THE COURT OF APPEAL

[71/19]

Edwards J.
McCarthy J.
Kennedy J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

-AND-

A.B

APPELLANT

JUDGMENT of the Court *(ex tempore)* delivered on the 18th day of February 2021 by Mr Justice McCarthy.

1. This is an appeal against conviction. The appellant was convicted on the 29th of January, 2019 of seventeen counts of what we might shortly describe as sexual offences. The appellant was stepfather of the complainant who was born on the 8th July, 2001. The offences occurred in the family home of the appellant and his wife, mother of the complainant – she resided with them in the normal way.

2. The original thirty two counts in the indictment covered the period of between 2010 and 2017. The offences extended to the penetration of the child's mouth by the appellant with his penis, sexual intercourse and sexual exploitation of a child.

3. Count 1 concerned rape contrary to section 4 of the Criminal Law (Rape) Act,1990. The dates in this count were amended by the trial judge on the 25th January 2019. On the 25th January 2019, the trial judge gave a direction of not guilty in relation to Counts 2 to 13 inclusive. Counts 2 and 3 were sample counts of rape, contrary to section 4 of the Criminal Law (Rape) Act 1990. Counts 4 to 13 concerned rape contrary to section 2 of the Criminal Law (Rape) (Amendment) Act 1981. Counts 14 to 25 inclusive were counts of rape covering three month periods when the complainant was 12, 13 and 14 years of age. Counts 26 to 28 inclusive were three counts of defilement, contrary to section 3 of the Criminal Law (Sexual Offences) Act 2006, when the complainant was 15 years old. Count 32 was a count of sexual exploitation contrary to section 3 of the Criminal Law (Human Trafficking) Act, 2008.

4. On the 29th January 2019 the jury returned a guilty verdict on all remaining counts on the indictment, namely Count 1, Counts 14 to 28 inclusive, and Count 32. The appellant was remanded in custody on that date. The sentencing hearing took place on the 29th March 2019. The appellant was sentenced on the 8th April 2019. The following sentences were imposed:-

Count 1- 6 years imprisonment;

Counts 14-25- 12 years imprisonment;

Counts 26-28- 12 years imprisonment;

Counts 29-31- taken into consideration;

Count 32- 5 years imprisonment.

All sentences were to run concurrently.

5. As appears from the notice of appeal three aspects of the trial are in debate on this appeal. We will deal with each *seriatim*.

Grounds of Appeal

6. The grounds of appeal are as follows:-

i) The Learned Trial Judge erred in fact and in law in failing to exclude the Voluntary Memo of Interview of the appellant, dated Monday 17th July 2017, on the grounds that a solicitor was not present at the time of the making of the voluntary interview in circumstances where the appellant did not understand that a solicitor could be provided for him free of charge;

ii) The Learned Trial Judge erred in fact and in law in admitting the previous witness statement of Mrs. [A.B] under section 16 of the Criminal Justice Act, 2006;

iii) The Learned Trial Judge erred in fact and in law in amending the dates in count 1 of the indictment to on a date between 8th day of July 2011 and the 7th day of July 2013, to the prejudice of the appellant.

Ground One

The Learned Trial Judge erred in fact and in law in failing to exclude the Voluntary Memo of Interview of the appellant, dated Monday 17th July 2017, on the grounds that a solicitor was not present at the time of the making of the voluntary interview in circumstances where the appellant did not understand that a solicitor could be provided for him free of charge.

7. The appellant submits that the learned trial judge erred in fact and in law in failing to exclude the voluntary memo of interview of the appellant, dated Monday the 17th July, 2017 on the grounds that a solicitor was not present at the time of the making of the voluntary interview in circumstances where the appellant did not understand that a solicitor could be provided for him free of charge.

8. The issue as to admission in evidence of what is described as the voluntary statement was determined on the *voir dire*. The complainant had attended at a Dublin Garda Station with her sister and a number of cousins on the 17th July. She made allegations against her father which subsequently gave rise to the charges herein. In the nature of the allegations two gardaí expert in the investigation of sexual offence, Detective Gardaí Corrigan and Duncan became engaged in the matter. Sergeant Nuala Bruce having received the initial approach at the Garda Station in her capacity as a member in charge. A Garda White was also engaged in the matter at that early stage in the process ultimately leading to what might be described as a full investigation of the offence.

