THE COURT OF APPEAL

Record No: 108/2022

Birmingham P.
Edwards J.
McCarthy J.

Between/

THE PEOPLE (AT THE SUIT OF

THE DIRECTOR OF PUBLIC PROSECUTIONS)

Respondent

V

A.T.

Appellant

JUDGMENT of the Court delivered by Mr. Justice Edwards on the 29th of February 2024.

Introduction

1. On the 6th of May 2022, A.T. (i.e. "the appellant") was convicted following a jury trial before the Central Criminal Court of thirty counts of indecent assault contrary to common law, which counts comprised count nos. 15 to 39 inclusive and count nos. 41 to 47 inclusive on the indictment (Bill CCDP0023/2020). These counts related to sexual abuse which occurred over a period from April 1977 to May 1983, perpetrated by the appellant against his sister-in-law (i.e. "the complainant"). During this period the appellant was aged approximately 21 to 24 years, and the complainant was aged approximately 11 to 14 years. The offending behaviour was said to have occurred at two residential addresses – the complainant's family home, and the home of the appellant and his wife – and in the appellant's car.

2. Having been convicted of the foregoing counts, the appellant was sentenced on the 31st of May 2022 to a global custodial sentence of 4 years, which sentence was backdated to the 24th of May 2022. No element of this custodial disposal was suspended, and the court below further made provision for post-release supervision pursuant to ss. 28, 29 and 30 of the Sex Offenders Act 2001 (i.e. "the Act of 2001") for a period of 2 years from the date of release. The appellant being a person to whom Part II of the Act of 2001 relates, the court below further issued a certificate pursuant to s. 14(2) thereof.

3. Now before this Court in the context of an appeal against conviction, the appellant advances three grounds in his Notice of Appeal dated the 31st of May 2022, those three grounds stating as follows:

"*1. The learned trial Judge erred in law in failing to give the jury a corroboration warning.*

2. The jury's verdict was perverse.

3. The jury's verdict was internally inconsistent."

Factual Background

4. On the 26th and 28th of April 2022, the complainant gave evidence at the trial of the appellant, outlining the sexual abuse which the appellant was then alleged to have perpetrated on her. It should be restated at this remove that the sexual abuse which the complainant then alleged was said to have been committed at three different locations, including two residential addresses. For the purposes of the present judgment, the residential addresses concerned shall be referred to as "House A" and "House B", respectively.

Allegations relating to events prior to March/April 1977

5. The complainant described how she came to be contact with the appellant. She stated that he was the husband of her eldest sister and that he had moved into the complainant's family home, House A, with his wife and their young child on the 31st of January 1976, when the complainant was aged approximately 10 years. The complainant's memory of the exact date of the appellant's arrival was attributed by the complainant to her then regarding her sister's return to the family home as momentous, as she "*adored*" her sister and had missed her "*terribly*".

6. The complainant's evidence then centred on events subsequent to January 1976. Before describing the complainant's evidence, it should be emphasised that the events complained of prior to the 1st of April 1977 form the subject matter of counts in respect of which the appellant was ultimately acquitted (i.e., count nos. 2 to 14). As will be seen, the abuse described by the complainant was said to have occurred on a repeated and frequent basis, and was said to have taken place throughout the time in which the appellant lived at House A.

7. The complainant described how she would play in one of the bedrooms in the upstairs part of House A. At the time, the house did not have central heating and so, in advance of putting his child to bed in the evening, the appellant would go upstairs and light a fire in the fireplace of the bedroom which he and his wife occupied. He would call the complainant into the room, and in the course of the earlier encounters it was said that he would ask the complainant whether she knew "*where babies came from*" and that he would say that he would show her, before then proceeding put the complainant on the bed, lay her back, pull down her underwear and digitally penetrate her vagina. The complainant recalled feeling "*terrified*"; that she did not know what was happening; that she was "*absolutely mortified*" that the appellant had gone near her underwear, and; that she was "*afraid*". She said that was not able to cry out, "*because he* [i.e. the appellant] *told me no one would believe me, and he told me that if I ever told that he was an adult* (sic)*, I was a child, they wouldn't believe me*". She further averred that this behaviour occurred repeatedly "*for months the whole time they lived in the house*", she went on then to describe how this abuse would occur two to three times a week.

8. The complainant said that the abuse would evolve to include other elements, including getting her to learn and read to him a "*filthy*" poem, and further that he would expose his penis to her while he digitally penetrated her vagina, though she stated that the abuse did not (at that particular remove in time) escalate to penile penetration. The complainant described how the

appellant tried to kiss her, "*shoving his tongue*" into her mouth and telling her it was called "*French kissing*". She averred that such kissing occurred two to three times a week. In cross-examination, the complainant's evidence was that she had stated as much in her statement to gardaí, however Garda Sergeant Georgina O'Reilly (otherwise "Sgt. O'Reilly") in her evidence on the 29th of April 2022 confirmed that at no stage, during any of the statements that were taken, was it ever complained that the appellant had attempted to French kiss, or kiss at all, the complainant.

9. The complainant stated that these encounters with the appellant were "*quick*" and that they occurred at a time when other adults in the house would be either preoccupied or absent and when the complainant would usually be upstairs playing in the bedroom. The complainant averred that the abuse would always start in the appellant's bedroom but that it would move to the bathroom. The complainant said that her father would insist on minimising the use of electricity and that it would be dark when she went to use the bathroom located at the other end of the hallway. She described how the appellant "*took every opportunity to jump out of the end of the stairs in the dark*". Outside the bathroom door there were coats hanging up against the wall. The complainant recalled how the appellant would "*grab* [her] *up against the coats*" and would "*grab*" at her vagina and at her chest and push her against the wall. She stated "*[h]e wouldn't be nice about it. And it was always real quick* (sic) *so no one would catch him*". The appellant would similarly jump out at the bottom of the stairs in the dark too. This behaviour was said to have been "*constant*", and the complainant described how she "*used to hate having to leave a room to go to the bathroom if he wasn't in that room, because* [she] *knew he'd be somewhere*". She went on to recall,

> "*He'd just laugh. He'd just keep laughing. He told me nobody would believe me. He told me my family would disown me, that my nana would have nothing to do with me, you know. And he also told me that he knew people and that he could get my family harmed if I ever told on him*".

10. Such remarks were said to have been a "*constant*" feature of his abuse of the complainant, and she recalled how she was "*terrified*" and hated being in and around the house, being on her own, and hated the dark. She recalled not knowing what to do, and that the appellant's remarks inhibited her ability to disclose his abuse, leading her to effectively remain silenced.

