



**APPROVED
NO FURTHER REDACTION NEEDED**

THE COURT OF APPEAL

Record No: 04//2021

**Birmingham P.
Edwards J.
McCarthy**

Between/

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

RESPONDENT

V

J.G.

APPELLANT

JUDGMENT of the Court delivered on the 27th day of January, 2022 by Mr Justice Edwards.

Introduction

1. On the 10th of December 2020 the appellant was convicted by a jury at the Central Criminal Court sitting at the Courthouse, in Kilkenny of ten counts of rape contrary to common law and as provided for by s.48 of the Offences Against the Person Act, 1861 (being counts 1 – 10 inclusive on the indictment then before the court), and of another ten counts of rape contrary to common law and as provided for by s.48 of the Offences Against the Person Act, 1861 and s.2 of the Criminal Law (Rape) Act 1981 (being counts 11 to 14, inclusive, and counts 17 to 22 inclusive, on the same indictment). The appellant was also acquitted of two further counts of rape as provided for by s.48 of the Offences Against the Person Act, 1861 and s.2 of the Criminal Law (Rape) Act 1981 (being counts 15 and 16, respectively, on the indictment).
2. He was subsequently sentenced to 11 years' imprisonment on each of the rape counts of which he was convicted, to run concurrently and to date from the 10th day of December 2021. As required by law the appellant was further declared to be a sex offender for the purposes of the Sex Offenders Act 2001.
3. The appellant now appeals against his said convictions.

The principal evidence in the case and the course of the trial

4. The complainant, we will call her "A", was born in the 1960's and was brought up in a village on the east coast of Ireland. The family home had initially consisted of a three bedroom bungalow occupied by the complainant's parents, the complainant and her twelve siblings, and a grandparent. The grandparent died when the complainant was 9 years old.
5. One of the complainant's older sisters, then aged 16, we will call her "B", started going out with the appellant, and not long afterwards he moved in to the family home to live. The complainant testified, *"he wasn't long there and he started to rape me"*. She said he would get her on her own and *"he'd pin me down and he'd have his knees on me and his hand over my mouth, I couldn't move, and he would take off my underwear and he would put his penis into my vagina."* The complainant said she was still in primary school when this had begun. She would run home from school to see "Bosco" on the television but *"a lot of the times I didn't get to see Bosco because he'd get me first."*
6. The complainant said, *"sometimes he'd even be waiting in the yard before I'd get into the house and he'd lure me to the shed and he'd pin me to the wall there and he would rape me"*.
7. Asked if this type of behaviour had occurred in any other locations, the complainant said *"Yes, a lot in the big room [the witness had earlier described the layout of the family home, referring inter alia to a big room], my bedroom in the house and in my grandmother's room."* As to frequency, there was the following evidence:

Q. *... can you tell me the regularity with which this occurred?*

A. *It was almost the same all the times, just the same pattern, just go in and get caught by him and he'd find a way of luring you to the room or the shed or it was just all the time, it was constant.*

Q. *Okay, and when you say all the time, do you mean weekly or monthly or daily?*

A. *It was almost every day.*
8. The witness said, *"I'd be kicking and pushing but I couldn't scream because my mouth was covered."* She also said it had been very painful. She would be bleeding afterwards, for a short time. There would be blood on her underwear afterwards. She said there was never anyone else present. The appellant would say to her *"It's our secret, you can't say nothing because no one will believe you"*, and would leave the room when it was over. Typically her parents were out working during the day, and the younger children were being minded by her older sisters, "B", and another sister we will call "C". Often "B" and "C" wouldn't be aware that she had come home.
9. After the grandparent had died, one of "A's" older brothers, we will call him "D", moved into the grandparent's room. The complainant testified that "D" would be in work all day, and the appellant would *"get me in there sometimes and he would get my mother's old*

tights and tie my wrists, tie them to the post of the bed to stop me from kicking around too much, and he'd sometimes just tie my hands behind my back with them." She continued:

Q. *Okay?*

A. *And then he'd rape me.*

Q. *And do you recall him using anything else?*

A. *He used to use Vaseline, he'd put Vaseline on his penis, and he'd put it on my vagina.*

Q. *And do you recall anything about his penis?*

A. *Sometimes he'd put my hand on his penis and he'd move it with his hand and then he'd take his hand off and he'd say, "Pull me".*

