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| PARTIES: | HALLETT, John Francis<br><br>v<br><br>THE QUEEN |
| TITLE OF COURT: | COURT OF CRIMINAL APPEAL |
| JURISDICTION: | COURT OF CRIMINAL APPEAL<br>EXERCISING TERRITORY<br>JURISDICTION |
| FILE NO: | CA 9 of 1995 |
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| JUDGMENT OF: | Gallop, Angel and Thomas JJ |

**CATCHWORDS:**

Appeal - Criminal Law and Procedure - Evidence - Proof of particular matters - Corroboration - Accused's false statements - Whether statement to jury that such statements were corroborative amounts to - Misdirection by trial judge - Convictions quashed

Appeal - Criminal Law and Procedure - Evidence - Proof of particular matters - Failure to call witness - Verdict of jury unsafe - Convictions quashed

Sexual Offences (Evidence and Procedure) Act, s4(5)(b)
Criminal Code NT, ss127(1)(b), 126
*Edwards v The Queen* (1993) 178 CLR 193, applied
*R v Lucas (Ruth)* [1981] QB 720, applied
*M v The Queen* (1994) 181 CLR 487, applied
*Whitehorne v The Queen* (1983) 152 CLR, approved

*Chamberlain v The Queen [No 2]* (1984) 153 CLR, approved
*Knight v The Queen* (1992) 175 CLR 495, approved

**REPRESENTATION:**

*Counsel:*

Appellant: R Mulholland QC

Respondent: C Cato

*Solicitors:*

Appellant: Withnall Cavanagh & Co

Respondent: Director of Public Prosecutions

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IN THE COURT OF CRIMINAL
APPEAL OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. CA 9 of 1995

BETWEEN:

JOHN FRANCIS HALLETT

Appellant

AND:

THE QUEEN

Respondent

CORAM: GALLOP, ANGEL and THOMAS JJ.

REASONS FOR JUDGMENT

(Delivered 13 October 1995)

**GALLOP J:** On 6 October 1995 the Court announced its unanimous decision that the appeal in this matter was allowed and the convictions quashed. The Court indicated that it would deliver its reasons later. These are my reasons for joining in the orders made.

On 2 May 1995 the appellant was arraigned on an indictment charging him with seven offences of committing an act of gross indecency with a male contrary to s.127(1)(b) of the **Criminal Code**. Upon his arraignment he pleaded not guilty. Counts 1 and 4 of the indictment alleged a

circumstance of aggravation, namely that the act of gross indecency was committed with a male under the age of 14 years, but only count 1 was left to the jury on this basis. The jury returned verdicts of guilty on counts 1 and 5 and acquitted the accused of the other counts in the indictment.

On 25 May 1995 the primary judge sentenced the appellant to five years' imprisonment on count 1 and three years' imprisonment on count 5 to be served concurrently, and fixed a non-parole period of two years to commence from 17 May 1995.

The first three grounds of appeal relied upon by the appellant related to two statements made by the appellant in a record of interview with police. The grounds were that the two statements, namely that he had not changed the lock on his bedroom door and that no children had visited his bedroom, were not capable of amounting to corroboration of the complainants' evidence, and the two statements of the appellant in the record of interview and the evidence of certain witnesses in relation to those two topics were inadmissible and should have been excluded as a matter of judicial discretion on the basis that the evidence had no or no significant evidentiary value in comparison with the prejudicial effect. There was also a ground of appeal directed to the terms of the trial judge's direction on the subject.

There was a further ground of appeal that the verdicts of guilty on counts 1 and 5 are unsafe and unsatisfactory and, lastly, there was an appeal against severity of sentence.

Grounds 1-3

The Crown case in relation to counts 1 and 5 was that the accused caused the respective complainants to masturbate him in his bedroom at the Christian Brothers' house at Nguiu, Bathurst Island. Part of the Crown case consisted of two oral statements which the appellant made during a police interview. The prosecution contended that the statements were false and capable of corroborating the complainants' evidence.

The first statement was that the appellant at no time changed the lock on his bedroom door. The record of interview conducted on 24 January 1995 in the relevant parts reads as follows:

"CAMPBELL: Okay. Just in regards to your bedroom, do you have a lock on the door of that bedroom?
HALLETT: Um, yes, there's locks on the doors of all the rooms in the house.