Complainant's evidence regarding events post-March 1977

11. The complainant described how the abuse which took place in the bedroom came to a close around the time that the appellant's second child was born in and around March 1977. The events occurring after the birth of the appellant's second child are of interest, inasmuch as they relate to counts in respect of which the appellant was actually convicted; the preceding events conversely formed the subject matter of count nos. 2 to 14 on which the appellant was acquitted. While the appellant's behaviour ceased to take place upstairs in the bedroom, the complainant recalled how it moved downstairs or would take place at "*any chance he got*". She stated that "*[h]e just never stopped* [...]. *It just was constant*". The complainant then went on to describe the alleged events giving rise to count no. 1 on the indictment, a count of rape, on which count the appellant ultimately was not convicted.

12. In September 1979, the appellant, the complainant's sister, and the couple's children, moved out of House A. Prior to this, there was a period in which the appellant was said to have continued to perpetrate sexual abuse against the complainant. She averred that the appellant continued to try grabbing her, and that he would try to grab her chest. She described how he thought it "*was very funny all the time*" and that he would jump out at her in the dark. She also described how he would walk by her and drop his hand to touch her on her genitals. When asked by counsel for the prosecution how frequently the appellant would behave in this manner towards her, the complainant replied "*[a]ll the time. Any time he could get near me with no one around*". She stated that she would try to avoid the appellant's abuse by keeping out of his way, either by not being in the same room as him or by staying in the one room if he was not in it with her, even if it meant foregoing a trip to the bathroom or to go upstairs. The complainant continued in not disclosing the abuse both before and after the appellant left House A.

13. The complainant stated that the appellant's departure from House A happened in the same year that the appellant had found employment at a local pub. As neither the appellant nor his wife had a car initially after moving out of House A, the appellant would take a particular bus route which passed by and stopped outside House A, where he would visit on his work breaks. The complainant described how when the appellant was there for his breaks, neither she nor her elder sister were permitted in the kitchen where he would be. When asked by prosecution counsel whether the appellant touched her on any of these occasions, the complainant replied that the abuse would continue when no one else was there.

14. When the appellant acquired a vehicle and was able to drive back to his house, he would for a time continue to visit House A on his breaks from work, but eventually would just go to his own house, House B. The location of the complainant's encounters with the appellant then changed. She described how between the ages of 13 to 17 years she would visit her eldest sister and her two nieces at House B, which visits would occur once or twice a week. The complainant's sister would insist on the appellant dropping the complainant home to House A, even if arrangements were in place for the complainant's father to collect her to bring her home. The complainant described how the appellant was never present at House B when she arrived, but that some point while she was there the appellant would return for his break and would drop her home on his way back to work. The complainant averred that on these occasions, the appellant would grab in between the complainant's legs and at her chest while he continued to drive.

15. One encounter which the complainant recalled took place at House B when the complainant was approximately 16 years old (which encounter would appear, based on the complainant's age, the dates particularised on the indictment, and location, to form the subject matter of count no. 47). On this occasion, the complainant was babysitting the appellant's two children while he and the complainant's sister had gone out for a meal. The appellant returned to House B alone and was said to have had "*a lot of drink on him*". The appellant and the complainant's sister were said to have had "*a row*" at the restaurant, spurring him to leave her there and head home. The complainant recalled how he had walked to the kitchen where he took out two bottles of ale, opened them, and then went to the sitting room where the complainant was seated in an armchair by the fireplace. He tried to hand the complainant one of the bottles, which offer was rebuffed, prompting the appellant to curse at her, stating "*You* [complainant's family

name], *you think you're all effing great*". The complainant recounted how the appellant then got on his knees and attempted to put his hands up her skirt and her top, and that he tried to kiss her. It was said that the success of these unsolicited advances was limited to him barely touching her leg, and that they were halted on account of the complainant hitting his back with a poker. The appellant retreated, and called the complainant "*everything*" (by which term, the complainant presumably meant that the appellant had insulted or cursed at her in some form or another). The complainant ran out of the room and up to her nieces' bedroom where she shut the door and waited. Hearing no movement from the appellant, she went down the stairs and left the house, hopping a wall and running up the road to a telephone box to ring her father. The appellant, however, had followed the complainant in his car. Having found the complainant at the telephone box, he was said to have rolled down his car window, "*call[ed]* [the complainant] *everything*", and laughed at her. Having spoken with her father and sister, she made her way back to House B where she sat between the beds of her two nieces and awaited her father's arrival to bring her home.

16. After this incident, the complainant described how she had further encounters with the appellant, that they would involve "*touching all the time*", and that, if her sister insisted that the appellant would give the complainant a lift home, the abuse would occur in the appellant's car. The complainant stated that she ceased visiting her sister and her nieces at House B when she had turned 17 years of age. After this, the complainant did not have many dealings with the appellant, and she avoided her sister's family.

Disclosing the abuse

17. The complainant went to the gardaí in late 2014 to make a complaint. She averred that the lapse in time between the events and the ultimate making of her complaint was on account of her "*living in fear* [her] *whole life*". The complainant made her complaint after learning that the appellant had visited her elderly mother who was sick and dying, which revelation was said to have caused the complainant to suffer a "*meltdown*", culminating in her disclosing the abuse and ultimately precipitating the making of her complaint to gardaí.

18. The identity of the first person to whom the complainant was said to have disclosed the abuse she had suffered at the hands of the appellant was in dispute at trial. On the 26th of April 2022, the complainant stated, in response to a question posed by prosecution counsel as to the "*influence*" that news of the appellant visiting her sick mother had over her, that she "[...] *just couldn't take it.* [...] *And* [she] *just had a complete meltdown and* [she] *told her* [i.e., her mother] *that he had abused* [her] *for years*". But, on the 29th of April 2022, she went on to give evidence in the course of cross-examination that the first person whom she had told about the abuse was her doctor, a Dr N.C., and that she had told gardaí as much when she made her complaint.

19. Dr. N.C., in her evidence tendered on the 29th of April 2022, recorded in a contemporaneous note that the complainant had informed her of "*a history of sexual assault*", and in the same note she had written that the complainant had "*eventually told her sister* [name redacted] *and mum after her father passed away*". Counsel for the defence put to the complainant in cross-examination that her categoric statement to the gardaí regarding the identity of the first recipient of disclosure was inconsistent with the contents of the doctor's account. The complainant's response, characterised in the appellant's written submissions to this Court as a

"*bald denial*", was to state that she had never told Dr N.C. that she had informed her mother of the abuse, and further, on the 28th of April 2022, was to suggest that there were typographical errors in the doctor's record such that it was not an accurate account nor reflective of what she had told Dr N.C.

