

Accomplices

I should now discuss an important matter that has been referred to by counsel in the addresses - the question of the evidence of (alleged accomplice). It is suggested that (name of witness) was involved (with the defendant) in the offence.

OR

In this case (name of witness) admits to being involved in the commission of the offence.

OR

(Name of witness) has been convicted of the offence.

You should approach your assessment of the evidence of [the witness] with caution. A person who has been involved in an offence may have reasons of self-interest to lie or to falsely implicate another in the commission of the offence. You should scrutinise [the witness'] evidence carefully before acting on it. [The witness], having been involved in [the offence] is likely to be a person of bad character. For this reason, his evidence may be unreliable and untrustworthy. Moreover [the witness] may have sought to justify his conduct, or at least to minimise his involvement, by shifting the blame, wholly or partly, to others.

Perhaps [the witness] has sought to implicate the defendant and to give untruthful evidence because he apprehends that he has something to gain by doing so. [He has pleaded guilty and indicated that he is prepared to give evidence against his co-accused, the defendant in this case.] You may consider that he has an expectation of being dealt with more leniently as a result of his co-operation with the authorities. [If witness has an indemnity or has been sentenced pursuant to s 13A of the *Penalties and Sentences Act* 1992 see Direction No 60].

Whilst it is possible to identify some reasons which he may have for giving false evidence, there may be other reasons for giving false evidence which are known only to him.

(The witness's) evidence, if not truthful, has an inherent danger. If it is false in implicating the defendant, it will nevertheless have a seeming plausibility about it, because he will have familiarity with at least some of the details of the crime.

[The defence points to this evidence (briefly describe evidence) in support of its argument to you that (the witness) is not telling the truth. On the other hand, the prosecution submits to you that (the witness) is a truthful and reliable witness and relies on (briefly describe evidence).]

Other matters which you may think bear upon the reliability of the evidence of (the witness) are (briefly describe evidence).

In view of the matters I have touched upon, it would be dangerous to convict the defendant on the evidence of (the witness) unless you find that his evidence is supported in a material way by independent evidence implicating the defendant in the offence.

[There is evidence coming from an independent source which is capable of supporting the evidence of (the witness) in a material way. It is a matter for you as to whether you accept that evidence. If you do accept it, it is a matter for you whether you think it does support (the witness's) evidence in this way. The evidence is (briefly describe evidence).

OR

There is no other evidence that supports (the witness's) evidence in a significant way].

By the *Criminal Law Amendment Act 2000* operational 27 October 2000, s 632 now provides:

“(1) A person may be convicted of an offence on the uncorroborated testimony of 1 witness, unless this Code expressly provides to the contrary.

On the trial of a person for an offence, a judge is not required by any rule of law or practice to warn the jury that it is unsafe to convict the accused on the uncorroborated testimony of 1 witness.

Subsection (1) or (2) does not prevent a judge from making a comment on the evidence given in the trial that it is appropriate to make in the interests of justice, but the judge must not warn or suggest in any way to the jury that the law regards any class of persons as unreliable witnesses.”

In *Robinson* ([1999](#)) [197 CLR 162](#) at 168-9, the Court said:

“Sub-section (2) negates a requirement, either generally or in relation to particular classes of case, to warn a jury ‘that it is unsafe to convict the accused on the uncorroborated testimony of one witness’. That does not mean, however, that in a particular case there may not be matters personal to the uncorroborated witness upon whom the Crown relies, or matter relating to the circumstances which bring into operation the general requirement considered in Longman. Moreover, the very

nature of the prosecution's onus of proof may require a judge to advert to the absence of corroboration."

The requirement in *Longman* ([1989](#)) [168 CLR 79](#) is that since a defendant could be convicted on the evidence of one witness only, the law was required to address the problem of unreliability. Such unreliability could arise from matters personal to the witness, or from the circumstances of a particular case. The law requires a warning to be given "whenever a warning is necessary to avoid a perceptible risk of miscarriage of justice arising from the circumstances of the case" (86).

The 2000 amendment to sub-section (3) seems to prevent the trial judge from giving an unreliability warning in relation to "any class of persons" which must include accomplices. The amendment was a result of the Women's Task Force recommendations; and was designed to overcome the anomaly as between child witnesses and child complainants identified in *Robinson* (1998) 102 A Crim R 89, 91.

Where the accomplice is also a co-accused on a joint trial, the directions given should accord with those at 26.1