CAMPBELL: Did you have the doorlock changed to your room?
HALLETT: I had all the locks in the school changed to master key.

CAMPBELL: Yes; what I'm saying is, there's a master key for all those locks?
HALLETT: There's a master key for every lock.

CAMPBELL: Was your lock to your bedroom changed so that the master key that fitted the other locks would not fit it?

HALLETT: No. The master - the master key fitted all the locks in the house, and all the locks in the school.

CAMPBELL: Are you sure about that?

HALLETT: I am absolutely positive about that.

...

CAMPBELL: Well, was anybody else specifically given a key, like a janitor or a caretaker or a gardener or - or ---

HALLETT: Yes, the - the - the yardman, caretaker/janitor he had a - one of the master keys.

CAMPBELL: Can you tell me the name of that person, please?

HALLETT: Oh, now, when? Last year or year before or - - -

CAMPBELL: 1992?

HALLETT: 1992, was David - his name just escapes me at the moment - David Stephenson, sorry.

CAMPBELL: And 1991, can you remember back then?

HALLETT: I'm just not exactly sure when David started work; I think it was the beginning of 1991 but I didn't - I didn't give him a master key straight off. He had a bunch of keys and I'm not sure - think it may have been halfway through 1991 that I gave him the - yes, it was halfway through '91 that I gave him the - the master key so we had more cut at that stage.

...

SPRANKLIN: Were any locks changed or when were they master keyed?

HALLETT: I had them done just after I took over - it must have been just after I took over as principal, not as - not acting, I didn't make any changes to the school while I was acting, um, just ---

CAMPBELL: Did you have a different lock on your door to the other doors of the Brothers' residence?

HALLETT: No, I didn't. Well, they - they were still on a master key which all the

brothers had, um, you know, we just didn't - the only - the only change that I made was when I relocked the - the whole school and house, was to um, to bring everything sort of back into line right around the school and the house and um, there was certainly nothing different about the locks that were on the room and the doors in my room.

CAMPBELL: All right?

HALLETT: And I think, you know, if you looked at the doors today unless Peter has changed them since I doubt very much that they'd be any different.

...

CAMPBELL: Okay. Is there anything you'd like to tell me or say in relation to what I've put to you?

HALLETT: I have a number of points to make, yes. Um, I've realised under reflection that - um, Adama has been in my bedroom. Um, from the time when she was about one year old her parents - um, used to leave her at the Brothers' house because I was a member of that particular family. They would ask me to look after her while they went to the club in the afternoon. Not every time they went to the club, occasionally when they went to the club. In the nature of young Tiwi children, Adama would just follow the person who was looking after her wherever they went. So that, in the nature of that, she would've - um, followed me into the bedroom if I went into the bedroom. So, I can't say - um, absolutely definitely that she did not go into the bedroom at this stage, even though I did deny that previously. Um, because of the nature of that relationship I had in that particular family - um, there may have been some jealousy by other kids - um, because of the attention that was given to the children in that particular family and - um, I would put that down as one possible reason for some of the allegations that have been made against me.

CAMPBELL: Yes.

HALLETT: The second concerns the lock on the door of my bedroom. Um, I categorically deny that I ever changed the lock on that bedroom and I would like to refer you to -

um, records held at Pularumpi Police Station, I would imagine, referring to a break-in of the Brothers' house during the Christmas holidays in 1990. During that period, Mr Roy Moore was asked to look after the Brothers' house. I gave him my keys and I emphasise 'my keys' which contained the master key for both the house and the school. During that period, Mr Moore had occasion to ring me - um, down here at the Coast and inform me that children had broken into the Brothers' house, property was removed from the Brothers' house and I requested that he check all of the rooms in the Brothers' house to ascertain whether anything else had been disturbed or removed. Roy had been through the house - this is Mr Moore had been through the house previously with me. He rang back and informed me he had been through every room of the house and I repeat, every room of the house, and that he was unable to find any other disturbance in the house other than the ones he had noted previously."