Directed acquittals on count nos. 3 to 8, inclusive

20. On the 28th of April 2022, counsel for the defence asked the complainant in the course of cross-examination whether the appellant had moved out of House A at any point between January 1976 and September 1979. The complainant recalled that at one stage the appellant and his family had moved to a property (which for present purposes shall be referred to as "House C") but she could not state, beyond saying "*they came back*", for how long. Counsel put to her that the appellant had briefly moved out of House A at the end of March 1976 / beginning of April 1976, and that he did not return to living at House A until October 1976. The complainant could not confirm these dates, and merely stated "*If you say so*" in response. She went on to reject counsel's suggestion that the appellant had found work at a bar during this time period, claiming that he was living off her parents instead. She further rejected counsel's suggestion that the appellant had started employment at the pub described in para. 13 above in August 1977 and had risen to a management position there in September 1979, at which remove he and his wife, the complainant's sister, had moved into House B; the complainant maintained her position that the appellant was unemployed until September 1979. The complainant also rejected any suggestion that the appellant had attended a further education course in engineering from January 1977.

21. On the matter of the appellant's employment, it should be stated that both the appellant and his wife in their respective testimonies averred that he had worked in the pub from August 1977. On the 29th of April 2022, documentation from social welfare was adduced as evidence at trial, which documentation detailed social welfare contributions that would have been made on the appellant's behalf by his employer during the relevant period, covering *inter alia* 1977, 1978, and 1979. There was also reference to contributions over a ten-week period in 1976, which appeared to relate to his time working as a barman for part of that year.

22. On the 29th of April 2022, the appellant gave evidence at his trial. In the course of his testimony, he described how in March 1976 he had started working at a bar and that in April 1976 he, his wife and their child moved out of House A to House C and there resided until early October 1976 when, after losing employment at the bar, he returned to House A. He averred that in the course of his time living at House C he never had occasion to take his meals or stay over at House A. The appellant's wife (who shall be referred to as "W") also gave evidence on the 29th of April 2022. W stated that she and the appellant did not reside exclusively at House A for all of 1976, and that in April of that year they had moved out of House A for "*about six months*" and that they had moved to House C during that time. She averred that the appellant was working at a bar and that while working there "*he couldn't get home for breaks*". W testified that the appellant did not visit House A during the time in which she and him lived at House C, stating "[the appellant] *was never there during the time we were living in* [House C]". She said that they had moved back into House A on account of the appellant no longer being employed at the bar.

23. On the 3rd of May 2022, counsel for the defence made an application seeking a direction for acquittal on count nos. 3 to 9, which counts covered events occurring between the 1st of April

1976 and the 31st of April 1976. The import of the application for this direction was straightforward: counsel submitted that the particulars of the counts in question relied upon the appellant's presence at House A during that period and, as evident from the cross-examination of the complainant on the 28th of April 2022, it was effectively conceded by the complainant that the appellant was not residing at House A between these relevant dates. Counsel for the prosecution did not challenge this application, beyond disputing ever so slightly the duration of the period (submitting that count no. 9, which related to offending between the 1st and 31st of October 1976, ought to be left intact). In the circumstances, the trial judge was disposed to allow the application, subject to the amendment that count no. 9 would remain intact, and accordingly he directed an acquittal in respect of count nos. 3 to 8, inclusive.

Inconsistencies arising between certain counts

24. The particulars of count nos. 39, 41, 43, and 45 on the indictment, taken together, alleged that the appellant had indecently assaulted the complainant in a car on four occasions between the 1st of September 1979 and the 9th of May 1983. Count no. 39, in particular, specified a timeframe in which such abuse was said to have occurred in a car as running from the 1st of September 1979 to the 31st of August 1980, which timeframe would cover when the initial period following the appellant's move to House B. Meanwhile, count nos. 40, 42, 44, and 46, alleged that such abuse was said to have occurred at House A during the same period.

25. The difficulty which arose, and which counsel for the defence would ultimately go on to present in his closing speech to the jury on the 3rd of May 2022, was that the complainant's evidence was that the appellant did not initially have a car until some time after he had moved out of House A. However, the evidence of the appellant on the 29th of April 2022 was that in July 1979 (i.e., prior to moving out of House A) he and his wife had purchased a MG 1300 sports car, which recollection was buttressed by his memories of having trouble insuring it as it was classed as a sports car, which difficulties were inadvertent as the appellant recalled not knowing the vehicle had twin carburettors when had bought it. Similarly, W's evidence was that the car was purchased in July 1979, that they had it about six weeks before moving out of House A, and that it was their first car together which they enjoyed "*by being able to go and buy paint and go up to the shop*".

26. Counsel for the appellant's complaint was that the inclusion of count nos. 40, 42, 44, and 46 was predicated upon the proposition that the appellant continued to commute by bus to House A for his breaks, which proposition relied upon him not having a car during the relevant period. This gave rise to what the appellant characterises as "*unavoidable conflict of fact*", a conflict of fact which was never, the appellant submitted on appeal, acknowledged or reconciled by the prosecution at trial.

Application for a Corroboration Warning

27. On the 4th of May 2022, following closing speeches made the previous day, counsel on behalf of the defence made an application seeking the trial judge to exercise his discretion under s. 7(1) of the Criminal Law (Rape) (Amendment) Act 1990 (i.e. "the Act of 1990") to give a corroboration warning to the jury. The basis for the application was couched in the following terms by defence counsel:

> "*Judge, it's a case, the case where one should ask for a corroboration warning, is it's a case in which the reporting of the allegations in the case are at an extreme delay from the*

original allegations. That's the first point. The second point is that [...] *there were a number of aspects of what one might consider islands of fact in old cases on which the complainant could have been incorrect. I won't go through those, the Court will know what they are. And the Court will also recall that it appears that some complaint was put to the complainant's mother, who is not -- unfortunately is deceased, and that's another absence of evidence which could have been available to the defence. So, for these three reasons I'm inviting the Court to consider giving a corroboration warning to the jury.*"

28. The "*islands of fact*" to which counsel referred were outlined by the defence in that side's closing speech on the 3rd of May 2022. In essence, they comprised the following:

(i) The identity of the first person to whom the complainant was said to have disclosed her abuse at the hands of the appellant: Whether it was Dr N.C. (as the complainant averred it was) or whether it was her late mother (in line with the content of Dr N.C.'s note).

