

Cahill v The Queen

14 May 2004

Angel, Mildren & Thomas JJ

Ex tempore judgment

In July 2003 the appellant was convicted by a Darwin Supreme Court jury of one count of having sexual intercourse with the complainant, his niece, without her consent, and of two counts of attempting to have sexual intercourse with her without her consent. Although the appellant sought leave to appeal against the convictions on a number of grounds, he was granted leave on only one ground, namely, that the convictions were unreasonable and could not be supported having regard to the evidence.

The Crown case rested upon the uncorroborated evidence of the 13-year-old complainant. The trial judge gave a corroboration warning to the jury. The Crown, without objection, led evidence of complaints made by the complainant to her sister and her mother. The jury was given directions concerning the complaints. The appellant did not complain of the corroboration warning given to the jury by the learned trial judge, nor was any complaint made about the trial judge's directions concerning the complaints made to the complainant's sister and mother.

The appellant did not give evidence.

Counsel for the appellant pointed out certain inconsistencies and discrepancies in the evidence all of these were put to the jury by the appellant's counsel at trial and were referred to by the learned trial judge in his summing up.

In an *ex tempore* judgment, the court unanimously dismissed the appeal holding that although the discrepancies and inconsistencies were arguable points which the jury might well have found persuasive, the verdicts demonstrated that the jury accepted the complainant's evidence as truthful. Having scrutinised the evidence, the court was satisfied that there was no significant possibility that there had been of a miscarriage of justice, that is, the conviction of an innocent person.