The second statement in the same record of interview was that children did not visit his bedroom. The relevant passages read as follows:

"CAMPBELL: Were there any children at any stage that you used to have constant contact with that would be over there?

HALLETT: Now, what do you mean by constant contact?

CAMPBELL: Well - - -

HALLETT: What do you mean by over there?

CAMPBELL: Oh, sorry, I'll be more specific. At the Brothers' house were there any children that were there sort of on a regular basis?

HALLETT: On a semi-regular basis.

CAMPBELL: Mm, what do you mean, semi-regular?

HALLETT: Maybe oh, couple of times a week.

CAMPBELL: And who would they be?

HALLETT: Mostly members of my family, my adopted family

CAMPBELL: Can you tell me who they - they are?
HALLETT: Um, specifically, Adama Tipiloura, Cipriana Tipiloura, Cipriana Alungura.

...

CAMPBELL: Mm, did you ever have any of them in your bedroom?
HALLETT: No, not at any stage.

CAMPBELL: Never?
HALLETT: No.

CAMPBELL: You're positive about that?
HALLETT: Yes.

...

HALLETT: I've indicated to you already that Adama and Cipriana used to come up to the house occasionally - ah, Adama by the way is the daughter of Gerard and Benedetti, not Albertus and Asunta; she's their youngest daughter and she is part of my family on the island.

CAMPBELL: Did you ever have Adama in your bedroom?
HALLETT: No, I didn't have Adama in my bedroom.

CAMPBELL: Did you ever have any children at all in your bedroom?
HALLETT: No, I didn't have any children in my bedroom.

MOSELEY: Okay; what - what do you call the house at Bathurst Island?
HALLETT: Brothers' residence.

MOSELEY: Brothers' residence?
HALLETT: Yes."

There is a further passage on p.489 of the Appeal Book which is produced above in relation to the statement that at no time did the appellant change the locks on his bedroom door.

The trial judge's directions

The trial judge overruled defence objections to the evidence and directed the jury that the statements could be used as corroboration:

> "That being the case, you may think it is unsafe to convict the accused on the evidence of a particular complainant unless you find that his evidence is confirmed in a material way by independent evidence. And by 'independent evidence' I mean evidence from a source other than the complainant which supports his evidence in a relevant way, and which tends to implicate the accused.
>
> It is open to you to convict the accused on the complainant's evidence alone if you are absolutely satisfied with its substantial truth. But you may think, in the circumstances of this case, that corroborative evidence should be looked for and discovered. Now in this case there is evidence which is capable of providing independent corroboration of the complainant's evidence. Whether you accept this evidence and whether you regard it as corroborative are matters entirely for you.
>
> The evidence in question is to be found in two statements made by the accused in the video taped record of interview which the Crown says are wilfully false statements made in circumstances from which a consciousness of guilt on the accused's part should be inferred. The first statement is to the effect that the accused at no time changed the lock on his bedroom door. This statement has been repeated in the accused's evidence.
>
> The relevance of the statement to the issue of guilt is, you may think, apparent. If you were satisfied that the accused changed the lock on his door, it is open to you to infer that he did so to restrict access to his room by unwanted visitors. The first question is whether you are satisfied that the statement is false. The answer to this question depends upon what inference, if any, you are prepared to draw from Stevenson's evidence.
>
> If you are satisfied that Stevenson was using a master key at Christmas 1991 and was unable to unlock the blue door to bedroom four, but was able to do so with the same key in mid-1993, it is open to you to infer that there had been a change of locks by the accused in the meantime. To do so you would have to reject as a reasonable possibility that at Christmas 1991 the lock

merely malfunctioned because of the effect of the wet season, or for some other reason.

Even if you are satisfied that the accused told a wilful lie about the lock, you will have to consider whether it is a reasonable possibility that, although not guilty, he lied because of panic or because he thought that for some reason he should not admit a change of locks. To be incriminating, the Crown must prove that the accused made a wilfully false statement, actuated by a fear of implicating himself in a crime which he had committed.

Now, as you can see, there are a number of matters about which you will have to be satisfied before drawing the guilty inference. If you are so satisfied, you may treat that finding as providing corroboration of the evidence of any particular complainant in the sense that it makes the complainant's account more likely to be true.

