THE COURT OF APPEAL

Birmingham J.
Hogan J.
Mahon J.

No. 210 of 2016

The People (at the suit of the Director of Public Prosecutions)

Respondent

And

C. Ce

Appellant

JUDGMENT of the Court delivered on the 8th day of December 2017 by

Mr. Justice Birmingham

1. On 12th May, 2016, following a four day trial, Mr. C.Ce was convicted of two offences, one of rape and one of indecent assault. Subsequently, on 11th July, 2016, he was sentenced to seven years imprisonment in respect of the rape offence and to a concurrent term of 18 months imprisonment in respect of the indecent assault. He has now appealed against his conviction. A number of grounds of appeal have been formulated which were summarised in the written submissions as follows:

> (i) The refusal of the trial judge to stop the trial at the close of the prosecution evidence on the grounds of prejudice caused by delay in the making of the complaint.
>
> (ii) The ruling of the trial judge in relation to the alleged admissions by the appellant to his son.
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> (iii) Issues relating to the trial judge's charge, in particular in relation to corroboration warning, the delay warning and the provision of a modified *Lucas* warning.

2. Before turning to deal with the grounds of appeal, and in the Court's view only one is a point of substance, it is appropriate to refer to the evidence that was put before the jury.

3. The case related to events that are alleged to have occurred in the summer of 1971. The complainant, Ms. A.U., gave evidence that along with her mother, who is a sister of the appellant, and her siblings, she went to Clare to stay with the appellant. The complainant and her family were living in Britain at this stage. A.U. was aged 11 in summer, 1971. In evidence the complainant described an incident when she was indecently assaulted by C.Ce. on an occasion when he had taken her hunting. She also described a second incident, this time of rape, during the same holiday. She referred to the background to the rape incident involving a row between the appellant and his son in the course of which the latter produced a shotgun. She says that she was taken from the bed where she had been sleeping by a woman named M.C. and brought by her to the appellant's bedroom. She then describes M.C. undressing her and then lying her naked in the bed alongside the appellant who was already naked in the bed. After M.C. left the room, the appellant proceeded to have sexual intercourse with her.

4. Some weeks after the incident, the complainant and her siblings returned to Britain. The complainant had very limited contact with the appellant thereafter, encountering him on only one occasion in 1987. She made a complaint to Gardaí in April, 2004.

5. In the course of the trial, the complainant's brother described visiting Clare with his mother, his two sisters, one of whom was the complainant, and his two brothers. In evidence, he described a row between C.Ce. Senior, who is his uncle, the appellant, and C.Ce. Junior during the course of which a shotgun was produced. Perhaps unsurprisingly the details he offered of this incident which the prosecution say formed the background to the rape, diverged in certain respects from the description of the incident provided by the complainant. C.Ce. Junior gave evidence on behalf of the prosecution. He described his aunt and her family, including the complainant, coming to Ireland for a holiday and staying with his father at his house in Clare. He went on to describe a row between himself and his father in the course of which the witness produced a shotgun. According to him, the background was an earlier row in a licensed premises between his father and M.C. which escalated on their return to the house. C.Ce. Junior also gave evidence in relation to an occasion when he taxed his father in relation to these and related matters which led to his father admitting his involvement in this matter. This conversation would seem to have been alleged to have occurred in 1997.

6. C.Ce. Senior did not give evidence in his own defence. However, the trial court heard an account of an interview conducted with him after he had been arrested and detained in 2005 in the course of which he denied any wrongdoing. He also denied that there had ever been a time when he and the complainant and her family had all been staying at the location in Clare.

