

THE HIGH COURT

2001 820 JR

BETWEEN

R.C.

APPLICANT

AND
THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

Judgment of Mr. Justice John MacMenamin dated the 11th day of February, 2005

1. The applicant in these proceedings was born on 4 June, 1941 and has five children. He is married to Mrs. M.C. who is a complainant in earlier proceedings (see *B.C. v. Kirby and the Director of Public Prosecutions*) and (*P.J.C. v. D.P.P.*). The children of the marriage are K.N.C. born on 23 July 1968, M.C. born on 5 July 1972; L.C. born on 22 October 1973; R.C. Jnr. born on 29 March 1975 and; W.C. born on 23 January 1978.

2. As against this applicant, there are nine charges of indecent assault. There are two complainants making allegations against him. These are Ms. J.S.C., born on 8 July 1952. She is the applicant's niece and is the daughter of P.J.C. and J.M.C. The second complainant is Ms. J.G.C. who is the daughter of M.C. and Mrs. Ja. C. She is therefore a niece of the applicant.

First complainant – J.S.C.

3. In view of the fact that the charges relating to the complainant are set out in a rather confusing way it is as well to clarify precisely the position. The charges are as follows. Charge sheet 127/2000 alleges assault with intent to commit buggery against the applicant between 1 June 1957 and 30th September, 1958, both dates inclusive, at No. 2 R.H. Road. Charge sheet 4/2001 alleges indecent assaults between the same dates on a date other than that referred to in charge sheet 127/2000 at the same address, No. 2 R.H. Road.

4. In the subsequent additional charges proffered the following offences are alleged:

- Charge sheet 224/01: indecent assault between 28/7/57 and 7/7/58 at No. 3 B. Road;

- Charge sheets 225/01: indecent assault between 28/7/57 and 7/7/58 on an occasion other than that referred to at charge sheet 224/01 indecent assault;

- Charge sheet 226/01: indecent assault on dates between 8/7/57 and 7/7/58 on dates other than those referred on charge sheets 224/01 and 225/01 at No. 3 B. Road;

- Charge sheet 227/01: indecent assault between 8/7/57 and 7/7/58 other than on the occasions set out in charge sheets 224/01, 225/01 and 226/01 at No.3 B. Road.

- Charge sheet 228/01: indecent assault between 8/7/57 and 7/7/58 on occasions other than in charge sheets 224/01, 225/01, 226/01 and 227/01 at No. 3 B. Road.

5. It will therefore be seen that so far as relates to J.C.S., all the alleged charges relate to complaints regarding incidents which allegedly took place between 41 and 42 years ago.

6. At the time of these alleged incidents the complainant was aged between four and six. During the same period the applicant R.C. Snr, having been born on 4th June, 1941, was aged between sixteen and seventeen. The complainant was living at No. 2 R.H. Road with her family consisting of her father M.C., her mother Mrs. Je.C. and her five brothers. At this time, J.S.C.'s grandmother lived at No. 3 B. Road. R.C. also lived at No. 3 B. Road with his mother and other members of his family.

7. At the time of all the incidents alleged in the various charges, i.e. between June 1957 and September 1958, J.S.C. was aged between four and six years. During the same period the applicant R.C., having been born on 4 June 1941, was aged between sixteen and seventeen years.

8. In the course of her statement to the Gardaí verified by affidavit, J.S.C. states that she remembers being in her house; she was approximately five years of age. She was going to school then. She remembers it was wintertime because the fire was lighting in the front bedroom, which was her mother and father's bedroom. She states that she was in the room with her mother, her father and R.C. (the applicant). For some reason her mother and father left the room and she was on her own in the room with R.C. She said she knows he said something to her. The next thing, she said, she knew the applicant had placed two fingers inside her vagina. Then she started to cry. She states that she did not know exactly how it happened. She told the applicant to leave her alone or she would tell her father. The applicant said to her she was well used to it. Then he allegedly left her and said 'I'll get you again'. Her recollection was that she was crying. The applicant, she said, strolled down to the kitchen. She never told anyone about this.

