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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

RK

Before: Sir Declan Morgan, Treacy LJ and McCloskey LJ

Neil Connor QC with Neil Moore BL (instructed by Donnelly & Wall) for the Appellant
Philip Mateer QC with Suzanne Gallagher BL (instructed by the PPS) for the Prosecution

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TREACY LJ ***(delivering the judgment of the court)***

Introduction

[1] This is an appeal against conviction for 5 offences perpetrated against the first complainant GP and 4 offences against her daughter FP, the second complainant in the case.

[2] The complainants are entitled to automatic lifetime anonymity in respect of these matters by virtue of section 1 of the Sexual Offences (Amendment) Act 1992.

[3] At Appendix 1 we have summarised the charges, the pleas entered and the outcome after trial of the proceedings.

History of Proceedings

[4] The applicant was committed to Antrim Crown Court on 12 November 2018. He was arraigned on 20 November 2018 and pleaded not guilty to the 21 counts he then faced. He was re-arraigned on 10 September 2019 and pleaded guilty to counts 3, 4, 9 and 10. On the same date the applicant was also arraigned and pleaded not guilty in respect of counts 8 and 11. After a contested trial and two days deliberation the jury unanimously convicted the applicant on 1 October 2019 of counts 1, 2, 5, 8,

11, 12, 20, 22 and 23 and unanimously acquitted the applicant of counts 6, 7, 13–19 inclusive and count 21. He appeals against his convictions.

[5] The applicant was sentenced on 19 February 2020 to an effective sentence of 14 years' imprisonment.

Factual Background

[6] GP met the applicant in April 2010 when she was about 26 years old. At the time she was living in her own home with FP, her daughter from a previous relationship. FP was approximately 4½ years old. When she met the applicant, GP had a job and was paying her mortgage by direct debit.

[7] Within 2 weeks of meeting GP the applicant moved some of his things into her home while continuing to maintain his own flat elsewhere. He effectively took up residence in her house. Her evidence was that he discouraged her from working and paying her mortgage which he regarded as a waste of money. He encouraged her to go onto benefits and said they would get her a council house. By October/November 2010 her home was repossessed and she got a tenancy of a Housing Executive house (House 1), a house that she describes as being "like a squatter's house." The applicant continued to maintain his own flat but to live with GP and her daughter in House 1 which was in her name.

[8] The transcript of her ABE interview describes violence from very early on in the relationship, approximately 2 weeks after he moved himself into her original home. Initially the violence was primarily physical consisting of pushing, slapping, nipping, biting and kicking generally on areas of the body that are usually covered by clothes. There was spitting "he would have spat on my eye … on my face … on my possessions."

[9] She describes emotional abuse, manipulation and threats of violence designed to control her. The emotional violence included name calling:

> "I was a fat bastard and a slut and a whore ... a lot of it was about my weight. I was always a fat bastard, I was ugly, I was so ugly he doesn't know how …"

[10] Threats of violence and death to her were also part of the background throughout the relationship.

> "It was always I'll knock you out or I'll knock you out where you stand. It's always the same, slit your throat, burn you out."

[11] The threats extended to the children of the family:

> "He threatened to burn the house down … he threatened to kill me, he threatened to kill AJ, he threatened to take [Q], to abduct her."

They extended to her own family:

> "If you don't get down here now I'm going to kill you … I'm going to burn your mum and dad's house."

[12] She reports being scared of him "and I was scared." The threats were used both to control her and to prevent her from seeking help for example, from Social Services.

> "He said if you open your mouth to them again that you're dead, he was like I'll kill you."

[13] She describes trying to leave the relationship and some of the reasons it was impossible for her to do so.

> "I was basically so controlled … by him … that … it was very, very hard to leave and I think at that time I … didn't even want to leave because I was that brainwashed….
>
> I was dependant on him, I didn't have anybody. … He controlled my money, he controlled everything.
>
> So if I needed anything I had to ask him for money."

[14] Sexual abuse became a more prominent feature of the relationship after she lost her own home and moved to House 1. She noted that the applicant had a very high sex drive:

> "This is a man that basically had to have sex every day…Morning, night, no matter how you felt….And it became really, it because I dreaded it."