Q. *Okay. Now, I think you mentioned that after these things happened, that he'd say to you, "Don't tell anyone"?*

A. *Always, "It's our secret, don't tell anyone, no one will believe you".*

10. The evidence was that the appellant and "B" subsequently had a child, and the three of them moved into a caravan in a yard close to the family home. The complainant said that *"every evening I'd be sent out to mind the little lad when "B" would go in to talk to mammy or watch telly."* Asked if anything occurred when she went out to the caravan, the complainant said, *"Yes, he'd come out shortly after the child would be asleep and he would rape me in the kitchen area of it."* As to how often this occurred, she said:

"A lot, just more or less there all the time after that then, and then there was one night he raped me, and I just didn't stop bleeding this time and I didn't know what was wrong, all the next day I was bleeding, so he came at me that night and I said, 'I have to go to the doctor because I can't stop bleeding, you're after hurting me', and he said, 'Oh that's just your yokes, we just have to be careful at these times'.

Q. *And can you remember about what age?*

A. *I was 11 or 12 at the time, I didn't even know what my period was.*

Q. *And did anything change in the way that he engaged with you after your period started?*

A. *Yes, every month I'd get a few days rest then because he wouldn't be near you. But then he started as I know obviously now, I didn't know at the time, he would ejaculate on my belly and wipe it off with a sock or a tissue or whatever he put his hand to.*

Q. And you didn't know at the time what that was, but you understand now?

A. Yes."

11. There was further evidence that the appellant and "B" had a second child while still living in the caravan. When the child was a couple of months old they moved the caravan to a different location on a green area. The complainant was asked, "*did anything occur in the caravan when it was on ... that green area?*" and the witness replied, "*The same, he would rape me there too.*" No one else would be present, except for the children who would be asleep. It happened "*two times every week at least*".
12. The complainant said that after the appellant and "B" had lived in the caravan on the green area for about a year, they were allocated a (local authority) house. She continued to have contact with them. She was in that house every day at lunchtime for her lunch and she would stay over there at weekends to babysit. While still living in the caravan "B" had become pregnant again with twins, and tragically she lost both twins. The complainant was in secondary school at this stage.
13. The complainant said that when calling to the house at lunchtimes she would meet "B" going out the door, "*and when you'd go in then, he would mostly bring me into the bathroom and put me across the cistern of the toilet, lean me over and rape me*", putting his penis into her vagina from behind. She would be in her school uniform. Then, "*[h]e'd just get up and walk out, say it's - just can't tell anyone.*" She said this happened five days a week. Sometimes it happened in the kitchen at the back of the house.
14. The complainant said there were never any rapes at weekends in the new house, because she would be in bed with the children. There were times the appellant came in to the room, but one of the children would wake up and he would go back out again.
15. The complainant testified that:

"I just thought it was normal at first and I thought every little girl was going through it and just no one could tell anyone, I thought my friends were going through it and couldn't tell me. So then for a few months I knew it was wrong, and I was trying to pick up the courage, so one day before the summer break from school, he came at me and I just told him to fuck off, or I was going to the guards."
16. The witness said she didn't go up to the house during the summer break but that "*when I went up in the September he made a grab for me and I told him to fuck off, or I was going to the guards.*" She then stopped going up for her lunches during school term. She said she was 15 years of age at this stage.
17. The complainant was extensively cross-examined. She conceded that she had never told anyone about her abuse while it was ongoing, nor had she gone to a doctor. She agreed she had not confided in her mother. The first time she told anybody was when, in her 20's, she had told "B" what the appellant had done to her. This was in 1991 or 1992. Subsequent to this she had gone down to a pub accompanied by "B", and at B's

suggestion, to confront the appellant. "B" then went in to the pub and brought the appellant outside and asked him in the presence of the complainant, "*Did you rape A*"? The complainant testified that he replied, "*She wanted it*". It was put to the witness that there had been no confrontation in 1991 or 1992, but that there had been a confrontation about eight months prior to her going to the gardaí in January 2018. The witness responded that the appellant "*didn't tell you the truth then, did he.*".