The grounds of appeal

7. The Court will deal first with the issues raised in relation to the trial judge's charge and her response to requisitions. It is necessary to say a little about the procedural backdrop to the charge and requisitions. When the prosecution evidence before the jury closed, the trial court proceeded to deal with what was described as a *P.O.C.* application i.e. a request that the trial judge stop the trial by reason of delay and the prejudice that it had given rise to (from the case of *DPP v. P.O.C.* [2006] 3 I.R. 238). It is of some significance that the evidence before the jury concluded at 3.50 pm on 10th May, 2016, the second day of the trial. In the absence of the jury, judge and counsel discussed arrangements for dealing with the issue which it was envisaged would involve fairly brief evidence in relation to the period between complaint to Gardaí and the charging of the appellant and then substantial legal argument. In the course of that debate the judge commented:-

> "Now, I don't want to be pre-emptive in any respect, but while you're working on those things, I might as well direct my mind to a charge, whether it's going to be needed or otherwise is another issue, that will depend on the issue tomorrow. Is there anything you want to say to me in relation to what might be included in it or what you might want included in it?"

Prosecution counsel responded by saying that a strong, tailored "Haugh warning" would be needed. Counsel then referred to the

possibility of a corroboration warning, indicating that whether there was one was a matter of discretion for the judge. In further discussions, counsel, prompted by the judge, touched on the issue of evidence that might be regarded as constituting corroboration and referred to the evidence in relation to the conversation between the accused and his son as the only possible source of corroboration. Counsel also canvassed the possibility of a modified *Lucas* warning, in a situation where he felt that the jury might conclude that the accused had lied when he told the Gardaí in interview that the complainant and her family had never stayed as visitors in his home while he was there. After brief evidence from a retired Garda Sergeant in relation to his efforts to move the case on, and before the court rose for the day, the trial judge asked counsel for the defence whether, again not being pre-emptive, he wanted to say anything in relation to the charge. Counsel responded that, in a situation where the prosecution case had not finally closed and there was a substantial legal issue to be dealt with, he had not at that point applied his mind to the question of the judge's charge. When the judge ruled on the P.O.C. issue and directed that the trial should proceed, counsel then proceeded to deliver their closing speeches and the judge gave her charge without any further discussion about what the charge might contain.

8. The relevance of the sequence of events described is that when defence counsel raised requisitions relating to delay, corroboration and the *Lucas* warning, the judge felt that these were matters that could and should have been raised with her before she delivered her charge and this led to some testy exchanges between the judge and defence counsel.

Modified *Lucas* warning

9. The defence is critical of the fact that the judge cautioned the jury about the dangers of relying on lies told by an accused and advised them as to the limited use that could be made of lies. The defence says that the issue of a *Lucas* warning normally arises in situations where it is admitted that lies were told, or where there was clear proof of lies but that the issue in the instant case of whether what was said about visitors staying with the appellant was the truth or a lie, was inextricably linked with the issue of whether the appellant had or had not committed the offences. It is said that, in the circumstances, the reference to lies was disadvantageous and indeed very damaging from the defence perspective. In the Court's view, the point made by the defence is somewhat misconceived. The *Lucas* direction, or the modified *Lucas* direction, which is required to be given in certain circumstances is designed to guide jurors about the extent to which reliance can be placed on lies. However, even before the concept of a *Lucas* warning entered the lexicon, it was always open to judges to discuss with jurors the relevance of lies and to caution against attaching unduly broad and impermissible significance to them.

10. In this case, any jury was quite likely to conclude that the appellant had not told the truth in relation to whether the complainant had visited, given that the jury had evidence on this topic not just from the complainant, but also her brother and from the appellant's son and all that was weighed in the balance against that was what the appellant said while detained. It was entirely understandable that the judge should caution against jumping to conclusions if the jury found that the appellant had not been truthful. Absent a direction, there had to be a real risk that would happen. The judge was of course careful to make clear that what she was saying was relevant only if the jury was satisfied that deliberate lies were told. This Court is satisfied that what the judge said was appropriate and rejects this ground of appeal.

Failing to properly contextualise the corroboration warning

11. The judge, in the exercise of her discretion, decided to give a corroboration warning. Given, in particular, the antiquity of the case, it is not at all surprising that she chose to do so. However, she is criticised for failing to properly contextualise the corroboration warning.