9. J.S.C. then describes a second occasion when an assault allegedly took place. She did not recollect how long it was after the first. She remembers being in the front room again and looking out the window. The applicant came up behind her and pulled down her pants. She described the applicant attempting sexual assault on her by anal penetration. She says she just stood there from fear. She started crying again and tried to pull away from him. He just walked away and left. She states she had never told anyone about this out of fear.

10. In order to maintain the chronological sequence one must then turn to a second part of the statement in the Book of Evidence which, it appears, was derived from a subsequent statement furnished to the Gardaí. This begins:

"Since my previous statement I can now remember more details about my uncle R.C. The reason I remember now and not at the time of my original statement because I had just made allegations against my father P.J.C. and I had thought at the time that the abuse by R. was not as serious and I only remembered two incidents at the time. The first time that R. (nickname) abused me was behind the shed at the rear of my granny's house at 3 B. Road. I had started school in (address). I was about five years of age and it was in my first year in primary school (before I went into high babies) – I was on my summer holidays. I was playing in the shed with some dolls. My sister B. was with me. (The applicant) called me out of the shed – he then showed me apples on granny's trees. He brought me behind the shed. I was wearing

a red and white spotted summer dress. I was also wearing white pants and white socks and red sandals. He pulled down my pants – he did not say anything. He put two fingers of his right hand inside my vagina. He shoved them up and down inside me. It was very sore and I was crying. He smelt like my father – drink, smoke and sweat. When it was finished I pulled my pants up and he told me to go back and play and say nothing to no one. Over the next two months this happened about four times. Every Sunday my granny used to send us to the shed to play when we were visiting. Granny didn't want her house to get dirty. It was always at the back of the shed. B. (her sister) would usually be there when (the applicant) called me out..."

11. The statement goes on then to furnish more particulars of some of the alleged assaults.

12. The accounts of alleged assault relating to the applicant are part of a larger statement, composite in nature, wherein the complainant makes a number of allegations regarding alleged assaults committed on her by other uncles after a time when the family moved to England.

13. When the family returned from England in 1965 the complainant describes another incident taking place allegedly at her home. She and her sister B. were allegedly in a little room, which was their bedroom. The applicant was in the front bedroom with their mother and father. The complainant and her sister B. had gone to bed. She says the applicant came into the bedroom and asked "do you want to have sex with me?". She did not know whether he meant with her or with B. With that the applicant put his hands under the covers. B. and she were both in the same bed. B. told him to get out as she was calling her father. The complainant thinks he went off and nothing happened to her on that occasion.

14. In summary then it will be seen the complaints insofar as they relate to J.S.C. fall within two categories; those which occurred when she was in the region of five years of age and the second incident from which no charges emanate relating to an incident which occurred on or after 1965 when the family returned home from England and she says she was in sixth class.

15. Later in the statement in the book of evidence another assault is described which allegedly took place on or after October 1976, at a time when the complainant was working in a nearby city. She describes coming home at the end of work and passing a particular identified house. She states she alleges that the applicant grabbed her by the arm, took her inside the gates of the house and then again carried out a sexual assault upon her by way of digital penetration. She describes the applicant's sexual stimulation as a result of what occurred. Thereafter she states she went home and told no one because she would have got a hiding from her mother. She states that when she got home she changed her clothes because of semen on her clothing. She used a wet cloth to clean her legs. She stated she had reached puberty when this occurred.

16. No charges relate to any incident that took place after 1966.

Previous complaints:

17. There is no evidence of this complainant having made any previous complaint of any type.

Second complainant – J.G.C.

18. The second complainant herein is J.G.C. She was born on 22 June, 1961. She is a daughter of M.C. (not an applicant in these proceedings) and Mrs. Je.C. She is now in her fortieth year.

19. She made a statement to An Garda Síochána on 11 July, 1999 when she was aged thirty-eight years. At that point a period of twenty-three years had elapsed since the earliest offence, and a period of twenty-one years approximately since the most proximate date of complaint.

