



**THE COURT OF APPEAL**

**Sheehan J.  
Mahon J.  
Edwards J.**

**The People at the Suit of the Director of Public Prosecutions**

**V**

**Q.T.**

**242/11**

**Respondent**

**Appellant**

**Judgment of the Court (ex tempore) delivered on the 2nd day of November 2015 by**

**Mr. Justice Sheehan**

1. On the 12th July 2011, following an eight day trial at Wexford Circuit Criminal Court the appellant, Q.T. was convicted of sexually assaulting one J.M. on the 25th May, 2008, at a location in Enniscorthy.
2. On the 21st October, 2011, the appellant was sentenced to three years imprisonment with the last two years of the sentence suspended for a period of three years on various conditions.
3. He now appeals against the conviction on two grounds namely:-
  1. That the learned trial judge erred in refusing to direct the disclosure of the complainant's medical psychiatric records to the defence.
  2. That the learned trial judge erred in allowing the prosecution to adduce evidence of recent complaint before the jury.
4. In order to consider these grounds of appeal it is necessary to briefly set out the background to this offence.
5. The complainant and her husband were friendly with the appellant and on the night in question the three of them had been out socialising in Enniscorthy, following which the complainant and her husband being unable to get a taxi returned to the appellant's house to stay for the night. The complainant alleged that the appellant sexually assaulted her in an upstairs bedroom in his house while her husband was asleep downstairs.
6. The appellant was arrested by the gardaí on the 2nd June, 2008. In the course of his detention, he was interviewed. He denied the allegation made by the complainant that he put his fingers inside her vagina, although he did admit that he had lain beside her in the bed and that he had touched her bare backside and her vagina.
7. He detailed the history of interaction between himself and the complainant and the context in which he made this advance and he indicated that he thought that the complainant was awake at the time.
8. At the trial the appellant himself gave evidence and called two witnesses on his own behalf.
9. While this application for the complainant's records delayed the start of the trial by at least two days and was given an exceptionally careful hearing by the learned trial judge, the reality is that this application was entirely speculative in nature, the kind of application that is frequently referred to as a fishing expedition.
10. The justification advanced by the appellant for seeking the psychiatric records was the possibility that the material sought might assist the appellant in testing the credibility of the complainant and assessing her state of mind at the time of the alleged offence.
11. This explanation is in this court's view simply not a sufficient ground which would have entitled the appellant to the documents he sought access to and accordingly on this ground alone, this ground of appeal must fail. In light of this finding it is not necessary for this Court to consider other arguments advanced by counsel for the appellant under this heading.
12. With regard to the second ground of appeal, this essentially boils down to a submission by the appellant that the appellant's evidence was more general than the specific complainant that she made to the two witnesses shortly after the occurrence of the event about which she was complaining. These witnesses were D.K. the gentleman who she phoned and who she asked to take her to her own home and his wife SK.
13. The appellant in support of his argument on this ground relies in particular on the judgment of the Court of Criminal Appeal in *The People (Director of Public Prosecutions) v. Gavin* [2000]4 I.R. at 557.
14. Of course there are some variations in the way the injured party expressed herself in the witness box and in the manner in which she complained to the gentleman who collected her from the appellant's house in the early hours of the morning in question, just as there is a difference in how she expressed her complaint to the wife of the gentleman who collected her and brought her as it happened to his home before bringing her on to her own home.
15. The court has considered the evidence of the complainant in this case. Not only her evidence in chief, but also what she said under cross examination and considered this evidence in the light of the evidence of DK. and the evidence of SK.

16. The court considers that the trial judge was entitled to hold as she did when she gave her ruling on this matter as follows:-

"Now I intend to deal with consistency first and then revert back to whether the complaint was made at the first available at the first reasonable opportunity. I have considered and looked at the evidence given by the complainant in court and then in the *voir dire*, the evidence given by the three other witnesses being DK, SK and JE who was tendered but did not give particular relevant evidence on this matter."

The trial judge went on to say:-

"Now it has to be said that different people see things differently and there is no doubt about it, it will be suspect if each and every witness got up and gave exactly the same detail of what complaint was made to them. However, I am satisfied that the complaint correlates in its main particulars with the testimony of the complainant as to the commission of the offence and therefore it will not be excluded."

17. The court is satisfied that the learned trial judge was entitled on the basis of what was before her to so conclude and accordingly this ground of appeal also fails. Accordingly the appeal against conviction is dismissed.