THE COURT OF APPEAL

[151/23]

The President

Kennedy J.

Burns J.

IN THE MATTER OF SECTION 23 OF THE CRIMINAL PROCEDURE ACT 2010

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

APPELLANT

AND

F.H.

RESPONDENT

JUDGMENT of the Court delivered on 14th day of May 2024 by Birmingham P.

Introduction

1. On 28th April 2023, the respondent, who had stood trial in the Dublin Circuit Criminal Court on 13 counts of gross indecency, contrary to common law, as provided for by s. 11 of the Criminal Law Amendment Act 1885, was acquitted by direction of the trial judge. The circumstances in which the application for an acquittal was made were somewhat unusual, and perhaps best explained by providing a fairly detailed narrative of the nature of the complaint made to Gardaí, the preferring of charges, and then what transpired at trial. However, in a nutshell, the Director argues that the trial judge should not have directed an acquittal at the close of the complainant's direct examination, in circumstances where, in light of ostensible discrepancies that arose between the complainant's evidence in court and his statement made to Gardaí, the Director did not pursue a line of questioning seeking to clarify the period during which the alleged offending took place.

2. Before turning to the narrative, it is appropriate to refer, at this stage, to the terms of s. 23(3)(b) of the Criminal Procedure Act 2010 (the "2010 Act"):

> "23.— (1) Where on or after the commencement of this section, a person is tried on indictment and acquitted of an offence, the Director, if he or she is the prosecuting authority in the trial, or the Attorney General as may be appropriate, may, subject to subsection (3) and section 24, appeal the acquittal in respect of the offence concerned on a question of law to the Court of Appeal.
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> . . .
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> (3) An appeal under this section shall lie only where—
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> (a) a ruling was made by a court during the course of a trial referred to in subsection (1) or the hearing of an appeal referred to in subsection (2), as the case may be, which erroneously excluded compelling evidence, or

(b) a direction was given by a court during the course of a trial referred to in subsection (1), directing the jury in the trial to find the person not guilty where—

(i) the direction was wrong in law, and

(ii) the evidence adduced in the proceedings was evidence upon which a jury might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned.

. . .

(11) On hearing an appeal under this section, the Court of Appeal may—

(a) quash the acquittal . . . and order the person to be re-tried for the offence concerned if it is satisfied—

(i) that the requirements of subsection (3)(a) or (3)(b), as the case may be, are met, and

(ii) that, having regard to the matters referred to in subsection (12), it is, in all the circumstances, in the interests of justice to do so,

or

(b) if it is not so satisfied, affirm the acquittal or the decision of the Court of Appeal, as the case may be."

Background

3. The complainant in this case was born in the first quarter of 1962. He made a complaint to Gardaí, in the course of which he *inter alia* complained of having been subjected to sexual assaults by the respondent to this application. At the request of Gardaí, he supplemented that statement of complaint on a number of occasions. The statement refers, by way of background, to his family circumstances, and describes an upbringing which involved extreme poverty while living in a south city suburb. While not directly relevant to the trial or to this appeal, in the course of the statement, the complainant describes how he was the subject of intense humiliation by a priest who, as part of his duties, visited the national school attended by the complainant. The complainant describes leaving school before he had been due to finish primary education, at a time when he was aged around 11 or 12. He describes how, after about two years of not attending school, he was brought to court by school inspectors. In the Children's Court, the presiding judge sent him to an assessment unit in St. Michael's School in Finglas, where he spent a few weeks, and then, when he was brought back before the Court, the presiding judge sent him to St. Laurence's in Finglas. The complainant explains that he lived there from Monday to Friday until he turned 15 years of age. He says he was there for about eight or nine months in total and that he got to go home at weekends.