20. The charges here relate to two allegations of indecent assault alleged to have taken place between 1 March 1976 and 31 October 1976 at an address of 1 C.C. At this stage it is alleged that the applicant R.C. was living at this address. The charges are embodied in charge sheets No. 128 and 129 of 2000.

21. Insofar as relates to the applicant she stated that when she was about 15 years old, during the summer, she went up to a shop. She was with two friends (whom she named). The applicant called them over. He informed her that he had a message for her father. He said it was written on a book over in the house. He asked her to come to the house and she invited her two friends in as well. When they went in she was given the message and they left. The applicant then sent his daughter K. out after her and told her that she had to come in to the applicant's house as her father had forgotten to give her something important. She went back into the house on her own because she thought it would be safe once K. was there. The applicant told her to go into the kitchen and he sent K. into the sitting room. He came into the kitchen, locked the door and pinned her up against the wall with both of his hands. She describes a sexual assault being carried out upon her by the applicant. She also describes the applicant stimulating himself sexually. As she escaped from the kitchen he tried to grab her but she got away and he shouted after her not to tell his wife or anyone else about the incident. She ran out across the road crying. She states she was hysterical.

22. The complainant also describes a further alleged incident when she was about 17 years of age when she was walking up a road relatively close to her home. The applicant would often be waiting at the end of her terrace for a bus. She describes that on several occasions he allegedly attempted to carry out a sexual assault on her by grabbing her breasts as she went by.

23. The statement made by J.G.C. to An Garda Síochána was made on 8 July, 1999 when she was in her thirty-eighth year.

24. At that point a period of twenty-three years had elapsed since the earliest offence and a period of twenty-one years approximately since the most proximate date of complaint.

25. At the time of the earlier alleged offences, the complainant was aged between fifteen and sixteen years. At the time of the later alleged incidents, the complainant was aged between seventeen and eighteen years.

Previous alleged incidents relating to J.G.C.

26. J.G.C. was born in England in 1961. When she was aged nine years she returned to Ireland in or around 1969. She thereafter lived at 3 B. Road with her grandfather and grandmother. She describes a recollection of being sexually assaulted by her grandfather J.C. when she was aged nine and also alleges a series of assaults perpetrated up to the time she was aged twelve years by another applicant.

The attitude of the applicant to his daughter L.C.

27. Contained in Detective Sergeant Byrne's affidavit, there is a rather lengthy reference to an interview with L.C., the daughter of

the applicant. There are no charges wherein it is alleged that the applicant carried out any assault on L.C. However Detective Sergeant Byrne deposes to a telephone call from R.C. that allegedly took place when he was interviewing L.C. in England with another member of the Garda Síochána.

28. In the course of this telephone conversation, where he was present, he states that the applicant indicated to L.C. that it was alright for her to give evidence in relation to matters relating to other members of the family, but she was specifically prohibited from giving information or making any complaint in relation to assaults which he allegedly may have carried out upon her.

29. She made a specific very brief reference to having being sexually assaulted by her father in the statement taken on 30th September, 1999 at W- Police Station, Leeds. This statement was taken by Detective Garda Sinéad Moody and Detective Garda Thomas Byrne.

30. This matter was further dealt with in the evidence of Brian Graham, social work team leader, which is part of the respondent's case and dealt with below.

The complexity of the case

31. The actual progress of the proceedings does not differ in any material way from that described in the earlier case of B.C.

The applicant's grounds

32. The applicant relies upon two basic grounds: (1) the delay in the institution of these proceedings and; (2) the lack of specificity in the charges.

33. The applicant contends that the delay which occurred on the facts of this case is unfair, violates the applicant's right to trial with reasonable expedition and denies him his right to a trial in due process of law. It is contended that the delay has prejudiced the applicant in his defence and is excessive and prejudicial. Such delay it is contended would amount to a denial of the applicant's rights pursuant to Article 38.1, Article 40.1 and Article 40.3 of the Constitution of Ireland.

34. Lack of specificity is the second ground. It is contended that these charges are so broad as to prejudice the application. With regard to lack of specificity, the applicant contends his defence is prejudiced and his right to a fair trial in due course of law violated.