(ii) Whether the abuse had occurred on a continuous basis from February 1976 to September 1979, the correctness of which allegation the defence submitted was in some doubt, not least because it was shown in evidence that the appellant did not reside in House A for the entirety of this period (which revelation at trial ultimately precipitated the directed acquittal in respect of count nos. 3 to 8, inclusive).

(iii) The inconsistency of certain counts, specifically whether the particulars of count nos. 39, 41, 43, and 45 could be reconciled with those of count nos. 40, 42, 44, and 46 in circumstances where the former set of counts were predicated upon allegations that the appellant would get the bus to House A because he was said not to have had a car at this particular remove, whereas the latter set rely upon the presupposition that he had, in fact, a car at the relevant time.

(iv) The complainant's claim that the appellant was not working prior to September 1979, which claim was not supported by the only documentation produced at trial which showed social welfare contributions made by the appellant employer(s) in the years 1976, 1977, 1978, and 1979, which contributions were said to be indicative of a work history. The complainant's evidence was that the abuse was continuous and frequent during these years, which complaint presupposed that the appellant was at House A throughout this time such that he had opportunities to abuse her, which presupposition faced a difficulty if the appellant was, in fact, at work.

(v) The complainant's evidence that the appellant had attempted to or did French kiss her two to three times weekly, which allegation was not part of any statement to gardaí as confirmed by Sgt. O'Reilly at trial.

29. The trial judge's ruling, dismissing the application for a corroboration warning, stated as follows:

"*Well, my view in this case is in line with the present jurisprudence concerning the giving of warnings on corroboration. It's not a mandatory matter in cases of alleged sexual offences. Difficulties can arise in relation to aspects of the personalities of persons, of history of persons where or history of relationships where there is deep and abiding*

difficulty in terms of mental problems, for example, or a history of lying or false complaints in the past or something of that nature. Nothing like that arises in this case whatsoever. I've listened to the complainant's testimony and I've heard her give her testimony during the course of the trial, and it doesn't appear to me that anything stands out from either the manner or the content of what she said that gives rise, for me, for any such concern as attract a corroboration warning. So, that's in terms of the complainant herself and the manner in which she has articulated her evidence to the Court and presented herself in court. And in relation to her history, there's nothing in her history to suggest, in my view, that a corroboration warning is required for any of the reasons that might be set out in some of the case law, or indeed, that might obviously present themselves as matters of fact in terms of a personal history, such as the matters I've referred to. So, then there's the other matter by virtue of the nature of the case itself, in that it's an old case, that there should be a corroboration warning or, indeed, that because she's a child and it's an old case, a child can be -- alleged offences occurred and it's an old case that I should give a warning. Well, a corroboration warning doesn't automatically apply these days in respect of children either if they're giving evidence as children, but in fact, she's an adult, and in fact, also the jurisprudence directs me to give a warning in respect of the dangers in respect of cases that arise concerning the fact that they're old cases, and that I will do. And it does seem to me that the reasons for giving a warning in respect of old cases are more pertinent to this case, than the issue in relation to corroboration. In terms of corroboration in the case, there is no corroboration in the case, it seems to me, but that does not mean that simply because that fact exists and that is the case that I should give the warning, because that would be to fall into what is regarded as the wrong approach in terms of simply saying that it should be given in all cases, and I'm not going to do that. So, for those reasons, I don't propose to give a warning in relation to corroboration".

Jury's Verdict

30. The jury's verdict was delivered over the course of two days. On the 5th of May 2022, unanimous verdicts of guilty were returned in respect of count nos. 46 and 47. On the 6th of May 2022, the jury returned unanimous verdicts of guilty in respect of count nos. 15 to 39, inclusive, and in respect of count no. 41 to 45, inclusive. As noted in the appellant's written submissions, and evident in the relevant transcript, the jury had on the 5th of May 2022 returned verdicts in respect of count nos. 42 and 44, which were announced in court as being not guilty verdicts. However, on the 6th of May 2022, verdicts of guilty were returned in respect of the same counts. When this inconsistency was raised by counsel for the prosecution on the 6th of May 2022, the following exchange ensued:

"*COUNSEL FOR THE PROSECUTION: There is one thing to be said, Judge. I don't know if the jury should be present for it but unless my recordkeeping is disastrous, some of the counts that we were told were not guilty counts yesterday have now been described as guilty counts.*

JUDGE: Okay.

COUNSEL FOR THE PROSECUTION: But it must be my own mistake, which I share with [defence counsel]*, I think.*

JUDGE: Thanks. Just a second now. There were two not guilty counts which are recorded as not guilty counts. There's no change in the issue paper.
COUNSEL FOR THE DEFENCE: If that's what the issue paper says, Judge.
COUNSEL FOR THE PROSECUTION: Well, then, I must have mis-recorded what was said yesterday and my apologies.
JUDGE: There's no change. There's no alteration. It's the same record that was there yesterday.
COUNSEL FOR THE PROSECUTION: Very good".

31. While counsel accepted the trial judge's assertion, the appellant submitted in his written submissions to this Court that it would appear based upon a reading of the transcript of the 5th of May 2022 that the trial judge's assertion was not reflective of what was actually recorded on that date.

Parties' Submissions

Ground of appeal no. 1

32. The appellant's first ground relates to the refusal of the trial judge to give the jury a corroboration warning. In the appellant's written submissions, his counsel contended that a trial judge's discretionary power under s. 7(1) of the Act of 1990 might be appropriately exercised in cases where the complainant's evidence appears unreliable, and the Court was referred to in this regard to the dicta of McGuinness J. of the Court of Criminal Appeal in *The People (DPP) v. O'S.(D.)* [2004] IECCA 23 wherein the learned judge, at p. 14 of her judgment, noted:

"*Counsel for the applicant accepted that a warning would be appropriate only where some factor was present which called into question the reliability or credibility of the complainant's evidence*".

33. Counsel for the appellant doubled down on this proposition, and also drew the Court's attention to the commentary of Prof. Tom O'Malley S.C. in his treatise *Sexual Offences* (2nd edn, Round Hall 2013), in particular para. 19-12 of this work, wherein the eminent scholar, referencing the judgment of the Court of Appeal (Criminal Division) of England and Wales in *R. v. Makanjuola* [1995] 1 W.L.R. 1348, in which Taylor L.C.J. held that the issuance of a corroboration warning may be appropriate where for some reason the complainant's evidence appears unreliable, commented that "*[t]his seems intuitively correct and is indeed reflected in Irish case law as well*", citing in a footnote the *O'S.(D.)* case previously referred to. Prof. O'Malley then went on, in the same paragraph, to describe certain factors, other than deliberate untruthfulness, such as the elapse of a long interval since the commission of the offending, which may "*render evidence unreliable or wanting to some degree in credibility*". The appellant went on to submit that a delay in reporting or prosecuting an offence is one of "*the more intuitive examples where a warning may be desirable*", and further contended that "*[t]his is particularly the case where the delay is accompanied by an absence of independent evidence supporting the complainant's account and where significant aspects of the Complainant's account have been shown to be unreliable*."

