UNAPPROVED JUDGMENT
FOR ELECTRONIC DELIVERY

THE COURT OF APPEAL

Edwards J.
Donnelly J.
Ní Raifeartaigh J.

Record No: 84/2019
Neutral Citation Number: [2021] IECA 81

THE PEOPLE (AT THE SUIT OF
THE DIRECTOR OF PUBLIC PROSECUTIONS)

Respondent

V

M. C.

Appellant

JUDGMENT of the Court delivered by Mr Justice Edwards on the 25th of March 2021.

Introduction

1. The appellant in this case was in a relationship with the mother of the complainant, and they resided together. The complainant was the daughter of the appellant's partner and the appellant performed the role of a de-facto stepfather in the complainant's life. The

indictment charged the appellant with 73 counts of indecently assaulting the complainant, covering the period from the 1st of October 1973 to the 24th of August 1979. Every allegation bar one was said to have occurred at their place of residence at an address in a north Dublin suburb. The outlying allegation was said to have occurred at an unidentified beach in Ireland. The trial judge directed an acquittal in respect of this charge. The 72 remaining charges consisted of four types of offending behaviour for every four-month period between the dates mentioned.

2. The four different types of offending behaviour to which we have referred comprised complaints of:

1. the accused having the complainant rub his penis;
2. the accused penetrating the complainant's mouth with his penis;
3. the accused touching the complainant's vagina with his mouth; and
4. the accused having the complainant rub herself up and down his penis while she was naked.

3. The appellant was tried before a jury in the Dublin Circuit Criminal Court in 2019 and was convicted of all 72 remaining counts by a 10-2 majority decision of the jury. He was subsequently sentenced to a combination of consecutive and concurrent sentences leading to an overall term of ten years imprisonment, to date from the 5th of March 2019.

4. The appellant is appealing against his conviction and sentence. This judgement will deal solely with his appeal against conviction in the first instance.

Evidence at trial

5. The complainant was born on a date in 1966. In her examination-in-chief, the complainant gave evidence that when her mother "A.B." met the appellant, she had been working in a restaurant in Dublin city which, for the purposes of this judgment, we will call "The X Restaurant". The appellant had been working in the same restaurant as a cook. Her

mother and the appellant entered into a relationship, and they all began living in a B&B. Shortly thereafter, they moved into a basement apartment in a south Dublin suburb. The complainant did not know if the appellant and her mother were still working in The X Restaurant at this point.

6. The family then moved to a three-bedroom apartment in a north Dublin suburb. The two adults shared a bedroom, and the complainant and her stepbrother had the other two bedrooms. Her stepbrother, the son of the appellant, was about six years younger than the complainant.

7. The complainant gave evidence that when they moved to the north Dublin suburb, her mother was working night shifts in an hotel in Dublin city which, for the purposes of this judgment, we will call "The Y Hotel", and claimed that "*she was always working"*. She remembered that the appellant was working in a restaurant in Temple Bar at this point. She stated that she had called the appellant by his name, but he instructed her to call him 'Dad'.

8. The appellant stated that before she made her Holy Communion at the age of 8, the appellant and the two children were in the living room when the following occurred:

> "*[M.C.] was sitting on the chair and he was tickling us and then he said to me -- he says, "Oh," he says, "I have more tickles somewhere else." And he made me, like, tickle. He says, "No." He says, "Not there." And anytime I was going around. And then he says -- he took out his trousers, the zip of his trousers. He didn't take his trousers off. And he just opened his zip and he took his penis out and he says to me, he says, "If you tickle this", he says, "something will happen." And he said, "Rub it.""*

9. The complainant stated that she did rub his penis and the appellant's penis became erect. "*And then he says to me, "Don't say anything to anybody." But I was always afraid of him."*

10. The complainant recollected that when her mother was out, and she was in bed, the appellant would wake her up, bring her into his bedroom, make her take off her nightdress and make her rub and suck his penis. The appellant did not speak much during these encounters. "*All he did was just laugh all the time and smile*". The complainant described feeling afraid, guilty that she was doing something wrong, and that it was her fault. She described how after she had stopped sucking his penis, the appellant "*used to have me kiss him all over his body. He'd kiss me in my mouth. Stick his finger -- stick his tongue in my mouth. He made me piss in his mouth one time*".

11. At this point in time, the appellant's son was around two years old. The appellant always took the complainant into his bedroom, and the offending behaviour generally lasted for around one to two hours. She stated that it occurred two to three times a week and continued until she was 12 years old. The complainant stated that her mother used to leave the house at around 10 p.m., after which the appellant would wake her up and use her like "*a sex doll*". She stated that if her mother had been working in The Y Hotel, she would not return home until 7 a.m.

12. She also testified that her mother used to attend bingo with her aunt, which would sometimes be followed by drinks. The complainant informed the court that her mother had been close to walking in on them at times, and when the appellant would hear the key in the door, he would tell her to "*Run, go on, quick".* The complainant described feeling sorry for the appellant, but not knowing why.

13. The complainant recounted getting her first period at the age of 11, on the 25th of November. On various occasions after this, she would inform the appellant that she was having her period, to which he would respond "*It doesn't matter",* before proceeding to "*suck on my vagina".*

14. In general, the complainant felt safe when the family went on holiday together, as the appellant would not have the same opportunities. However, she described one occasion on a day trip when she was around 9, when the family had gone to the beach, and the appellant brought her far out into the sea and instructed her to lie on her back while he "*put his finger up my vagina and started rubbing".* The count on which the direction was granted related to this alleged incident.

15. When asked if she knew why the abuse stopped after the age of 12, the complainant told the court that it was likely due to a combination of her periods and starting comprehensive school.

16. The complainant stated that from the age of 13 or 14 she began sniffing "*glue and Valium and acid and drink*", and left school at the age of 15. At the age of 17 or 18, the complainant's drug usage progressed to include heroin. She moved out of the family home at the age of 16 and got a flat with a friend. After a while she moved abroad and worked in a hotel there, before returning briefly to Dublin and then moving to England at the age of 18, where she lived with her (maternal) aunt, "C.D.". She continued to abuse drugs up until four years before the trial. She had lived in another country for the previous 30 years and has three daughters.

17. She confirmed that while living abroad she had been in contact with a member of An Garda Síochána, and had subsequently come back to Ireland to make a formal statement of complaint against the appellant.