[15] She agreed that there was also consensual sex at times throughout the relationship:

> "Now there was consensual sex … because there were times whenever maybe he would have been alright one day and I wouldn't have got hit, you know before it got even worse …"

Predominantly however sexual intercourse took place under threat or other pressure:

> "You weren't allowed to be sore or uncomfortable or tired or not want it and then if I didn't engage … then I would be accused of cheating or … did I not love him any more and it was basically guilt tripped …"
>
> Sexual relations "came to the point where it was the norm for me to be crying … it fell upon deaf ears and he still done whatever he wanted …"

[16] Shortly after they moved to House 1, GP discovered she was pregnant with the couple's first child, Q. She reports:

> "I said to him you know we don't have to have sex every day, I'm pregnant."

This seemed to make no difference.

> "If he wanted it he got it and I would say no, … at the start I would have fought back but as I got more and more pregnant then … I couldn't …He would sort of pin me down and that would be it … I would cry and then he would say what are you crying for or else he wouldn't acknowledge the crying sometimes."

[17] This was the context within which the first 11 charges on the attached table were raised. Initially the appellant denied all the charges. After nearly a year he pleaded guilty to four of the assault charges. He continued to deny all the rape charges and one assault charge.

[18] Charges 12-23 relate to the appellant's conduct in relation to GP's daughter, FP.

FP - Factual Background

[19] FP is the daughter of GP by a previous relationship. She was about 4½ years old when the appellant moved into her original family home. She reported a history of sexual activity by the appellant towards her commencing after the family moved to House 1 and continuing until about January 2012. This behaviour consisted mostly of inappropriate touching over and under her clothing, kissing on the lips on one occasion and one occasion of digital penetration of her anus. She also recounted two specific events involving the appellant's penis – one when he came into her bedroom late at night, took out his penis, took her hand and forced her to hold it, and a second when he came into her bedroom, took out his penis and put it in her mouth. She asserted that there were some other occasions when similar acts occurred after the first instance which she had described in detail. She asserted that the appellant

threatened her that if she told anyone about these events he would kill her, her mother and in due course her little sister.

[20] FP's ABE statement was made on 5 January 2017 when she was 11 years old. It related to incidents that occurred between October 2010 and January 2012 in one of three Housing Executive houses that the family had occupied over that period of time. At the time of the incidents FP was in fact between 5 and approximately 6½ years old.

[21] Her ABE was unclear about her age at the relevant time. On some occasions she said she was 4, at other times, 6. When asked to clarify this she replied:

> "Hum, it's round them two ages, I can't I couldn't put like a finger on what age, it was."

[22] It was unclear in relation to the location of events and unclear about precisely when threats were made to her. She made general statements about threats:

> "…if I tried to hm, say anything, he used to threaten to kill me, and my mum, or hm, when it got to the stage, where my sister was born, it was, he'd kill my sister as well, hm, and I, I didn't want any of my family to get hurt or anything….'

Alongside the claims that he made threats to her there were denials that threats were issued after specific incidents she was questioned about:

> "Q: Did he say or make any noise, while his hand was down your pants, did he say anything to you, or make any noise.
>
> A: No he was silent.
>
> …
>
> Q: OK, and did he say anything then,
> A: No it wasn't until my mum came down that he started to speak.
>
> Q: OK, alright and you had said earlier then, and she told you to go back up to bed.
>
> A: Yea…"

[23] A few pages later she says of these incidents:

> "… I had learned by then just to keep it quiet, because there, there was the threats in between it and everything and I, I just learned to keep my mouth shut for the sake of keeping my mum and me safe, from getting murdered, or our throats slit like he said…..
>
> And hm, so I was just quiet and then when it was his time to finish, it was his time to finish."

[24] In due course FP was cross-examined about the many inconsistencies in her ABE. Having heard all the evidence the jury acquitted the appellant of all charges related to sexual activity with a child under 13. They convicted in relation to the specific oral rape charge, the charge related to the specific incident where he caused her to hold his penis in her hand and two charges related to threats to kill.