18. It was put to the complainant that the confrontation the appellant was maintaining had occurred in 2017 had related to an affair she had had with him when she was 16½ or 17 years old. She responded "*Never happened*". Later during her cross-examination, when counsel returned to this theme, she added:

"The last time before I made my allegation that I was in a pub, that he was in it, was the year was the day his sister was buried, which was about five years previous. I haven't seen him in that five years after, so I couldn't have been in a pub with him eight months before."

19. The complainant accepted that following the incidents of rape where she had been bleeding and where Vaseline had been used there would have been traces of blood and Vaseline on her underwear. Her evidence was that she didn't do her own laundry, but that no one had commented on it or said anything to her about it. She had not discussed her periods with her older sisters. On the occasion she had told the appellant that she wanted to see a doctor it was because, "*I thought he injured my insides.*" The witness said she never told anybody, "*because he told me it was my secret, and I couldn't.*" She had not told her mother, or sisters. Neither had she confided in a doctor or a teacher. She said she never saw a doctor at any stage during her puberty. She had received no sex education while in school, stating, "*there wasn't any in school back then.*" There had been no talk with friends about sex. She agreed there had been discussions with friends about kissing when they got boyfriends.
20. There was extensive cross-examination about the layout of the family home, and who resided there, where each had slept, and in which room there had been a bed with bedposts (to which the complainant maintained she had been tied by the appellant with nylons on occasion). She didn't know if she had suffered wrist burn.
21. She was asked about the circumstances in which she would babysit in the caravan. She never expressed reluctance to do so to her mother because, "*you didn't tell my mother no, if she told you to do something you done it.*"
22. She was asked why she had not mentioned to gardaí that the caravan had been moved at a certain point from the yard to a green area some distance away. She said, "*I told them later, but I only left it out of my first statement because I was embarrassed and ashamed to say my sister lived on a green in [location provided].*" She agreed that she had "*purposefully left it out*". However, she also said, "*when I realised that it was going to go to court about two years later, I said I have to tell her [the investigating garda] now.*"

23. It was put to the complainant, and acknowledged by her, that while the appellant and "B" were still in the caravan the twins they were expecting were stillborn. She accepted she had not made any reference to that in her statement to gardaí.
24. It was put to the complainant, and she accepted, that there had been four or five caravans on the green, and that they were only a few feet or a couple of metres from each other. Notwithstanding this nobody had come in during the rapes in the caravan or disturbed them.
25. The witness accepted defence counsel's suggestion nearly 14 years old when the appellant and "B" finally moved from the caravan on the green into a house, and that during the period covered by the most recent of the charges on the indictment she had been 15. It was put to her that during the previous seven years (i.e., from the most recent alleged offences stretching back to when she said the rapes began) she had *"matured from a nine-year-old child through to a 15 year old teenager."* She accepted that she never once made a complaint to anyone, nor had she refused at any time to go to the family home, or to the caravans in either location, or to the appellant and B's new house. She accepted that another older sister "E" lived in a house in a cul de sac off the green. She agreed that she had never gone there for her lunch while at school. It was put to the complainant, *"you never once went to "E's" and said, I don't want to go into [the appellant and B's house] because I'll be raped or abused?"* She responded, *"No"*.
26. The complainant was cross-examined as to the layout of the appellant and B's new house, and concerning the circumstances in which she claimed to have been raped there. She had said in her statement that *"he would pin me down in the kitchen or the bathroom and would rape me."* She was asked to explain what she meant by being pinned down. In response, she said:
- "A. He'd hold me, he'd hold my hands, he'd put his hand over my mouth.*
- Q. Well, that's not pinned down per se, pinned up against the wall?*
- A. Well, I was pinned against the wall, I was pinned."*
27. She accepted that it was her evidence that the rapes had only occurred during the school year. She had not been raped during summer holidays. However, from September to May or June she would be raped five days a week, and every week, *"more or less"*.
28. It was put to the complainant that the appellant had denied to gardaí of ever raping her, and she said she was unaware of that, but was aware that he had pleaded not guilty. It was further put to her that the appellant had told gardaí that they had had an affair when she was 16½ or 17 years old, and that it had continued for six months. She replied, *"No, never."* It was put to her that as the appellant was being driven home from a fair by a third party :
- "Q. That he [the driver] picked up three women ... including yourself, [A], that you sat in on top of him, that you begin flirting with him in the car?"*

