

R. v. KALUMKUNYA.

CRIMINAL REVIEW CASE NO. 336 OF 1940.

Indecent assault—corroboration of child's story—evidence of report cannot be given if child does not give evidence.

Evidence cannot be given by a mother of a complaint made to her by her child unless the child also gives evidence. The reason for this is that such evidence is merely evidence of the consistency of the child's story but is not evidence of the truth of the complaint.

See also *R. v. Wallwork* (1958) 42 Cr. App. Rep. 153.

Law, C.J.: In this case it is not necessary to consider any question regarding corroboration of the child's story. She did not give evidence.

The accused pleaded not guilty to the charge. The prosecution sought to prove the case against him by calling evidence as to the child's complaint to her mother, and medical evidence as to the child's physical condition.

With regard to the mother's evidence. This was not admissible as the child did not give evidence. To follow the language of PARKE, B. in *Regina v. Guttridge* (9 Carrington and Payne's Reports, at p. 472) "her evidence was not part of the *res gestae* but merely confirmatory evidence of complaint by the child". It could not be used as proof of the particulars of the complaint (*Regina v. Megson*, 9 C. and P. 420). Such particulars—in cases of this nature—are only admissible in evidence as corroborating the credibility of the prosecutrix and as evidence of the consistency of her conduct, and not as evidence of the truth of the charge alleged (*R. v. Osborne* (1905) 1 K.B., p. 551).

As regards the medical evidence. The mother's evidence not being admissible, the evidence of the doctor, of itself, does not prove anything against the accused.

In the circumstances the accused should not have been called upon to enter on his defence (section 190 Criminal Procedure Code). But having been so called upon, there does not appear to be anything in his evidence to establish the charge against him.

The Attorney-General has intimated that he cannot support the conviction.

It is noted that the punishment imposed on the accused has been administered. Nevertheless, and for the above reasons the conviction is formally quashed and the sentence set aside.