



Neil Hastie and The Law Officers of the Crown
Court of Appeal
29th September 2015

JUDGMENT
59/2015

In relation to limitation, joinder and insufficient evidence – appeal against conviction and sentence

IN THE COURT OF APPEAL OF GUERNSEY

CRIMINAL DIVISION

Criminal Appeal No 458

29th September, 2015

Before: **Clare Montgomery QC, Presiding**
Robert Logan Martin Esq., QC
Deemster David Doyle Esq

Between: **NEIL HASTIE** **Appellant**
and
THE LAW OFFICERS OF THE CROWN **Respondent**

Advocate C M Fooks represented the Appellant
Advocate R J Calderwood represented the Respondent

JUDGMENT

Montgomery JA:

This is the judgment of the Court.

1. On 13 June 2014 the Appellant, a man born on 15 November 1948, was convicted in the Royal Court (Judge John Russell Finch Esq. and Jurats) of three Counts of indecent assault on Complainant A born in September 1963 (Counts 1-3) and three Counts of rape of Complainant B born in October 1969 (Counts 4, 6 and 8 at trial renumbered as 4, 5, and 6 for the purpose of sentencing). On 1 August 2014 the Appellant was sentenced to a total of 12 years imprisonment. The Court also imposed an extension period of five years. The Appellant appeals against both conviction and sentence.

Appeals against conviction

2. The Appellant raises three grounds of appeal against conviction. The first ground is that the conviction on Counts 2 and 3 should be quashed on the grounds that the prosecution infringed the principle in *R v J* [2005] 1 AC 502. The second ground advances the contention that the cases of the Complainants should not have been joined in the same indictment and that their evidence was not cross admissible. The third ground is that there was insufficient evidence of rape or lack of consent.
3. Ground 1 The Appellant submits that he could not lawfully be prosecuted for offences of indecent assault against Complainant A insofar as they consisted of acts of unlawful sexual intercourse.
4. Reliance is placed on the majority decision of the House of Lords in *R v J* [2005] 1 AC 502. *R v J* established that, under the laws of England and Wales in force prior to 1 April 2004, it was unlawful for a prosecutor to charge a person with indecent assault under section 14(1) of the Sexual Offences Act 1956 (the 1956 Act) in circumstances where the conduct on which the charge was based was an act of unlawful sexual intercourse with a girl between 13 and 16 in respect of which no prosecution could be commenced under section 6(1) of the 1956 Act by virtue of the 12 month limitation period in section 37(2) of and Schedule 2 to the 1956 Act.
5. The reasoning in *R v J* is said to apply in Guernsey and to preclude the prosecution of indecent assault in Guernsey if the acts relied on are acts of unlawful sexual intercourse with a girl between 13 and 16 in respect of which the limitation period under Guernsey law has expired.
6. Before this proposition is examined, it is important to recognise that the majority in *R v J* accepted that the principle did not preclude the prosecution of independent acts of indecent assault incidental to a sexual relationship but not inherent in or forming part of an act of sexual intercourse. For these reasons, in this case, the decision in *R v J* has no impact on the conviction on Count 1 on the indictment since that Count was concerned with the indecent touching of Complainant A's breasts and vagina. Only Counts 2 and 3 concerned acts of sexual intercourse.
7. It is significant to note that there was no issue in *R v J* that the conduct was time barred. Sexual intercourse had taken place when the child was between 13 and 14 years of age. However there is no such clarity in this case. The Counts in the indictment charged acts that had taken place in 1976 or 1977 when Complainant A was either 12 or 13. It was therefore impossible to argue that the indictment should have been quashed since it was common ground that a charge alleging indecent assault when Complainant A was 12 would be lawful.
8. Moreover it became clear from the evidence given at trial by Complainant A that notwithstanding the equivocation about dates in the particulars of offence in the indictment, her recollection was that the acts of intercourse took place over the summer holiday before the swimming pool at Beau Sejour opened. It was an admitted fact that Beau Sejour opened in December 1976. Complainant A did not turn 13 until 13 September 1976. Accordingly her account at trial was that the offences in Counts 2 and 3 were committed when she was 12. Her account on this point was not challenged in cross examination and was not undermined by her sister's evidence which was, at best, ambiguous as to the relevant dates. More importantly in our view, the Appellant gave evidence on the basis that, although sexual contact was denied, his contacts with Complainant A took place in the summer of 1976.
9. In our view it would be necessary for the Appellant to establish, at least on the balance of probabilities, that Complainant A was 13 when any act of sexual intercourse took place before he could rely on the principle established in *R v J*. There was no such evidence. On the contrary we are satisfied on the evidence given at trial that any act of sexual intercourse took

place when Complainant A was 12. This is sufficient to dispose of the first ground of appeal. However, since the law has been fully canvassed in the course of this appeal, we propose to express our tentative conclusions on the issue.