12. The judge dealt with the issue as follows:-

> "Now, you've heard, I think, Mr Devally [Senior Counsel for the Prosecution] in particular referred to corroboration and the fact that I would give you a corroboration warning. And I'm going to tell you first of all what corroboration is, it's independent testimony or evidence which effects the defendant by connecting or tending to connect him to the crimes alleged. It is evidence which implicates him, which confirms in some material particular, not only the evidence that the crime has been committed, but also that it was the accused that committed it. And a former President of the High Court said, and I paraphrase, there can be no doubt that the entire purpose of corroboration is to reassure the jury that potentially questionable evidence is both credible and reliable. And as I say, you heard [A.U.]'s account of what she says happened, that's her story, her account of what happened and, as with all of the other witnesses in the case, you have to decide whether her evidence is – you have to decide whether her evidence is credible and reliable. And you've also heard the evidence of [C.Ce. Junior], the eldest son of the accused man. And he said that after he visited with [A.U.] in her house in England and after she told him things of significance, he came back to Ireland with the intention to talk to his father as a result of what he had heard from [A.U.]. And he said he had told his father that [A.] told him that he had been sexually abusive towards her and he said he was very surprised at his father's reaction. His father didn't deny that anything happened and more or less said it was her own fault.

Now, that evidence is capable of being supportive of the evidence of [A.U.] It is capable of being corroborative of the evidence in the account that she has given you. But it's not for me to decide that, ladies and gentlemen, it's for you, the members of the jury, to decide if it is corroborative of her story. You are the – all 12 of you are the judges of the facts in this case and all I can say to you that it is evidence which is capable of being corroborative to show that not only her evidence is true in the sense that a crime was committed, but also that it was the accused man, [C.Ce.] that committed it. But then I have to warn you, and you probably knew that this warning was coming from what counsel said. That the experience of the law built up over a long period of time in this sort of case is that it can be dangerous to convict in the absence of corroboration. And so I warn you of the dangers of a conviction in respect of either of the counts after so great a lapse of time. But the law does not say, as you've heard Mr Delaney [Senior Counsel for the Defence] say, that you cannot convict. And if all 12 of you are in agreement as to the guilt of the accused on any one or either of the two counts on the indictment to the standard of beyond reasonable doubt, then you must convict [C.Ce. Senior] on any or both of those counts in the absence of corroboration. And if you're not satisfied as to the guilt of the accused on one or other of the two counts to the standard of beyond reasonable doubt, then you must acquit the accused on that count or counts."

13. The defence says that the warning was inadequate, as it contained only a reference to "the great lapse of time". The defence draws attention to the case of DPP v. D. [2014] IECCA 20 and the observations of MacMenamin J. that if a warning is given it must be clear, unmistakeable and contextualised. In the Court's view what the judge said was appropriate, the reference to the experience of the law in these kind of cases would seem to be a reference to the category of cases involving allegations of historic sex abuse and there was a specific reference to the great lapse of time. The Court is of the view that it is very likely that it was the fact that there had been a great lapse of time and that this was a case of historic sex abuse that prompted the judge to give a warning and that thus provides the context for the warning. If the trial was concerned with events that had occurred in the recent past then it is very possible, indeed probable, that there would have been no warning.

14. The Court would caution against over inflating the significance of the remarks of MacMenamin J. and seeking to turn them into

hard and fast rules about contextualisation. It is important to bear in mind the circumstances of the case that he was dealing with which was that both counsel believed that a warning had been given but when issues were raised with the trial judge he denied that that was so. One cannot lose sight of the provisions of s. 7(2) of the Criminal Law (Rape) (Amendment) Act 1990 which states expressly:-

> "If a judge decides, in his discretion, to give such a warning as aforesaid, it shall not be necessary to use any particular form of words to do so."

15. This Court is satisfied that, in the circumstances of the case, the judge gave a clear and appropriate warning and so rejects this ground of appeal.

