SUPREME COURT OF QUEENSLAND

CITATION:	*R v LAK* [2018] QCA 30
PARTIES:	**R** **v** **LAK** (appellant)
FILE NO/S:	CA No 220 of 2017 DC No 234 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	District Court at Maroochydore – Date of Conviction: 14 September 2017 (McGill SC DCJ)
DELIVERED ON:	9 March 2018
DELIVERED AT:	Brisbane
HEARING DATE:	14 February 2018
JUDGES:	Sofronoff P and Gotterson and Philippides JJA
ORDER:	**The appeal against conviction should be dismissed.**
CATCHWORDS:	CRIMINAL LAW – PROCEDURE – MISCELLANEOUS POWERS OF COURTS AND JUDGES – SUMMING UP – where the appellant was convicted of two counts of indecent treatment of a child under 16, under 12 – where the jury requested part of the complainant's evidence relating to those counts be replayed – where requested evidence and cross examination evidence replayed – where the primary judge did not warn the jury not to place undue weight on the evidence of the complainant which was replayed – whether failure to give such a direction resulted in a miscarriage of justice CRIMINAL LAW – PROCEDURE – VERDICT – INCONSISTENT, AMBIGUOUS AND MEANINGLESS VERDICT – where the appellant was charged with four counts of indecent treatment of a child under 16, under 12 – where the appellant was convicted on counts 3 and 4 and acquitted on counts 1 and 2 – whether the verdicts were so inconsistent as to represent a miscarriage of justice *Evidence Act* 1977 (Qld), s 93A *Gately v The Queen* (2007) 232 CLR 208; [2007] HCA 55, considered *R v Ali* [2015] QCA 191, considered *R v DAJ* [2005] QCA 40, cited *R v FAE* [2014] QCA 69, cited

R v GAO [2012] QCA 54, cited
R v GAW [2015] QCA 166, cited
R v H [1999] 2 Qd R 283; [1998] QCA 348, cited
R v SCG (2014) 241 A Crim R 508; [2014] QCA 118, applied

COUNSEL: R M O'Gorman for the appellant
G P Cash QC for the respondent

SOLICITORS: Aitken Whyte Lawyers for the appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **SOFRONOFF P:** I agree with Philippides JA.

[2] **GOTTERSON JA:** I agree with the order proposed by Philippides JA and with the reasons given by her Honour.

[3] **PHILIPPIDES JA:** The appellant was charged with four offences of indecent treatment of a child under 16 and under 12, who was, to the appellant's knowledge, a lineal descendant. Each offence charged was a domestic violence offence. The offences were alleged to have been committed between 28 July and 2 August 2014 when the appellant (the complainant's paternal grandfather) and his wife (the complainant's paternal grandmother) were visiting and staying with their son (the complainant's father) at the Sunshine Coast, Queensland. The charges alleged indecent treatment by the appellant of his five year old granddaughter as follows:

- Count one alleged the appellant put the complainant's hand on his penis when she climbed into bed to greet him one morning.
- Count two alleged the appellant exposed and put the complainant's hand on his penis when they were near a bakery at Coolum.
- Counts three and four alleged the appellant twice put the complainant's hand on his penis when they were together on the balcony of the appellant's son's house where they were staying.

[4] The evidence in the trial took place over two days commencing on 11 September 2017. Each of the counts depended on the complainant's evidence. The complainant's evidence at trial took the form of two police interviews, admitted pursuant to s 93A of the *Evidence Act* 1977 (Qld), and her pre-recorded evidence. The complainant's two police interviews were played to the jury on the first day of trial. The pre-recorded cross examination of the complainant was played immediately afterwards, also on the first day. The prosecution called the complainant's mother, her father, her maternal grandmother, the appellant's wife and the police officer who conducted the interviews, Detective Senior Constable Strong. The defence did not give or call evidence.

[5] After the jury retired to consider its verdicts on 13 September 2017, the jury asked that the part of the complainant's evidence from the second police interview, which related to counts 3 and 4, be replayed. With counsel's agreement, the trial judge directed that the requested part of the complainant's evidence be replayed, as well as the part of the complainant's pre-recorded cross examination evidence

concerning those counts. Upon further deliberation, the jury convicted the appellant on counts 3 and 4 and acquitted him on counts 1 and 2.