10. The existence of a single statute in the form of the 1956 Act was, in our judgment, critical to the reasoning of the majority in *R v J*. The majority held that Parliament must have intended to prohibit prosecution under section 6 of the 1956 Act after the lapse of 12 months and that clearly expressed statutory intention would be undermined if exactly the same conduct could thereafter be prosecuted, with exposure to the same penalty, as an indecent assault under section 14 of the 1956 Act. It was for this reason that the majority held (see the analysis of the Court of Appeal in *R v Timmins* [2006] 1 W.L.R. 756) that the prosecution in *R v J* was unlawful rather than an abuse of process.
11. In Guernsey, indecent assault is a common law offence. Unlawful sexual intercourse with a minor aged 13 to 15 is a statutory offence under Article 3 of the Loi relative à la Protection des Femmes et des Filles mineures of 1914 (the 1914 law). The Article 3 offence has always been subject to a statutory limitation period; originally six months but later 12 months under the Loi relative à la Protection des Femmes et des Filles mineures (Amendement 1930) (the 1930 law). Unlawful sexual intercourse with a minor under the age of 13 is a statutory offence under Article 2 of the 1914 law and subject to no limitation period. Accordingly, unlike the case of *R v J*, there is in Guernsey no single statute with “clear and unambiguous provisions” (per Lord Bingham in *R v J* at para 15) that can be read as prohibiting prosecution of indecent assault in place of unlawful sexual intercourse.
12. Advocate Fooks nevertheless contends that it is a necessary implication of the Guernsey legislation that the delayed prosecution of indecent assault, where the assault would also constitute an Article 3 offence, is prohibited. She suggests, albeit faintly, that the 1914 Law is the source of this prohibition. However there is nothing in the 1914 Law that would enable us to draw the conclusion that the legislation was intended in 1914 to prevent the prosecution of offences of indecent assault even where they consisted of acts of intercourse with minors between 13 and 15.
13. The reason we are not able to conclude that the 1914 Law was intended to inhibit the prosecution of indecent assaults is that, at least until 1950, the possibility of prosecuting an indecent assault on the same facts as an Article 3 offence did not arise, since the consent of the victim that is a feature of the Article 3 offence would constitute a defence to an allegation of indecent assault. It was only with the passage of the Offences against Girls (Availability of Defences) Law 1950 (the 1950 Law) and a further law in 1956 that the consent of a child ceased to constitute a defence to indecent assault (other than in relation to the so called young man’s defence). Accordingly it is impossible to construe the time limitation provisions in the Guernsey Laws of 1914 and 1930 as implying a legislative intention to limit the prosecution of indecent assaults.
14. We see no reason to apply an updating construction to the Guernsey Laws of 1914 and 1930 to produce the prohibition for which the Appellant contends. Although it is presumed that a court will apply to an ongoing Law a construction that updates its wording to allow for changes since the Law was initially framed (so that it is to be treated as always speaking), this does not mean that it can be updated so as to prohibit prosecution of offences that are not covered by the Law merely because of some later changes in the rules relating to criminal responsibility. As Lord Bingham put it in *R (on the application of Quintavalle) v Secretary of State for Health* [2003] 2 AC 687 at [9]: “There is, I think, no inconsistency between the rule

that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now." In our view the Guernsey Laws of 1914 and 1930 were not Laws applicable to indecent assault when they were passed and cannot properly be interpreted as being applicable to indecent assault now.