9. Contact was made by Detective Garda Corrigan with the Social Work Department of Tusla in relation to the complaint as children other than the complainant were resident in the family home and Detective Garda Duncan contacted the appellant's wife, child of the complainant. She came to the garda station about ten minutes later and certain steps were taken with the assistance of social workers for the protection of the children. Mrs. A.B then left the garda station but returned in the early evening with the appellant. He had a passport application form and asserted that it was for this reason that he attended the garda station. Whilst Mrs. A.B was making a statement to the gardaí pertinent to this matter (and we return below to that topic when addressing Ground 2) the appellant waited for her. At some time during the evening an interpreter had arrived at the garda station and the statement was taken with Mrs. A.B with the benefit of such interpreter.

10. After his wife had made her statement Detective Garda Corrigan approached and asked him to assist in the investigation of the offence and answer certain questions which the gardaí had in relation to the allegations, with the benefit of the interpreter inasmuch as the appellant's English was poor. Detective Garda Corrigan, with the assistance of the interpreter, explained to the appellant that the interview was voluntary and that he was not compelled to answer questions. He was introduced to the member in charge who likewise told him that he was present on a voluntary basis in the garda station and not under arrest. She made a note of this fact in the Occurrence Book maintained at the station. She also told the appellant that he could consult with a solicitor if he wished, that he could leave at any point and that if he was not in a position to nominate a solicitor she would do so. He was also told that the interview could be stopped so that a solicitor could be contacted. Detective Garda Durkin said that she would have explained this fact also to the appellant but it casts doubt on whether or not she did so because no note thereof was kept. In any event both Detective Gardaí Corrigan and Duncan were in a position to give evidence to the same effect as Sergeant Bruce.

11. The following was the evidence of Sergeant Bruce:-

> *"A. Sorry, I thought I took a note of what he said somewhere. What he actually did say I recall was that I explained to him that they wished to question him in relation to an allegation of sexual assaults/rape of a minor female. He said he was aware of the allegation and when I asked him what it was he said to me sex with my step daughter.*

Q. And they were his words to you?

A. They were his words. I then clarified, I said so you know how serious the allegation is and he said yes. I explained to him that he was not under arrest, that he was free to leave at any time.

Q. And did he understand that?

A. Yes, I asked the translator specifically to ask him if he understood that he was free to go.

Q. And did you see anything else to him?

A. The next the next, and again one of the most important rights a person has whilst being questioned under caution was the right to consult with a solicitor.

Q. And did you explain that to him?

A. I did and I also told him that if he did not know of a solicitor I could nominate one for him and that before being questioned he could consult with his solicitor and get legal advice.

Q. And again, did he understand that?

A. Yes."

At a later point Sergeant Bruce stated the following in relation to the conversation before the voluntary interview:-

"Q. Did you explain anything about the interview process?

A. Then the most important thing, because again because I was conscious of the fact that he had said no to a solicitor, I told him he could change his mind at any time. I then explained to him in ordinary simple English of what the caution meant and how I did this was we have to ask the questions, the gardaí, but he did not have to answer any questions. He wasn't obliged to answer any of our questions and that was his right.

Q. And was that explained to him?

A. Yes.

Q. And was the interpreter present?

A. Yes.

Q. And did he understand?

A. Yes."

12. It is not in doubt but that the appellant was cautioned in the usual manner at the start of the interview. That interview was recorded and the recording was played during the hearing.

13. After that interview had concluded the appellant was arrested and during the course of his period in subsequent detention for the investigation of the offence he was interviewed on four occasions. During the course of the fourth interview he sought to retract the content of the first (to put the matter shortly). The following is the relevant portion of that fourth interview:-

"Question: *"Do you wish to say something?*

Answer: *"Yes. I would like to withdraw my first statement.*

Question: *"Does he mean the first voluntary cautioned memo of interview he made?*

Answer: *"Yes.*

Question: *"The information that you provided to us in that voluntary interview, you made admissions to raping your step daughter, […], who is a child. You made these admissions of your own free will. You were not arrested. You sat here and you cried about what you did to[…]. Why now do you want to withdraw your statement?*

Answer: *"Because at that time I had no solicitor who will give me advice for my own benefit.*

Question: *"You could have availed of legal advice before you spoke to us?*

Answer: *"I wish I did.*

Question: *"You could have spoke to one before coming to the garda station?*

Answer: *"I know but I am from […] and I do not know about the law I do not know my rights here. I have no convictions here.*

Question: *"Do you remember meeting Sergeant Bruce when you came here first?*

Answer: *"Yes.*

Question: *"Sergeant Bruce offered you the opportunity to speak to a solicitor when you first came to the station?*