4. In the course of his statement, the complainant says he went to St. Laurence's in 1976, when he was 14 years of age. Before that, he met the respondent, a Catholic priest, and, at one time, curate, in the parish where the complainant was living. The complainant explains that he first met the respondent in a community hall at the back of the parish church. On that occasion, the complainant was playing football, as he used to do on Tuesday or Wednesday evenings. He was playing along with other boys from the flats complex where he lived, although at another point he casts doubts as to whether he was playing football that particular evening. He describes the first

encounter and is very specific that it was at a time when the complainant had left primary school, when he was not going to school, and it was before he was sent to St. Laurence's. He says the respondent asked him if he went to mass, and he responded, no, and the priest then asked him to go to mass that Sunday, and that he did. After mass that Sunday, the last mass on the Sunday, the respondent invited the complainant to his residence. The complainant describes them having a cup of tea, being in the priest's sitting room. He describes sexual activity, involving mutual masturbation. Further in the statement, the complainant says that he was around 13 years of age when this happened with the respondent. The complainant says that from then on, he went to mass every Sunday evening, and after mass, went back to the priest's residence. He describes escalating sexual activity on the part of the priest on these occasions, and says that on each evening, he was given an old £10 note and was told to get something to eat and to get smokes, as the priest knew that he smoked.

5. In the statement, the complainant says that from then on, being a period of a few weeks from the first encounter at the community centre and the first sexual activity the following Sunday, to the time he was sent to St. Laurence's, that he went to mass every Sunday evening, and after mass, went to the priest's residence, and on every occasion, sexual activity took place. The statement expressly states, "[the respondent] kissed me, put his penis in my mouth and he penetrated my ass with his penis nearly every Sunday evening from when I was 13 years of age until I was sent to St. Laurence's, it happened many, many times, over 30 times, probably 40 times." The complainant describes how, on one occasion, at the invitation of the priest, he stayed over in the parish house and slept with the respondent in his bed. He explains that, after this, the priest asked him to accompany him on a visit to his parents who lived in a distant part of the country. The complainant describes activity, which, he says, occurred in the location where the respondent's parents lived, during that visit, which involved sexual activity. The complainant expressly says that this happened before he was sent to St. Laurence's, but that after he left St. Laurence's, he was again driven by the respondent to the home of the respondent's parents, where the same thing happened. The statement describes this second incident outside Dublin as occurring when the complainant was about 16 years old. He says that this second visit to the country location was the last time that anal penetration took place, but thereafter, sexual contact continued in the priest's residence.

6. The complainant describes the fact that his father died when he was aged 16 and that the respondent officiated at the funeral, and thereafter, was instrumental in arranging for the receipt by the complainant of an orphan's pension. Again, while not directly relevant to the present proceedings, the statement describes the fact that the complainant was abused by two De La Salle Brothers while at St. Laurence's. The complainant does not know the names of these brothers but provides detailed physical descriptions. At another point in the statement, the complainant states that he had already been sexually abused by the respondent when he was abused by the two Brothers in St. Laurence's. The statement says the sexual contact stopped when the respondent moved to a parish on the northside of Dublin, which the complainant named. The complainant says he met up with the respondent over the years, but had not seen him since 1990, when the complainant moved to London.

7. In the course of further interview with Gardaí, when he provided a supplemental statement, the complainant was asked whether he had met the respondent when home on weekends from St. Laurence's, and he said that he did not, because he would not have had time as he had to be back to school between 5pm and 6pm on Sunday evenings. In the course of a further supplemental statement, the complainant was asked by Gardaí to confirm that the sexual abuse, which he said he had been subjected to by the respondent, occurred when he was around 13 years of age, as he had previously stated to Gardaí. He added that in his mind and in his heart, he remembered meeting the respondent before he went into St. Laurence's.

8. The indictment on which the respondent was arraigned charged him with 13 counts of gross indecency. The first count alleges that the offence occurred between 22nd January 1977 and 21st March 1977. Eleven of the other counts then allege an offence during a particular period, the overall offending ending just before the complainant's 17th birthday. One count alleges an offence on a date unknown between 22nd January 1977 and 22nd January 1979 at the rural location to which there has been reference.