15. There is therefore no restriction, whether express or implied, under the laws of Guernsey on the prosecution of indecent assault even in circumstances where a prosecution for unlawful sexual intercourse contrary to Article 3 is time barred.
16. Ground 2 Rule 3 of the Schedule to the Indictments (Guernsey) Law 1950 provides that charges for "any offences ... may be joined in the same indictment if these charges ... form or are part of a series [of offences] of the same or a similar character."
17. Rule 3 is similar in form to the provisions of the Indictment Rules in England and Wales and the question whether particular charges "form or are part of a series of offences" has been considered in detail in *R v Kray* 53 Cr App R 569 and *Ludlow v Metropolitan Police Commissioner* [1971] AC 29.
18. The Court in *Kray* held that although the relevant part of the rule does not require the offences to arise out of the same facts or be part of a system of conduct before joinder can be sanctioned, a sufficient nexus must nevertheless exist between the relevant offences. If the evidence of one offence is admissible on the trial of the other then there will be a sufficient nexus.
19. It is therefore convenient to consider the cross admissibility of the evidence of Complainants A and B at this juncture. The decision of the House of Lords in *DPP v P* [1991] 2 AC 447 rid the law of the notion that the test of cross admissibility was that there should be a striking similarity between the similar fact evidence and the evidence relating to the charge being tried. Lord Mackay of Clashfern, LC at p 462 held that in considering this issue "the Judge must first decide whether there is material upon which the jury would be entitled to conclude that the evidence of one victim, about what occurred to that victim is so related to the evidence given by another victim, about what happened to that other victim, that the evidence of the first victim provides strong enough support for the evidence of the second victim to make it just to admit it notwithstanding the prejudicial effect of admitting the evidence. This relationship from which support is derived, may take many forms and while these forms may include 'striking similarity' in the manner in which the crime is committed, consisting of unusual characteristics in its execution, the necessary relationship is by no means confined to such circumstances. Relationships in time and circumstances other than these may well be important relationships in this connection. Where the identity of the perpetrator is an issue, and evidence of this kind is important in that connection, obviously something in the nature of what has been called in the course of argument a signature or some other special feature will be necessary. To transpose this requirement to other situations where the question is whether a crime has been committed rather than who did commit it, is to impose an unnecessary and improper restriction upon the application of the principle."
20. The decision in *DPP v P* has been applied in the Courts in Guernsey in *Jose Alvarez v Law Officers*, Royal Court (Finch J) unreported 27 September 2012, and it is common ground between the parties that it represents the law of Guernsey that we should apply in this case.

21. In *R v Venn* [2002] EWCA Crim 236 at paragraph [35] Potter LJ pointed out that, while the decision in *DPP v P* eliminated the necessity to identify a striking similarity, “it was still necessary to invoke some identifiable common feature or features constituting a significant connection and going beyond mere propensity or coincidence. ...The classic examples are: (i) where the question is one of identity (ii) where mistake, accident or innocent association is an issue (iii) where the defence is based on an assertion that two or more complainants are lying or mistaken ... In all these cases the nature of the identifiable common feature or features which may constitute a significant connection is bound to depend upon the context and on the circumstances which cannot be prescribed. Where, as in this case, the prosecution witnesses are alleged to have made up those stories in a situation where collusion or cross-contamination can be discounted, the existence of common features in the nature or context of the separate offences which are the subject of complaint, may, whether separately or cumulatively be more readily regarded as non-coincidental and therefore probative on the issue of lies than would be the case of identity were the issue. That is because, in a case of this kind, the similar facts relied on are the making of similar allegations and not the events which are described in the allegations.”
22. In this case the issue was not one of identity but whether the two Complainants were lying. The question for the Royal Court was therefore whether the evidence had the necessary probative force in this context. As Lord Taylor, CJ, pointed out in *R v Ryder* (1994) 98 Cr App R 242 at 250: “The rationale of similar fact evidence is that two or more people do not make up or mistakenly make similar allegations against the same person independently of each other. The degree of similarity will add weight to the unlikelihood that false allegations have been made.”
23. In determining the degree of similarity, the task of the judge is to assume that the evidence of the witnesses is true (since the credibility of the witnesses is a matter for the jury, see *R v H* [1995] 2 AC 596 at 612) and then ask himself whether any explanation of the common allegations on the basis of chance or coincidence would be an affront to common sense. The Advocates in this case agree that *R v H* describes the approach that the courts of Guernsey ought to adopt when faced with questions of cross admissibility of evidence.
24. It follows that it is not open to the Appellant to advance arguments based on challenges to the credibility and reliability of the Complainants as the starting point for an attack on the decision of the Judge on joinder/cross admissibility.
25. The suggestion that there is relevant evidence that was not before the Judge relevant to this issue is also advanced without any regard to the duty of the Appellant to satisfy this Court that his is an appropriate case in which fresh evidence should be admitted. The starting point for the admission of fresh evidence on appeal is that the evidence was unavailable at the trial; it is relevant; capable of belief; and if it had been given at trial it might have raised a reasonable doubt as to the Appellant’s guilt. In general, the reception of fresh evidence on appeal is regarded as wholly exceptional, see *Hume v Attorney General* [2006] JCA 162. None of these tests appear to us to be passed in this case.
26. In our view, the Judge was right to proceed to determine the application for joinder on the assumption that the evidence of Complainants A and B was true. On that basis there were the following significant features:
 - (1) Neither Complainant knew the other.
 - (2) In each case the Complainant met the Appellant for the first time at venues for swimming;