Answer: *"Yes.*

Question: *"So, you were aware you could have availed of a solicitor's advice?*

Answer: *"Yes.*

Question: *"So, you have contradicted yourself?*

Answer: *"I accept it. At the first time when I arrived I heard about a solicitor, I had no conception about where they come from or what they do. Do they work for the garda? After being there I realise after speaking to solicitors that they protect me. I am from […] and there I have to pay for solicitors. By conception I mean idea."*

14. During the course of the first interview after arrest the memorandum of the interview made before arrest was read over to the appellant and he was asked whether or not he was true. The relevant portion of that first interview is as follows: -

> *"Question: "What age was […] when you first met her?" Answer: "Five or six years of age." Question: "And you became her stepfather a few years ago?" Answer: "I met her when she was five or six years in [named country] with her mother. I met her in Ireland when she was nine or 10 years in 2010." Question: "As […]'s stepfather, your job is to protect and care for […]. What you did was not do you understand? Yes." Question: "We call it rape; do you understand what that means?" Answer: "Yes." Question: "How do you feel?" Answer: "Normal, I'm fine. I know what did I was wrong. I'm willing to take a jail sentence."*

15. The appellant relies on *The People (DPP) v. Gormley* and *The People (DPP) v. White* [2014] 2 IR 591 appertaining to the rights to legal advice of persons in custody prior to interview. In the course of his judgment, Clarke J., as he then was, posed what he characterised, as the "first real question of principle" which the court had to decide was:-

> *"to consider is as to whether the entitlement to a trial in due course of law, guaranteed by Article 38(1) of Bunreacht na hÉireann, encompasses an entitlement to have access to legal advice prior to the conduct of any interrogation of a suspect arrested and/or prior to the taking of any forensic samples from such a suspect. If that proposition is accepted at the level of general principle then many more questions of detail would, of course, arise. Questions such as the point in time when the right arose, the extent to which it is necessary for the suspect to request the presence of a lawyer, whether the entitlement can be waived and, if so, by reference to what standard of action on the part of the suspect, the extent to which a lawyer is entitled to be present during the questioning as well as being entitled to advise the suspect prior to questioning, the extent to which the entitlement to have legal advice might extend not only to a situation where it was intended to question the suspect but also, as in Mr. White's case, to where it is intended to take samples from the suspect and, doubtless, many others would arise. By no means do all of those issues arise on the facts of these cases. However, the first question which requires to be addressed is as to whether there is a constitutional entitlement of the type asserted in the first place."*

16. It is abundantly clear that the question posed pertained to persons under arrest: thereafter, that principle having been decided, what he characterised as "*many more questions of*

detail would …. arise" and amongst these, for example, was as to the point, subsequent to arrest, at which such right arises.

17. He went on to say that, after arrest:-

> *"the suspect is no longer someone who is simply being investigated by the gathering of whatever evidence might be available. Thereafter the suspect has been deprived of his or her liberty and, in many cases, can be subjected to mandatory questioning for various periods and, indeed, in certain circumstances, may be exposed to a requirement, under penal sanction, to provide forensic samples. It seems to me that once the power of the State has been exercised against a suspect in that way, it is proper to regard the process thereafter as being intimately connected with a potential criminal trial rather than being one at a pure investigative stage. It seems to me to follow that the requirement that persons only be tried in due course of law, therefore, requires that the basic fairness of process identified as an essential ingredient of that concept by this Court in State (Healy) v. Donoghue applies from the time of arrest of a suspect. The precise consequences of such a requirement do, of course, require careful and detailed analysis. It does not, necessarily, follow that all of the rights which someone may have at trial (in the sense of the conduct of a full hearing of the criminal charge before a judge with or without a jury) apply at each stage of the process leading up to such a trial. However, it seems to me that the fundamental requirement of basic fairness does apply from the time of arrest such that any breach of that requirement can lead to an absence of a trial in due course of law. In that regard it seems to me that the Irish position is the same as that acknowledged by the ECtHR and by the Supreme Court of the United States."*