34. The appellant's complaint with respect to the trial judge's ruling on the corroboration warning was that the defence application for such a warning was premised on more than just concerns with respect to delay. His counsel observed in written submissions that:

> "*An important point deriving from the case law is that the delay in prosecution alone is not what gives rise to the potential unreliability of the evidence. The delay in prosecution may be what causes or accentuates the failure to provide independent evidence supporting the complainant's account of events, thus rendering the evidence unreliable or wanting in some degree in credibility. This is what the judge may rely upon in deeming it appropriate to provide a corroboration warning*".

35. The appellant's criticism of the trial judge's ruling on the corroboration warning is manifold.

36. In the first place, it was said that the trial judge did not sufficiently analyse the complainant's account in considering whether a corroboration warning was warranted. It was said that the absence of a history of lying or of making false complaints or of mental health or personality difficulties did constitute sufficient analysis. The evidence ought to have been examined by the trial judge in the round and a warning should have been issued in circumstances where it contained substantial inaccuracies and inconsistencies and where the effect of extreme prosecutorial delay on reliability was an issue.

37. Second, counsel for the appellant criticised the trial judge's ruling as failing to engage with the material inconsistencies highlighted by the applicant, all of which occurred in a case which, by any metric, was extremely old.

38. Third, it was submitted by counsel that the fact that a delay warning could or should be given does not mean that a corroboration warning might not also be required, nor does it remove the requirement for an analysis of the complainant's evidence to evaluate whether there are matters which render her account unreliable and which, by virtue of the delay, warrant the issuance of a corroboration warning to the jury.

39. Finally, counsel for the appellant submitted that the suggestion that the absence of corroboration does not warrant issuing a warning does not "*usefully add*" to the trial judge's discretion. It was argued that the exercise of the trial judge's discretion under s. 7(1) of the Act of 1990 ought to be based on an analysis of the evidence, and not on any presumptive basis that a warning is not warranted merely because there is no corroborative evidence present.

40. Counsel for the respondent, in reply to the appellant's arguments on this ground, submitted in the first place that the Court of Criminal Appeal in *People (DPP) v. Mulligan* [2009] IECCA 24 held (at p. 3 of the judgment of Fennelly J.) that the proper inquiry is not "*whether this Court would have decided to give* [a corroboration warning]*, but rather whether the trial judge exercised his discretion wrongly*". Counsel for the respondent went on to note that this Court (Birmingham J., as he then was, delivering the judgment of the Court) in *People (DPP) v. K.C.* [2016] IECA 155 held at para. 25:

> "*The starting point for consideration of this issue is that the decision to issue a warning or not is a matter for the trial judge's discretion. This Court will be slow to intervene with the exercise of that discretion by a trial judge and a court will intervene only if it appears that the decision was made upon an incorrect legal basis or was clearly wrong in fact*".

The respondent thus submitted that in order for the issuance of a corroboration warning to be justified, an applicant must satisfy a trial judge that there is something in the evidence that is

"*of such a fundamental nature which demonstrates that the complainant is unreliable, has previously lied or made false complaints or has a grudge against the accused, so that this gives pause for thought. It must be a feature going beyond mere inconsistency or lack of memory*".

41. Counsel for the respondent contended that the trial judge's ruling exhibited the correct approach to be applied when considering whether to make a corroboration warning, and that he took into account all relevant matters. Counsel argued that the there was nothing in the evidence before the trial court which went over and beyond mere inconsistency or lack of memory on certain issues, and that the ruling made by the trial judge was "*very considered of all the points that had been raised throughout the trial*".

42. It was observed that the trial judge's ruling was consistent with present jurisprudence in the area of corroboration warnings, inasmuch as it acknowledged that such warnings are discretionary. It was further stated that the ruling was inclusive of considering whether there were (and there were not) any difficulties in the personality or mental health of the complainant, or indeed whether she had a history of lying or making false complaints. Counsel further remarked that the trial judge had also considered both the manner and content of the complainant's evidence and had concluded that there was no concern which may attract a corroboration warning. Similarly, there was consideration of personal and factual history of the complainant and a conclusion that there was nothing in such history to warrant a corroboration warning. It was observed by counsel that the trial judge's reasoning acknowledged that a corroboration warning did not "*automatically*" flow from the absence of corroboration and that such a warning should not be given without an analysis of the facts of the case. Counsel noted that the trial judge was cognisant of the case being "*old*" and that a delay warning was given.

43. It was submitted by counsel for the respondent that on reading the trial judge's ruling it is clear that the correct approach was used in the exercise of the trial court's discretion under s. 7(1) of the Act of 1990. It was said that the trial judge clearly addressed every aspect, assessed the facts of the case and the manner and content of the complainant's evidence, and did not jump to any "*automatic*" conclusions to give a corroboration warning and did not conclude that such a warning "*automatically flowed*" from the absence of corroboration. Counsel for the respondent described the ruling as "*considered and reasoned*" and submitted that it was not made on an incorrect legal basis and does not constitute an error of law.

Ground of appeal nos. 2 and 3

44. The appellant's second ground of appeal simply asserts that the jury's verdict was "*perverse*". The third ground of appeal then claims that the verdict was "*internally inconsistent*". On account of the significant overlap between these two grounds, and that they have been paired by both the appellant and the respondent in the parties' respective written submissions, the arguments advanced in respect of each shall here be summarised together.

45. The perversity or internal inconsistency in the jury's verdict is said to arise in relation to count nos. 39 to 46, inclusive. Repeating observations made earlier in this judgment, count nos. 39, 41, 43, and 45 were predicated on the appellant travelling by bus (to House A to take his meals) and that he did not have a car; whereas count nos. 40, 42, 44, and 46 (the events of which, as particularised, were said to be contemporaneous to the previously mentioned set of

counts) presuppose that the appellant did have a car. Counsel for the appellant described this as "*an unavoidable conflict of fact*" which was not acknowledged or aligned by the prosecution at trial. Counsel for the appellant argued that this conflict of fact is "*of very particular concern*" in the light of different verdicts delivered by the jury on different days in respect of the same counts (see paras. 30 and 31, above).