- (3) The Complainants were girls aged around 12 years old when they met the Appellant;
 - (4) In each case the Complainant was singled out by the Appellant for attention despite the difference in their ages and (in the case of Complainant A) the presence of her peers;
 - (5) Both Complainants were treated as friends by the Appellant and allowed to ride on his motor cycle as the relationship developed.
 - (6) The Appellant had an interest in sexual intercourse with young girls.
 - (7) In each case the Complainant was taken on her own to a public area in day light hours where sexual activity took place.
 - (8) In each case the Complainant was taken to the “Cow’s Horn” area near Guernsey Aquarium with a view to sexual activity taking place.
27. The Judge drew attention to these features and concluded that there was a sufficient nexus for the counts to be joined in the same indictment and that prima facie the evidence would be cross admissible. In our view this decision was correct.
28. The only remaining issue was whether the evidence of Complainant A might have been contaminated by reason of the fact that she knew that allegations had been made by Complainant B before she went to the Police. However there was no evidence that the two Complainants had any opportunity to concoct their accounts. It is suggested that the fact that Complainant A had previous convictions for offences of dishonesty was relevant to the decision on cross admissibility. However in the absence of a case based on cross contamination or mutual concoction, that would be supported by Complainant A having convictions for dishonesty, those convictions appear to us to be irrelevant to the decisions on joinder and cross admissibility. Even if we are wrong in this, we consider that the case for joinder and cross admissibility was nevertheless overwhelming.
29. The point remains that two young girls, whom the Appellant admits he knew but claims to have had only innocent contact with, independently made allegations that he had taken an inappropriate sexual interest in them in similar circumstances when they were children. The Jurats were in our view, entitled to take into account the whole of the evidence in evaluating whether the two Complainants had invented the same or similar false stories.
30. In the circumstances it is wrong to suggest that the cases should not have been joined and equally impossible to contend that the admission of the evidence was wrongly determined by the Judge. Ground 2 of the Grounds of Appeal against conviction must therefore be dismissed.
31. Ground 3 The Appellant contends that the vagueness of the description given in relation to the offences of rape by Complainant B means that there was no sufficient evidence that an act of penetrative sexual intercourse had taken place. In addition it is said that the absence of consent to rape was not sufficiently established. Finally it is said that the Jurats were not provided with sufficient information on the impact of delay on the defence case and it is suggested that there may be fresh evidence that is relevant to the credibility of the Complainants.
32. A problem with these submissions is that they were not advanced at trial by way of any submission of no case to answer. In addition they rely upon a number of factual assertions that were not established in evidence at trial. No application has been made for the admission of fresh evidence and on the face of it any application would be bound to fail.
33. Moreover the submissions are in reality a complaint about the weight of the evidence rather than a submission that there was no case. A ground of appeal that there was no evidence will not succeed where there is some evidence. The question of its reliability, credibility and sufficiency are all matters for the Jurats. As the Court of Appeal confirmed in *Garven v Law*

Officers Guernsey Court of Appeal 13 September 2013 unreported paras 13, it is not sufficient to allege that a verdict was against weight of the evidence. A verdict will only be set aside in those rare cases where the verdict can be shown to be obviously wrong. The Court cited with approval the analysis in *Pinto and Others Guernsey Court of Appeal 24 May 2013 GLR 12/2013*, emphasising the importance of the role of the Jurats and the difficulty in establishing that a verdict is obviously wrong in such cases.