Cross-Examination of the complainant

18. Under cross-examination, the complainant agreed she had led a very troubled life, having abused drugs and alcohol on and off for around 25 years, which she attributed to the abuse inflicted on her by the appellant. She recalled that the appellant threw her out of the house when he discovered her drug use. When it was put to the complainant that she had

never liked the appellant at any stage, she agreed and said that he had hit her, and had sometimes forced food into her mouth at meals when she was not inclined to eat. He had made her afraid of him from the beginning of their time as a family.

19. The complainant stated that she had been raped by one other person at the age of 18 when she was drunk. She did not make a complaint to the gardaí in relation to it.

20. The complainant accepted that she may have been incorrect about her mother working at The Y Hotel. She claimed that whilst she may have got the name wrong, her mother did work night shifts at an hotel. She claimed that her mother played bingo on Friday nights, but conceded that she might have been incorrect about the specific day. She accepted that sometimes the appellant would not always be home at the weekends.

21. The complainant stated that another maternal Aunt, "E.F.", would sometimes visit on Sundays but would not sleep over despite the complainant's requests that she should do so, as E.F. was fearful of the appellant. E.F. was only two years older than the complainant. She was unable to say at what time of year E.F. would have been coming over.

22. The complainant was cross-examined extensively concerning her allegation that she had been digitally penetrated at the beach location. She accepted that in her statement to gardai she had not told them that the appellant had inserted his finger into her vagina and had said only that he had "*played around with my clitoris"*.

23. She accepted under further cross-examination that she had not informed the gardaí about the occasion on which she "*pissed in his mouth".*

24. She stated that she was unable to sustain sexual relationships due to the trauma and suffers from flashbacks. She was cross-examined about what she meant by flashbacks and agreed with defence counsel's suggestion that *"flashbacks are something that you remember that you hadn't remembered before"*. She was unable to teach her daughters how to dry themselves after bathing because looking at the bodies of her daughters was enough to trigger

flashbacks. She informed the court that some flashbacks led her to recall details for the first time. She claimed one such incident had occurred a month prior to the trial, when she remembered the appellant making her "*suck his testicles".* However, when it was pointed out to her by defence counsel that she had in fact mentioned this detail to a Garda in 2017, she could not account for that.

25. The appellant was further cross-examined about attending with various counsellors and therapists in the country where she was then living. The complainant stated that she had been attending therapy for the past 15 years, and that 15 years ago she had sought to make a complaint about the appellant's abuse in the country where she was living at the time but was told it was too long ago. She was told by a therapist that giving evidence against the appellant would contribute therapeutically to her recovery.

26. Counsel for the defence put an extract from a counsellor's notes made in 2013 to the complainant, in which it was recorded by the counsellor that, *"She doesn't know – she's not sure if she needs help. Sometimes she thinks she's exaggerating. The abuse happened a long time ago."* The complainant denied saying this to the counsellor, and explained:

> "*I thought I was going mad. That sometimes day* (sic) *I feel like I'm on top of the world and some days, like, it gets me. It just comes up in certain aspects of my life with my children, with sexual relationships….*
>
> *…sometimes I think I can deal with this what happened to me, and some days I can't. Some days I'm on top of the world and some days I just feel like dying*."

The complainant stated that the counsellor may have been mistaken, or that the real meaning could have been lost in translation from its original language but insisted that she had never said she could have been exaggerating. Seemingly the notes that were put had been originally been taken in the language of the country where the complainant was then living, and counsel was utilising a translation.

27. It was put to the complainant that she had told the counsellor that there had been ongoing issues after the age of 12, whereas her evidence to the jury had been that the abuse had stopped when she was 12. The witness agreed that she had told the counsellor about ongoing issues but stated that while the appellant *"came on to me He didn't sexually – because I was old enough then to say no and I was strong enough then"*. She gave an example of what she was speaking about stating, *"because I wanted to travel, and I was saving money and he says to me that if I give him a blow job that he'd give me, like, a hundred pound – it was pounds then."* She stated that the appellant had also given her a "*love bite*" at the age of 16. These incidents did not amount to sexual assault in the opinion of the complainant.

28. She informed the court that she self-harmed with drugs from an early age and was taken into hospital on one occasion. It was put to her that she was prescribed "Oxazepam" for cannabis-induced paranoia, which she rejected and maintained that it was prescribed for depression.

29. The complainant was asked about a road traffic accident in which she was injured at the age of 6. She was hit on the back of the head by a car when she was crossing the road. She said she was taken into hospital for an X-ray and suffered no further problems.

Evidence of A.B., complainant's mother

30. A.B. informed the court that she worked as a waitress in many venues across Dublin. She claimed that she did not meet the appellant whilst working in the Y Hotel but met him in The X Restaurant, when they were both employed there. She believed the complainant would have been four years old at this point. After they met, A.B. and the appellant began a relationship which lasted around 8 years. They were never formally married, but she used his name for formal purposes. A.B. had her third child "G" with the appellant.

31. She believed the complainant to have been 7 years old when she made her first communion. The immediate family including the appellant attended the communion, after which they returned home.

32. A.B. stated that when they moved into an apartment in a north Dublin suburb she was working in the Coffee Dock in another hotel in Dublin which, for the purpose of this judgment, we will call "The Z Hotel". She worked shifts from 11 p.m. to 8 a.m. The exact rota would have been subject to change, but she would generally work around four shifts a week. In her statement to the gardaí, A.B. had said that she played bingo with her neighbours, sister and friends on Tuesday nights, but clarified at trial that she had played on Wednesday nights and on some Friday nights. She stated that the appellant looked after the children when she was out. On occasion, her sister E.F., or her brother "J" (otherwise referred to at the trial as "Uncle J") would help to look after the children.

33. The witness stated that after the appellant left The X Restaurant he had worked at another hotel, which we will call "the Q Hotel", and did a variety of shifts.

34. She confirmed that her daughter left the house due to drug use. She confirmed that her daughter went by the appellant's surname as a child, thus ensuring all the children would have the same name so as to avoid stigma.

Evidence of C.D.

35. C.D., sister of A.B. and aunt of the complainant, gave evidence that she used to look after the complainant and her younger brother during the day when their mother was working in The X Restaurant. She recalled that the complainant would have been in school and that the complainant's mother would collect them from her house at around 6 o'clock. She believed the complainant would have been aged around 7 or 8 at the time.

36. She confirmed that when she used to play bingo twice a week along with A.B. and friends in a local pub, bingo would finish at around 9.30 p.m., following which the group

would have a bag of chips, a chat and a drink. She stated that on bingo nights, her husband would babysit her children and the appellant would babysit A.B.'s children.