9. In the course of the investigation, records were obtained from the parish where the respondent had ministered as a curate and where the abuse was alleged to have occurred. Those records indicate that the respondent was attached to the parish between 4th September 1976 and 17th July 1981. The detention order relating to St. Laurence's was also obtained and that indicated a date of admission of 29th January 1976 and a date of discharge of 22nd January 1977. Thus, the records would appear to establish that, at the time when the respondent came to the parish in question, the complainant was already detained in St. Laurence's, or, to put the matter slightly differently, the complainant was detained in St. Laurence's at the time when the respondent arrived in the parish, and the complainant had been so detained for several months before the arrival of the respondent in the parish.

10. The trial commenced on 27th April 2023, when prosecution counsel opened the case to the jury. In the course of her remarks, counsel explained that the offending behaviour occurred at a particular address on the southside of Dublin between 22nd January 1977 and 22nd January 1979, saying that this was at a time when the complainant was aged about 15 and 16 years. Counsel also made reference to the fact that one of the 13 counts related to a specific event at a location outside Dublin. Counsel referred to the date of birth of the respondent, explaining that at the time of the alleged offending, he was in his late twenties, into his 30th year. Relevant in the context of the issues that arise on this appeal is the fact that counsel did not make any reference to any possible conflict between reports which existed by way of documentary evidence and what the complainant had said to Gardaí in the course of his statement of complaint.

11. The complainant was called to give evidence on 28th April 2023. In the usual way, counsel for the prosecution took the witness through his direct evidence. In broad terms, the complainant's direct evidence mirrored what he had said in his statement to Gardaí, in that he described the first contact being an occasion when the complainant was at the community centre, when he was asked to go to mass, then going back to the priest's residence, sexual activity on that occasion, and escalating sexual activity thereafter. Of note is that there was a lack of specifics about dates when particular activity occurred. In the course of evidence, the complainant did refer to two occasions on which untoward sexual activity occurred at a rural location. The complainant referred to two

weekend visits to the rural location, and when asked what age he was, the first time, he said he was around 13 or perhaps 14 years of age, and on the occasion of the second weekend, that he was 15 or 16 years old. In direct examination, the complainant dealt with his family background, his experience of primary school, ceasing to attend school and being sent to St. Laurence's. Then, having described his attendance at the community centre, counsel asked the question, "[c]an you tell us when you first met [the respondent]?" We think it is fair to say that anyone who is familiar with the statement of evidence, as it appeared in the Book of Evidence, would have expected that the question might have been met with an answer along the lines "I first met him when I was around 13" or perhaps "I first met him before I was sent to St. Laurence's", but, in fact, the witness answered, "I met him in that Community Centre, it was probably during the week, could have been a Tuesday or a Wednesday, I don't honestly know what day -- … is where I first met him". Counsel then asked the witness what he remembered of the day.

12. When the complainant concluded his direct evidence, counsel for the respondent, instead of immediately beginning to cross-examine, as would be normal, asked for ten minutes to rearrange his papers. After the short break, counsel for the respondent opened his application, first suggesting it would be appropriate that the complainant, and what he described as the complainant's supporters, would not be present in court during the currency of the application. At an early stage, counsel said the Court might have observed that not once during his evidence was the complainant asked when he first met the respondent. At that point, the judge intervened, commenting "I think he was asked that". In response, counsel indicated there was no doubt about the fact that the witness had been asked about a location, being a hall at the back of the church, but that, curiously, the witness was not asked when the meeting was alleged to have occurred. Counsel referred to the evidence of activity over successive Sundays and commented that, most curiously, the witness was not asked when those things were alleged to have occurred. At that point, the judge interjected and said, "I understood it was when he came out of St. Laurence's, that that was the first meeting… [w]ell, that's the phase of his life he was discussing". Counsel responded by saying it was an interesting observation and he could see how the Court was left with that impression. Counsel asserted that the prosecution, despite the fact that they had a statement of proposed evidence from the witness, had chosen to lead the evidence in a particular way so as to not identify when the first meeting with the respondent was alleged to have occurred, and to deliberately avoid seeking to adduce from the witness when the incidences of alleged gross indecency were alleged to have occurred and to have commenced. Counsel then referred the judge to passages from the statement of evidence, in particular the comment "[t]his all commenced long before I went to St Laurence's". Counsel for the respondent said he should not be left in a position where he now had to cross-examine the witness as to when things did or did not occur, in a situation where the prosecution had deliberately not led evidence from the witness or adduced evidence. Counsel said the prosecution had led or adduced evidence, which had left the jury, and indeed the Court, under the impression that the first meeting between the respondent and the complainant occurred after the complainant left St. Laurence's and that there were occasions of alleged sexual abuse on a continuous basis thereafter. Counsel said it was his submission that the prosecution had done that deliberately, and he said this was clear by virtue of the fact that the witness was never asked when he first met the respondent, the witness was never asked when the