34. It will be recalled that the powers of this Court, in considering an appeal against conviction, are strictly limited. Article 25(1) of the Court of Appeal (Guernsey) Law 1961 states, among other matters:- "... the Court of Appeal shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal ..."
35. As was pointed out by the Jersey Court of Appeal in *Styles v Attorney General* [2006] JLR 210, in relation to the same provision under the Court of Appeal (Jersey) Law 1961, it is no part of the powers of the Court of Appeal to review the totality of the evidence, sift through points of alleged weakness and attempt to make a judgment on an Appellant's guilt or innocence. In *Attorney General for Jersey v Edmond O'Brien* [2006] 1 WLR 1485 the Privy Council indicated the exceptional nature of cases in which a criminal verdict has been set aside as one which no reasonable tribunal could have found. The Privy Council confirmed that the Jersey Court of Appeal had no power to try the case of *O'Brien* on the written record and allow the appeal if it was persuaded that it would not have convicted. That was held to be beyond the powers of the Court and to usurp the function of the Jurats.
36. We consider that there is no basis for the contention that the Jurats came to a flawed conclusion in finding the charges were proved beyond reasonable doubt in this case. The Jurats were reminded of the salient points made in the defence case and the burden and standard of proof. Although criticism is made of the order in which points were made in the summing up, Advocate Fooks does not suggest that the contents of the summing up were in any way faulty. Her contention is simply that various defence points could have been made with greater cogency or in a different order. However this contention does not lead us to conclude that the guilty verdicts in this case were either unfounded or irrational. It follows that the application for leave to appeal insofar as it is based upon grounds of unreasonableness or the weight and substance of the evidence cannot be granted.
37. In any event the complaints about the weight of the evidence do not appear to be justified, either in relation to the question of penetration or the question of consent. Complainant B has an adult understanding of penetrative sexual intercourse and rape. She said that the Appellant had "raped" her [14]. On the first occasion she said the Appellant "lay on top of me and had sex with me" [23]. The fact that she said at the time she had no idea what he was doing does not support the suggestion that she may not be describing sexual intercourse. She was asked what she meant by "had sex" and she replied "penetration, you know penis/vagina penetration" [25]. In cross examination she explained she had a memory of the sex itself and a movement of the Appellant convulsing "... it could only have been sexual intercourse. ... I believe it was penetrative sex" [41]. That this was an account of sexual intercourse appears to have been accepted at trial. The defence argued that "given this was the first time that this young girl on her evidence had sex ... she could have been able to remember more detail" [128].
38. Complainant B was similarly explicit about the second occasion: "I remember again lying on a

bed and Neil being on top of me and having penetrative sex again ... same as before, the penis and vaginal sex ... it's an image I have really hard time shaking off" [27].

39. As to third occasion Complainant B said she was at "a height so that Neil could have penetrative sex again standing up. ... Q You mean putting his penis into your vagina. A Yes."
40. In our judgment the suggestion that there was insufficient evidence for the Jurats to conclude that penetrative sexual intercourse had taken place is unfounded.
41. The evidence in relation to the absence of consent was equally clear. In relation to the first occasion Complainant B said: "It didn't occur to me what was going on ... I was told to lie down ... I was completely compliant and I had no idea what he was doing" [23]. On the second occasion she said she was passive; "just doing what I was told. ... He just asked me – or told me what to do and I did it" [27]. "It didn't occur to me to say no so I didn't enjoy it but it didn't occur to me that it was something I could or should stop" [28]. So far as the third occasion is concerned Complainant B said she was "always passive. It's never me taking the initiative. It would have been his decision to go there, his decision to do that ..."
42. Complainant B was asked in relation to the three incidents whether she wanted to have sexual intercourse. Her reply is illuminating: "No, no. The first occurrence I had no idea what was going on and subsequent occurrences I didn't want to do it but I didn't put up a fight at all" [31].
43. This is a description of submission and not consent. The Judge's summing up drawing attention to the difference between submission and consent was not (as was submitted) a gloss but a reflection of the evidence.
44. There was also no basis for the suggestion that, on Complainant B's account, the male person would have believed that she was consenting. The submission that "she was at all times ... capable of giving consent and so did" was not put to Complainant B in cross examination nor was it raised in the defence closing speech.
45. The question of delay and the absence of examples of case specific prejudice is raised by the Appellant and fresh evidence is relied on. The Appellant is not entitled to re-run his defence in this way. If the evidence was relevant and admissible, it was available at trial and should have been adduced then. The Appellant chose not to give evidence at trial that he was working during the Summer of 1981 (so not at the pool with Complainant B) or that his Aunt would have been home asleep during the daytime in 1976 and 1981 or that his medical condition may have prevented him riding a motorcycle in 1976. He is not entitled to rely on this material now.
46. The appeal against conviction is accordingly dismissed.
47. **Appeal against sentence.** It is submitted that a sentence of 12 years imprisonment is manifestly excessive. The total of 12 years imprisonment is made up of five years imprisonment on each of the indecent assaults charged in Counts 1, 2 and 3 concurrent on each Count and seven years imprisonment imposed in respect of each of the rapes charged in Counts 4, 5 and 6 concurrent but consecutive to the sentences for the indecent assaults.
48. The Judge in his sentencing remarks identified the appropriate overall starting point as one of