[6] The appellant appeals against his conviction on counts 3 and 4 on the grounds that they are unsafe and unsatisfactory because of:

(a) the failure of the trial judge to warn the jury not to place undue weight on the evidence of the complainant, which related to counts 3 and 4, when that evidence was replayed to them after they had retired to consider their verdicts; and

(b) the inconsistency between the appellant's conviction on counts 3 and 4 and his acquittal on counts 1 and 2.

The evidence

[7] On the occasion that the complainant visited her father's house, when the appellant and his wife were staying there, her parents had separated. Following the visit, on 1 August 2014, the complainant was at her mother's house and made disclosures to her mother and maternal grandmother to the effect that she had seen and touched the appellant's penis. The appellant and his wife were still staying with the complainant's father at that time.

[8] The next morning, 2 August 2014, the complainant was taken to the Maroochydore police station where she was questioned by a police officer. In a police interview conducted that day, the complainant disclosed that the appellant had grabbed her hand and put it on his penis one evening when she and the appellant were sitting on a balcony at her father's house. She said that her father, paternal grandmother, father's partner and two sons were inside the house. In a second police interview with the complainant conducted on 15 February 2015, the complainant referred to that incident and said that the touching took place and then ceased when her father or paternal grandmother (or perhaps both) came onto the balcony and that it continued when they went back inside. Those incidents, alleged to have occurred on the balcony, constituted counts 3 and 4.

[9] It was during the second police interview that the complainant described another occasion when she had stayed at her father's house. She said that in the morning she had gone to say goodbye to her grandparents, who were still in bed. She said that she had climbed into bed with them and that the appellant had taken her hand and placed it on his penis. The alleged incident in the bedroom constituted count 1.

[10] Also during the second interview, the complainant described an incident she said occurred while the complainant and appellant were sitting outside a bakery near the Coolum Woolworths waiting for her father and paternal grandmother, who were shopping. The complainant said that the appellant took his penis out of his pants and put her hand on it. The alleged incident outside the shops constituted count 2.

Evidence related to the balcony incident (counts 3 and 4)

[11] The complainant's evidence was that she and the appellant were seated on the balcony when the appellant put his penis outside of his shorts. He then grabbed her left hand and put it on his penis. He quickly removed her hand when her paternal grandmother and father came outside. The complainant said that when they returned inside, the appellant grabbed her hand again and put it back on his penis.

[12] The appellant's wife gave evidence that she and the appellant stayed with their son and his partner between 29 July and 2 August 2014. She said she saw the complainant on the third night of their visit (a Thursday) and briefly the next morning when the complainant stayed over at her son's house. The appellant's wife was present when the complainant was dropped off at her father's house after school on the Thursday. She gave evidence that that night the complainant stayed at the house. She, the appellant, their son, his partner and her two boys were there also. They had a barbeque dinner on the deck that her son prepared. She did not help with dinner; she "got waited on". She said that she and the appellant remained out on the deck the whole evening. She did not go inside the house at any stage. She was also there when the complainant went to bed. She said she did not see any exchange between the appellant and complainant on that evening.

[13] The complainant's father gave evidence that his parents visited the house he shared with his partner and her two sons in July 2014. He said that his parents stayed at the house for only one or two nights in a spare room at the front of the house. The complainant visited the house on the Tuesday and Thursday night. He could not remember if she stayed the night on Tuesday, but said she did stay on Thursday night and he took her to school the next morning. His parents were present when the complainant arrived on the Thursday. He said that that night, he, his parents, the complainant, his partner and her two sons had a barbeque on the deck and that everyone was involved in preparing dinner. He had the complainant under his observation for "most" of the time, "mainly to ensure that she was behaving and not getting overexcited because she was excited that Nana and Pop were visiting". He did not see anything about the appellant's interactions with the complainant that disturbed him. He said that, during the day, the appellant had helped him work on a retaining wall and that he had observed that the appellant was not wearing underwear under his shorts.