I repeat that whether you draw the guilty inference and, if so, whether you regard it as supportive of the complainants' evidence, are entirely matters for you.

The second statement of the accused, which you may consider in this connection, is his statement that no children ever visited his bedroom. This statement was qualified later by a concession that Adama may have followed the accused into his bedroom when she was left at the house by her parents when she was young. You will find that passage at the transcript of the record of interview, page 21.

Now, the statement that children did not visit the accused's bedroom is a statement relevant to the issue of guilt. It bears upon the issue of the accused's opportunity to commit the crimes. In this instance the accused has conceded that the statement is false, but says that it was not wilfully false. He says, in substance, that he was upset over the making of the allegations by the police and he misunderstood the context in which the question was asked.

He said, in substance, that he thought he was being asked about visits to his room for sexual purposes, whereas the question was in fact quite general. His explanation is contained in a passage which Mr Mulholland recently read to you at pages 396-7 of the transcript, which you will remember.

You will remember he first said that this was the first time the allegations had been made. He later conceded that he had had notice many months earlier of the general nature of the allegations, and the fact seems to have been that he had gone along with a solicitor and

a member of his brotherhood for the interview, and it is in that setting that you will have to ask yourself what you make of the explanation that he gives for the admittedly false statement.

Now, the statement that children did not visit the accused's bedroom is, as I say, a statement relevant to the issue of guilt. If you accept the explanation given by the accused, at least as a reasonable possibility, the accused's mis-statement ceases to have any incriminating potential. If, however, you reject the accused's explanation, it is open to you to infer that this statement was a wilful lie.

If you have reached this point, you will consider whether the wilful lie may be reasonably explainable on some innocent basis such as irrational panic, in which event it will lose its incriminating character. If you reject that innocent explanation, you may infer that the statement was a wilful lie actuated by a fear that to tell the truth would tend to implicate the accused in the crime known by him to have been committed."

The first statement

The Crown sought to establish the falsity of the statement that the appellant at no time changed the lock on his bedroom door by the evidence of Stevenson. He gave evidence that he commenced work as a cleaner, maintenance person for Xavier Boys School in approximately July 1991 and left after two years four months in 1993. He said that he would collect freight and deliver it to the teachers and the Brothers' house weekly, and the appellant had given him a master key to the Brothers' residence which would open 98% of the locks at the school.

He said that after he had been contacted in relation to a break-in at Christmas 1991 he had gone to the house the next day and checked all the rooms but had been unable to open the door to the appellant's room. In 1993 he had been able to

enter this room using the same key. He said that he had seen children at the Brothers' house on numerous occasions "outside on the back verandah ... I seen children in the loungeroom, in the kitchen area and on four or five times in John's bedroom". He had no idea of the sex of the children he had seen in the appellant's bedroom but said their ages were 4, 5, 6 or 7, "around that area".

In cross-examination he agreed that the appellant had taken the master key back from him after a break-in at the school when money was stolen but said that the appellant had given him the key back about a week later. He denied the suggestion that he did not receive the grand master key back until after the Christmas 1991 break-in.

He said he had gone alone to the Brother's house the day after the Christmas 1991 break-in. He did not report not being able to get into the appellant's bedroom to anyone. He said he could not be sure whether he tried a key on the other bedroom doors or not. He had not tried the hallway door to the appellant's bedroom because he thought that that was a cupboard. The door to the appellant's room which he had tried was down the corridor past the kitchen. He agreed to having experienced difficulty in unlocking doors during the wet season, but stated that he had tried this particular door "for about 20 or 30 seconds". He said that he had assumed it was the laundry door and did not know it was the appellant's

bedroom at that time. He admitted to previous convictions for assault, breaking entering and stealing and larceny.

Before turning to the probative value of Stevenson's evidence, it is appropriate to repeat what the High court has said most recently on whether an accused's false statements are capable of amounting to corroboration. In *Edwards v The Queen* (1993) 178 CLR 193 the majority (Deane, Dawson and Gaudron JJ) repeated that in order to amount to corroboration lies must satisfy the four requirements identified in *Reg v Lucas (Ruth)* ([1981] QB 720 at 724, namely that the lies must:

(1) be deliberate;

(2) relate to a material issue;

(3) spring from "a realisation of guilt and a fear of the truth"; and

(4) be clearly shown to be lies by evidence other than that to be corroborated.