18. The appellant here seeks to extend the rights of a suspect, accordingly, to the right to legal advice before engagement in the giving of a voluntary statement or questioning by the Gardaí even before arrest and in particular before the coercive power of the State is exercised either by such arrest or thereafter, such as the entitlement of this objection of an arrested suspect to interview about which he has no choice. The decision in *Gormley* and *White* could not be clearer. The Gardaí are perfectly entitled before arrest to speak to suspects. Here, the suspect attended at the garda station in circumstances where he must have been aware of the allegations. We pass over the issue of whether or not there was any credibility to the idea that in such circumstances he was applying for a passport. Since he was not under arrest at the time there was in strictness no obligation on any of the Gardaí or Sergeant Bruce to take the steps they did in reminding him that his presence was voluntary, that he could leave at any time, and that he did not have to say anything (not to mention the caution which was afterwards given). It has been sought in some way to cast suspicion on the conduct of the Gardaí by raising the innuendo, for which there is no evidential basis, that there must have been some decision to interview him at some unknown point whether before or after he attended at the station. There is no evidential basis for this innuendo. The Gardaí behaved in an exemplary manner. The only complication, if one could call it that, which might arise or have arisen in this case in

distinction, say, to someone who had good English, and perhaps been born or grown up here was what we might call a language barrier and this of course was addressed properly. We cannot ignore the fact that subsequently in interview after arrest and under caution the appellant corroborated what he had said prior to arrest. The ruling of the learned trial judge on this aspect was extremely comprehensive. We do not set it out here *in extenso*. However, he addressed the facts and we think that it is helpful if we refer to the fact that he held that: -

> *"Whether the objection to the statement be on constitutional or other grounds the crucial test is whether it was obtained in compliance with basic or fundamental fairness and the trial judge will have a discretion to exclude it where it appears to him that public policy, based on a balancing of interest, requires such exclusion."*

He plainly held that there was no unfairness.

19. The judge correctly added, in relation to *Gormley* & *White* that:-

> *"… The Court is satisfied that there is no positive duty where a person is being asked voluntarily questions, even a foreign national, once proper procedures are followed that a solicitor actually has to be physically present for that interview or that there is a positive duty on Garda Síochána to have a solicitor physically present before voluntarily interviewing can proceed."*

20. We therefore reject this ground of appeal.

Ground 2

The Learned Trial Judge erred in fact and in law in admitting the previous witness statement of Mrs. [A.B] under section 16 of the Criminal Justice Act, 2006

21. The relevant provisions of that Act are as follows: -

> *"(1) Where a person has been sent forward for trial for an arrestable offence, a statement relevant to the proceedings made by a witness (in this section referred to as "the statement") may, with the leave of the court, be admitted in accordance with this section as evidence of any fact mentioned in it if the witness, although available for cross- examination—*
>
> *(a) refuses to give evidence,*
>
> *(b) denies making the statement, or*
>
> *(c) gives evidence which is materially inconsistent with it.*
>
> (2) The statement may be so admitted if-
>
> *(a) the witness confirms, or it is proved, that he or she made it, (b) the court is satisfied—*

(i) that direct oral evidence of the fact concerned would be admissible in the proceedings,

(ii) that it was made voluntarily, and

(iii) that it is reliable, and

(c) either—

(i) the statement was given on oath or affirmation or contains a statutory declaration by the witness to the effect that the statement is true to the best of his or her knowledge or belief, or (ii) the court is otherwise satisfied that when the statement was made the witness understood the requirement to tell the truth.

(3) In deciding whether the statement is reliable the court shall have regard to—

(a) whether it was given on oath or affirmation or was video recorded, or

(b) if paragraph (a) does not apply in relation to the statement, whether by reason of the circumstances in which it was made, there is other sufficient evidence in support of its reliability,

and shall also have regard to—

(i) any explanation by the witness for refusing to give evidence or for giving evidence which is inconsistent with the statement, or

(ii) where the witness denies making the statement, any evidence given in relation to the denial.

(4) The statement shall not be admitted in evidence under this section if the court is of opinion—

(a) having had regard to all the circumstances, including any risk that its admission would be unfair to the accused or, if there are more than one accused, to any of them, that in the interests of justice it ought not to be so admitted, or

(b) that its admission is unnecessary, having regard to other evidence given in the proceedings.

(5) In estimating the weight, if any, to be attached to the statement regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

(6) This section is without prejudice to sections 3 to 6 of the Criminal Procedure Act 1865 and section 21 (proof by written statement) of the Act of 1984".

22. The first thing to be said is that the statement which Mrs A.B made contained a statutory declaration by her to the effect that the statement was true to the best of her knowledge

and belief, which she had initialled. She was not under arrest. She had the benefit of an interpreter. The statement was read back over to her.

