



THE COURT OF APPEAL

[2024] IECA 291

Record Number: CCAT0077/2023

**Edwards J.
McCarthy J.
Kennedy J.**

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT/

- AND -

S.C.

APPELLANT

**JUDGMENT of the Court delivered on the 4th day of November 2024 by
Ms. Justice Isobel Kennedy.**

1. This is an appeal against conviction. On the 18th of October 2022, the appellant was convicted of 6 counts of indecent assault contrary to common law, 14 counts of sexual assault contrary to s.2 of the Criminal Law (Rape) (Amendment) Act, 1990, and 13 counts of rape contrary to s.4 of the Criminal Law (Rape) (Amendment) Act 1990.

Factual Background

2. The complainant and the respondent are first cousins. They lived in two separate, but adjacent houses, for the period of the alleged offending. The appellant has had cerebral palsy from birth and was cared for by his aunt and uncle. The complainant lived in an adjacent house. The evidence before the jury was that the two families were close, and that there was regular movement between the houses by family members.

3. The complainant alleges that he was sexually abused by the appellant on an ongoing basis for 10 years, beginning when the complainant was 5 years of age, and the appellant was 18 years of age.

4. At trial, the complainant gave evidence that he regularly went over to the appellant's house and into his bedroom where the offending occurred, under various pretexts, including to play video games, or to keep the appellant company when his aunt and uncle were not home. The offending began at the age of 5 with sexual assault, continuing over time and occurring approximately twice a week, eventually escalating to s.4 Rape. The offending ceased when the complainant was approximately 14 to 15 years of age, when he began avoiding the appellant.

5. The complainant gave evidence that he experienced distress throughout his life, which escalated in 2019, at which point he was referred for counselling. When he first attended for counselling, he said he was not sexually abused. He explained in direct examination that he was unable to bring himself to say this. The complainant was cross examined on this issue, and it was suggested by counsel for the appellant that he attended counselling due to financial pressure.

6. On re-examination it was established that the complainant, at a later stage of counselling in 2019, disclosed that he had been sexually abused.

7. In July 2019, the complainant told his mother about the offending. The complainant later confronted his aunt, uncle and the appellant. The appellant denied the offending, and the complainant punched him.

8. The appellant denied the allegations and it was contended: that family members regularly entered the appellants room and never noticed the offending, his aunt effectively provided 24-hour care to him, the computer on which they played video games was in the kitchen rather than the appellant's bedroom, and that the appellant had significant mobility difficulties and was not physically able to commit the offending alleged.

9. The trial judge declined to give a corroboration warning and while three grounds were originally filed, this appeal only concerns the refusal of a warning.

Ground of Appeal

10. The only ground put forward by the appellant during oral argument was the following: -

- (1) *The learned Trial Judge erred in law or in fact or on a mixed question of law and fact in failing to give a corroboration warning in light of the strong evidential basis for such a warning.*

Submissions of the Appellant

11. The appellant submits that the trial judge erroneously conflated the issues of the delay and corroboration warnings, and should have considered them as separate issues.

12. The appellant highlights three factors which it is contended mandated a corroboration warning: a) difficulties inherent in defending allegations of antiquity, b) the absence of any recent complaint evidence, and, most significantly, c) the complainant's denial of having been the victim of sexual abuse when first asked

by his counsellor. It is said that these factors, and in particular the latter factor, make this case exceptional and warranted a warning on corroboration.

Submissions of the Respondent

13. The respondent submits that a corroboration warning was not warranted on the evidence. It is argued that an appellate court should be very slow to intervene in the discretion of a trial judge to issue a corroboration warning, unless it is demonstrated that it was exercised on a legally incorrect basis or is patently wrong in fact. Ref: People (DPP) v Ferris [2008] 1 IR 1, People (DPP) v RA IECA 110, and People (DPP) v DN [2018] IECA 279.

14. The respondent also submits that the factors relied upon by the appellant do not demonstrate the need for a warning or that there was evidence the trial judge strayed outside her discretion.

Discussion and Determination

15. It is well settled on the authorities that an appellate Court should be slow to intervene in the exercise of discretion by a trial judge as to whether to give a corroboration warning. The position is that this Court will only intervene when the decision was made on an incorrect legal basis or was patently wrong in fact.

16. It is quite clear that the trial judge considered first, the aspect of a delay warning on which there was no dispute and then moved on to consider a corroboration warning. The trial was of short duration and the submissions made on this aspect were succinct. This was not a case of complexity. It is apparent that the judge was aware of the jurisprudence and pointed to the need for something of an evidential nature which warrants a corroboration warning. She decided that the real issue was one of delay which could be addressed by a delay warning. We do not agree that the judge conflated the issue of delay and corroboration. She considered each separately.

17. The judge had observed the evidence of the complainant in direct, cross examination and re-examination. The issue of the complainant not informing the counsellor at the outset of the sexual abuse was fully explained in evidence and does not come anywhere close to mandating a warning.

18. We do not find the trial judge's decision to decline to give a corroboration warning in any way unusual. This was a decision open to her on the evidence and entirely within her discretion. Accordingly, we reject the ground of appeal, and the appeal is dismissed.