37. Under cross-examination, C.D. confirmed that she babysat A.B.'s children during the daytime, as their mother was a day worker and did not work night shifts at The X Restaurant.

38. C.D. moved to London in 1976. The complainant's mother would bring the children over to visit about once a year. The appellant did not join them. She remained close with the complainant and helped her get a job when she came to stay with her in London after turning 18.

39. The witness informed the court that her own daughter, "L" who was close in age to the complainant, would often spend the night in the complainant's home and play with her, and that on these occasions the appellant would also have been in the apartment. This detail was apparently not contained in the witness's statement in the Book of Evidence

Evidence of E.F.

40. E.F., another sister of A.B. and aunt of the complainant, testified that she used to stay over with her to keep her company whenever her mother was working in The X Restaurant, mostly when she did not have school to attend the next day. Accordingly, these occasions were mostly during the summers or at weekends, or during school holidays. Sometimes the appellant would come home when she was in bed with the complainant. Other times, if he was to return home earlier, she would leave before he came home. E.F. stated that she had never stayed over when A.B. was at bingo, and that she remembered A.B. going out to play bingo quite often.

Sergeant R. McM

41. The complaint was first made to the Gardaí in 2015. Gardaí first received an email from the complainant on their website, which stated that she was a victim of historic sexual abuse in a named area. On the 15th of February 2015, Sergeant R McM contacted the

complainant by phone. He took her details and the basic allegation against the appellant. She told Sergeant McM of the circumstances surrounding the sexual abuse which she stated occurred in the 1970s when she was aged between 7 and 12, and that the abuse occurred in an apartment at a particular address and had been perpetrated by her stepfather, the appellant. She was invited to make a statement. On the 22nd October 2015 she attended at a named Garda Station and dictated a statement to Sergeant McM.

42. On the 1st of November 2015, the Gardaí contacted the appellant for the first time and invited him to attend at the said named Garda station. By arrangement he attended on the 4th of November 2015, and the allegations were first put to him. He reattended, at the request of Gardaí, for further questioning, on the 8th of June 2016. He was later arrested and charged on the 11th of September 2017.

43. When interviewed by Gardaí on the 4th of November 2015 the appellant stated that he began working in The Y Hotel in 1961 or 1962, and had worked there until 1968, when he began working in The X Restaurant. He met the complainant's mother at The X Restaurant. They moved to a north Dublin suburb after she had his child. He stated that one of the complainant's aunts used to babysit, as he used to work night shifts, and would finish at 11 p.m. He claimed the complainant had adopted his last name of her own accord. He believed he had been at her first communion but claimed his memory had been affected in recent years. He was not sure if they went to a hotel afterwards. He stated that he met another woman around 1988 and moved out.

44. He stated the complainant had been a quiet child and went "*a bit wild*" and got involved with drugs as a teenager. He claimed he was too busy with work to notice much about it. He confirmed that the complainant's mother played bingo some nights during the week. He denied that the complainant would ever have been in his bedroom. After being read the allegations, he replied "*It never happened and I have to say it sounds like a fantasy*

world…I can't believe it. It's just -- I don't know where it was coming from". He denied ever babysitting but could have looked after the children when their mother was at bingo.

45. In the second interview conducted with the appellant on the 8th of June 2016 he denied ever being in the apartment on a Friday night as he would have been in a club, and that he "*was never the type of guy who sat in minding kids*", bar perhaps once a month.

46. Sergeant McM confirmed that no similar allegations have ever been made against the appellant by anybody else.

Grounds of Appeal

47. The appellant has lodged five grounds of appeal in respect of his conviction, which are as follows: -

1. The trial judge erred in refusing the defence application for a direction;
2. The trial judge erred in law in refusing to remove certain counts from the indictment, on application by defence counsel, on the basis of insufficiency of evidence;
3. The delay warning given by the judge was inadequate;
4. The corroboration warning given by the judge was inadequate;
5. The trial judge's charge to the jury lacked balance and was unduly favourable to the prosecution. Justice must not only be done but be seen to be done. The conduct of the proceedings was objectively unfair

Ground of Appeal No 1 – the refusal of a direction (on *P. O'C* grounds)

48. In the trial at first instance the appellant sought a direction at the end of the prosecution case on a dual basis, namely on so-called *P.O'C* grounds (referencing *People (Director of Public Prosecutions) v P.O'C* [2006] 4 I.R. 720), and on the basis of insufficiency of evidence relying on the first limb of Lord Lane's celebrated statements of principle in *R v Galbraith* (1981) 73 Cr App R 124 ; [1981] 1 W.L.R. 1039. The trial judge

refused to grant a direction on either basis and is said to have been in error in not doing so. The appellant seeks on this appeal to reprise the grounds advanced in support of his application for a direction before the trial court. He relies on *P. O'C* grounds in support of ground of appeal no 1 and does so on insufficiency of evidence grounds in support of ground of appeal no 2. We will address the latter when we come to consider ground of appeal no 2.

49. There are two facets to the appellant's complaints underpinning ground of appeal no 1. First, it is complained (per the appellant's written submissions) that *"the trial judge misdirected herself on the utility of potential witnesses"*. Secondly, it is said that the delay in prosecuting this case impacted on the accused's constitutional rights to due process and a fair trial.

50. Central to the issue from the appellant's perspective is the fact several new details emerged during the complainant's evidence, and that of C.D., which were not contained on the Book of Evidence. These were itemised in the appellant's written submissions as:

(i) An allegation of being forced to urinate in the appellant's mouth;

(ii) An allegation of the appellant digitally penetrating the complainant;

(iii) An allegation of having been physically assaulted by the appellant;

(iv) An allegation of having been forced to suck the appellant's testicles;

(v) An allegation of the appellant offering the complainant money to perform oral sex on him;

(vi) An assault in the form of a "love bite";

(vii) An admission that some of these new allegations came as a result of "flashbacks" which she had been experiencing;

(viii) Other allegations, i.e., ones the complainant maintained she had always been aware of but had not included in her statement to the Gardaí.