35. A further affidavit sworn by the applicant on 17 December, 2003 denies dominion in relation to either of the complainants, and deals with other matters to which reference is made below.

36. With regard to J.G.C., he states that she was always asking him to meet her at weekends and asking him to go for drinks with her friends. He states that J.G.C. offered him £2,000 for him to swap houses with her. When he refused she stopped talking to him and ignored him.

Grounds of Opposition

37. In the statement of grounds of opposition it is denied that there has been unexplained delay such as would justify a prohibition of the trial. It is contended that if there has been delay in the making of complaints the applicant has been responsible therefore by reason of his dominion. It is further contended that he prevented the making of complaints by threats and intimidation of the complainants. The allegations of delay causing prejudice are denied as is the allegation that there has been delay in the institution of proceedings such as would breach the applicant's constitutional rights as asserted. It is denied that there is a lack of specificity in the charges. It is further specifically denied that the applicant is entitled to prohibit his trial merely because of the lapse of time, it is submitted that the alleged lack of specificity in the charges is a matter for the trial court and not for judicial review.

The evidence of Brian Graham, social work team leader

38. As part of the respondent's case, an affidavit has been sworn by Bryan Graham, social work team leader.

39. In or around 1987 to 1988, he was employed by the Eastern Health Board as a social worker. In 1987, he states that allegations of abuse made by L.C. were brought to the attention of the Health Board. He was the officer assigned to deal with the applicant's family. Following meetings with members of the family he prepared reports dated 4 December, 1987 and 7 January, 1988, a supplementary report in or about February, 1988 and a letter to the Area Manager dated 10 May, 1988. He exhibits these documents. He says that the documents represent a true and accurate record of his dealings with the applicant's family. The reports represent an interaction which took place between Mr. Graham, Dr. Imelda Ryan and the C. family in 1987.

40. The reports refer to sexual abuse of L.C. by her father. There is also reference to assaults carried on other members of the applicant and Mrs. M.C.'s family by others of R.C.'s brothers including F.C. It appears that, when complaints were made against F.C. (the applicant's brother), such complaints were withdrawn in circumstances where there was pressure put upon Mrs. M.C., and in circumstances where, it was said, Mrs. M.C. was suggesting that her husband R.C. had abused L. (his daughter) as well as another family member.

41. As appears from Mr. Graham's affidavit, on 4 December 1987, while he was involved in dealing with these allegations, he received a threatening phone call from the applicant telling him to keep away from his home and the children or he would be hurt. He telephoned the Gardaí and informed him of this threat. On 5th January, 1988 he re-engaged with the applicant's family in order to undertake an assessment of the allegations that had been brought to his attention. The primary objective of such an assessment was to ensure the children's safety and to organise whatever help was indicated. The applicant's family departed to England in or about April, 1988. No affidavit was sworn in response to these allegations by the applicant, nor did he respond to the contents of the social work reports.

J.S.C. – the psychological evidence

42. Mr. Michael Dempsey gave evidence in relation to J.S.C. In the course of this report Mr. Dempsey quotes J.S.C. as saying:

"[S]he alleged that a number of her uncles including R.C. (the applicant) began to abuse her between the ages of 4 and 6 years. She alleged that on occasions she would have been sexually abused by more than one relative on any given day. She alleged that her uncle R.C. had attempted to have anal intercourse with her when she was approximately 11.5 or 12 years. Around the same age she alleges that he inserted his fingers into her vagina as she lay in bed with her sister B. She alleged that her mother colluded in the abuse she experienced from her father. She reported that the alleged sexual abuse by her uncle R.C. stopped when she was approximately 13 years and she reported that she does not know why the alleged abuse by him stopped at that particular age."

