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March 27  
Port Moresby  
Magistrate A.C.J.

Criminal Law - Appeal - Whether a defendant making an unsworn statement from the dock may be examined or cross-examined by complainant or magistrate - Whether such cross examination fatal to conviction.

The Appellant and the Respondent are in fact cousins but Respondent describes their relationship by saying she is the younger "sister" of the Appellant. On 9th March, 1956, at mid-day both were together. Later the Respondent complained that the Appellant 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. The Respondent 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 the Appellant elected to make a statement which the magistrate recorded and then both the magistrate and the Respondent cross-examined the Appellant on matters completely outside the scope of his statement.

When a defendant elects to make a statement he makes it from the dock and is not sworn or affirmed and cannot be examined or cross-examined.

Where a defendant makes an unsworn statement any examination of him by questioning will be fatal to the conviction, if a conviction is the finding.

Sturgis for the Appellant.

Respondent unrepresented.

(Editor's note: Semble, this decision does not affect the magistrate's duty to ask any questions which may be necessary to clarify an **112**

ambiguity in the statement. Neither this nor the extent of such a duty is discussed in this case.)

APPEAL

The Notice of Appeal contained two grounds:

- (1) the conviction was against the evidence and the weight of evidence; and
- (2) the Magistrate wrongly admitted in evidence clothing which had not been identified as that worn by the complainant.

At the hearing of the Appeal, Counsel for the Appellant submitted further that the conviction could not be sustained because the depositions disclosed a lack of corroboration.

(Editor's note: The depositions also disclosed

- (i) that the question of corroboration was not dealt with by the Court; and
- (ii) That the Appellant himself 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.)

Now type the judgment as far as the words "Conviction quashed".

Delete all other parts of the roneoed report.

Norman White, Solicitor for the Appellant.

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(Ian Malcolm Macphree)