Grounds of Appeal

Ground of Appeal 1

The Learned Trial Judge, in the course of Mr Connor's cross-examination of the first complainant, interjected and stated that the witness was "doing her best." This comment had the effect of usurping the role of the jury and was capable of affecting the jury's consideration of the evidence of the witness as a whole. The error was compounded by the Learned Trial Judge's failure to discharge the jury at the request of the defence

[25] Mr Justice McAlinden reviewed the recording of the relevant section of the trial and he comments as follows:

> "29. I have listened carefully to the recording of Mr Connor's cross-examination of the first-named complainant. On 13 September 2019 from approximately midday, Mr Connor QC questioned the first-named complainant about the first time the applicant raped her. The first-named complainant was unable to say precisely when this incident occurred and accepted that she had not specifically referred to the circumstances of this first alleged rape in her video interview with the PSNI. At about 12:09 on the recording the first-named complainant attempted to provide an explanation as to why she did not give details of this alleged incident to the Police and **it is clear that the first-named complainant was in a state of some distress.**'' [Emphasis added]

[26] The transcript in relation to this section of the trial records Defence counsel pressing the witness for details about the first time she was raped. At one point the witness said:

> "It's really really difficult to talk about this. It's not a nice thing, and I certainly, this is the last place I want to be right now, and I'm trying my best …"

Counsel replied:

> "You're not here to make speeches, you're here to answer questions …"

The witness responded:

> "I'm trying to answer the questions as best I can …"

[27] The following exchange then occurred:

> "Judge: She's doing her best, Mr Connor.
>
> Mr Connor: Would your Honour – would your Honour ask the jury to leave momentarily, please?
>
> Judge: Well …
>
> Mr Connor: I have to say, your Honour, in my experience, the most outstanding comment has just been made that she is doing her best.
>
> Judge: To answer your question.
>
> Mr Connor: I have an application …
>
> Judge: She's doing her best to answer your question.
>
> Mr Connor: … that can be made in the absence of the jury, with your Honour's leave please.
>
> Judge: Yes, ladies and gentlemen, can you give me ten minutes, please."

[28] The jury withdrew and further submissions were made. Defence counsel asked for the jury to be discharged; the application was resisted by prosecution counsel. The judge refused the application.

[29] The law relating to discharge of juries was summarised as follows in *R v Lawson* [2007] Cr App R 20 (277) paragraph 65:

> "Whether or not to discharge the jury is a matter for evaluation by the trial judge on the particular facts and circumstances of the case, and this court will not lightly interfere with his decision. It follows that every case depends on its own facts and circumstances, including: 1) the important issue or issues in the case; 2) the nature and impact of improperly admitted material on that issue or issues, having regard, inter alia to the respective strengths of the prosecution and defence cases; 3) the manner and circumstances of its admission and whether and to what extent it is potentially unfairly prejudicial to a defendant; 4) the extent to and manner in which it is remediable by judicial direction or otherwise, so as to permit the trial to proceed … The test is always the same, whether to continue with the trial would or could, by reason of the admission of the unfairly prejudicial material, result in an unsafe conviction."

[30] In the present case the judge's comment was made after a somewhat short-tempered cross-examination sequence during which the witness was showing clear signs of distress. It came to the point where the witness herself told counsel she was doing her best to answer the question and the judge then made her intervention. Even before the jury withdrew she had clarified that her comment related to the witness's attempt to answer the specific question asked.

[31] The application for discharge of the jury was made and dismissed and the jury returned to the court. The judge then immediately stated the following:

> "Judge: Yes, thank you very much, ladies and gentlemen. At the end of that last exchange between Mr Connor and the witness I did say 'She's doing her best to answer your questions.' Well, ultimately, ladies and gentlemen, it will be for you to decide whether the witness was doing her best. I was simply just saying to move the case on. It will be for you to decide upon the facts of the case. I determine the law and the legal implications, but in terms of the facts you will determine whether or not the witness is –

> whether this witness, or the next witness, or the defendant, or a defence witness had been doing their best to answer the questions. That will ultimately be for you, but we are now ready to resume the trial, thank you. Yes."

[32] In light of the context in which this comment was made, the immediate clarification issued by the Judge and her supplementary comments to the jurors after their return from the jury room, we are not satisfied that this comment could have prejudiced the Defendant in this case. It appears to us that any risk of prejudice was dispelled by the clarifications issued both within the immediate context and by the clear directions the judge gave in her charge to the jury that the assessment of the witness' performance was for them alone to decide. This message was delivered repeatedly and strongly in the charge and we are satisfied that sufficient steps were taken to dispel any risk to the fairness of the trial or to the safety of the convictions that flowed from it.