43. Mr. Dempsey goes on to state that "(the complainant) reported that one reason for the delay in reporting the alleged abuse to the Gardaí was fear, absolute fear, 'as we were terrified of them all' ". She alleged that her father used to sleep with a dagger under his bed and she feared that her uncles did as well. Another reason for the delay in reporting the abuse is that she felt that no one would believe her. Mr. Dempsey states that this has been identified in the literature and is the subject of the common reason for not reporting incidents of abuse. She reported that she was eventually motivated to make a complaint to the Gardaí about her father because of her fear that he might abuse neighbouring children and she also complained about the alleged abuse by her uncles, including R.C., at the same time.

44. Mr. Dempsey then writes in his report:

"The complainant alleges that she was sexually abused by her uncle (the applicant) between the ages of 4 and 6 years. She also alleges that she was abused by other uncles at this time. A recent review (Eisen et al, 'Memory and Suggestibility in the Forensic Interview' LEA 2002) of the research and memory of traumatic events reports that traumatic events were more accurately retained in memory and subsequently more accessible than more normal non traumatic memories, memories where traumatic events were not impervious to the effects of temporal delay. Generally the accuracy of memory and the amount of detail and memory increases with age during childhood and further the gist of an event is retained in memory more accurately than the peripheral details. Given this research and given the allegation that she was being abused by a number of people between the ages of 4 and 6 it is in my opinion difficult to identify accurately who was abusing her at the time. Although it is my opinion that she was probably being sexually abused at that time. Ms. C.'s report of the short and long term consequences of the alleged abuse are consistent with the social research on the subject. In my opinion the delay in making the complaint is also reasonable having regard to the particular circumstances of this case."

Inconsistencies and internal conflict in account in the case of J.S.C.

45. It is clear that a number of inconsistencies arise in the case of J.S.C. There would appear to be some discrepancy between the statement furnished to the Gardaí and that furnished to Mr. Dempsey. At the time of all the alleged incidents (between 1957 and 1958) she was stated in the former to be between 4 and 6 years.

46. First, no reference is made in the statement to the Gardaí to sexual abuse by persons other than the applicant between the ages of 4 and 6 years. Secondly, no reference was made to sexual abuse by more than one relative on any one given day.

47. Thirdly, the complainant identifies the attempts by the applicant to have anal intercourse with her as taking place when she was approximately "11.5 or 12 years". By inference it might be thought that this second assault took place before the family moved to England in 1960. This does not tally with the complainant's age given her date of birth on the 11th of July, 1952. It is not consistent with the assault having taken place between the ages of 4 and 6. Fourthly, it is inconsistent with the other alleged assaults which are set out in the statement. It will be recollected that the alleged incidents are stated to have taken place between June 1957 and September 1958. At this point the complainant would have been aged between 4 and 6.

48. Fifthly, the incident which is alleged to have taken place while the complainant was in bed with her sister B. is described in a manner entirely at variance from that in the Garda statement, Therein she alleged the incident occurred between the time she was aged 4 and 6. In the course of the report from Mr. Dempsey it is stated:

"Around the same age (i.e. 11.5 or 12 years) she alleges that he inserted his fingers into her vagina as she lay in bed with her sister B.. In the course of the statement it is stated "B. told him to get out or she is calling Daddy. I think he went. Nothing happened to me that time. As far as I can remember what I have told you about R.C. is all that happened"

J.G.C. – the psychological evidence.

49. J.G.C stated to Mr. Dempsey that when she was 17 or 18 years of age she had complained to the Gardaí about the abuse by her uncle R.C. but that the Garda had told her to leave the station and had made derogatory remarks about her family. She was motivated to go to the Gardaí at that stage because she felt the applicant "shouldn't get away with it" and because the applicant's wife told her that he was abusing their own children and she wanted to stop it. She stated that the applicant commenced to sexually abuse her at the age of 16 years. She described a number of incidents of sexual assault including one of particular seriousness which allegedly took place in this house.

50. At the age of 18 years, she reported that she had complained to her father about the applicant abusing her but he told her to keep quiet. As a result, she chopped all of her hair and slashed her face with her father's razor.