first incident of abuse was alleged to have occurred. Counsel said the prosecution had "studiously avoided that".

13. Counsel for the respondent repeated in somewhat more assertive terms that the reason his client had not been charged with the earlier phase of alleged misconduct was because his client had not been there, he had not been in the parish, and the prosecution knew he was not there. Counsel said he did not understand why the witness was never asked when these things occurred and the witness was allowed to give evidence which created a narrative, in the mind of the Court, that the events occurred after St. Laurence's. Exchanges followed between counsel and the judge, with the judge asking "…but is it not to your advantage now that you have that, he can be cross-examined in relation to that?". Counsel said this placed him in an invidious position, it was almost like reversing the burden of proof and the presumption of innocence. In response to a query from the judge, counsel confirmed that he was saying the prosecution had cherrypicked. Counsel said if he was to put it to the witness at any stage "…you didn't say any of this in your direct evidence, you didn't say when [was] the first time you met [the respondent]?", the witness's response would be "I wasn't asked". Counsel stated that, in his submission, there had been a studied avoidance, when the witness was giving evidence, to ask him when he first met the respondent, when the incidents alleged commenced, either by reference to a date or by reference to age. Counsel on behalf of the prosecution was upfront in accepting that she failed to clarify when the meeting with the respondent occurred, and whether the complainant had been talking about the community centre before St. Laurence's or after St. Laurence's. Counsel said there was no gainsaying that she did not ask the follow-up question. However, surprisingly, and in our view, incorrectly, she commented that she could not fix it now. Counsel said that she wanted to say emphatically that there was no purposeful or malicious intent with not clarifying with the witness as to when he was talking about, pre-St. Laurence's and post-St. Laurence's.

The Trial Judge's Ruling

14. In ruling on the matter, the judge introduced her remarks by commenting that it was an application by reference to *PO'C* (*DPP v. PO'C* [2006] 3 IR 238), made, unusually, after the complainant had given evidence. The judge recited that the prosecution conceded that the complainant's evidence was not consistent with his statement. The judge said:

> "The Court has to take the view that the effect of the manner in which the prosecution case had been presented, certainly avoided the issue that the prosecution has with the case and with the case and with the statement, and that's how the evidence had been presented to the Court by not establishing dates, by not establishing from the witness when he first met [the respondent], and when the acts alleged to have occurred at that time, certainly is not presenting the case as per the [P]rosecutor's [G]uidelines, in terms of presenting the evidence, warts and all."