A. *It wasn't me, I was never in a car with him.*

Q. *Okay, and that that was the start of the affair and that, 'When [A] sat in on top of me she dropped her hand on me, and the lads in the front knew well what she was at and someone said something about being careful owing to the fact that I was married and I had four kids at that stage'?*

A. *It wasn't me anyway, whoever it was."*

29. Counsel continued:

"Q. Yes. The question is asked did he have sex that night and he said, "No, we dropped the girls in [a named location] in the square, and then [the driver] dropped [another individual] at [another location] and then the car crashed and we hit the car outside." He's asked, "When you said [A] put her hand down?" Answer: "She put it down outside my trousers." Question: "When did it start after that?" Answer: "After that, [A] would visit me and the children when [B] was working. [A] would come up to my bedroom when the kids were in bed. [A] was going out with my brother" Were you going out, did you go out with his brother ?

A. *No, I wasn't."*

30. There were the following further exchanges (*inter alia*):

Q. *... . He was asked, "How did it end?" He said, "I did it, I ended it because she was with other men. My brother ... and other married men"?*

A. *He has a great imagination.*

Q. *"When you and [A] split up, was she upset?" "No, no tears, no nothing. I finished, it was too serious for me, the consequences." And he said, "I know where this came about", and he talks about, "You and [A] were in a pub eight months ago and [B] said to [A], only you had an affair with [the appellant] we'd still be together"?*

A. *Never happened, it's about ten years ago since I was even in a pub with my sister.*

Q. *He said he did not admit the affair to anyone only [his brother] about 30 years ago, "... I didn't know how [B] found out and [B] never spoke for 20 years to me", and that the families, both families were going mad?*

A. *Not true.*

Q. *And then he talks about himself and [B] having to split up because [B] had an affair?*

A. *Oh God, not to the best of my knowledge, that is not why they split up.*

Q. *A question is asked later during the interview, "[A] said you raped her every day, once a day or even twice?" He said, "Couldn't have happened, I go to work Monday to Friday, then go to the pub every evening", and he says, "[A] alleged she was struggling trying to get away but she couldn't?" "That never happened, I'm not going down for something I didn't do, I never touched her", and he says you'll pay for this. And what do you mean by this, "God will down on her, she'll have no luck for it", and at that stage then a number of the allegations are put to him, I don't have them in their entirety but the jury will see them. And again, he denies any of these allegations concerning what you have indicated to the jury here today."*

31. The witness was not invited to specifically respond to what had been just put to her, although it is implicit from the entire transcript that she was rejecting the appellant's denials. Instead the cross-examination moved to a different topic, namely whether there had been family parties at Christmas time. The complainant accepted that "E" had held Christmas parties and further accepted that she had made no allegations to anybody at these Christmas parties.

32. The witness accepted that notwithstanding the alleged frequency with which she was saying the appellant had raped her, she had not become pregnant. There were the following exchanges:

"Q. *But you never got pregnant?*

A. *No, wasn't I lucky?*

Q. *Is that what you put it down to?*

A. *Yes.*

Q. *Luck, right. You see it never happened as alleged or at all, and that's the reason why you never got pregnant, accidents do happen you know; isn't that correct?*

A. *He was obviously cleverer than that."*

33. The witness was subsequently re-examined by prosecuting counsel:

"Okay, and I think Mr Colgan asked you how you didn't get pregnant, did anything change in the manner in which the rapes occurred after you spoke to Mr Giltrap and he explained your yokes, as he called them to you?"

A. *Yes, he used to ejaculate as I now know, on my belly.*

Q. *Okay?*

A. *So obviously that's why I wasn't getting pregnant."*

34. At the commencement of the trial certain admissions had been made by the defence pursuant to s.22 of the Criminal Justice Act 1984 concerning the occupancy, and the

relevant dates of occupancy, of different dwellings by different parties; concerning permission being given for the photographing of those premises; concerning the attendance by the appellant voluntarily at a garda station for the purpose of being interviewed; and concerning the lawfulness of the interview conducted with the appellant and the proper treatment of the appellant by the interviewing gardai.