The delay warning

16. The judge is also criticised for failing to contextualise the delay warning. The judge dealt with the issue of delay by pointing out that the case related to events alleged to have occurred 44 or 45 previously. She then read in full the so-called Haugh warning as it appears in the *R.B.* case and then added:-

> "But to try and tie it into this particular case the accused man, [C.Ce.], is grappling with allegations from between 1971 and 1972 when the complainant was 11 years of age. And the prosecution's path in this case is not levelled, it's not made easier because it brings this old case, and you, this jury, must bear that in mind, that it's much harder for an accused person, in this case [C.Ce.] to defend himself because of delay. And the more vague the allegation, the harder it is to probe and the harder it is to cross examine – to cross examine the person who made the allegation, in this case [A.U.] because you can't really tie them down to anything. And you can't prove them to be wrong in relation to dates and times when the say, 'I don't know it was about such a date and such-and-such a time'. And it might be different if the old complaint was made against you that referred as I said to a specific date or a year. And so to deal with allegations and dates unknown in 1971 and 1972 is difficult, as I say, these offences – these alleged offences occurred more than 40 years ago and time can do strange things to people's memories and events so long in the past. And you know that [A.U.] made a complaint to the Gardaí in 2004.
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> Now, in this case, you have also heard that [M.C.] is now deceased and that she died in 2008. And she's not available as a witness in this case and I told you earlier on, at the very beginning when I started to address you, that you cannot speculate about what evidence there might have been, what evidence about – what evidence there was, what evidence you didn't have or what evidence there might have been. And it's the same here, you cannot speculate about what evidence [M.C.] would have given if she were still alive. What is clear is that a – is that a person, [M.C.] who potentially could have given assistance in this case is not available. Who knows what [M.C.] would have said in her evidence? And so the accused man is at a disadvantage in defending the case because he cannot at least seek information from [M.C.], whatever the outcome of her evidence might have been. Now, you do not know, I don't know, you don't know if [M.C.] was alive, whether she would have given in support of the accused man or against him. But as I say you cannot speculate about what evidence there might have been, but you can see the difficulties deriving from the absence of such a witness.
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> Now, there's one other witness that was also not available and that was [A.U.]'s mother (…) And I wouldn't put her evidence, if she were alive to give it, in the same class as [M.C.] But the same applies to that, you cannot speculate about what evidence there might have been because you have to make your decision on the facts of the case only on the evidence that you've heard here in the witness box from the – from the witnesses and that memo of interview. But these are things you take into your considerations and insofar as they are added difficulties, they cannot endure to the benefit of the State. And you must be able to say to yourself, all 12 of you, ladies and gentlemen of the jury, that it is all the harder to be satisfied if you think it's vague. And, if you're not satisfied to the standard of beyond reasonable doubt, then you have to acquit the accused man. But if you are satisfied to the standard of beyond reasonable doubt then you must convict him."

17. The Court is quite satisfied that the judge made very clear to the jury the relevance of the very considerable delay that had occurred to their deliberations and did so in an appropriate manner. Thus, this ground of appeal is also rejected.

The issue relating to alleged admissions made by the appellant to his son

18. The prosecution was anxious to put before the jury evidence in relation to a conversation between father and son said to have taken place in 1997 or thereabouts. The complicating factor was that the conversation was alleged to have taken place against the background of a meeting between C.Ce. Junior and the complainant but also against a background of a meeting between C.Ce. Junior and two of his own sisters who are also alleging that they had been abused by the appellant. Indeed, the complaints by these two sisters were the subject of a trial in the Central Criminal Court in 2014 which resulted in his conviction. In his statement in the book of evidence C.Ce. Junior had said:-

> "When I came home I confronted my father. I went out to him in K. [naming a venue in Co. Clare]. His wife was with him. I told him that I had met all the people that he had abused when they were small children. I named them all out to him. He admitted interfering with them and said they used to come into his bed. They were going after him. He was not the one who was going after them and he tried to say that they were not that young."