51. It is said that on foot of this new evidence, elicited for the first time at trial, there were several potential witnesses who had never been interviewed but whose evidence might have proved beneficial to the defence. There has been no identification of such potential witnesses with particularity, nor has it been indicated in respect of which one or more of the additional allegations listed they might have been able to provide useful evidence. However, it is said that such potential witnesses might have proved invaluable in establishing "an island of fact" which the defence might have built its case around in the absence of other evidence. Quite apart from such possible witnesses it is said that there were other potential witnesses who were also never been interviewed but whose evidence might have proved beneficial to the defence. These were identified as "Uncle J" who had babysat occasionally, and C.D.'s daughter "L" who had occasionally stayed over in the complainant's home. It was not suggested what might be the useful evidence that either of these persons could have given.

52. Counsel for the respondent submitted in reply:

> *"In respect to the -- I'll categorise them as so-called missing witnesses, for the defence to have any submission to make in relation to those and the impact on this trial, I would say the defence need to engage with the facts as to the exact impact and how they are prejudiced by the absence of these. Uncle J, the babysitter, has been mentioned. There's nothing from him. We've nothing to say as to why he would be helpful in relation to this matter. In respect of the aunt I would say we've had both aunts who babysat, E.F. and C.D. and as Mr Greene points out L was a child at the time. And I think he mentioned others. Obviously, I don't know who those others are, Judge."*

53. In rejecting the *P.O'C* application in so far as it related to witnesses not interviewed, or even identified, the trial judge said:

> *"I note that Mr Greene yesterday evening raised the issue of a reference to uncle [J] and another aunt having been people who babysat but that this wasn't evidence which the gardaí had when they were investigating matters, and that therefore it was suggested that this was another matter which may have been helpful to the accused if they had been made available. But I do note that in that regard there is no suggestion by the complainant or any other party that either of these people would have observed anything or were present at any of the events which, pursuant to which the allegations are made."*

54. The appellant complains that by supposedly relegating the utility of the potential witnesses in a case of this nature to merely that of possible observers the trial judge had fallen into error, and in that regard re-iterates his case that there might have been witnesses who could have provided assistance in establishing "an island of fact".

55. We feel it is important to point out that in so far as reliance is placed on the fact that new details had emerged at the hearing which were not mentioned in the Book of Evidence, that circumstance is only relied upon to support the suggestion, made it seems to us on a speculative basis, that there might have been witnesses who could have given some testimony concerning these matters of potential help to the defence. However, there had been no objection to the evidence concerning the new details at the time, and no application was made for a discharge of the jury and/or for an adjournment of this relatively short trial to enable the defence to carry out their own investigations and/or to take instructions concerning this new material.

56. Under questioning from the bench at the oral hearing of this appeal, counsel for the appellant conceded that he had viewed the prospect of a jury discharge as having been remote, and that he had opted on a strategic basis to instead make a *P.O'C* type application at the end of the prosecution case. We think he was wise in that decision. While some new

details had emerged, they were largely as to collateral matters, and while they did relate in some instances to aspects of the alleged offending conduct of which the defence were not previously aware, and which was not being attributed to any specific charge or charges, such evidence was nonetheless admissible in principle as providing context. That said, if there had been any question of serious prejudice or unfairness to the defence by not having notice of these details the appellant would have been entitled to a discharge of the jury and an adjournment for the asking. It is clear, however, that the defence did not seek to make that case.

57. We find no error in how the trial judge ultimately dealt with the *P.O'C* type application in so far as it related to witnesses said not to have been interviewed, or even identified. We are guided in this view by the approach of O'Malley J in *O'C v Director of Public Prosecutions and Ors* [2014] IEHC 65, at para 65 of her judgement, which commends itself to us as having been entirely the correct one:

> *"... it seems to me that when an applicant seeks to establish that the absence of a specific witness or piece of evidence has caused prejudice, he or she must be in a position to point to, at least, a real possibility that the witness or evidence would have been of assistance to the defence. In other words, I do not believe that it is sufficient to point to a theoretical possibility that an unavailable witness might have had something to say that would contradict the complainant's account and that of other witnesses."*

58. In this case, the suggestion that Uncle J or L might have had something useful to say is entirely theoretical. The suggestion that there might have been "other" unidentified witnesses who might have provided assistance in establishing "an island of fact" which the defence might have built its case around in the absence of other evidence is entirely speculative. We therefore have no hesitation in rejecting this aspect of the complaint.

59. The second facet to the *P.O'C* based complaint is that the delay in prosecuting this case impacted on the accused's constitutional rights to due process and a fair trial. It cannot be gainsaid that, even as cases of historic sexual abuse go, this was a very old case and there was very significant delay.

60. However, in further rejecting the *P.O'C* based application for a direction, in so far as it related to the delay issue, the trial judge said:

> "*the Court will endeavour to protect the accused's right to a fair trial, as appropriate, by giving the necessary warnings regarding delay in cases such as this and the problems that are caused by the same*."

61. The appellant complains that it can be extrapolated from this that the trial judge was satisfied that the appellant had been prejudiced by the consequences of delay to the extent that there was a real risk of an unfair trial but had concluded that those prejudices could be rectified in her charge. The appellant contends in the written submissions filed on his behalf that there were elements incapable of being addressed appropriately within the charge. However, apart from a reprise of the complaint concerning witnesses said not to have been interviewed, or even identified, no such elements were identified with specificity in either the written submissions or counsel's oral presentation to this Court.

62. In dealing with this aspect of the matter the trial judge said to the jury:

> *"Reference was also made to the mention in the course of this hearing of an Uncle John, and it would appear that Uncle John had not been referred to when the complaint was made to Sergeant McMorrow. And, as a result, no statement was taken from him, and he is not, therefore, before you as a witness to be cross-examined in relation to the events being prosecuted here. Mr Greene points to this as an example of how his client is disadvantaged in general, but, specifically, by reference to the delay in the allegations being made. [M.C.], he says, is unable to locate or,*

indeed, remember events or people who might be able to aid his defence. He referred to the fact that memories fade with the passage of time."

63. The trial judge gave a lengthy and detailed delay warning, which will be further considered later in this judgement, at the end of which she concluded by saying:

"Members of the jury, these are the matters which you have to take and consider and assess. It is for you to decide whether the evidence is sufficient to allow you to be satisfied beyond reasonable doubt of the prosecution's case, or whether you are left with a doubt which is based on reason. Now, members of the jury, the superior courts have said that such delay as in a case like this, and other cases which the Court deals with on a regular basis, can be understandable. In this case, you have heard the evidence of the complainant. It is a matter for you to consider the evidence in its totality, and the delay in this case is also a matter for you to consider.