This, she said, had to impede on the defence's cross-examination of the witness and the Court has to be careful to protect the integrity of the process, and this included the way in which the prosecution evidence was presented. The judge said that while her first instinct was that these matters could be cured by way of cross-examination, she did feel that the manner in which the evidence was presented, which was not consistent with the statement itself, had affected the

ability of the defence to fully cross-examine. The judge said the Court had an obligation to protect a fair trial and the prosecution had failed in its obligations to present the evidence in a fair and impartial manner. While the judge was not accusing prosecution counsel of any partiality, there was the same effect; the case had become fundamentally unfair in terms of how the evidence was adduced. She said the Court had to show its odium for such a manner in presenting a case of historical abuse. She said she was satisfied that the situation met the criteria set out by *PO'C*, and so, she was going to direct acquittals in relation to the charges. In response to a query from prosecution counsel, the judge confirmed that it related to count 13, the out of Dublin count as well. In the course of his submissions, counsel for the respondent had appeared to concede that a case remained in relation to count 13 because of the direct evidence of activity occurring at an out of Dublin location when the complainant was 15 or 16 years of age.

Discussion and Decision

15. We begin our consideration of this issue by clarifying and putting on record what, in truth, is already clear. The first observation we want to make is that we are entirely satisfied that prosecution counsel acted completely properly and that there was no deliberate attempt to present the evidence in an unfair manner. It is quite clear that counsel asked the question of the complainant as to when he had first met the then accused, and by reference to the complainant's statements of evidence, counsel must have expected a response by reference to when the complainant spent time in St. Laurence's, or by reference to the complainant's age, or perhaps both, as in "when I was around 13 or 14, before I went to St Laurence's". When the answer that was provided was not at all informative, it would have been better if counsel had stayed focused on the issue, but that did not happen.

16. If we are entirely satisfied about the probity of the conduct of prosecution counsel, we are pleased to say that we are in a position to make exactly the same observation in relation to the conduct of the defence legal team, in particular, Senior Counsel for the defence. When the direct evidence of the complainant ended, defence counsel sought a short adjournment. In the course of this appeal hearing, we have been told, and would ourselves have assumed, that this was for the purpose of allowing him to check his notes of evidence. Unfortunately, counsel's submissions thereafter were not fully accurate, in particular, they fell into error in stating that the question of when there had been first contact for sexual activity was never asked. That prosecution counsel did not pursue the question of the first encounter was unfortunate, as was the fact that defence counsel fell into error in saying that the crucial question had not been asked, when it had.

17. At that stage, matters, having gone off the rails, stayed off. Prosecution counsel, no doubt motivated by a desire to act fairly and honourably, commented more than once that the situation, having arisen – she was stuck with it and there was nothing she could do. We think she was in error in that regard. We can see no reason why she could not have offered to put further focused questions of a specific nature to the complainant about when he first encountered the respondent and when sexual activity first occurred. If we think prosecution counsel was in error in not seeking to reopen her examination-in-chief, then we also feel defence counsel was in error in suggesting that he had been unfairly disadvantaged in the way in which evidence had emerged and the way in which the state of the evidence had been left. Both sides must have approached the trial on the

basis that it was one where there was a significant conflict within the proposed prosecution evidence. In his statement of evidence, the complainant had said clearly and unequivocally that there was significant sexual activity over an appreciable period of time before the complainant went to St. Laurence's, but there was documentary evidence, by way of parish records and school records from St. Laurence's, to establish clearly that the respondent had not been in the parish before the complainant was placed in St. Laurence's on foot of a court order. We do not see how the defence was disadvantaged by the fact that this conflict did not emerge during the direct evidence. On the contrary, it seems to us that the defence were gifted a significant advantage. It was open to them to disclose before the jury that the complainant was saying that abuse had occurred at a time when it was impossible for that to happen. Obviously, one can never know with absolute certainty how the complainant would have responded if asked by defence counsel, "when did the first sexual activity occur?". It seems to us that the likelihood is that the complainant would have responded by giving an account along the lines of that which he had given to Gardaí when making his statement of complaint, if, unlikely as it might seem, the complainant responded by saying that sexual activity took place only when he was older and after the time when he left St. Laurence's, then, if that had occurred, the defence would have been in the highly advantageous position of being able to put it to the witness that he had said something entirely different on a previous occasion. Moreover, the defence would have been in a position to put it to the witness that he was fundamentally changing his story in circumstances where objective documentary evidence had emerged from two independent sources – parish records and St. Laurence's school records - which meant that the account he had given to Gardaí was an impossibility. Another option available to the defence was to ask investigating Gardaí whether they had taken a statement from the complainant and to bring the witness through the statement taken. That would not have offended against the hearsay rule because the defence were not seeking to establish the truth of what the complainant said, but rather, their interest was in establishing the fact that the complainant had actually said things had happened that were impossible.