35. Other evidence in the case included testimony from a Garda mapper and photographer, from the principal investigating garda, from the complainant's mother, and from the appellant's son. In the course of her testimony the principal investigating garda produced the memorandum of the garda interview with the appellant, portions of which had been put to the complainant during her cross-examination as described earlier in this judgment. This became an exhibit in the case and the contents of the memorandum were read to the jury by the witness. The interviewing of the appellant had been video and audio recorded in accordance with the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997 and a DVD containing the recording was also played for the jury at the request of the defence.
36. There was no application for a direction at any stage. Moreover the defence did not go into evidence. Defence counsel requested the trial judge to give both a corroboration warning and a delay warning to the jury in the course of his charge, and the trial judge agreed and duly did so. No complaint was or is made about the corroboration warning, or the delay warning. Following the judge's charge there was one prosecution requisition concerning hearsay evidence in the DVD which had been played to the jury, in respect of which the trial judge briefly re-addressed the jury. There were no defence requisitions on any aspect of the charge.
37. Following their retirement to deliberate at 12.09 pm on day 5 of the trial, the jury returned at 15.52 pm with a series of questions. These were:
 - 1) *If the jury finds that [the appellant's] account of the affair with [A] when she was 16 years old was invented, can the jury reasonably connect his motive in inventing an affair to his possible guilt regarding the charges?*
 - 2) *Is the jury entitled to ask defence counsel why [the appellant's] tenancy of [the new house into which the appellant and "B" moved, following living in the caravan on the green] ended in late 2016 after 34 years."*
 - 3) *Is the jury entitled to ask defence counsel who told [the appellant] about the claimed confrontation between [A] and [B] in April/March of 2016, where [B] is alleged to have stated to [A], 'If it weren't for your affair with [A], we'd still be married'?*
 - 4) *Is the jury entitled to ask the prosecution counsel why these disclosures came to light in 2017?*

- 5) *Can the jury assume that [A] was made aware of [the appellant's] claim that they had an affair?*
 - 6) *Can the jury review DVD evidence exhibit 1A?*
 - 7) *Could the defence counsel please read out the authorities cited once more?*
38. The reference to "authorities cited" in the last question was an allusion to a reference by defence counsel during his closing speech to aspects of the delay warning given by the late Mr Justice Haugh in *The People (DPP) v R.B.*
39. On receiving these questions, the trial judge adjourned the matter overnight, and sought to address them on the morning of day 6. Following discussions with counsel he further instructed the jury as follows:

"JUDGE: Now, Mr [Foreman], ladies and gentlemen of the jury, thank you very much for your attention, and thank you for the questions which you have asked and the issues that you have raised. Firstly, in relation to the exhibit 1 A, that's the DVD, yes, you can and that will be provided to you, and I understand that there will be a laptop of some description or a monitor of some description that you will be able to use and to be able to view the DVD on, no difficulty about that.

Now, in relation to the other questions that you have asked, what I have to say to you about the questions you have asked is as follows; you must not, and you should not engage in any speculation or conjecture about matters that are not in the case, and about which you do not have evidence. You may recall I have stressed on a number of occasions that you must conduct your deliberations having considered the evidence which is actually in the case. And therefore, your consideration must be confined to the evidence which is in the case and which is before you. And you must consider that evidence in accordance with the directions which I gave you in my charge.

Bearing in mind all of the principles that I went through in some detail with you on Friday, I mentioned them very briefly to you yesterday. But the principles of law that I mentioned to you on Friday about the various matters, such as onus of proof, burden of proof, inferences, all of those kind of things, they apply to evidence which is in the case. Now, so therefore I am not in a position to, as it were, go into any greater detail with you in respect of the issues, that they are essentially matters for evidence that you must consider. But what you must consider is what is the evidence in the case, and you mustn't speculate about matters that are not before you, that's the first thing I will say.

The second thing is in relation to the question this morning. Now, the question this morning was, 'Could the defence counsel please read out the authorities cited once more.' Now, it's very important that you understand I think both Mr Colgan and Ms Murphy, when they were addressing you, and I indicated to you that regardless of

what counsel say to you about the law, you must take the law from me, and you mustn't take the law necessarily from what counsel says. But I believe having looked at the transcript, I think this is the paragraph which you are referring to, if I am wrong, I prefer not have a discussion, Mr [Foreman], you can go back in and have a short discussion and come back out and send me a note and say, no, that's not what we were talking about. But in any event, I have had the opportunity to review what counsel said to you on the matter of delay, and in fact I'm satisfied that that is an accurate representation of the legal position.