23. Portions of the evidence of Mrs. A.B were put to her during the course of her evidence. She accepted parts of them and denied others. Counsel for the respondent, in their submissions, rightly characterised her approach as "diverse". We need not quote these *in extenso* but her stance was characterised as such by counsel in those submissions, (correctly in our view) in the following terms: -

- She stood over parts of the statement (she accepted she said certain things that her husband had said to her);
- She claimed she never said other things which appeared in her statement (parts she claimed she did not say and had not been said by her husband to her);
- She claimed that she had said a number of things to the Gardaí asserting that they had been said by her husband but that no such things were said.

24. Each of the pieces of evidence in debate, so to speak, from her statement were incriminatory of her husband, almost exclusively purporting to be admissions by him as to the unlawful sexual engagement with his stepdaughter.

25. The following exchange also took place in the course of cross-examination:-

"Q. Do you think that the guards might have got mixed up in the statement as to what you were saying and they thought he said it but, in fact, your daughter told you this information?

A. They could have, okay,

Q. Now you were asked at the end of – this statement was read back over to you, was it?

A. Yes.

Q. Yes, and were you asked to make any alterations or additions?

A. Yes."

26. This Court has addressed this Act on many occasions. We do not intend here to reprise the law. The ruling of the learned trial judge on this aspect comprehensively address the facts and on the evidence identified what had emerged as the core issue, as follows:-

> *"Now, the issue which the Court wants to focus on is subsection 2 (b) (iii), is the original statement reliable and subsections 4 and 5, the discretion of the Court in respect to its admission. The Court wants to stress that in dealing with reliability that the Court is dealing with it in the context of admissibility of the statement. It's ultimately, if it is admitted, a matter for the jury to decide whether it's reliable or*

not but the Court has to give a decision based on the factors set out in the section and also the evidence that the Court has heard, whether it is reliable or not and then, having done that, looks at the issue of the discretion of the Court.

In respect of its reliability the Court wants to say a number of things. The Court is satisfied from the evidence of Garda Duncan and Garda Corrigan and the surrounding circumstances that […] hadn't given a detailed statement when the voluntary statement was taken from her mother. The Court accepts that the state of the information that was in possession of An Garda Síochána, the investigating gardaí at the time, Garda Duncan and Garda Corrigan, was limited to general disclosure by […] that she had been historically sexually abused by her father and that they didn't have the detail of the allegations.

The second matter is that the Court does not wish to rely only on the evidence of the gardaí as to the issue of reliability and in respect of some matters which Mrs. [A.B] disputes either having said to the gardaí or spoken to the gardaí about it or that her husband spoke to about it, a situation has arisen that if you look at the voluntary statement of Mr. [A.B] in respect of these matters, he actually confirms some matters which are in the statement. One area of dispute is: "[…] told me when […] was about nine years old he put his penis ..." sorry, before that: "[…] told me when […] was about ten years old […] touched his penis." And in his answer to a voluntary question he said: "The first time is when she touched my willy." Then when he went on to deal with where it happened, he said: "She came into my room. Sometimes if I could ask her to come to my room she would come. Sometimes I would Facebook messenger her to come to the room." And in her statement to the gardaí she stated: "When [another family member] was asleep and I was in work […] would go into my room with […] and they would have sex." He repeated this again: "When the incidents happened my wife was in work. My mother in law was asleep. […] sleeps with her sister. When she was asleep […] would come into my room then." In relation to the last sentence which Mrs. [A.B] says she doesn't remember, Mr. [A.B], in his statement to voluntary statement said: "One month ago I felt […] didn't want to do it anymore." Which reflects exactly what Mrs. [A.B] told the Gardaí, that […] told him she didn't want it to happen anymore.

He also accepted that he hadn't in his voluntary statement, that he hadn't control, which is something that was indicated by Mrs. [A.B] in her statement to the gardaí. He said: "After the first time it kept happening. The fourth time happened, he couldn't control himself." That was his answer. So, what you have is remarkable similarities to what is in the statement as what was told to her, echoed again in Mr. [A.B]''s voluntary statement that particular evening.