[14] That observation was of relevance, in the appellant's submission, because of the prosecution's reliance on a pretext telephone conversation between the complainant's mother and the appellant on 2 August 2014 in which she told him of the complainant's disclosure that she had "seen Poppy's willy" and "what she had to do" and "where she had to touch [him]". The appellant responded "there's no touch" and said:[1]

> "… nothing intentional I don't think … Ah, so yeah she went to touch it, I said no that's not right… Ah, don't do that… that's and all that was done because I was just sitting down, I hadn't had some shorts on and ah yeah I didn't realise it was showing.
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> … and when she went and put her finger on it and I didn't realise, yeah, oh shit, yeah, no, no, we don't do that… And that's about all that was in it.
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> … I don't think yeah, it was seen for sure… I, yeah [indistinct] sitting out under the back veranda so yeah anyone could have seen me… just lucky it was her, yeah."

[15] Later the same day, police spoke to the appellant about that incident and he said:[2]

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1 AB at 255-257.

2 AB at 266.

> "... I was sitting here having my tea the other night... And I was just sitting up here like this... And next minute [the complainant] grabbed hold of me willy and I didn't realise it was, it was showing... So that's virtually what's to it."

[16] The appellant also participated in a record of interview on 13 May 2015 in which he maintained the same version of events.

[17] The complainant's mother and maternal grandmother gave evidence of the disclosures that the complainant had made to them on 1 August 2014 about seeing and touching the appellant's penis.

Evidence related to the incident in the bedroom (count 1)

[18] The complainant gave the following evidence about count 1:[3]

> "I was um, I was in bed then Daddy woke me up and then I had breakfast, packed all my stuff and then I said goodbye to everyone and then I forgot Nan and Pop and then I, then I said goodbye to Nan and Pop. And then I went into Nan and Pop's bed and then he grabbed my hand when he was in bed too; he grabbed my hand and put it on his willy... And then we went to school."

[19] The appellant's wife gave evidence that, the morning after the barbeque on the deck, the complainant came into the room where she and the appellant were sleeping to say goodbye to them before going to school. The complainant was in her school uniform. She said she was wearing a nightie and the appellant was wearing a singlet top and pair of undies. She said she and the appellant were awake and that the complainant:[4]

> "… just came in and she jumped into bed and she said, 'It's cosy in here'. And her father's standing by the door saying, 'Come on … you'll be late for school'. So she leaned over and gave me a cuddle with both arms and a kiss and then come back and gave Pop a cuddle and got out of bed."

[20] She said that the appellant was lying on the side closest to the door and that the complainant got into bed on that side. She said she was facing towards the door the whole time and that her son was in the doorway. The complainant was in the room for "inside two minutes at that" and in the bed for "seconds probably".

[21] The complainant's father gave evidence that he took the complainant to school the morning after the barbeque. He said that before they left the house, the complainant:[5]

> "… raced in really quickly as I've walked down there and she walked in, said, 'Good morning', a quick hello for Pop, a quick good morning and 'I'll see you later on,' because we were going to be picking her up on the Saturday to spend some more time... and that was it."

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3 AB at 225.
4 AB at 45.
5 AB at 89.

[22] He said that he could mostly see the complainant's hands and arms throughout this interaction and that, when she hugged the appellant, she did so with her arms "round … his shoulders and neck".

[23] In his record of interview, the appellant denied the complainant was in bed with him and his wife. He also said that he "wouldn't touch a kid when [his wife's] in there".

Evidence related to the incident outside the shops (count 2)

[24] The complainant's evidence in her second police interview was about the incident outside a bakery, which was next to "Coolum Woollies", when they were sitting at a table. She said:[6]

> "… me and Poppy were outside the shops… And then Poppy sticked his um, his crutch outside of his pants, pants and then he grabbed my hand and put it on his leg… there were people behind us…
>
> [W]e turned around so they couldn't see what we were going to do and I thought he was gonna tell me a secret but really loud… But he wasn't, he was having my hand and um, putting it on his willy."

[25] The complainant's paternal grandmother did not give any evidence about going to the shops with the complainant and the appellant. Her cross examination evidence was that she and the appellant never went to a Woolworths or a bakery, or "anywhere with her on that visit at all". The complainant's father also gave evidence that on no occasion during his parents' visit did he take the complainant with his parents to the Woolworths shops or bakery.

[26] In his record of interview, the appellant denied an outing to the shops took place.

Ground 1 - The trial miscarried because the trial judge did not warn the jury not to give undue weight to the replayed evidence

[27] The jury had heard the evidence of the complainant on the first day of trial, concluding at about 3.30 pm. The evidence of the last prosecution witness, Detective Senior Constable Strong, concluded at 3.47 pm on the second day of the trial and the jury retired soon after. On the third day of the trial, following counsels' addresses and the trial judge's summing up, the jury retired at 2.43 pm. Almost two hours later at 4.27 pm, the jury asked to watch "the second police interview with [the complainant], 15 February 2015, the section about the incident on the deck".