18. We are of the view that the application for a directed acquittal at the conclusion of the complainant's direct evidence was unjustified, and indeed, misconceived. It follows that we believe the trial judge was in error in acceding to the application.

19. We are, therefore, of the view that the direction that was granted was wrong in law.

20. There remains for consideration the question of whether the evidence adduced in the proceedings was evidence upon which a jury might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned. Apart from formal evidence in relation to maps and photographs, the only evidence adduced was the direct evidence of the complainant. Thus, the effect of the premature application to halt the trial and for a directed acquittal is that the prosecution has been placed in a difficult, if not impossible, position in seeking to argue that the evidence which was available, including the evidence relating to the timing of the arrival of the curate in the parish, and the detention of the complainant in St. Laurence's, was such that a jury could be reasonably satisfied of the respondent's guilt. The position, therefore, is that we are satisfied there was a direction that was wrong in law, and the evidence adduced before the jury was such that on the basis of that evidence, and not having heard the other evidence available and not having had issues explored, a jury might reasonably have been satisfied at that

point of the respondent's guilt. Being so satisfied, the Court then has to consider whether it is in the interests of justice to quash the acquittal and order a retrial.

21. If we are not so satisfied, then our task is to affirm the acquittal. Subsection 12 of the 2010 Act provides that:

> "In determining whether to make an order under paragraph (a) of subsection (11) or (11)(a), the Court of Appeal or the Supreme Court, as the case may be, shall have regard to–
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> (a) whether or not it is likely that any retrial could be conducted fairly,
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> (b) the amount of time that has passed since the act or omission that gave rise to the indictment,
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> (c) the interest of any victim of the offence concerned,
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> (d) any other matter which is considered relevant to the appeal."

22. One matter we consider relevant is that we think it doubtful that a jury, which heard the available evidence, would be in fact satisfied beyond reasonable doubt of the guilt of the respondent. The conflict that would exist on the evidence between the very detailed and specific account given by the complainant of sustained, untoward sexual activity, and the objective evidence as to when the respondent was in the parish, and when there was any possibility of the complainant and respondent being in contact with each other was very stark. We are conscious of the fact that in historic sexual abuse cases, it is not at all unusual for there to be a degree of doubt or uncertainty about when abuse commenced or about its duration or whether it was uninterrupted. In particular, those areas of uncertainty and vagueness will often arise where a complainant is recalling events of early childhood. However, it seems to us that the conflict here is of an altogether different order of magnitude.

23. The other matter to which we would have regard is the fact that, had the trial proceeded in the normal way, and if there was a retrial, a jury, sworn for the purpose of the retrial, would hear the account given by the respondent when interviewed by Gardaí. The respondent was interviewed by Gardaí at Terenure Garda Station on 5th September 2019. He was interviewed in circumstances where he attended at the Garda Station, voluntarily, and so was not under arrest when interviewed and was free to leave at any time. In the course of the early interviews, in response to questions about his relationship with the complainant, he would repeatedly respond "[o]n legal advice, I've nothing to add at the moment". However, at a later stage, in the aftermath of a consultation with his solicitor, he gave an account of the nature of his interaction with the complainant. He gave an account which indicated that they had been put in contact with each other by a social worker who explained that the complainant was entitled to weekly assistance payable from the post office, which led to the respondent becoming involved in collecting the payment and making it available for collection in the parochial house. The respondent said that the complainant slept in his own house for most of the day and was out for much of the night. The complainant was rarely, if ever, in the respondent's house beyond 8pm, because, by then, he was heading out. His visits were always short, 30 minutes at most. He said that, as he and the complainant got to know each other, they embraced from time to time, but he categorically denied any allegation of sexual abuse. The respondent said the complainant did come home with him to where the respondent's family resided, but on one occasion only, and the respondent presumed