In summary, members of the jury, you must be cautious in light of two facts. There is no corroboration in this case; it is the word of the complainant in this case, and that carries certain dangers that I've outlined to you, but it does not prevent you from convicting the accused once you have exercised caution in considering the case and you are satisfied to the required standard. Further, members of the jury, you must be cautious in light of the passage of time, and, again, the inherent dangers such time-lapse can bring in a case like this. However, as I have said to you, the law is that these cases can and are tried, even at a remove of this length of time. And once you exercise caution, you are not prevented from convicting the accused if, having exercised that caution, you have been satisfied to the required standard that the accused is guilty. Therefore, members of the jury, you must consider these facts along with all the other evidence that you have heard before coming to your decision.

Given the presence of these factors in the case, I am directing you again to exercise

caution if you are minded to convict the accused, as it may be unsafe to convict. While I must warn you that you cannot speculate, you are entitled to consider, in light of the evidence that you have heard, whether the absence of such a potential witness as has been put before you by Mr Greene in his discussion or in his submissions to you, the delay, and the lack of corroboration, if present, gives rise to a reasonable doubt which must be given to the benefit of the accused. However, having considered all the evidence, including the complainant's evidence, and the matters just outlined to you, and the caution I have urged upon you, if you are convinced to the required standard, beyond reasonable doubt, then you are entitled to convict [M.C.] on the counts on the indictment. To convict, you must be satisfied beyond reasonable doubt of all the elements of each offence, and the burden of proof is always on the prosecution."

64. We find no error in the trial judge's approach to the delay aspect of the *P.O'C* based application for a direction. It was within her discretion to allow the matter to proceed to the jury on the basis that the delay issue could and would be dealt with by appropriate instructions to the jury on delay. Counsel for the appellant has singularly failed to support his assertion that there were "elements" incapable of being addressed appropriately within the charge. Accordingly, we also reject the second facet of the complaint about the refusal to grant a direction on *P. O'C* grounds.

65. In the circumstances, we are not disposed to uphold ground of appeal no 1.

Ground of Appeal No. 2 – refusal of a direction (on insufficiency of evidence grounds).

66. It was submitted on behalf of the appellant that, even if the prosecution case was taken at its height. certain counts should have been withdrawn from the jury on the basis of insufficient evidence. The appellant's submission in relation to ground 2 was focused on those counts which covered the period during which C.D. was said to have babysat the

complainant while A.B. was at work. We were asked to particularly note the following evidence in the context of his contention.

67. The complainant gave evidence that the abuse occurred when her mother was not home. The complainant also had testified that her mother used go out to work a night shift at the Y Hotel. She said her mother used to return home around 7 o'clock in the morning. She also testified that her mother used to attend bingo on a Friday night. The alleged abuse was said to typically occur in the appellant's bedroom and that it continued until she was 12 years old. Under cross-examination the complainant admitted that it might not have been The Y Hotel that her mother was working at, but that it "*was a hotel that she did work in and she worked nights*."

68. The complainant's mother, A.B., also testified on the prosecution's behalf. She testified that she worked in The Y Hotel before she met the appellant. She then began working in The X Restaurant. Here she met the appellant and they began their relationship. This lasted approximately 8 years and she had her 3rd child, A.C. After A.C. was born, A.B. began working in The Z Hotel. In the course of her cross-examination she corrected her statement to the Gardaí. She clarified that she used to attend bingo on Wednesday nights and some Fridays. In her statement to the Gardaí she stated she used go on Tuesday nights but explained that in the course of making the statement "*I made a mistake*". A.B. gave evidence of working night shifts in The Y Hotel and also of working a night shift in The Z Hotel when she was employed there sometime in 1978. However, at no point in her testimony did she testify as to the hours she used to work in The X Restaurant.

69. C.D., the complainant's aunt, was called and she testified that she used look after the complainant and her brother when her mother used to work in The X Restaurant. She also testified that she used to attend bingo with A.B., twice a week. Under cross-examination she

confirmed that she babysat the two children during the day, as A.B. was a day worker and not a night worker at The X Restaurant. She moved to England in 1976.

70. E.F., another aunt of the complainant, had also testified. She stated that, as she was close in age to the complainant, she used to be friendly with her. She would play with the complainant and on occasion stay the night at the complainant's house provided she did not have school the next day. She testified that when she used to stay the night A.B. would be at work.

71. It was submitted on behalf of the appellant that the evidence before the jury at the close of the prosecution's case was:

- that, according to the complainant, her mother was working night shifts in a hotel for the duration of the sexual assaults. In her evidence-in-chief the complainant repeatedly referred to The Y Hotel but in cross-examination she admitted she may have been mistaken about where her mother worked.
- A.B. stated she worked multiple jobs but had worked in The Y Hotel before she met the appellant. She worked in The X Restaurant from sometime in 1970 until sometime in 1978.
- C.D. had testified that she used babysit for A.B. while she worked in The X Restaurant. The babysitting would occur during the day as A.B. worked a day shift and not a night shift.
- E.F. would stay the night at the complainant's house and when A.B. would be at work.

72. Counsel for the appellant maintains that that no jury, even if properly charged, could have been satisfied on the evidence before them to the standard of beyond a reasonable doubt, that any sexual offences were committed against the complainant during the eight years when A.B. was said to have worked in The X Restaurant, because the complainant had claimed to

have suffered her abuse when her mother was working nights in a hotel or hotels, or was at bingo. The evidence was that A.B. had only worked days while at The X Restaurant. In so far as bingo was concerned, the appellant maintains there were inconsistencies in the evidence in regard to that. There was debate as to whether the bingo occurred on a Tuesday or a Wednesday night. It is said that A.B. was adamant in her testimony that it took place on a Wednesday night, but in her statement she had claimed it occurred on Tuesday nights. This was said to be a practical example of how people's memories become unreliable following a lengthy delay. In addition, evidence was tendered that some Friday evenings the appellant would go for a drink with his friends.

73. As mentioned in the introduction to this judgment, the indictment contained 73 charges covering the period from the 1st of October 1973 to the 24th of August 1979. As a precise date was not available as to when A.B. left The X Restaurant, and the only evidence in that regard was that it was some time in 1978, counsel for the appellant contends that the alleged evidential deficit that he relies upon taints all counts the timeframe for which embraces any time from the 1st of October 1973 up to and including the 31st of December 1978. This argument, if it were to be accepted, therefore would have embraced all but counts no's 69, 70, 71 and 72. It will be recalled that a direction was granted at trial in respect of count no 73.