After discussing what is involved in telling a lie, the majority of the High Court went on to say that a lie told by an accused may go further than merely affect his credit. It may, in limited circumstances amount to conduct which is inconsistent with innocence and amount therefore to an implied admission of guilt. In this way the telling of a lie may constitute evidence. When it does so, it may amount to corroboration provided that it is not necessary to rely upon the evidence to be corroborated to establish the lie.

In regard to the first statement, I have come to the conclusion that it could not, even if it was revealed as a lie, be a lie with any probative value. If it was a lie, it was a lie not about the occurrence of gross indecency in the bedroom with either of the victims. At most it was a lie about whether the lock on the bedroom door had been changed by the appellant. Whether the lock had been changed was not a material issue in the case because there was no evidence that the complainants or any other person had been locked inside the appellant's bedroom at any time, and no evidence that suggested that unwelcome visitors might otherwise have entered the room. It is, in any event, even more fanciful to suggest that the appellant told a lie about changing the locks because, in the words of *The Queen v Lucas*, of a realisation of guilt and a fear of the truth.

There is also much force in the submission on behalf of the appellant that Stevenson's evidence was incapable of implicating the appellant in the offences charged because his evidence related to his inability to make the key work in the course of an incident during the 1991 Christmas holidays, a period well after the earliest period specified in each count in the indictment.

The second statement

The second false statement relied upon by the Crown and put to the jury as capable of amounting to corroboration was that children did not visit the appellant's bedroom. The

prosecution relied upon the evidence of witnesses Moar (misspelt in the transcript passages above), Stevenson, Minnecon and Coe.

Moar gave evidence that he was employed from time to time on building projects for the Christian Brothers. He was employed on the Island for approximately five years and left in 1992. He said that in the 1991/92 Christmas holidays the appellant had asked him to keep an eye on the house and he was given a key. He detected a break-in of the house on a Friday night and checked the rooms. He said that they were locked but then added that he did not remember whether he had tried the key. That night he contacted the police aid and they checked the rooms. He also telephoned the police officer from Garden Point and the same evening he contacted Stevenson, the janitor. He saw Stevenson the next day and he had already been to the house.

He gave evidence that he had seen children at the Brothers' residence on several occasions. They were "usually around the house and several times inside the house". He said he had seen children watching television in the loungeroom and on four occasions had seen male children coming from the appellant's bedroom. He was unable to recall whether on the occasions he was aware of children in the appellant's room he saw or heard any other people in the house.

In cross-examination he said that the occasions he had seen small children in the Brothers' house occurred over a period of five years. It would appear that he himself was a frequent visitor. He had a vague recollection of a break-in at the Brothers' house during the previous Christmas holidays (1990/91) when entry had been obtained through the louvres at the front of the house and a stereo and beer were taken. At the time of the first break-in he had a master key to the house and agreed that he had telephoned the appellant, who was on holidays, and had a conversation with him along the lines of informing him about the break-in, the appellant inquiring if he had checked all the rooms because he was concerned about the guns in his room. He went on to give evidence about telephoning the appellant again to say that he had checked all the rooms and that there was nothing missing so far as he could tell.

Minnecon gave evidence that he was employed as a self-employed painter on the Island from 1989 to 1993 and from time to time worked at the school and the Christian Brothers' house. In 1993, during which holiday time he was helping the appellant paint the kitchen, hallway and an open area at the house, he said that he saw some young children between 4 and 7 years old, he could not say whether they were male or female, in the appellant's bedroom. He said he visited the house quite a few times and normally saw children outside on the patio.

In cross-examination he said he was unable to say how long the children were in the appellant's bedroom on the occasion he mentioned.

Coe, a Christian Brother, gave evidence that he was at Bathurst Island from the middle of 1991 to the end of 1994. Towards the end of 1992 he became Deputy Principal and received a master key to the school and Brothers' house. There were often children around the house - "the house is near the school and there were kids that would come and go for that reason, also around the house itself there were kids ... one of the things was that the Brother gave haircuts and kids would come for those and also there were little kids that were sort of friends with John [the appellant] that would be around as well". He saw children inside the house in the loungeroom area.

