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SUPREME COURT OF THE TERRITORY OF PAPUA AND NEW GUINEA

MAGO, son of GAUDE  
Appellant

-and-

KORI, daughter of GOMARA  
Respondent

The Supreme Court (The Acting Chief Justice) as Court of  
Appeal from the Court for Native Matters at Port  
Moresby, 27th March, 1956.

Trial - questioning defendant in the dock.

Appellant and Respondent are in fact cousins but Respondent describes their relationship by saying she is the younger "sister" of Appellant. On 9th March, 1956, at mid-day both were together. Later Respondent complained that A. had asked her to permit him to have sexual intercourse with her and that on her referring to their relationship he attacked her, tearing her clothing. There was no corroboration of her story and the police, after investigating the complaint, declined to prosecute. R. then laid a charge in the Court for Native Matters and was her own sole witness. On the trial certain damaged clothing was produced. At the close of the prosecution A. elected to make a statement which the magistrate recorded and then both the magistrate and R. cross-examined A. on matters completely outside the scope of his statement.

- HELD :
- (i) When a defendant elects to make a statement he makes it from the dock and is not sworn or affirmed and cannot be examined. Questions either by the complainant or by the magistrate must not be put to him.
  - (ii) Where a defendant makes an unsworn statement any examination of him by questioning will be fatal to the conviction.

Editor's Note

This judgment does not affect the right, and the duty of a magistrate to make clear any ambiguity in what the defendant says from the dock, but deals with questions which are not strictly limited to clearing up actual ambiguities in the defendant's statement.

Desmond Sturgis, for Appellant

Applied to quash the conviction on the two stated grounds that:

Firstly, the conviction was against the evidence and the weight of the evidence, and

Secondly, the Magistrate wrongly admitted in evidence, clothing which had not been identified as that worn by the complainant.

To these he added, in argument, the submission that the conviction could not be sustained because the depositions disclosed a lack of corroboration. He referred generally to "Wills on Circumstantial Evidence".

Editor's Note:

- (i) The question of corroboration was not dealt with by the Court.
- (ii) The depositions disclose that, in addition to the second ground of appeal, the Appellant himself, as Defendant, raised at the trial the point that merely because the clothing was torn did not mean that he had anything to do with the tearing of it.

The Respondent was not represented

The Magistrate was not represented.

J U D G M E N T

GORE, A.C.J.

I think it is only necessary to view the appeal in relation to the questioning of the defendant on his unsworn statement. There was clothing which was not identified as being that of the complainant, but how far the Magistrate was influenced

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by a view of this clothing one cannot say.

The Appellant, as defendant, elected to make a statement. On that statement he should not have been examined. No questions either by the complainant or magistrate should have been put to him. In my judgment this is fatal to the conviction. Regulations 33 and 34 (of the Native Regulations) show that a defendant can be asked questions only if he is in the witness box, which means when he is giving evidence on oath or affirmation. A defendant does not enter the witness box but remains in the dock when making a "statement".

Appeal allowed.

Conviction quashed.

(end)

Published and edited by P.J.Quinlivan  
Barrister at Law, from material made  
available by the trial Judge and the  
Supreme Court Registry.

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