14 years imprisonment. He described the Appellant as having preyed on the children. One of the children (Complainant B) was; “so innocent that she did not know what the sexual act was.” The Royal Court allowed a discount of 10% to reduce the sentence to one of 12 years overall.

49. The Appellant submits that the component sentences for the indecent assaults were too high. The cases of *Garven* Court of Appeal 13 September 2013 unreported and *Finigan* are relied on as indicating sentences might range between four to four and a half years imprisonment in respect of acts of indecent assault. However in *Garven* the Court was primarily concerned with the total sentence of 12 years imprisonment imposed in respect of sexual offences short of intercourse committed against four pre-teen girls. The Court held that a total sentence of 10 years would have been appropriate. *Garven* was not a case in which rape or sexual intercourse was alleged.
50. We regard the fact that the indecent assaults in Counts 2 and 3 consisted of penetrative sex places these offences into the most serious bracket. The fact that Complainant A consented does not act as a significantly mitigating factor as the Appellant must have been aware that it was wrong for him to seek to have any form of sexual connection with her.
51. In our judgment, the sentences for indecent assault fall to be assessed on the basis that they were committed in 1976 against a female child then aged 12 years, for the reasons set out above. Thus the issue of the correctness of the decision in *Hinton* 16 Cr App R (S) 523 does not fall for decision in this case. In our view, where an act of indecent assault consists of sexual intercourse with a girl under 13 years old, five years imprisonment is an appropriate starting point. Accordingly we do not consider there are any grounds for criticising the starting point selected by the Royal Court in this case.
52. The offences of rape were committed in 1981/2 against a girl aged between 11 and 12 years. The Appellant was 33 years old when the offences were committed. The rapes were further offending behaviour on the part of the Appellant. This is a seriously aggravating feature in his case.
53. In the case of the rape of a child under the age of 13, the starting point under the current sentencing guidelines in England and Wales in cases involving the grooming of young children by older men is a sentence of 10 years imprisonment with a sentence range of 8-13 years imprisonment. Aggravating factors will include the specific targeting of particularly vulnerable children. These guidelines are of some assistance to the Guernsey courts in identifying factors that may be regarded as aggravating or mitigating offending behaviour.
54. Similar assistance can be gained from the case of *Milberry* [2003] 1 WLR 546. In *Milberry* the Court of Appeal indicated that five years imprisonment was the appropriate starting point for a single offence of rape where there was no aggravating factor. Eight years imprisonment was the starting point when any aggravating factor was present. Amongst the aggravating factors identified was the rape of a child or a vulnerable person. The Court in *Milberry* also emphasised that repeat offending is a significant aggravating factor.
55. This case appears to us to involve aggravating factors that would have justified starting with a sentence of eight or nine years imprisonment for the offences of rape. The offending in relation to Complainant B was a repetition of earlier sexually predatory behaviour by the Appellant. Complainant B was an exceptionally naïve 11 year old whom the Appellant

groomed after meeting her at the Royal Hotel swimming pool. There were three separate acts of rape. These acts were committed without any regard for whether Complainant B understood what was happening to her or was able to consent to these sexual assaults. It follows that we reject the submission that the starting point of seven years imprisonment for the offences of rape was too high; if anything it was too low.

56. Save for the issue of totality we would have no hesitation in holding that the sentences for the rapes should have been served consecutively with those imposed for the indecent assaults. Accordingly in our view the starting point for the sentence to be passed was one of 14 years imprisonment. It follows that we consider that the sentencing court was correct to identify that as the starting point.

57. The Appellant was given the benefit of what was described as a discount. We consider it was appropriate, having regard to the totality principle, to allow some small reduction in sentence on account of the passage of time, the Appellant's age, his previous good character and the impact the sentence would have on his family which includes two young boys aged 15 and 10. In our judgment it was appropriate to reduce the starting point of the total sentence marginally to reflect these factors. However an overall sentence of 12 years imprisonment was in our view appropriate. The appeal against sentence is accordingly dismissed.