that this was near the end of his time in the parish. He describes how, on that occasion, the respondent's mother found the complainant in the car, transferring money from the respondent's coat to the complainant's pocket. The respondent's mother challenged the complainant and took the money from him; it was very embarrassing. The respondent described a similar incident occurring in the parochial house. The respondent describes contact on a sporadic basis with the complainant post-1981, having moved from the parish where he served and where untoward activity was alleged to have occurred, to a number of other duties in different parishes and locations. One incident, which probably occurred in 1984, was described, when the complainant walked the considerable distance from the city centre to where the respondent was then located, arriving cold and wet. Food was arranged for the complainant from the kitchen, while the complainant showered and put his wet clothes on the radiator. The respondent acknowledges that they sat and talked and that this led to a sexual encounter. He describes the complainant moving to England and coming home briefly on occasions, and accepts that on one occasion, there was a sexual encounter.

24. It seems to us that in deciding where the interests of justice lie, it is appropriate for us to have regard to the fact that, at any retrial, there would be two separate narratives involving quite distinct versions of events available to a jury. The jury would have the complainant's account of untoward sexual activity before and after St. Laurence's, coming to an end with the transfer of the accused to a northside parish, but also the accused's account of more limited sexual interaction after his move to Dublin's northside, including an occasion when the complainant made a visit on a return from London. At the moment, the conflict we have been describing has not really been addressed. It is not impossible that there might be an explanation. One possible explanation one can envisage is that it might be suggested that the respondent spent some time in the parish before formally being assigned to it as a curate. We refer to this only as the sort of possible explanation one could envisage and stress there is no evidence whatever in that regard. Indeed, we note that, in the course of Garda interviews, when the respondent was dealing with his background and personal circumstances, he referred to the fact that he had ministered abroad in the period running up to his assignment to a parish on the southside of Dublin, which would seem to go a distance towards excluding any suggestion of time spent in the parish prior to formal posting there.

25. The trial that took place and which has given rise to this application related to alleged events in the first half of 1977 and 1978. If a retrial was ordered, and if it took place with all possible expedition, it would be taking place 47 or 48 years after the earliest date mentioned in the indictment. As is not unusual in old cases, the complainant's account is not corroborated. There was a time when corroborative evidence, or supporting evidence, might have been available. The complainant has provided a detailed account of two visits to the home of the respondent's parents and has provided details of the sleeping arrangements on the occasion of each visit. There was a time when there was potential evidence available as to how many visits there were, when they took place and what the details were of the sleeping arrangements. If the evidence accorded with the complainant's account, that would have provided support, at least, for his narrative. If, on the other hand, that evidence accorded with the respondent's account, then that would have

offered a degree of support for the account given by the complainant when speaking to Gardaí, and, to some extent, would have served to undermine the complainant's account.

26. A further point to be considered is that the respondent has drawn attention to the fact that the judge, having decided to grant a direction, explained her thinking at a time when the complainant was present in Court. Thus, if there was a retrial, the retrial would be taking place in circumstances where this issue had been highlighted and where the complainant would have an opportunity to prepare his position in relation to the issue. While we do not entirely dismiss the significance of this argument, it is not one that weighs heavily with us. That is so because we believe that at a retrial, the complainant would still be faced with the situation that he would either stick with the account he had given to Gardaí of being abused before going to St. Laurence's, and then having to confront the documentary records, or the other option being to change his account in a fundamental fashion, and if he did that, in practice, he would have to be in a position to provide a convincing explanation as to why that was happening.

27. Overall, in the somewhat unusual circumstances of this case, we have not been persuaded that the interests of justice would be served by quashing the acquittal and ordering a retrial, and so, we reject the application on behalf of the Director and affirm the acquittal.