[28] As mentioned, with counsel's concurrence, the relevant parts of both the second police interview and the complainant's pre-recorded evidence were played to the jury. The requested portion of the complainant's second interview (about 15 minutes) was played to the jury from about 4.46 pm. The following morning,[7] the portion of the pre-recorded evidence (also about 15 minutes) which related to the balcony incidents was also played to the jury. The jury retired at 10.22 am to resume their deliberations and returned verdicts at 12.10 pm.

The appellant's submissions

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6 AB at 238-239.

7 AB at 187-189.

[29] The trial judge was not asked to, and did not, after the replaying of the evidence of the complainant, direct the jury not to place undue weight on this evidence because it had been replayed. Nor did the trial judge remind the jury of the appellant's denial of the allegations and his version of events regarding counts 3 and 4. That forms the basis of the contention in ground 1 that there was a miscarriage of justice.

[30] In contending that the trial judge's failure to warn the jury not to place undue weight upon the evidence replayed to them because they had seen and heard it twice resulted in a miscarriage of justice, the appellant referred to the decision in *R v FAE*.[8] In that case the complainant's police interview and pre-recorded evidence were replayed to the jury after they had retired to consider their verdicts without a warning being given about not placing undue weight on that evidence. Reliance was placed on the approach taken by Fraser JA, who, after reviewing *R v GAO*,[9] *R v H*,[10] *R v DAJ*[11] and *Gately v The Queen*,[12] concluded that in the circumstances of *FAE*:[13]

> "It must inevitably be concluded that the trial miscarried because the trial judge did not warn the jury that they should not give the replayed evidence of the complainant undue weight merely by virtue of its repetition and the trial judge did not appear to repeat or summarise to the jury any of the evidence given or called by the appellant."

[31] The appellant also referred to *R v SCG*,[14] where the Court held that no miscarriage of justice had resulted from the trial judge's failure to warn the jury not to place undue weight on the complainant's evidence by virtue of its repetition and to reiterate any of the appellant's evidence. Morrison JA (with whom Gotterson JA and Jackson J agreed) observed that "*Gately*, *GAO* and *FAE* do not lay down immutable standards. Each case depends upon its facts".[15] His Honour stated that the overriding consideration must be fairness and balance, referring to the following as relevant in that regard:[16]

> "… the time that has elapsed after completion of the defence evidence; the time that has elapsed since the conclusion of the summing up; the character of the complainant's evidence, including the manner in which it is given; the course of the trial, in particular the stage of deliberations that the jury has reached; and the length of time that the relevant evidence occupies. In terms of the need to remind the jury of the defence evidence, one factor might be the manner in which that evidence was given; where that is relevant it is likely to have been a matter referred to by the Crown in their address."

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8 [2014] QCA 69.
9 [2012] QCA 54.
10 [1999] 2 Qd R 283.
11 [2005] QCA 40.
12 (2007) 232 CLR 208.
13 [2014] QCA 69 at [25].
14 [2014] QCA 118.
15 *SCG* at [35].
16 *SCG* at [35].

[32] The appellant contended that the considerations relevant in *SCG* to the question of whether fairness and balance required a warning be given[17] were largely present here and that a warning ought to have been given.

[33] It was submitted that, while the appellant did not give or call evidence, he made denials, including as to counts 3 and 4, in a pretext telephone call and two police interviews played to the jury on day two of the trial. In each interview, although he accepted that the complainant had touched his penis, he denied the touching was indecent, which the jury was not reminded of. Further, an appreciable time had passed between the playing of the two police interviews with the appellant and the request to have the complainant's evidence replayed the next day. Another relevant matter was that the trial was an emotive one involving allegations of sexual offending of a young girl by her grandfather. The replayed evidence, which lasted about half an hour, was heard at the end of that day and the start of the next. That portion of the complainant's evidence was heard again in its entirety, rather than read from a transcript, such that the jury was exposed to the emotional impact of seeing the young complainant again, without reference by the trial judge to the competing evidence of the appellant's police interview statement.