So therefore, you can take it from me that I'm agreeing with what counsel have said and I'm going to read back to you the paragraphs. And I hope this is the paragraph that you were referring to, or at least the portion of Mr Colgan's address that you were referring to. As I say to you, if not, Mr [Foreman], I'd prefer if anybody did not say anything at this stage, as it were, we can't have a group discussion, you're deliberating, and you have one function and I have the next function.

Anyway, this is what the note suggests that the note indicates that Mr Colgan said. He said, 'There will be a number of warnings given in the course of this case by the judge to you, and I want to refer to them just briefly hopefully but one of them will take a little bit longer than the other one. And that is the one of delay, and this is a warning that will be given by the trial judge to you in respect of delay in this particular case. And there's a sufficient delay between the commission of the offence at trial, the jury should be instructed in general terms as to how this affects the case against the accused. And the courts rely upon a decision of DPP v. RB, and that was a case back in an unreported decision of 2003 by the late Mr Justice Haugh. And this is one that Mr Justice Haugh during the course when he was a Circuit Court judge gave a warning in respect of a matter. Such was the nature of that, that the superior courts directed or took on board what Mr Justice Haugh said to the jury in that particular case. He said, "You have heard in this case, and it is undoubtedly a further difficulty for this case that this is a case of an old complaint. The events that you have to decide here are alleged to have occurred more than 15 years ..." now, that's when Mr Colgan interjected, and said, 'In our particular case it's 40 years'. And the quotation went on, '... it obviously makes the task for a jury and the task for a court in trying these cases a lot more difficult. As Mr McKeown ...' Now that's referable to, I believe, that was in the case before Judge Haugh -- '... says they normally degenerate into one man's word against another, you did, I didn't, you did, I didn't, kind of a contest, and that is because when you are dealing with an old complaint, you are dealing with events from a long time ago. And for the very reason that they are so old, they generally lack precision, they generally lack detail, and it is in precision and in detail that cross examination generally takes place.'

Now, Mr [Foreman], that is what I understand your query to have been, if that is not the query you had, I'd like you just to go back into the room and consider it

with your fellow members of the jury, and you can come back out and I will try to deal with the matter. The two areas of law that I did direct you on were the issues in respect of delay and the issue in respect of corroboration. I gave you specific directions in relation to those, apart from all of the other general principles of law that apply in criminal cases. But I did mention delay, and I did outline to you the principles in respect of corroboration.

So I'd like you just to retire ..."

40. After the jury had retired again, there was some further brief discussion between the trial judge and counsel, following which the jury were brought back again and given some further instructions on the delay issue. Nothing turns on this. The jury resumed their deliberations at 11.56 am on day 6. By 16.03 pm they had not reached a verdict and were sent home for the night. They then returned on day 7 and deliberated throughout that day without returning a verdict but intimated at 15.59 pm on that date that they had a further question, namely:

"Can the Court clarify for the jury why in counts 13 and 14, the location of the alleged offences is stated just as [a named village]?"

41. The question may be placed in some context by noting that, with the exception of counts 13 and 14, in all of the remaining twenty counts on the indictment the offending conduct was pleaded as having occurred at specified locations in the village in question, whether that was the address of the family home, the first location of the caravan in the yard close to the family home, the second location of the caravan on the green area, or the address of the house to which the appellant and "B" moved after having resided in the caravan on the green area. However, as there was some uncertainty as to the precise date on which the caravan had been moved from the yard close to the family home to the green area, the prosecution had elected to plead the location of the alleged offences the subject matter of counts 13 and 14 with less specificity, so that the indictment merely referred to those alleged offences as having occurred in the village in question but without specifying where within the village they were said to have occurred.
42. Having received the question the trial judge said he would defer dealing with it overnight and sent the jury home. The following morning he addressed the jury before they were sent out to continue their deliberations, and said to them:

"Now, Mr [Foreman], the question that you asked yesterday was can the Court clarify for the jury why in counts 13 and 14 the location of the alleged offences is stated just at [the named village]. Now, you may recall that this was the subject of some discussion but for the purpose of clarification, the reason why it is those counts are phrased as they are is because it is unclear whether the alleged offences occurred while the caravan was at [the yard close to the family home] or while the caravan was on the green in [another named location] I think, isn't that essentially the case, Ms Murphy? So, that's the reason why [the named village] is chosen, because it's unclear as to whether it was the offences are alleged to have

occurred at the caravan while it was in [the yard close to the family home] or the caravan on the green and you remember there was sort of a transition period between going from [the yard close to the family home] to [the address of the house to which the appellant and "B" moved to after having resided in the caravan on the green area] and that's essentially the I hope that's clear enough."