46. The Court was referred by counsel for the appellant to the authority of *People (A.G.) v. Powell* [1945] 1 I.R. 305 wherein the Court of Criminal Appeal (Maguire P.) held, at p. 306 of the Report, that:

> "*It is clearly open to this Court to quash the conviction even where proper and adequate directions have been given by the trial Judge if, on reviewing all the facts of the case, it considers the verdict unreasonable or that it cannot be supported having regard to the evidence: Baskerville's Case* [[1916] 2 K.B. 658]".

47. The appellant submitted that in the present case the prosecution cannot rely upon both pieces of evidence, as for the jury to convict on the counts relating to the car ought to have resulted in acquittal on the other conflicting counts, and vice versa. Moreover, it was emphasised that the differing verdicts issued by the jury on the 5th and 6th of May 2022 must be considered to be a matter of very real concern in that the verdicts ultimately delivered were internally inconsistent or perverse.

48. The starting point for counsel for the respondent in reply to the appellant's submissions on ground nos. 2 and 3 was the judgment of this Court (Edwards J.) in *People (DPP) v. B.F.* [2017] IECA 219 wherein the Court, having regard to the judgment of the Court of Criminal Appeal (MacMenamin J.) in *People (DPP) v. Tomkins* [2012] IECCA 82, observed at para. 26 that

> "[...] *there is a high threshold to be crossed in claims of perversity and that an appeal court should only quash a decision as being perverse where serious doubts exist about the credibility of evidence which was central to the charge, or where a guilty verdict, even by a properly instructed jury, was against the weight of the evidence. Moreover, in any assessment of a perversity claim a court must look at all the evidence which was before the jury and not just selected portions of it".*

49. Counsel for the respondent went on to draw this Court's attention to excerpts from MacMenamin J.'s judgment in *Tomkins* on the role of appellate courts (taken from paras. 18 to 21 of the learned judge's judgment), which excerpts particularly emphasise that the Court "*has no power to substitute its own subjective view of a case for that of the jury*". MacMenamin J. relied in particular upon the dicta of McCarthy J. in *People (DPP) v. Egan* [1990] I.L.R.M. 780 at p. 784 wherein it was remarked that "*[t]o permit verdicts on criminal trials to be upset upon such subjective consideration would seem to me to be a denial of the validity of trial by jury*".

50. It was accepted by counsel for the respondent that the jury had ostensibly returned different verdicts on count nos. 42 and 44 on the 5th and 6th of May 2022. However, it was emphasised that counsel for the respondent had raised this matter when it arose, and outlined to the trial judge that there was a discrepancy in verdicts between what was announced on one date, and what was announced on the previous day. It is said that this was done in the presence of the jury. Counsel for the respondent submitted that the trial court checked the issue paper and outlined that there was no change on the issue paper, and that he was satisfied that the verdicts

were correctly recorded despite different verdicts being announced on the two dates. Moreover, it was noted by the respondent that counsel for the appellant was content with the issue paper's contents on the 6th of May.

51. Counsel for the respondent noted that the trial judge's charge of the 4th of May 2022 was adequate in respect of this issue. For the sake of completeness, we set out the relevant excerpt of the trial judge's charge, which provided as follows:

> "*There a number of car counts, if I might call them that, alleged -- in which allegations were made that are indecent assaults said to have been carried out in the car when she was being brought home from visiting the couple in their new home. And count 39 makes those allegations, and the counts are 39, 41, 43 and 45, they refer to the car, and you'll see that on the issue paper. And they cover successive periods, they are the counts -- count 39 covers the 1st of the September '79 to the 31st of August 1980, a period of 12 months. Count 41 for September 1980 till the 31st of August '81. Count 43 for September '81 to the 31st of August '82. Count 45, 1st of September 1983 to 9th of May 1983, which was around about her birthday. There are further counts then of indecent assault said to have been committed at* [House A] *during the same period, and they're counts 40, 42, 44 and 46. And they cover the same periods as the car, and you've heard some submissions about that*".

52. It was submitted that it was well within the provenance of the jury to decide on all issues of fact in the case, and that they were properly charged in relation to the matters that needed to be decided with specific breakdown as to the different periods of time between the start and end of the offending. It was further argued that the issues of fact which fell for determination by the jury included an assessment as to whether or not the appellant had a car at the relevant time. It was observed that the jury deliberated for 5 hours and 46 minutes before returning verdicts on the 5th of May 2022 in circumstances where their number had been reduced to eleven on account of one juror taking ill, and that in total they deliberated for 8 hours and 39 minutes. It was submitted that returning guilty verdicts on some charges and no guilty verdicts on others was indicative of the jury giving careful consideration to issues of fact. Counsel for the respondent thus argued that in all the circumstances, including that there was credible evidence before the jury to support its verdict, the jury decision cannot be deemed perverse or the conviction unsafe.

The Court's Analysis and Decision

Ground of Appeal No. 1 – The failure to give a corroboration warning

53. The appellant maintains that the trial judge was wrong in refusing the application by his counsel that the trial judge should give the jury a corroboration warning.

54. In that regard the trial judge ruled:

> "*JUDGE: Well, my view in this case is in line with the present jurisprudence concerning the giving of warnings on corroboration. It's not a mandatory matter in cases of alleged sexual offences. Difficulties can arise in relation to aspects of the personalities of persons, of history of persons where or history of relationships where there is deep and abiding difficulty in terms of mental problems, for example, or a history of lying or false complaints in the past or something of that nature. Nothing like that arises in this case whatsoever. I've listened to the complainant's testimony and I've heard her give her testimony during*

the course of the trial, and it doesn't appear to me that anything stands out from either the manner or the content of what she said that gives rise, for me, for any such concern as attract a corroboration warning. So, that's in terms of the complainant herself and the manner in which she has articulated her evidence to the Court and presented herself in court. And in relation to her history, there's nothing in her history to suggest, in my view, that a corroboration warning is required for any of the reasons that might be set out in some of the case law, or indeed, that might obviously present themselves as matters of fact in terms of a personal history, such as the matters I've referred to. So, then there's the other matter by virtue of the nature of the case itself, in that it's an old case, that there should be a corroboration warning or, indeed, that because she's a child and it's an old case, a child can be -- alleged offences occurred and it's an old case that I should give a warning. Well, a corroboration warning doesn't automatically apply these days in respect of children either if they're giving evidence as children, but in fact, she's an adult, and in fact, also the jurisprudence directs me to give a warning in respect of the dangers in respect of cases that arise concerning the fact that they're old cases, and that I will do. And it does seem to me that the reasons for giving a warning in respect of old cases are more pertinent to this case, than the issue in relation to corroboration. In terms of corroboration in the case, there is no corroboration in the case, it seems to me, but that does not mean that simply because that fact exists and that is the case that I should give the warning, because that would be to fall into what is regarded as the wrong approach in terms of simply saying that it should be given in all cases, and I'm not going to do that. So, for those reasons, I don't propose to give a warning in relation to corroboration".