Ground of Appeal 2:

The Learned Trial Judge failed to adequately put the defence case in the course of her charge to the jury and her charge had the effect of unfairly neutralising many of the points made on behalf of the applicant

[33] By way of example of this alleged error counsel points to the Judge's treatment of the evidence given by a clinical psychologist, Dr Denise McCartan. She had been instructed by GP's solicitor to prepare a report in relation to separate family proceedings which the complainant was involved in. Her report recorded: 'She told me that she had been raped by [RK] when she was pregnant with [Q].' It did not record any other disclosures about rape. GP said she had complained about numerous rapes at the interview and alleged that the report was not an accurate record of what she said. She made other complaints about the psychologist's treatment of her including that she 'didn't listen' and that she 'basically called me a liar'.

[34] Mr Connor argues that this was an important piece of evidence because it impacted on the 'unusual metamorphosis' from the one count of rape that the psychologist recorded into the 'serial campaign' of rape that the complainant was alleging at the trial. It was also important in terms of the credibility of the witness: 'was she a truthful witness doing her best or was se prepared to lie and impugn the behaviour of a professional witness to dig herself out of a hole?'

[35] The transcript of the evidence on this topic runs to some 7 pages. The evidence itself is internally conflicting. Counsel puts it to the witness that 'all you referred to was an alleged rape when you were pregnant with.' She repeatedly denies this: 'No, no, definitely not.' Among the things she says she told the psychologist are:

- 'No. What I said…….the way I put it was some sexual offences against me and some rape. You know I didn't put it in the words that she's put it in… that's not what I said.'

- 'I said ….. there was incidents and I said one of them was whenever I was pregnant with [Q]. Not the way it's worded the way you're saying it.'

- Q: 'did you tell her in broad terms that you'd been raped by [RK] when you we pregnant with [Q]?' A: 'Yes, I had.'

- Q: Are you saying that you told her about other rapes that had taken place…. A: Yes, I told her…

- Q: …at the hands of [RK]?

- A: yes, I told her there was numerous incidents and I'd been speaking to the police…

- Q: -are you saying then that the only one you gave any specific details about was the one when you were pregnant with?

- A: …I didn't give specific details as such about any of them because she just wasn't listening.'

- Also in the course of this cross-examination GP said she was upset and crying during the meeting. She felt the psychologist 'wouldn't listen to me' and that 'she basically said I was a liar.'

[36] The psychologist began her evidence by explaining that she wrote court reports for a living: 'I write about a hundred reports a year.' She confirmed that GP had told her she had been raped by the applicant when she was pregnant with Q and said she didn't refer to any other instances of rape. She stated that she had not called GP a liar in the course of their meeting. She confirmed that she had been instructed to write her report for the purpose of family proceedings and not in relation to the rape trial. She said that she wrote about 100 family reports per year and confirmed that interviews for these reports can be stressful and upsetting for those involved.

[37] The judge's summary of the evidence reflects the content of the evidence given and sometimes she added comments of her own. For example she reminded the jury that the psychologist wrote about 100 reports a years and commented that this meant she saw 'lots of children and mummies and daddies.' She did remind the jury that GP 'wasn't there to tell Dr McCartan about her own sexual history' – which reflected part of the evidence given. These are the kinds of emphases that counsel

now complains about on the grounds that they 'watered down' the defence and were unfair to the defendant.

[38] In the course of her charge the judge spoke about the interplay between her role and the jury's role. She explained that she would give them a summary of the facts but pointed out and exemplified how, on issues of fact, the jury have primacy over the judge:

> "If you think I make a point or I am putting a particular slant on a piece of evidence and you think 'well the judge was sort of saying it that way and I don't like that, I don't agree with that', that's fine, you just absolutely reject that. Or if you accept something that you think that I'm saying or a slant, then you accept it. But that's how crucially important your function is ladies and gentlemen. You and you alone determine the facts of the case."

She then summarised the evidence and her summary included the remarks now complained about in this appeal. Neither counsel made any requisition to her at the end of her charge.