74. Counsel for the appellant anticipated correctly that the prosecution might counter that A.B.'s attendance at bingo afforded the appellant the opportunities to abuse the injured party. However, counsel says, there were inconsistencies in this evidence. There was debate as to whether the bingo occurred on a Tuesday or a Wednesday night. A.B. was adamant in her testimony that it was a Wednesday night but, in her statement she had claimed it occurred on Tuesday nights. Counsel suggests that this is a practical example of people's memories being

unreliable following a lengthy delay. In addition, evidence was tendered that on some Friday evenings the appellant would go for a drink with his friends.

75. The appellant maintains the combined effect of the matters pointed to is that he was required to answer a case which was vague and full of inconsistencies. It is suggested that whilst, individually, the conflicts would not justify withdrawing the case from the jury, cumulatively, they form an opaque and uncertain case and one that should have been withdrawn.

76. While the case has been advanced in submissions on the basis that the appellant is relying on the first limb of the *Galbraith* test, i.e., insufficiency of evidence, it seems to us that in truth the appellant is in fact seeking to rely on both limbs of the *Galbraith* test., i.e., insufficiency of evidence and a contention that the evidence was so infirm due to contradictions and inconsistencies that no jury properly charged could convict upon it.

77. We will address these primary complaints momentarily. However, it is convenient at this point to allude for completeness to a further but subsidiary argument also made by the appellant under this heading which was that the difficulties pointed out by him were incapable of being remedied by the giving of instructions to the jury. While the appellant accepts that certain issues such as delay, and lack of corroboration, were in principle capable of being dealt with by instructions (although how that was in fact purported to be done in this case is complained about in separate grounds of appeal) he says that the issue of A.B's work hours in The X Restaurant was not capable of correction in a charge. The only way the prosecution's case could succeed was if the jury rejected the entirety of C.D.'s evidence. While a jury is entitled to reject the evidence of a witness, given the conflict in evidence between the injured party, her mother and C.D., together with the inherent unfairness in trying to defend charges of this vintage, the counts referable to the time C.D. babysat the injured party case should have been withdrawn from the jury.

78. In reply to the appellant's complaints the respondent maintains that the trial judge was correct in allowing any conflicts in the evidence of the complainant, her mother A.B. and her aunt C.D., to be resolved by the jury on the basis that they would be given appropriate warnings and instructions. The jury were given both a delay warning and a corroboration warning. Moreover, with respect to the inconsistencies pointed to by counsel for the appellant the jury were told the following by the trial judge in the course of summarising the evidence:

> *"We then heard from [C.D.]. She told you she used to mind [the complainant] and her little brother M during the day when A.B. was working in The X Restaurant. She told you [the complainant] would have been in school and that [M.C.] would collect them from her house at around 6 o'clock. She told you that when she used to play bingo maybe twice a week along with A.B., there was also some friends there and they played in [a named pub]. She told you that whenever they went to bingo, [M.C.] would babysit the [complainant] and M junior. She also told you that she moved to London in 1976. She said she was close with [the complainant] and she helped her get a job whenever she came to stay with her in London whenever [the complainant] was 18."*
>
> …
>
> *"And certainly the night work figured prominently in this case until we learned a very important detail, which was that from when she left [The Y Hotel] around 1970 until she had [G] in the spring of 1978, there was no night work. She went off to work in the coffee dock in [The Z Hotel] after she had [G], she left The X Restaurant when she fell pregnant, having worked there for years and having been a day worker or an evening worker there.*
>
> *And, we know that because thankfully [C.D.] was able to remind us or tell us, she having been an adult at the time, what the babysitting set up was. Sorry, I think it was*

[C.D.], I may be mistaken on that and I'm sure I'll be told before the end if I am. But in any event, it's your recollection, a witness told us about the babysitting. So, she didn't work nights, which removes like a leg from a stool one of the foundations of the prosecution's case with respect to this man's opportunity to do what it is alleged he did. Much was made of bingo with [C.D.], much was made of that and I'm not saying that [A.B.] never went to bingo again, but much was made of the fact that she was having bingo nights with principally [C.D.], and [C.D.] was able to say, "My husband looked after these children, he looked after those children", but she's gone to London in 1976, so that's the height of your evidence with respect to the bingo. Straws in the wind; things that we're trying to grasp a hold of to test the reliability of what's being said, and insofar as it's being said that an opportunity was taken to viciously assault this girl. The opportunity to do so because she was working nights just did not present itself until 1978 no matter what way you look at it."

79. We consider that the trial judge was correct to allow the matter to go to the jury. There was sufficient evidence upon which a jury properly charged could convict of the offences charged on the indictment, notwithstanding the contradictions and inconsistencies in the evidence concerning the dates and circumstances of A.B.'s night shifts and bingo playing. The dates bracketing opportunities such as those during which the alleged abuse might have been committed by the appellant were not critical. What was critical was whether the jury accepted beyond reasonable doubt that the appellant had abused the complainant as alleged by her, regardless of whether evidence adduced on collateral issues, such as possible opportunities to perpetrate such abuse during night shifts, or while AB was at bingo, was clear or equivocal. The complainant herself was clear in her evidence as to what she said had happened to her, and as to how often and in what circumstances it had happened. The defence was simply that such things had never happened, ever. To the extent that there was

vagueness, contradiction or inconsistency in aspects of the evidence adduced by the prosecution these were quintessentially matters for a jury to resolve. The critical issue for the jury was whether they could be satisfied beyond reasonable doubt that the complainant was both credible and reliable in maintaining that she had been abused by the appellant as she alleged.

80. We are satisfied in all the circumstances of the case that the trial judge would not have been justified in granting the directions sought. On the contrary, she was right to allow the case to go to the jury on the basis that the jury would be appropriately warned and instructed. She gave both a delay warning and a corroboration warning and summarised the evidence with conspicuous fairness. We are therefore not disposed to uphold ground of appeal no 2.

Ground of Appeal No. 3 – the adequacy of the delay warning.