19. The prosecution was anxious to adduce evidence of the encounter so far as it related to A.U. but were conscious that if there was a comprehensive account given of the encounter that this would be very prejudicial as the jury would learn that two daughters of the appellant were alleging that they had been abused by him also. Prosecution counsel told the judge that he was offering to speak to the witness and would then, if necessary, lead him through his evidence so that what he said would be confined strictly to A.U. The defence, however, was not prepared or not in a position to cooperate in any such arrangement. The judge ruled as follows:-

> "It clearly is a case where it can be dealt with in a way where cooperation is extended, that's not always possible, and if it's not always possible, then it has to be dealt with by way of direction. So, in these circumstances, Mr Devally, I'll direct that you speak to [C.Ce.] Junior and that you lead him appropriately and it's acceptable and it's understandable and it's now on the transcript that Mr Delaney can't consent to that course of action."

A little later she added:-

> "And just so that I am being clear on the basis of the application, I'm saying I'm allowing the witness to be led precisely so that any element of unfairness or prejudice might be avoided."

20. The defence submits that the fact that a witness should be led in relation to matters in dispute is a breach of a fundamental rule of evidence. They say that the situation was particularly unsatisfactory here as the jury was in effect being made aware that the complainant had told C.Ce. Junior that she had been abused, this was, after all, the trigger for him confronting his father. The issue was dealt with by way of a voir dire before the judge ruled, as we have seen. There is no doubt that the evidence which the prosecution was seeking to adduce was highly significant. In these circumstances, it was understandable that prosecution counsel would indicate that if he was not allowed to adduce the evidence in a modified or edited form, he would seek to adduce the evidence in full unedited form This is due to the evidence being so significant and prosecution counsel would argue that this was justified by the probative value of the evidence. The approach taken by the defence in objecting to the evidence being given in full because it contained information which was prejudicial while withholding any cooperation to having the material adduced in a modified form was an unrealistic one. Their attitude created a dilemma for the trial judge. She sought to resolve the issue in a way that would meet the demands of a fair trial. The evidence was subsequently adduced in a manner that was particularly restrained and measured. In these circumstances, the Court is not prepared to uphold this ground of appeal.

The issue of delay

21. The Court turns therefore to the application to halt the trial by reason of delay, which the Court sees as the main issue on the appeal. At the conclusion of the prosecution case, a submission was made to the trial judge that the case should not proceed further because of the prejudice caused to the accused by the absence of M.C. and to a lesser extent, the mother of the appellant. In the course of dealing with this issue, the judge heard evidence from retired Sergeant Burke in relation to his unsuccessful efforts to make contact with M.C. after the investigation commenced, in relation to his dealings with the appellant post-interview and about what was known about the appellant's movement. The trial judge also heard further evidence from C.Ce. Junior in the absence of the jury in relation to a visit to London to see his sister, who reported being sexually abused by the appellant. He also gave evidence to the trial judge about then going to Holyhead where he met with his aunts and M.C. C.Ce. Junior outlined how he spoke to his aunts about what his sister had told him. He was then asked:-

> "Q. Did you get any guidance from them as to what to do?
>
> A. The guidance was not to go to [A.U.]
>
> Q. Did they say why?
>
> A. Well, they said it was all lies."

The defence focuses on the phrase "all lies" and says that this provides powerful evidence that M.C. would have been a witness who was favourable to the defence. The defence linked this to the fact that when interviewed by the Gardaí and while denying the allegations against him, that the appellant on one occasion commented that M.C. would verify what he was saying.