Submissions on behalf of the appellant

55. Counsel for the appellant has argued in submissions to this Court that there are a number of issues with the trial judge's reasoning.

56. First, it was said that the fact that the complainant did not exhibit mental health or personality difficulties or a history of lying or of making false complaints in the past is not a sufficient analysis of the complainant's account (one which, in the appellant's contention, was littered with significant inaccuracies and which arose in the context of substantial delay) in considering whether a corroboration warning is required. It was submitted that the evidence must be looked at in the round and where the complainant's evidence contains substantial inaccuracies and inconsistencies, the effect of the extreme delay in prosecution on the reliability of the evidence becomes an issue and critically this does not appear to have been considered.

57. Secondly, it was submitted that the trial judge's statement that nothing he had seen in the content or manner of the witness's evidence failed to engage with the material inconsistencies highlighted by the appellant all of which occurred in a case which is, by any metric, extremely old.

58. Third, it was said that the fact that a delay warning could or should be given does not mean that a corroboration warning might not also be required nor does it remove the requirement for an analysis of the complainant's evidence to see whether such matters which render the complainant's account unreliable, and by virtue of the delay, require a warning to the jury on convicting on uncorroborated evidence. This provides a clear and distinct error of law.

59. Finally, it was urged upon us that while it may be correct to say that just because there is no corroboration does not mean that a corroboration warning must be given - such analysis does not, in fact, usefully add to the trial judge's discretion which ought to be based on an analysis of the evidence and not on any presumptive basis to the effect that just because there is a no corroboration does not mean such a warning must be given.

60. Counsel for the appellant submitted that the facts of the case clearly warranted a corroboration warning and the reasoning of the trial judge in refusing the application was erroneous.

Submissions on behalf of the respondent

61. Counsel for the respondent has submitted that the correct approach was adopted by the trial judge in regard to the exercise of his discretion and there was no error of law. He submitted that the trial court clearly addressed every aspect and did not jump to any "*automatic*" conclusions to give a warning or that a warning "*automatically flowed*" (when there was no corroboration in a case).

62. He submitted that the trial judge in exercise of his discretion took into account the salient facts and made his own assessment of the evidence that was given. Each aspect was considered and reasoned. There was nothing to show that his ruling was made on an incorrect legal basis or was wrong in fact.

63. It was submitted that the mere existence of some inconsistencies, vagueness or contradictions in the evidence does not automatically trigger the requirement for a corroboration warning. All such issues are quintessentially matters for a jury and in this instance, a delay warning was given in which the trial judge remarked that "*the reasons for giving a warning in respect of old cases are more pertinent to this case than the issue in relation to corroboration*".

The Court's Decision on Ground of Appeal No. 1

64. It is a matter for the discretion of a trial judge as to whether or not he or she should give a corroboration warning. The appellant has not demonstrated that the judge in this case exceeded the range of his discretion or exercised his discretion on an improper basis. There is therefore no basis for this Court to intervene.

65. We reject the suggestion that there was an insufficiently rigorous analysis of the evidence by the trial judge in considering whether or not it would be appropriate to give a corroboration warning. We are satisfied that the trial judge was fully alive to all of the nuances in the evidence but that he was of the view that insofar as there were alleged inconsistencies, vagueness, or contradictions in the complainant's evidence, or deficits in her recall, that these were issues for jury resolution in the normal way. There was nothing in the content and manner of the witness's evidence, the circumstances of the case or the issues raised to suggest inherent unreliability on the part of the complainant such as might require a corroboration warning. The sort of issues that were identified by the Court of Appeal (Criminal Division) in the neighbouring jurisdiction in *R v. Makanjoula* [1995] 1 W.L.R. 1348, a decision cited with approval on many occasions in this jurisdiction, as typifying circumstances which might justify an appellate court in intervening in respect of a complaint that a corroboration warning had not been given, simply do not exist in this case. While the potentially relevant factors listed in *Makanjoula* do not represent an exhaustive list of what a court might need to take into account, the examples given suggest that something is

required to be demonstrated beyond the existence of some inconsistency, vagueness, contradiction, or deficit in recall in aspects of the complainant's evidence, because there are very few cases where such matters cannot be pointed to. The complainant must have been shown in some more concrete way to be unreliable or of doubtful reliability. The *Makanjoula* jurisprudence references factors such as a demonstrable propensity on the part of the complainant to tell lies and having a history of doing so, the making of previous false complaints, or the existence of a demonstrated grudge against the accused, as being the sort of thing that would raise a concern as to inherent unreliability. Again, we must emphasise that this does not purport to be an exhaustive list and that there may be other factors which would raise such a concern. For example, if there was evidence of a history of mental illness on the part of the complainant, particularly if that had manifested itself in paranoia or delusions, that might be relevant. However, what is clear is that the factors that would justify the giving of a corroboration warning do require to be clearly identifiable; and, cumulatively, they must reach a threshold level of cogency. They will usually be quite concrete, as illustrated by the indicative examples given. In saying that, however, we do not foreclose on the possibility that a combination of factors, perhaps less stark in their import than the examples instanced, and no one of which on its own would be sufficient to justify the giving of a corroboration warning, might nonetheless cumulatively raise a concern about inherent unreliability at a level sufficient to justify the giving of a warning.

66. It is clear to us from the trial judge's ruling that he properly appreciated the parameters of his discretion and that he was not satisfied that the factors presented to him as potentially justifying the giving of a corroboration warning in this case reached the level of cogency, either considered individually or cumulatively, that would have justified him in taking that action. We find no error on the part of the trial judge in that regard.

67. In the circumstances, we reject ground of appeal no. 1.

Grounds 2 and 3 – Alleged Perversity/Inconsistency

68. We can deal with these grounds reasonably shortly. The complaints made, and insofar as they go, only potentially impact the convictions recorded in respect of count nos. 41 to 46, inclusive. Insofar as counsel for the appellant has sought to suggest that if the Court is satisfied that there was perversity or inconsistency as between verdicts in respect of all or any of these counts, that it infects or contaminates all of the guilty verdicts returned by the jury, we reject that. No cogent basis for inviting such a conclusion has been advanced.