[39] It is against this context that all the complaints raised in Ground 2 must be viewed. Also, it must be borne in mind that both prosecution and defence counsel had had full opportunity to close their own cases to the jury, laying their emphases wherever they chose and rehearsing whatever parts of the evidence they wanted the jury to be particularly aware of when considering their verdicts.

[40] In the light of the entire context we are not satisfied that the judge's summary failed to put the defence case adequately or that it watered down defence points. Had defence counsel felt this was a serious issue at the end of the charge they could and should have raised a requisition about it when the opportunity was available at the end of the charge. It is notable that neither counsel took that step. We have reviewed the transcript in relation to all the alleged examples of unfairness in the judge's summary of the evidence. On balance we agree with the single judge's conclusion that there is no arguable case that the judge, during the entirety of her charge, failed to adequately put the defence case to the jury. Accordingly, we dismiss this ground of appeal.

Ground of Appeal 3

The Learned Trial Judge erred in refusing an application under Article 28 of the Criminal Evidence (Northern Ireland) Order 1999 to admit evidence contained in the Guardian Ad Litem note of an alleged conversation with the parents of the first complainant in which they stated that "she had been subjected to incidents of rape by Mr P (the former husband of the complainant)"

[41] Article 28(1) of the Order imposes restrictions on evidence or questions about a complainant's sexual history. Except with the leave of the court no evidence may be adduced and no evidence may be asked in cross-examination by the accused about any sexual behaviour of the complainant. Art 28(2) provides that the court may give leave only on an application by the accused and may not give such leave unless satisfied that paragraph (3) or (5) applies and that a refusal of leave might have the result of rendering unsafe a conclusion of the jury on any relevant issue in the case.

[42] The Article 28 Application in question was presented by the defence on 17 September 2019, five days into the trial. The application is based on a document that was disclosed to the defence on 23 November 2018, almost a year before the trial started. Paragraph 1 of the application acknowledges this fact. The Crown Court Rules make provision for the making of such applications. The Rules provide:

> "44H–(1) Subject to paragraph (10), an application under Article 28(2) of the 1999 Order for leave to adduce evidence of, or ask questions about, any sexual behaviour of a complainant shall be made by giving to the chief clerk notice in writing and shall:
>
> (a) Be made within 28 days from the date-
>
> (i) of the committal of the defendant; or
>
> (ii) on which Notice of Transfer under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 or under Article 4 of the Children's Evidence (Northern Ireland) Order 1995 was given; or
>
> (iii) on which leave to present an indictment under section 2(2)(e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 was given; or
>
> (iv) on which an order for retrial is made; or
>
> (b) Be accompanied by a full written explanation specifying the reasons why the application could not have been made within the specified period."

[43] This application is well out of time and no explanation for the lateness is contained in it despite the requirement of paragraph 44H1 (b) above.

[44] We have reviewed the transcript for 17 September. The application was delivered to the court just before the day's evidence was due to start. It appears that this application arrived on prosecution counsel's desk 9:35am on the morning it was to be moved.

[45] The application contained two elements. The first related to a note by Brenda Sheeran, a retired Guardian ad Litem, about a conversation she had with Mr and Mrs 'S' who are the parents of GP. Her note records that the parents told her GP had said she was raped on a previous occasion by a different partner. Defence counsel wished to introduce this material and cross examine GP about it in the current trial. This is the limb of the application which is the subject of Ground 3. The second limb related to a photograph and is not relevant to the present appeal.

[46] Despite the lateness of the application the judge did deal with it. She stated: "I've read it quickly" and noted:

> "There are two very distinct and different applications and they might fall under two different pieces of legislation, if indeed they fall under either of the pieces of legislation."

She continued:

> "And this is my preliminary view, I want to indicate, just in case that when I've heard the application I might take a different view. My attitude at this stage is that this application needs to be properly heard. This is not something that should be done in 10 minutes and responded to in 10 minutes without all of the authorities being fully aired before the court."

[47] She then sought the view of defence counsel as to whether he wanted to complete the cross examination of the witness scheduled for that day and deal with the application as a self-contained issue at a later date or whether he wanted to present the application in full before resuming the evidence. He wanted to pursue the application first so the court was adjourned for just over an hour to allow it to be considered.