22. It is appropriate to refer to some relevant dates:

> December, 1934 Birth of the appellant
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> April, 1960 Birth of complainant
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> Summer, 1971 Alleged visit to Clare by complainant and family members
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> 1997 (approximately) Alleged conversation between C.Ce. Senior and Junior, preceded by undated visit by C.Ce. Junior to his sister in London followed by a meeting between C.Ce. Junior and his aunts and M.C. in Holyhead
>
> 30th April, 2004 Complaint by A.U. to Gardaí
>
> 21st September, 2004 C.Ce. arrested in Donegal, detained and interviewed
>
> February/March, 2005 C.Ce. Senior and his wife, C.C., went to Panama. After 5 months, approximately, they left Panama and went to England. They were there for approximately 2 years and then went to Bulgaria, where they were for some two or three years before going back to England to the house where they had lived previously. There they resided until C.Ce. Senior was arrested in July, 2013
>
> April, 2008 M.C. died
>
> November, 2008 The mother of the complainant died

23. The prosecution opposed the application to stop the trial, characterising the absence of M.C. as no more than a lost opportunity. It was submitted that it was a matter of speculation as to whether M.C. would have been a favourable witness to the defence.

24. In the course of legal argument in the court of trial and indeed again in this Court, both sides referred to a number of authorities in this area in the context of judicial reviews seeking to prohibit pending trials. The defence placed particular emphasis on the Supreme Court decision in *S.B. v. DPP* [2006] IESC 67, a judgment of Hardman J., while the prosecution relied in particular on *M.S. v. DPP* [2015] IECA 309.

25. It is fair to say that the main focus of the defence interest has been on the position of M.C., but there has been reference also to the absence of the complainant's mother. Insofar as there has been reference to the absence of the complainant's mother, the Court is in no doubt that her absence could not possibly have provided a basis for stopping the trial. The only evidence that she could have been expected to have would have been addressed to the issue of whether the appellant and A.U. and her family ever overlapped at the location in Clare where the rape offence is alleged to have occurred. It is speculative in the extreme to suggest that she would have given evidence that was contradictory of the evidence put before the court by her daughter A.U. and her son C.

26. The situation in relation to M.C. is less clear cut. There is no doubt that she was a very significant figure in the narrative. In the first place, she has a relevance in that it is suggested that it was an argument that she had with the appellant that gave rise to the shotgun incident which provided the backdrop to the rape. More fundamentally though, the complainant's evidence is that it was M.C. who brought her from her bed to the bedroom where the appellant was, undressed her and placed her naked in the bed alongside the naked appellant.

27. It would seem inevitable that, had contact been made with M.C., she would have had to have been interviewed under caution. What she would have said, if anything, we cannot of course now know, but it seems unlikely that she would have been a prosecution witness. There remains the possibility that she would have been called as a witness by the defence. Based on the attitude that she and the aunts were expressing at Holyhead, there must be doubts as to whether she would have been a willing participant in a trial. She had married, changed her name and was making a new life for herself. The trial judge would have had to warn her that she need not answer questions if by doing so she might incriminate herself. If, having been so advised, she gave evidence in support of the appellant, it would seem inevitable that she would have been cross examined on the basis that she was denying the bedroom incident because she was a participant in it, a facilitator, in effect, an accomplice. Viewed in that light, the defence is seeking to halt the trial because of the unavailability of someone who was, on the complainant's account, an accomplice in this incident.

28. There is no doubt that at first sight the argument on behalf of the defence for stopping the trial is a powerful one. On A.U.'s account, M.C. was an eye witness to relevant matters and, in truth, much more than a bystander. If she gave evidence denying witnessing anything of the sort described and was convincing in that regard, that would be a very considerable assistance to the defence. However, if one considers what role she was likely to play at trial the significance of her absence is much less.

29. The judge ruled as follows:-

> "I agree that [M.C.]'s evidence is a lost opportunity. This is a consequence of delay or stale cases, because this is what can happen in delay or stale cases. We cannot speculate about what her evidence might have been, would it have been favourable to the prosecution or to the defence? And neither, indeed, can the jury speculate in relation to that. Whatever her evidence, I agree with the submission made by Mr Devally that it doesn't come close to the loss of a record which would show the improbability of the accused in the committing of the offence or the improbability, or similar to the improbability of a story that a nurse administering an injection when she had no authority to do so.
>
> I intend to give the full Haugh warning to the jury. I would intend to refer to [M.C.]'s absence specifically and also to the absence of [the complainant's mother], (…). And by doing so, I don't accept Mr Delaney's submission that I'm abdicating my duty under the Constitution by giving a jury a warning in relation to delay by a form of words. And I'm not persuaded that the absence of [M.C.] poses a risk of an unfair trial, such that the two charges should be withdrawn from the jury and accordingly I'll refuse the application."