69. It is convenient to deal in the first instance with the conflicting announcements made in the trial court by the registrar in respect of count nos. 42 and 44. It remains not entirely clear as to how it happened, but it was announced on the 5th of May 2022 that the jury had returned verdicts of not guilty on those counts, following which it was announced on the 6th of May 2022 that the jury had returned verdicts of guilty on those counts. The discrepancy was immediately noticed by both prosecuting and defence counsel on the 6th of May 2022, and they properly brought it to the trial judge's attention. The trial judge checked the issue paper and noted that it recorded a verdict of guilty and there had been no attempt to alter or change that entry. The implication was that regardless of what had been announced the previous day the only verdicts that had been recorded at any time in respect of those counts were guilty verdicts. It is regrettable that an ostensibly incorrect announcement was made on the 5th of May 2022, and the explanation

for this may be a simple as an inadvertent misreading of the document, although that is somewhat to speculate. Whatever the reason was, the actual position was ascertained quickly once the discrepancy had been noticed. It was done in the presence of the jury. The written record was determined to be consistent as between both days, and counsel for the accused expressed himself as being content, stating "*If that's what the issue paper says, Judge*". We are satisfied that the issue was properly addressed in the course of the trial and that there is no requirement for this Court to intervene arising from this procedural mishap.

70. That is not the end of the matter, however. A more substantive complaint arises to the effect that the convictions on count nos. 41 to 46, inclusive, were perverse, or at least against the weight of the evidence, and inconsistent. We note that there was no application at the conclusion of the prosecution case for a direction on any of these counts, or a suggestion that they should not be allowed go to the jury. There were, as it happens, applications for directions in respect of certain other counts on the indictment but not in respect of these counts. At any rate, in considering the arguments based on perversity/inconsistency it is necessary to recall the evidence relevant to these counts.

71. Count no. 41 charged indecent assault on the complainant by the appellant in a car between the 1st of September 1980 and the 31st of August 1981. Count no. 43 charged indecent assault on the complainant by the appellant in a car between the 1st of September 1981 and the 31st of August 1982, and count no. 45 charged indecent assault on the complainant by the appellant in a car between the 1st of September 1982 and the 31st of August 1983. The evidence was all one way that throughout this time the appellant and the complainant's sister were living in House B, that the appellant was in employment at that time at a named public house, and that the appellant had a car which had been acquired at some point in 1979 (although there was some dispute as to the date on which he acquired that car).

72. The evidence was that following the move by the appellant and her sister from the complainant's home (i.e., House A) to House B, and for so long as the appellant had no car, the appellant would continue to call in the evenings to House A on his way home from work and have his dinner there. The bus route which the appellant was required to take to get home took him past House A, and it was therefore convenient for him to stop off at House A. His partner (i.e., the complainant's sister) and their children would meet him there, and would cook his dinner for him there, which he would eat in the kitchen. The complainant and her other siblings, and their parents, would stay out of the kitchen for so long as the appellant was having his dinner. When dinner was over, the complainant's father would drive the appellant, his partner and his children home to House B. There was evidence that the appellant continued to sexually abuse the complainant during this period, notwithstanding that the complainant and her family did not go into the kitchen during the dinner. The complainant told the jury under cross-examination that the appellant would come out of the kitchen from time to time to use the bathroom or for some such purpose and that on such occasions if he was passing the complainant that, yes, he would abuse her in the manner she had previously described (in her evidence-in-chief). She had described in her evidence-in-chief that he would grab her outside the toilet door where there were coats hanging up, grab her up against the coats, grab at her vagina and at her chest and push her up

against a wall. She had said in her evidence in chief, "*he wouldn't be nice about it and it was always real quick so no one would catch him*".

73. Count no. 42 charged indecent assault on the complainant by the appellant in House A between the 1st of September 1980 and the 31st of August 1981. Count no. 44 charged indecent assault on the complainant by the appellant in House A between the 1st of September 1981 and the 31st of August 1982 and Count no 46 charged indecent assault on the complainant by the appellant in House A between the 1st of September 1982 and the 31st of August 1983.

74. The evidence was that the appellant ceased coming to House A for his dinner once he had acquired a car. While there was some dispute as to the exact date in 1979 on which the car was acquired, it was accepted that it had been in 1979, and it was common case that once the car had been acquired he would drive straight to House B from his employment at the pub and would no longer stop off at House A for his dinner. The Court has reviewed the transcript and there was no evidence given by the complainant of further abuses of her by the appellant in House A after the appellant stopped coming to House A for his evening meal. There was certainly evidence that she was subjected to abuse at the hands of the appellant in the appellant's car when he would drive her home after she had called to see her sister and children after they had moved into House B, and there was also evidence of abuse of her in House B.

75. In circumstances where there was no evidence given by the complainant of further abuses of her by the appellant in House A after the appellant stopped coming to House A for his evening meal, and in circumstances where it was common case that the car had been acquired at some point in 1979, and that the appellant and the complainant's sister had moved to House B in September 1979, there would appear to be no evidence adduced sufficient to support convictions for the offences charged on count nos. 42, 44 and 46, which relate the dates in 1980/81, 1981/82 and 1982/83. Certainly, the convictions on those counts were against the weight of the evidence, and in our view they cannot stand.

76. There is no reason, however, to suppose that the convictions on count nos. 41, 43 and 45 cannot stand. These relate to alleged abuses committed by the appellant on occasions when he was driving the complainant home from House B to House A. As already identified, we are satisfied from our review of the transcript that there was evidence to support those convictions.

77. We do not consider that the fact that there were convictions, not supported by the evidence, on count nos. 42, 44 and 46 has any implications for the convictions on count nos. 41, 43 and 45, or for any of the other convictions recorded, in circumstances where there was evidence on which a jury properly charged, which we are satisfied this jury was, could have convicted the appellant in respect of those other matters.

78. While we accept that the appeal must be allowed in respect of count nos. 42, 44 and 46 for insufficiency of evidence to support those convictions, we do not find any basis for intervening beyond that. In particular, we are not satisfied that any inconsistency of verdicts has been demonstrated.

Conclusion

79. In the circumstances, the Court's decision is to dismiss the appeal in respect of all counts, save in respect count nos. 42, 44 and 46. The appeal is allowed in regard to those three counts

only, and we will quash the appellant's convictions and sentences on those counts. There is no basis for directing a retrial on those counts.