[48] When court resumed the judge asked if counsel wanted her to rule on the basis of the legal arguments she had received in writing or if they wished to make further oral arguments. She stated:

> "I can just give an extempore ruling at this stage in respect of both aspects of the application if all counsel were content for me to do that."

[49] Defence counsel asked what ruling she is minded to make and she stated:

> "… in respect of the first aspect of your application, I'm against you because of the fact that it is fraught with hearsay. The application is based on hearsay. I'm in agreement with Mr Mateer's response to the application where he states that at paragraph 9 and, therefore, I would not be permitting any questioning in respect of that aspect of your application. In respect of the second aspect of your application, I am with you if the provenance of the photograph can be properly established. I note from your skeleton argument that you have suggested that the photographs are currently with experts."

[50] Shortly afterwards the courtroom was cleared and the hearing in relation to the application proceeded in private. Detailed argument follows during which authorities are cited and discussed but these exchanges all relate to the second limb of this application and are not relevant to this ground of appeal. The judge's extempore ruling in relation to the first aspect is not pursued further by Mr Connor despite the fact that the judge had made it plain she was willing to hear further oral argument on it. She has indicated that the extempore ruling represents "my view at present" [p6 Line 22 of transcript 17.09.2019] and she has plainly said that she would hear whatever further argument counsel wished to make about any aspect of the application.

[51] Both counsel appear to have accepted her ruling in respect of Limb 1 of the application without demur. Neither counsel advanced any further argument about it, and the rest of the exchanges related to this application are all directed to Limb 2.

[52] We have considered Mr Connor's argument on this point. He notes that the application was lodged with the court and says it was "dealt with in a peremptory manner." He quotes the ex tempore ruling the judge gave and argues that this was not a proper basis to refuse to permit the evidence being adduced.

[53] It is correct that the ruling given by the judge is short but his characterisation of it as "peremptory" does not catch the full flavour of these exchanges or the fact that written legal arguments were received and considered by the court. Also, there was an invitation from the judge to both counsel to advance whatever further oral argument on the application they wished to make and neither counsel made any further oral arguments on this point.

[54] This is a very experienced judge and we have no doubt she could have expanded on the reasons for her initial view more fully if she was requested to do so. When issuing her ruling she said she was rejecting the application because it was "fraught with hearsay." She indicated that she accepted prosecution counsel's

written argument on it and that was the basis she was refusing the application. Defence counsel did not try to persuade her to change her initial view. He never raised the matter again until he raised it as an appeal point some time later.

[55] We consider that the refusal of this limb of the application on the basis that it was "hearsay" was a fair and reasonable ruling for the judge to make. We do not accept that the judge erred in refusing the application. We do not consider that the exclusion of this line of questioning was unfair or that it prejudiced the appellant in any way. It did not put the fairness of the trial at risk and it does not call into question the safety of these verdicts.

Ground of Appeal 4

The applicant was denied a fair trial

[56] This is a catch all ground which was not expanded further and we dismiss it.

Ground of Appeal 5

The verdicts of the jury were inconsistent and perverse and no reasonable jury applying its mind to the evidence could have reached the conclusions that it did

[57] Counsel argued it is impossible to reconcile the jury verdicts in respect of both complainants.

[58] Counsel contended that the verdicts depended on the unsupported evidence of each complainant and that if the jury were not satisfied that the first complainant had been raped on several occasions whilst in hospital it is difficult to see how they could be sure to the required standard that she had been serially raped at home. The case depended in its entirety on the credibility of the respective witnesses. He stresses that there was no additional evidence in relation to the charges the jury convicted on. He asks why, if the witness was found not to be credible in relation to some charges, how can she be considered credible in relation to any other charge? He argued that there was no escaping the fact that the jury must not have been sure that the hospital incidents occurred at all (the applicant denied that anything of that nature occurred) and yet accepted the evidence of the complainant in relation to all other aspects of her evidence.

[59] In relation to the second complainant FP Mr Connor contended that the jury were (at the very least) unsure that she had been sexually abused as alleged by her on 4-6 occasions each month for a period of around 14 months as described in detail by her and yet returned guilty verdicts in respect of only two allegations occurring at the very "tail-end" of the alleged sustained and protracted period of abuse. As with each count, the evidence is based on the unsupported account of the complainant. There was no additional evidential support for the two allegations which resulted in conviction. On an approximate calculation the jury concluded that out of perhaps

seventy plus incidents of abuse, the defendant was guilty of only two such incidents. Counsel submitted that this demonstrates inconsistency to the point that no reasonable jury applying its mind to the evidence could have reached the conclusions that it did as in *R v Durante* [1972] 3 All ER 962.