30. Both sides have raised issues about factors that have contributed to the delay. The prosecution points to the actions of the appellant in leaving and going to Panama and says that this meant that for a significant period he was uncontactable. The defence say that for much of the period Mr. Ce. was living with his wife in England and had there been more energetic efforts made by the authorities he could have been contacted at an earlier stage. In the overall context of the case the Court does not attach undue significance to the arguments from either side on this point. Instead the Court focuses on the question of whether Mr. Ce.'s trial was a fair one or whether allowing the trial proceed to a verdict was unfair.

31. In that regard the particular focus of attention has to be on the position of M.C. in trying to identify what role she could or would have played at trial. This ques5tion cannot be examined simply in the abstract but must rather be viewed holistically by reference to the evidence actually before the trial judge. To take the view that she would likely have been of significant assistance to the defence involves a number of major assumptions which appear unjustified having regard to the totality of the evidence. Even in the case of trials that come on quite soon after the events in issue, it will be the case sometimes that a potential witness will be unavailable because of death, illness, emigration or some other reason. Cases where there has been significant delay, involve an additional dimension thus frequently involve the person seeking to resist the trial and preventing a jury delivering a verdict, identifying a witness who has died or become unavailable in the meantime and contending that by reason of that fact a fair trial is impossible. Such contentions have to be scrutinised. When the attempt to halt the trial is by way of an application to the trial judge as distinct from a pre-trial application for judicial review, the trial judge, and indeed if the matter goes on appeal, the Court of Appeal is in a position to assess the application against the background of the way in which the trial proceeded. In some cases, the application may be made against a background of uncorroborated complainant evidence, the kind of cases sometimes labelled as "she says, he says" cases. It must be said immediately that this was not such a case. There was an issue raised by the appellant in the course of his Garda interview as to whether the complainant and her family members had ever holidayed at a time the appellant was there, in effect raising the issue whether untoward sexual activity was ever possible. On this issue, the court and jury heard evidence from the complainant's brother and from the appellant's son which, if accepted, demonstrated that this opportunity existed.

32. It is particularly noteworthy that this was a case where there was evidence, which if accepted was powerfully corroborative in terms of the confrontation between C.Ce Junior and his father, the appellant, and the nature of the appellant's response to being told about the allegations. Specifically, the appellant's son gave evidence at the trial to the effect that when he confronted his father about these allegations, the latter merely stated that the complainant was partially at fault and that he agreed that he should avoid children in the future and seek professional help. The son was cross examined to the effect that this conversation simply had not taken place but was firm in saying that it had.

33. It cannot therefore be said that this was simply a case of an uncorroborated allegation of rape and indecent assault which is said to have taken place some 45 years earlier. There was other independent testimony which, if accepted, was strongly indicative of guilt. While there was no doubt but that the death of M.C. in 2008 represented, in the words of the trial judge, a missed opportunity for the defence, nevertheless, when viewed in the light of the totality of the evidence, it cannot be said that her absence was so gravely prejudicial in the circumstances such as would necessarily have warranted halting the trial.

34. It must be recalled that at the time the application was made to her, the trial judge had heard all the prosecution evidence which, of course, included the contents of the memorandum of interview taken from the appellant by Gardaí. Her conclusion that the trial was fair and ought not to be stopped was in the circumstances of the case an understandable one and it is not one with which this Court will interfere.

35. It follows that this ground of appeal also fails and the Court will accordingly dismiss the entirety of the appeal against conviction.