It is not necessary to repeat all that he said in cross-examination. He identified the Tipiloura children as children he had seen in the appellant's room once or twice when the appellant had brought sweets or toys for them from Darwin.

The use of the appellant's statement that children did not visit his bedroom as corroborative evidence was, in my opinion, wrong. It was not even established that the appellant deliberately lied in that respect, having regard to his explanation and the nature of the evidence which I have

set out above. In any event, the statement did not relate to a material issue. It did not concern the complainants, who were the only witnesses to attest that they had ever gone to the appellant's bedroom. Furthermore, there was no suggestion of a child going to the appellant's bedroom for other than innocent purposes.

It was submitted on behalf of the Crown that the evidence contradicting the appellant's statement afforded evidence of opportunity. I reject that submission in the circumstances of this case. The presence of the children around the house was not in itself sinister or suspicious and, in any event, did not relate to the complainants. It did not suggest knowledge of persons connected with the offences in a way that implicated the appellant. When he made the statement during the course of the record of interview, the appellant was not questioned specifically about the complainants. Hence his answer about children generally was precisely that. Not only was he not asked about the complainants being in the bedroom, but none of the witnesses who said they saw children in the room said that they ever saw the complainants. The children described by those witnesses appear to have been of a much younger age than the respective complainants.

In my opinion it was a misdirection to tell the jury that as a matter of law the second statement about children not being in the room could amount to corroboration.

Ground 4

The last ground of appeal against convictions is that the convictions on counts 1 and 5 are unsafe and unsatisfactory. In the most recent case on this subject the High Court has repeated what it has said in earlier cases. In *M v The Queen* (1994) 181 CLR 487 the majority (Mason CJ, Deane, Dawson and Toohey JJ) reiterated the principles as follows:

> "Where, notwithstanding that as a matter of law there is evidence to sustain a verdict, a court of criminal appeal is asked to conclude that the verdict is unsafe or unsatisfactory, the question which the court must ask itself is whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty (see *Whitehorn v. The Queen* (1983) 152 CLR at p.686; *Chamberlain v. The Queen [No. 2]* (1984) 153 CLR at p.532; *Knight v. The Queen* (1992) 175 CLR 495 at pp.504-505, 511). But in answering that question the court must not disregard or discount either the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence, or the consideration that the jury has had the benefit of having seen and heard the witnesses. On the contrary, the court must pay full regard to those considerations (*Chamberlain v. The Queen [No. 2]* (1984) 153 CLR at p.621)."

Thus instructed, I proceed to consider whether the verdicts were unsafe and unsatisfactory. It was submitted on behalf of the appellant that there were a number of inconsistencies and inadequacies in the evidence of the victims referred to in counts 1 and 5, and that their evidence lacked probative force. There is some merit in that submission but, notwithstanding those inconsistencies and inadequacies, I would not be prepared to conclude that the verdicts were unsafe or unsatisfactory.

The matter which has caused me most concern is that it was the Crown case that when the respective offences were committed they were committed in public. In order to establish that element it was necessary for the Crown to establish the presence of a person not a party to the act (s.126 of the **Criminal Code**). The prosecution gave particulars of the names of the persons other than the appellant and the complainants whom it was alleged were present at the time of the relevant acts. Yet the prosecution did not call any of the eight persons named in the particulars relating to counts 1 and 5 to give evidence and did not explain at the trial its reasons for not calling those persons.

That eight persons who may have witnessed what the Crown was alleging the appellant had done and yet not called to give evidence on behalf of the Crown is surprising in itself. But the absence of an explanation is astonishing. At the hearing of the appeal before this Court, counsel for the respondent proffered the explanation that the witnesses were not called to give evidence because the Crown did not have their evidence and did not know what they would have said about the Crown allegations. I agree with the submission on behalf of the appellant that this is an even more astonishing situation. It amounts to a statement by the Crown that the investigating police did not even make inquiry or investigation from the eight named persons. If that is the way crime is to be investigated then the consequences may well

be that any resulting conviction of that crime is unsafe and unsatisfactory.