51. At the age of 27, she was contacted by the Gardaí in relation to allegations of sexual abuse that one of her female cousins had made in relation to the cousin's father. The Gardaí had inquired of her if anyone had abused her and she reported that at that stage she had made allegations of abuse by certain named uncles including R.C. However she refused to make a formal complaint about the abuse at that time as she did not want to talk about it, was happily married with two children, did not want any of the hassle and upset that would come with charging them, and also that she did not feel strong enough to go through with the complaint as she was at that time afraid of her uncles. After attending group therapy in 1994 and more recently in or around 1999 she felt sufficiently fortified to make the complaint to the Gardaí. This took place following a conversation with one of her first cousins who told her about abuse that allegedly happened to herself and her siblings. She made complaints of sexual abuse by her paternal grandfather, her father and several uncles including the applicant to the Gardaí. In Mr. Dempsey's view it is not possible to attribute all the immediate and long-term effects of the alleged abuse to one alleged perpetrator. In his view, there was an inter-generalisation cycle of sexual abuse within the family and such sexual abuse is well documented in the clinical and social research literature of the subject. She stated that she reported to Mr. Dempsey that she was afraid of all the uncles that allegedly abused her. As a child she only ever told her best friend about the abuse. She experienced self-blame. At the age of 12 she decided she would gain weight in order to make herself unattractive and thus end the abuse. By 1988 she weighed 21 stone and suffered from diabetes. She now weighs 17 stone. She was motivated to engage in these behaviours by a sense of self-loathing. She reported that she hated what had been done to her and thought no one cared. The complainant identified the reasons why she did not report the abuse as follows. First, she experienced fear of her uncles and her father. Second, she did not want her father to get into trouble or indeed go to prison as a result of her complaints. Third, she had reported the matter at the age of 17 or 18 years to a Garda in S- and had been dismissed from the station. Fourth, at the age of 27 years she did not wish to pursue the complaint.

52. In Mr. Dempsey's view the delay in making the complaint to the Gardaí is "reasonable given her life circumstances".

Consideration of the evidence and application of legal principles:

Extension of Time

53. For the reasons deposed to in the affidavit of Darach McCarthy Solicitor sworn 3 December 2004, I am disposed to extend the time within which to seek leave for judicial review.

Delay *per se*

54. While in the case of J.S.C. the delay is very significant indeed, it is unnecessary for me to reach any determination on this issue in isolation for the reasons that are outlined below. The complaints took place between forty-one and forty two years after the alleged incidents. This elapse of time comes close to the outer parameters of a period of delay that would be condoned by the courts in any circumstances.

55. As regards the case of J.G.C., I do not consider the delay involved, *without more*, to justify prohibition of trial.

Prosecutorial delay

56. I do not think that there is any factor unique to this case which distinguishes it from the earlier decisions made on the issue of prosecutorial delay alone.

Complainant delay

57. It is clear that there is evidence of complainant delay. The elapse of time in the case of J.S.C. is between forty-one and forty-two years. The elapse of time in the case of J.G.C. is twenty-one years between the date of complaint and the most approximate alleged incident and twenty-three years from the most removed in time.

Distinguishing features

58. The distinguishing features which have been identified in the earlier cases are also present here. These are:

- (a) the familial relationship between the complainant and the respondent,
- (b) the close proximity in which they lived,
- (c) the continuing fear which the complainants had of the applicant and his brothers,
- (d) specific incidents of intimidation described by the complainants in relation to the applicant,
- (e) the evidence of dominion conduct on the part of the applicant,
- (f) the fear described by the complainant such as to be felt even up to the present day albeit somewhat diminished,
- (g) the evidence that the C. brothers acted in concert for and on behalf of each other. (It is to be noted that Detective Sergeant Byrne described the C. brothers as being a "*mini mafia*".)
- (h) In addition in this case, there is the evidence of Bryan Graham and the background material in Detective Sergeant Byrne's affidavit which describes the conduct and attitude of the applicant, even in 1999 towards his daughter L.C.