43. Having retired yet again, the jury returned with unanimous verdicts at 14.02 pm on day eight, convicting the appellant of the offences on counts 1 to 14 inclusive, and 17 to 22 inclusive, but acquitting him on counts 15 and 16.

The Sole Ground of Appeal

44. The appellant appeals against his conviction on a single ground, namely that the verdict of the jury was contrary to the weight of the evidence and was perverse.

Submissions on behalf of the Appellant.

45. The appellant contends that it was not open to the jury to have convicted the appellant on 20 counts, having acquitted him on two counts. It was submitted that the credibility of the same complainant was at issue in respect of all of the counts. There was no other evidence capable of corroborating her account and it was not therefore the type of case where some of her evidence might be accepted and some rejected. Moreover, the degree of delay in the case warranted heightened scrutiny of the verdicts.
46. Counsel for the appellant characterised the series of questions asked by the jury, despite having received a careful charge from the trial judge, as "*troubling*". It was submitted that in light of these questions, the subsequent verdicts returned suggested that the jury had engaged in speculation.
47. It was submitted that in the circumstances the standard for establishing perversity, which it was acknowledged was a high one, had been met. Counsel submitted that the threshold set out in *The People (DPP) v Nadwodny* [2015] IECA 307 and in *The People (DPP) v Tomkins* [2012] IECCA 82 had been crossed, and this Court should find that the convictions recorded against the appellant were perverse, and should quash them accordingly.

Submissions on behalf of the Respondent

48. It was submitted on behalf of the respondent that there was no evidence whatever that the jury had engaged in speculation. On the contrary, the perceptive questions asked indicated merely that the jury was taking their job seriously, and that they were subjecting the evidence to close analysis. This was borne out by the fact that they saw fit to acquit the appellant on two counts while convicting him of the remainder.
49. Prosecuting counsel submitted that it was not correct to suggest that there was an inconsistency between the verdicts returned on counts 15 and 16 respectively, and those returned on the remaining twenty counts on the indictment. Counts 15 and 16 had related to alleged rapes that had taken place in the caravan while it was located on the green area. In her evidence, the complainant conceded that while she had told the principal investigating garda about being raped in the caravan she had not initially told

the garda about the caravan being moved from the yard close to the family home to the green area. She acknowledged that she had "*purposefully left it out*" and had cited shame and embarrassment as the reasons why she had omitted to tell the investigating garda about being raped in the caravan when it was on the green area. Prosecuting counsel suggested that, contrary to what had been advanced by defence counsel, this failure to initially mention the alleged rapes in the caravan while it was on the green area to gardaí provided a ready explanation why the jury might have had a reasonable doubt as to the credibility and/or reliability of the complainant's evidence in respect of those allegations. However, as regards the other alleged rapes the complainant's evidence was clear and unimpeached in cross-examination and they would have been perfectly entitled to treat it as both credible and reliable and to convict the appellant on foot of it, which they had done.

The Court's Decision

50. We have no hesitation in rejecting this appeal. We entirely agree with counsel for the prosecution that there is a cogent potential explanation for the jury having acquitted on counts 15 and 16, and having convicted on the rest, in the light of the evidence given by the complainant at trial. We also agree that there is no evidence to suggest any speculation on the part of the jury. On the contrary, the questions they asked serve only to point to their attention to detail and to illustrate that they were taking their oaths as jurors seriously.
51. The jurisprudence on perverse verdicts indicates that the bar to be vaulted by an appellant who seeks to make that case is a high one indeed. In our assessment, this appellant has not come close to doing so. We are accordingly satisfied both that the appellant's trial was satisfactory and the verdicts recorded are safe.
52. The appeal must therefore be dismissed.