To my mind, the failure to call as witnesses any of those persons named whom the Crown knew were present and the further failure to provide any explanation at the trial for the Crown's failure to do so is such a significant matter that the convictions cannot be allowed to stand.

However, there are other cogent matters. In relation to count 1, the offence was alleged to have taken place between 1 January 1989 and 13 April 1992. In relation to count 5, the offence is alleged to have taken place between 1 January 1990 and 28 February 1993 (amended from 31 December 1992). There was no recent complaint by either complainant and the absence of recent complaint remained unexplained at the trial. Admittedly the absence of recent complaint by either complainant would not be fatal to the acceptance of the complainants' evidence. Delay does not necessarily indicate that the allegation is false and there may be good reasons why a victim of a sexual offence may hesitate in complaining about it. Indeed, where evidence is given which tends to suggest that there was delay in making a complaint about an alleged sexual offence by the person against whom the offence is alleged to have been committed, the trial judge is now obliged to warn the jury that delay in complaining does not necessarily indicate that the allegation is false, and inform the jury that there may be good reasons why a victim of a

sexual offence may hesitate in complaining about it (see **Sexual Offences (Evidence and Procedure) Act**, s.4(5)(b)). But delay and absence of explanation for delay are still factors to be considered in relation to verdicts which may be unsafe or unsatisfactory.

The other factors that I would take into account in concluding that the convictions are unsafe or unsatisfactory are that the circumstances gave rise to a reasonable possibility of the contamination of the complainants' evidence from outside influence, which was made more likely by the fact that similar sexual activity was not uncommon among young people on the Island. The reasonable possibility of collaboration, concoction and/or contamination from outside sources was recognised in cross-examination by investigating police officer, Detective Sergeant Campbell. There was evidence as to the other matter from witnesses Cantilla and Munkara as well as the accused.

There was unchallenged evidence of the appellant's good character. That would not cause me any concern about whether it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty, but it is a factor in the circumstances of the case.

The other matter about which there was no dispute is that after the appellant was questioned by police in January 1994 he was charged with 27 offences. All 27 charges were

withdrawn at the commencement of the committal proceedings in May 1994 and the appellant was charged with 72 offences. The committing magistrate found that there was insufficient evidence on 55 of those charges, but committed the appellant for trial on about 200 odd charges disclosed by the evidence. Two indictments came into existence, one charging two counts and the other 12 counts subsequently reduced to seven, and it was upon that indictment that the convictions now under review were recorded. At the time of the appellant being sentenced on 25 May 1994 notice was given of a further indictment in respect of another complainant containing three counts.

As to the actual verdicts, the jury indicated in the course of the trial and before ultimately delivering its verdict, that it was deadlocked in relation to four counts in the indictment. Ultimately, it by majority acquitted on two counts and convicted on counts 1 and 5. There is much force in the submission on behalf of the appellant that the verdicts on those counts bear some appearance of a compromise.

It is for those reasons that I joined in the orders of the Court that the appeal be allowed and the convictions quashed.

**ANGEL J:** I joined in the judgment that the appeal be allowed and the convictions quashed because I was of the view that neither the plaintiff's statement to police denying he had changed the locks to his bedroom, nor his statement to police denying having children in his bedroom, could, at law, be corroborative of his guilt. If those statements were lies, they did not relate to a material issue because the telling of them was not explicable only on the basis that the truth would implicate the appellant in the offences for which he was charged. There was nothing to suggest the appellant, in making those statements, was acting as if he were guilty or conscious that if he told the truth, the truth would convict him: *Edwards v R* (1993) 178 CLR 193 at 209.

I, too, was of the view that on the whole of the evidence it was not open to the jury to be satisfied beyond reasonable doubt that the accused was guilty and that the verdicts were, in all the circumstances, unsafe and unsatisfactory. I do not wish to add to the reasons of Gallop J for reaching that conclusion.

**THOMAS J:** I have read the Reasons for Judgment of Gallop J. I agree with his Reasons and have nothing to add.

I agreed with the orders of the Court that the appeal be allowed and the convictions quashed.