81. The trial gave a lengthy and detailed delay warning. The trial judge said:

> *"…there is a further difficulty that this case throws up, and that is the issue of the considerable delay which has passed between the time of the alleged offences, in 1973 to 1979, and when [the complainant] approached the Gardaí, in 2015. You will have heard from the evidence, members of the jury, that there was reference to [the complainant] going to the authorities while she lived in [another country], but she was told, at that stage, that the case was too old. That was obviously prior to 2015, sometime prior to that, and there was also reference in the counselling notes to a similar matter, I think, in 2013, that she had been discussing the matter with her counsellor in 2013. So, members of the jury, I am drawing to your attention that experience has shown that such a delay can create serious problems in providing an accused person with a fair trial. It also makes the task of trying the case or prosecuting the case, and your own task in deliberating on the evidence, more difficult. There is the problem of the allegation that 'he did this to me', and the*

accused person saying, 'I did not do anything to you', coupled with the fact that memories of all witnesses can be dimmed with the passage of time.
So, members of the jury, if I allege that I was assaulted by somebody on the 18th of January last, clearly my own recollection of what took place just under two months ago would be clear. There may be available to the gardaí witnesses who would have clear memories of the 18th of January, or at least aids such as diaries that might assist as to where I was on the 18th of January, or where somebody that I alleged to have assaulted me was on the 18th of January. There may be CCTV available. The place of the alleged assault may, in fact, be in the same condition as I alleged it was on the 18th of January. The accused person would also be in a position to recall where he was on the 18th of January, or at the time I alleged he assaulted me, and have available to him, perhaps, some proof, for example, that he was somewhere else on the day that I say that he assaulted me. All of these matters would initially assist me, the complainant. They would assist the gardaí in their investigation, and they would assist the accused in his defence. The passage of time makes these allegations more difficult to prove and to defend. Therefore, members of the jury, I am warning you that there is a real need to exercise caution if you are minded to convict. But I should also tell you, members of the jury, that the law does not say that old or stale cases cannot be tried. Cases such as this are prosecuted in the courts on a regular basis.

I will quote you from Judge Haugh, now deceased, what he said in relation to such cases. He said: 'But what I must tell you is that an accused person cannot, in your minds or in your consideration, be disadvantaged because the case is old, because the complaint is related to events from a long time ago. You have to be all the more

careful, and it should be much harder to satisfy you in relation to an event that is phrased in a vague and general way, rather than an event which carries details or particulars. The State should not take benefit from old cases. Their life should not be made easier by bringing old cases. Juries must, with their hand on their heart, recognise the huge difficulty that accused persons have of dealing with old cases, and be all the more careful and take that into account when arriving at a decision.' Now, members of the jury, you have the details on the indictment in front of you, so it's a matter for you to take all these matters into account in relation to the allegations made, the specifics of the allegations made, and the timeframe over which they have been made."

82. The appellant further accepts that the trial judge also particularised the difficulties faced by him in the case:

"*Mr Greene submitted to you, in general and specific terms, the difficulty his client faces in dealing with the allegations made. Firstly, he says that the passage of time itself makes it impossible to defend the case, but also, he says where specifics have been provided by [the complainant], he says her evidence is not reliable. Now, members of the jury, it's important that I point out to you what I've said to you already. What I say to you about the facts, what Ms Stuart says to you about the facts, or what Mr Greene says to you about the facts: that's not evidence. That's their submission to you, so you can disregard it, or you can accept it. You can accept it if it's something that you happen to think of the matter already, but you do not let it influence you other than you have decided it yourself already.*

You will recall that [M.C.], in his memo of interview, stated that he was rarely at home on a Friday night, for example, as this was a night where he and his friends

would go to a club after work and socialise late into the evening. Mr Greene has suggested to you that the passage of time in this case has deprived [M.C.] of defending himself in a specific way, by reference, for example, to dates, or work rosters and friends, for example. Reference was also made to the mention in the course of this hearing of an Uncle [J], and it would appear that Uncle [J] had not been referred to when the complaint was made to Sergeant McMorrow. And, as a result, no statement was taken from him, and he is not, therefore, before you as a witness to be cross-examined in relation to the events being prosecuted here. Mr Greene points to this as an example of how his client is disadvantaged in general, but, specifically, by reference to the delay in the allegations being made. [M.C.], he says, is unable to locate or, indeed, remember events or people who might be able to aid his defence. He referred to the fact that memories fade with the passage of time.

Another event which is complicated by the passage of such time is the work schedule of [A.B.], the mother of the complainant. The complainant believes that her mother worked at night throughout her childhood, while it would appear from the evidence that her mother commenced working nights in [the Q Hotel] sometime after 1978, when the complainant would have been about 12 years old. There was also evidence from [A.B.] that she worked shift work in [The X Restaurant] up until about 1978, when she had her daughter, [G]. And she said that the work in [The X Restaurant] involved day and evening work. She said she worked shift work, day and evening time, and her sister, [C.D.], gave evidence that [M.C.] would collect the children at about 6 o'clock in the evening when she minded the children for her sister, before she went to England in 1976. There was also some confusion regarding [A.B.]'s attendance at bingo, it either being Tuesday night or Wednesday night, as well as

Friday night. While there was evidence that she attended bingo with her sister, [C.D.], [C.D.] having moved to the UK in 1976, [A.B.] also stated that she went to bingo with neighbours of hers … from the time that she went there throughout those years."

83. Counsel for the appellant says he takes no issue with the general delay warning given by the trial judge, but he has issues with how that warning was applied to the particular facts of the appellant's case. He points with particularity to the following extract from the passage just quoted, and maintains that the clause highlighted constituted a misrepresentation of the evidence:

"There was also evidence from [A.B.] that she worked shift work in [The X Restaurant] up until about 1978, when she had her daughter, [G]. And she said that the work in [The X Restaurant] involved day and evening work. ***She said she worked shift work, day and evening time****, and her sister, [C.D.], gave evidence that [M.C.] would collect the children at about 6 o'clock in the evening when she minded the children for her sister, before she went to England in 1976."*

(emphasis by counsel for the appellant)

84. The appellant maintains that, while the trial judge cautioned the jury that they were "*entitled to use or ignore my views of the facts, or any comments made by me on the facts, as you think fit. You are the sole judges as to what the facts in this case are*.", in a case as finely balanced as this, her view of the evidence must have carried some weight in the jury room. It is said that the judge's error in misstating the evidence implied that the appellant had more opportunities to abuse the injured party than the evidence supported, and this elevated the prosecution case.

85. It is further complained that in relation to the appellant's social life, the judge made no reference to A.B's evidence relating to her accompanying the appellant on some of his

Friday night socialising. The appellant says that the failure to highlight that a prosecution witness gave testimony which strengthened one of the limited islands of fact available to him *i.e.* he was not home every Friday night, was another defect in this aspect of the trial judge's charge.