Prejudice in the case of J.S.C. (complainant)

59. In the course of the affidavit sworn on behalf of the applicant a number of points are made regarding specific prejudice. In relation to J.S.C., these are as follows:

- (a) The absence of forensic evidence: It is stated if a timely complaint had been made it would have been possible to collect samples of semen from her person for forensic examination and thereby obtain independent objective evidence as to the validity of her allegations. In view of the circumstances of this allegation relating to the period 1957 and 1958, I reject this highly unusual contention as being an unsatisfactory ground to demonstrate prejudice.
- (b) It is further contended it may have been possible to obtain medical evidence regarding the issue of whether or not digital penetration had taken place. Similar considerations apply here as in relation to (a).
- (c) With regard to the allegations of J.S.C., the applicant's states "*on one of the occasions on which she alleged I assaulted her I masturbated myself and the semen went over the floor*". It is contended on behalf of the applicant that if a timely complaint has been made it would have been possible to obtain forensic evidence as to the validity of her allegations. I reject this application also.
- (d) It is further contended that the applicant sustained head injuries in 1985 including a fracture of the frontal bone. Nowhere however is there any evidence that this injury or the effects were such as to prejudice the defendant in his defence. Nor is it contended that there is any diminution in his memory as a result of what occurred.

Two distinguishing factors in the case of J.S.C.

60. It is abundantly clear however that there are two highly specific factors in the case of J.S.C. that are evidence of prejudice. The elapse of time is one upon which the applicant relies. No such reliance was placed upon the internal conflicts in the evidence regarding J.S.C. as has been set out above. But these discrepancies, inconsistencies and internal conflicts must be such as to create a serious risk of prejudice. Taking into account together both factors, of elapse of time and of internal conflict (even if not pleaded or relied on), would justice be done in permitting this trial to proceed on those charges? I conclude not. I consider that:

- (a) the internal conflict of account is manifest on the papers which have been submitted;
- (b) the elapse of time is at the absolute outer end of time periods which have been countenanced in previous authorities.

61. In view of the foregoing I am disposed to grant relief in relation to the charges relating to J.S.C. i.e. charge 127/2000, charge

4/2001 and charges 224, 225, 226, 227 and 228 of 2001.

62. No such considerations arise in the case of J.G.C. however.

Is there evidence of dominion and its effects in relation to J.G.C.?

63. The question arises as to whether there is evidence of the continuing effects of dominion in relation to the complainant J.G.C.? This is particularly relevant with regard to what occurred when she was aged twenty-seven years. Her reasons for not making a formal complaint at that time were that she did not want to talk about it, was happily married with two children and did not want any of the hassle and upset that would come with charging them. She also says that she did not feel strong enough to go through with the complaint as even at that time she was afraid of her uncles. The continuation of the fear of her uncles and her father are reiterated in the four factors identified towards the end of that portion of the evidence. So too is the continuing factor that she did not want her father to get into trouble or indeed go to prison as a result of her complaints.

64. In view of the complex nexus of relationships, this explanation is consistent with continuation of dominion or the effects of abuse. This conclusion is supported by the evidence of the interviews conducted with R.C. by Mr. Dempsey.

Specific prejudice

65. The applicant contends that he is now elderly and has spent a considerable amount of the intervening time working outside the jurisdiction. I do not accept that this constitutes specific prejudice for the reasons that have been outlined earlier. The contention lacks content and specificity.

66. It is also contended that the applicant has suffered a head injury. There is no medical evidence that this significantly prejudices his ability to conduct his defence on the same basis as outlined under the first heading.

67. It is further contended that he is unable to present an alibi evidence. Again, no specific details are provided as to precisely the nature of the alibi evidence which has been denied him.

68. I do not accept that any of the matters outlined constitute specific prejudice. Nor is there any identification as to the manner in which it is alleged such matters allegedly giving rise to prejudice are relevant or material.

Decision

69. The court will grant relief in relation to the complaints referable to J.S.C. complainant is charges 127/2000 and 4/2001, and charges 224, 225, 226, 227 and 228 of 2001. (Each of these charges relates to J.S.C.)

70. The court is not disposed to grant any relief in relation to charges 128 and 129 of 2000, which said charges relate to the complainant J.G.C.