[60] In her charge to the jury the judge set out clearly how they were to approach each count on the indictment. She said:

> "So in relation to GP you will be asked to return verdicts in respect of counts 1 and 2, 5, 6, 7 and 8 and 11. …
>
> And what I say to you firstly is that you will be asked, you will be expected to deliberate on each of those counts separately. It's not a job lot, it's absolutely not a job lot …
>
> Now you will decide, you will determine the case, ladies and gentlemen, by going through each of the counts separately and individually and dealing with each of the two complainants separately and individually. It's not a case of well I believe this witness but I don't believe that one, you go through each and every count on the indictment individually and you determine the evidence on each case and whether or not you are satisfied to the requisite standard on each of every count. …
>
> Separate consideration for each count, separate consideration for each complainant."

[61] And on the burden of proof she had charged them in the often repeated formula:

> "You must be satisfied so that you're sure of a defendant's guilt on any count on the indictment before you can return a guilty verdict, or you must [be] firmly convinced of a defendant's guilt before you can return a guilty verdict. Sure or firmly convinced. If you are not sure or not firmly convinced then the defendant is entitled to the benefit of the reasonable doubt."

[62] There is no rational basis to believe this jury did not comply with the above directions when discharging their role. Mr Connor asserts that if the jury were not satisfied that the first complainant had been raped on several occasions whilst in hospital it is difficult to see how they could be sure to the required standard that she had been serially raped at home.

[63] We do not agree that the jury must not have been sure that the hospital incidents occurred at all. On the evidence in this case it is also possible that the jury was not sure to the requisite standard of proof in relation to those charges and so acquitted on them in accordance with the judge's directions on the law.

[64] We see no necessary logical inconsistency whatsoever in the jury's verdicts in relation to GP. As Archbold points out:

> "Where a jury had been directed to consider charges separately without any obligation to decide all counts in the same way and that they should not convict unless they are sure, it would be anomalous to hold that they had returned irrational or inconsistent verdicts where they followed the direction." [Archbold 7-70]

We agree, and accordingly, we dismiss this ground of appeal in relation to GP.

[65] The same considerations apply in relation to acquittals re some complaints by FP. The jury may well have felt more convinced by her evidence in relation to the two most serious (and most memorable) instances of abuse than they were of her account of the other incidents. There is no necessary logical inconsistency here.

[66] In relation to the threats to kill, there were certainly conflicts in the child's evidence on when and where some of the threats were made and on what occasions. However, there was also evidence from her that threats were uttered and that she remembered the impact of them if not the detail:

> "Q: OK, but the, the two occasions, let me just clarify the two occasions we talked about in detail, …you said he hadn't said anything, is that correct..
>
> A: It's correct.
>
> Q: OK, so the threats, were they made on different occasions,
>
> A: Yea, I can't remember all of them, but I, I know that he had said stuff, but I can't remember like, what occasions they were." [p27 ABE transcript]

[67] Mr Connor asserts that the jury could not convict of the threats in isolation and there was no evidential basis for the verdicts. It is submitted that this was a jury who were 'all at sea' and who, by their verdicts, demonstrated a logical inconsistency which simply cannot be explained.

[68] We do not accept this. On a fair reading of the ABE there is an evidential basis. The verdicts indicate that the jury were satisfied to the requisite standard by the evidence presented on these two charges. We are not persuaded that there was any logical inconsistency in the decisions regarding FP.

Ground 6

[69] In 2012 GP made a complaint of assault against the appellant. He was interviewed by police about the complaint and denied it. GP subsequently withdrew the complaint and no prosecution took place at that time.

[70] In the present trial charges in respect of the same alleged offending appeared on the indictment as Counts 3 and 4. The appellant originally entered Not Guilty pleas to those two counts. He made these pleas on 20 November 2018. He then made an application for a stay of the proceedings in regard to the assault charges which was refused. Only after this refusal did he plead guilty to Counts 3 and 4 and to two other counts of common assault. The prosecution used this material as the basis for a 'bad character' application in the present trial. It was claimed that the original denials and the subsequent pleas showed a propensity for untruthfulness.