86. In reply to these complaints the respondent makes the point that neither issue was raised by defence counsel as a requisition at the conclusion of the trial judge's charge. Indeed defence counsel had expressly confirmed that there was *"nothing arising."*

87. We think that the respondent's point about there being no requisitions is one that is well made. The appellant was represented at trial by a solicitor and two counsel, and nothing in what the trial judge had said in her charge had struck any of them as having been in any way unfair or incorrect. Equally, it does seem to have caused concern to the three further lawyers on the prosecution side, who would have been ethically and professionally obligated to bring any misstatement of the evidence by the trial judge in her charge, at a level likely to create a risk of unfairness, to the judge's attention at the end of her charge. While it does seem that the trial judge was slightly in error in suggesting to the jury that AB had *"said she worked shift work, day and evening time"* while she was working with The X Restaurant, we reject the suggestion that this minor error could have had the dramatic effect on the jury now contended for. The judge's charge has to be considered in full and in the round. We have already said that overall it exhibits conspicuous fairness. Since the error did not register as being significant with numerous highly trained lawyers whose job it was to monitor the fairness of the trial judge's charge, we find the suggestion that the jury might have been significantly adversely influenced by it to be entirely implausible. We therefore reject this complaint as being insubstantial and to the extent that there was an error are disposed to apply the proviso in s.3(1) of the Criminal Procedure Act 1993.

88. We are wholly unimpressed with the ancillary complaint that the charge dealt insufficiently with the appellant's own social life. We re-iterate that the charge overall was conspicuously fair. It is not the trial judge's job to make a second speech for the defence or to parrot every point relied upon by the defence. This was a short trial, and the jury would have had no difficulty in appreciating both prosecution and defence cases, and the evidence in support of them, without the need for the trial judge to descend into excessive detail in reviewing the evidence in the course of her charge. It must be remembered that a trial judge's obligation extends only to fairly summarising the evidence and the respective cases of the prosecution and defence, and she/he is entitled to considerable latitude with respect to how she/he chooses to go about their task. We see nothing in this point and reject it.

89. In the circumstances we are not disposed to uphold ground of appeal no 3.

Ground of Appeal No 4 – the adequacy of the corroboration warning.

90. At the oral hearing of this appeal counsel for the appellant conceded that this was not his strongest ground of appeal. He stated that while he was not abandoning it, he would not be pressing it in oral argument and would simply be relying on his written submissions.

91. In those written submissions it is accepted on behalf of the appellant that no complaint can be made about the corroboration warning given in generic terms by the trial judge in the course of her charge. However, it is complained that the generic warning was insufficiently contextualised with reference to the evidence in this particular case. It is said that the jury should have had the inconsistencies in the complainant's evidence, the medical evidence relating to the injured party's belief that she may have been exaggerating the abuse and the socialising of the appellant, highlighted to them. While it is conceded that the trial judge did refer to some of these elements later in her charge it is stressed that these specific warnings came after the judge had addressed the jury on the issue of delay. The appellant maintains

that the issue of corroboration and delay are separate issues and should not be confused for the jury. Accordingly, it is said, there should have been separate contextualization for the purpose of each of these warnings.

92. The appellant submits that the failure to properly contextualise the corroboration warning potentially misled the jury. It is suggested that this possibility should be afforded heightened importance in a case such as this where the jury convicted by a 10-2 majority verdict.

93. In reply, the respondent contends that the delay warning was more than adequate.

94. We must re-iterate that a judge's charge is to be considered as a whole and in the round. We are satisfied that the issues of delay and corroboration were both properly, if not individually, contextualised by the manner in which the judge instructed the jury sequentially with regard to both topics, giving a generic corroboration warning, and then a delay warning, and then referring to evidence potentially relevant to what she had said so as to place her instructions in context. We are of the view that it was not necessary in a short case such as this was for there to have been separate and individual contextualization for the purpose of both the corroboration and delay warnings respectively, and in any event in circumstances where the evidence providing necessary context would fall to be considered under both headings. We find no error in regard to contextualization of the corroboration warning, which was clearly and thoroughly explicated.

95. Accordingly, we reject ground of appeal no 4.

Ground of Appeal No. 5 – suggestion the charge lacked balance/was pro-prosecution.

96. It is suggested by the appellant that the trial judge's charge lacked balance and was unduly favourable to the prosecution. He points to the fact that a feature of the cross-examination of the complainant had focused on her attendance at counselling. She had acknowledged that she had been attending at counselling for 15 years. In the course of one of

these counselling sessions she had a "flashback" and she continued to suffer from these flashbacks. She had volunteered that testifying against the appellant was "*also part of my therapy as well*." When confronted with part of her counselling notes which indicated that at certain times, *"…she's not sure if she needs help. Sometimes she thinks she's exaggerating. The abuse happened a long time ago"*, the complainant rejected any implication of exaggeration and had suggested a possible mistranslation from another language to English.

97. This issue was addressed in counsel for the appellant's closing statement to the jury. However, it is complained, the trial judge's entire engagement with issues surrounding the counselling the injured party had received was "*there was also reference in the counselling notes to a similar matter, I think, in 2013, that she had been discussing the matter with her counsellor in 2013*." The appellant maintains that this was an inadequate summation of what was an important point for the defence.

98. In reply to the complaint made, the respondent again points out that no requisition was raised. The respondent has submitted that this was a short trial, with the Jury hearing from five witnesses and having two s.21 notices read to them, over the space of 2 days. Thus all of the evidence was fresh in the minds of the jurors. According to the respondent, the appellant's complaint appears to boil down to the fact that the trial judge did not reiterate what defence counsel had said in closing speech about the complainant's history with her counsellor.

99. We think there is nothing in the point raised by the appellant. The respondent's point about there having been no requisition is one which is well made. We have already stated that in our view there was an adequate summing up by the trial judge and that it is not the trial judge's job to make a second speech for the defence. If it was felt that the charge was unbalanced and pro-prosecution (which we do not accept) the question is begged: why did nobody on the defence team complain about it at the time by requisitioning the trial judge?

We have received no satisfactory answer to that question and can only infer that it was because those who listened to the charge as it was delivered saw nothing unfair in it, and nothing wrong with it. Accordingly we also reject this complaint and are therefore not disposed to uphold ground of appeal no 5.

Conclusion

100. In circumstances where we are not prepared to uphold any of the appellant's grounds of appeal, the appeal against his conviction must be dismissed.