Now, if you try and look at it objectively, taking for a moment this issue of confusion, that it may be a misunderstanding by the gardaí by picking up information that Mrs. [A.B] had retrieved from her daughter and made its way into

the statement, it's remarkable that a very substantial portion of the statement is reflects accurately what he says and that the last portion reflects accurately what she says. Now, I didn't find Mr. […] a reliable witness at all today, so I'm concentrating on Mrs. [A.B]'s evidence. He was at variance with Mrs. [A.B] in relation to her evidence as to exactly what transpired between them and the Court has come to the conclusion that at the time that it was made that it was a reliable statement. The Court finds that there was no confusion at that point in time. […] hadn't given details and there was substantial detail in the statement that could only from come from Mr. [A.B] and conveyed and be conveyed by Mrs. [A.B] to the Garda Síochána. So, I'm quite satisfied that at the time this was a reliable statement made by Mrs. [A.B] to An Garda Síochána and that there was no confusion in her mind about what [..] told her and what her husband told her. I'm not going to comment any further in relation to that, it's a matter ultimately for a jury to deal with the reliability now or otherwise of Mrs. [A.B]. It's obviously a corollary of the Court's that the Court is concerned about her reliability now in relation to evidence before the jury and the logic obviously is that the prosecution are seeking to admit the statement.

Now, then it goes on to deal with the I want to deal then with the discretion of the Court. Now, ultimately I don't consider that it's unfair to the accused person to admit this statement. There's other evidence which the Court has examined and considered which makes quite clear, and including evidence in the voluntary statement that Mr. [A.B] has accepted, apart from the three matters that he's pleaded guilty to, that there were other historical incidences which the voluntary statement the jury could take the view that he was accepting that there were other periods of time. There is an issue in relation to […]'s evidence as to when she exactly remembers it happening and the Court does accept for a child that the issue of dates is can be an issue in these types of trials. Time is not the an absolute element of guilt or innocence and that's standard legal principle. Obviously it goes to the witness's credibility and it's a matter ultimately for the jury.

Now, in relation to assessing the weight of the evidence for admissibility purposes, the Court takes into consideration the factors that had has already outlined, that in there's first of all […]'s evidence about the matters which she has already given with all the contradictions and inconsistencies that are in it, but she's clear that Mr. [A.B] had sex with her prior to the times where he has accepted that in his plea of guilty and secondly, in Mr. [A.B]"s own voluntary statement, there are issues which corroborate the statement of evidence of Mrs. [A.B] rather than her evidence. Ultimately the weight to be attached to it, as far as the Court is concerned it satisfies the Court in terms of admissibility. The weight that the jury can give Mrs. [A.B]'s evidence is obviously a matter ultimately for them when they're properly addressed, as they will be, by counsel for the prosecution and the defence and the trial judge in the charge to the jury. So, I'm permitting the prosecution to put the statement to the witness."

27. As will be seen from the relevant provisions of the Statute, as set out above the statement may be admitted *inter alia* if the court is satisfied that it is reliable and the provisions of subsections (4) and (5) in the first instance prohibit admission if and it bears repetition:-

> *"Having had regard to all the circumstances including any risk that its admission would be unfair to the accused or, if there are more than one accused, to any of them, in the interests of justice it ought not to be so admitted."*

and, as an alternative:-

> *"that its admission is unnecessary having regard to other evidence given in the proceedings."*

Subsection (5) deals with weight.

28. It is plain that the judge, apart from deciding that the conditions precedent to admissibility under the section had been fulfilled, and also exercised great care in ensuring that there was no unfairness to the accused or that it was not in the interests of justice to so admit it.

29. We accordingly reject this ground of appeal.

Ground 3

The learned trial judge erred in fact and in law in amending the dates in count 1 of the indictment to "on a date between the 8th July 2011 and the 7th July 2013" to the prejudice of the appellant.

30. No one doubts but that indictments may be amended at any time pursuant to s. 6 of the Criminal Justice (Administration) Act, 1924 and such amendments may be made "*as the court thinks necessary to meet the circumstances of the case unless the required amendments cannot in the opinion of the court be made without injustice.*"

31. Amendments of the indictments in cases of repeated sexual offences against children are commonplace. This is not to say that they ought to be taken lightly. The courts however face the reality that it is frequently impossible to give particulars of an offence with a high degree of specificity or perhaps one could say that is ordinarily desirable. The amendment in the indictment was plainly made to address the want of recollection or specificity on the part of the child witness as she still was at the time of the trial and as she had been at the time of the offences referred to in both the indictment as originally framed and as amended. The courts do not shut their minds against the reality. The contrary, in fact, is the case. It is absolutely clear from the evidence what the allegations against the appellant were and the time period over which it was alleged the offences had been committed.

32. We are not persuaded accordingly that there can be any complaint about the amendment in question even though it extended the period during which the offence was alleged to have occurred.

33. We accordingly reject this ground of appeal also.

34. We therefore dismiss this appeal against conviction.