[71] The judge explained the 'Bad Character' ruling to the jury as follows:

> "the fact that he lied and intimated that it was the complainant who was lying is introduced in this case … because the prosecution say that [RK] has a propensity to lie to avoid the consequences of wrongdoing.

Further on she stated:

> "so the prosecution have been permitted to introduce this evidence in this case because they say that what he is doing now is precisely what he did in the interviews in 2012."

[72] Mr Connor submits that too much reliance was placed on the bad character of the defendant, that the material referred to did not establish a propensity for untruthfulness, that his original denials were 7 years ago and that he had subsequently made full admissions about his use of violence towards GP.

[73] He asserts that the evidence points to a man who would not persist with lies or denials of culpability in a court setting. He asserts that the extensive reference to this by the judge in her charge rendered the trial unfair.

[74] We do not accept this. The appellant made his denial by Not Guilty pleas in November 2018 and maintained that denial until September 2019, a full 10 months

later. We do not agree that the judge's charge was excessive in the circumstances and we dismiss this ground of appeal.

Conclusion

[75] Accordingly, for the reasons given above, all of the grounds of appeal are dismissed. We are satisfied that the convictions are safe and the appeal is dismissed.

APPENDIX 1

Complainant 1:

Count Number	Offence	Plea	Sentence (19 February 2020)
1	Rape	Not Guilty – Convicted after Trial	9 years imprisonment Sex Offenders Registration – Indefinite Period
2	Rape	Not Guilty – Convicted after Trial	9 years imprisonment Concurrent with Count 1 Sex Offenders Registration – Indefinite Period
3	Common Assault	Guilty	2 years imprisonment Concurrent with Count 1
4	Common Assault	Guilty	2 years imprisonment Concurrent with Count 1
5	Rape	Not Guilty – Convicted after Trial	9 years imprisonment Concurrent with Count 1 Sex Offenders Registration – Indefinite Period
6	Rape	Not Guilty – Acquitted after Trial	-
7	Rape	Not Guilty – Acquitted after Trial	-
8	Rape	Not Guilty – Convicted after Trial	9 years imprisonment Concurrent with Count 1 Sex Offenders Registration – Indefinite Period

9	Common Assault	Guilty	2 years imprisonment Concurrent with Count 1
10	Assault Occasioning Actual Bodily Harm	Guilty	2 years imprisonment Concurrent with Count 1
11	Common Assault	Not Guilty – Convicted after Trial	2 years imprisonment Concurrent with Count 1

Complainant 2:

Count Number	**Offence**	**Plea**	**Sentence (19 February 2020)**
12	Rape	Not Guilty – Convicted after Trial	5 years imprisonment Consecutive to Count 1 Disqualification Order (Children) Sex Offenders Registration – Indefinite Period ISA Barring List
13	Sexual activity with a child under 13	Not Guilty – Acquitted after Trial	-
14	Sexual activity with a child under 13	Not Guilty – Acquitted after Trial	-
15	Sexual assault of a child under 13 by penetration	Not Guilty – Acquitted after Trial	-
16	Sexual activity with a child under 13	Not Guilty – Acquitted after Trial	-
17	Sexual activity with a child under 13	Not Guilty – Acquitted after Trial	-
18	Sexual activity with a child under 13	Not Guilty – Acquitted after Trial	-

19	Sexual activity with a child under 13	Not Guilty – Acquitted after Trial	-
20	Causing or inciting a child under 13 to engage in sexual activity	Not Guilty – Convicted after Trial	5 years imprisonment Concurrent with Count 12 Consecutive to Count 1 Disqualification Order (Children) Sex Offenders Registration – Indefinite Period
21	Causing or inciting a child under 13 to engage in sexual activity	Not Guilty – Acquitted after Trial	-
22	Threats to kill	Not Guilty – Convicted after Trial	2 years imprisonment Concurrent with Count 12 Disqualification Order (Children) ISA Barring List
23	Threats to kill	Not Guilty – Convicted after Trial	2 years imprisonment Concurrent with Count 12 Disqualification Order (Children)
Total			**14 years imprisonment** 7 years custody 7 years licence