[34] The failure to give a warning not to place undue weight on the replayed evidence resulted in a miscarriage of justice. The real risk that the jury placed undue weight on the replayed parts of the complainant's evidence was highlighted by the fact that the appellant was convicted on the counts which related to the replayed evidence and acquitted on the counts concerning the evidence which was not replayed. Further, as in *SCG*, while defence counsel did not seek the warning, there was no forensic advantage in refraining to seek the warning and so that omission ought not prevent a conclusion that there was a miscarriage of justice.[18]

Consideration

[35] The authorities establish that where all or part of the complainant's evidence is replayed to the jury after they have retired, it is desirable that the jury be warned not to give undue weight to that evidence and, where applicable, to remind the jury of evidence called by the defendant.[19] The giving of such a direction is not, however, an immutable standard.[20] As was emphasised in *Gately*, whether such a direction is necessary depends on the circumstances of the particular case.[21] The overriding consideration is whether fairness and balance gives rise to the need to guard against the risk that undue weight might be given to a complainant's evidence where it is played a second time without a warning, or where no reminder is given to the jury about the competing evidence or considerations relied on by the defence.[22]

[36] Ensuring fairness and balance may give rise to particular difficulties in emotive sexual cases which are particularly likely to arouse feelings of prejudice in the jury.[23] Factors that will be relevant include those identified in *SCG*, namely, the time that has elapsed after completion of the defence evidence; the time that has

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17 *SCG* at [36]-[38].
18 *SCG* at [30]-[33].
19 *FAE* at [24]; *SCG* at [35]-[36].
20 *SCG* at [35] per Morrison JA with whom the other members of the Court agreed.
21 *Gately* at [96].
22 *SCG* at [35] per Morrison JA with whom the other members of the Court agreed. See *Gately* at [96].
23 *GAO* at [20].

elapsed since the conclusion of the summing up; the character of the complainant's evidence, including the manner in which it is given; the course of the trial, in particular the stage of deliberations that the jury has reached; and the length of time that the relevant evidence occupies.

[37] In the present case, as the respondent submitted, the jury did not ask for and did not see the entire evidence of the complainant. The portion replayed to the jury was of relatively short compass concerning a specific aspect of her evidence relating to the balcony incidents the subject of counts 3 and 4. Unlike *R v Ali*,[24] the jury also heard the relevant portion of cross examination evidence. There was no sworn denial by the appellant to be weighed against the evidence in the prosecution case by the jury as the appellant did not give evidence. While the appellant's version was nevertheless before the Court in the form of the statements and denials he made in his police interviews, it provided some support for the prosecution case on counts 3 and 4 in that the appellant admitted to an incident where there was touching of his penis by the complainant, albeit that its indecent nature was disputed. Indeed, this was a case where the failure by defence counsel at trial to ask that the jury be reminded of the appellant's explanation can be understood as a sound forensic decision. As mentioned, the appellant had given an account to the complainant's mother and to the police in which he said no deliberate indecent touching had occurred. His version of the incidents that concerned counts 3 and 4 was that the complainant did touch his penis but that that occurred when the complainant accidentally saw his exposed penis and touched or grabbed it herself. There was said to be some support for the appellant's version in the evidence of his son that he had not been wearing underwear under his shorts. There was nonetheless difficulties attendant in drawing attention to the appellant's account, given his admissions. It was an altogether understandable strategy to avoid them being highlighted by requiring the trial judge to reiterate the appellant's version. In the circumstances, it is not apparent that it was to the appellant's advantage to remind the jury of his version.

[38] The appellant has not demonstrated that there has been a miscarriage of justice because of the absence of a direction. Playing, at the request of the jury, a short excerpt of the complainant's police interview, to which was added relevant cross-examination evidence, in circumstances where there was no countervailing testimony from the appellant, would not have led the jury to give the evidence undue prominence in their deliberations. The jury clearly desired an opportunity to verify what had been said by the complainant before returning a verdict. As explained when dealing with ground 2, the convictions on counts 3 and 4 and acquittals on counts 1 and 2 were explicable on a basis other than that the jury placed undue weight on the evidence they heard twice. While a warning would have been desirable, this was not a case where the failure to give the warning resulted in a miscarriage of justice; the considerations of fairness and balance did not render it necessary to give the warning now raised by the appellant. This ground of appeal fails.

Ground 2 - the verdicts are so inconsistent as to represent a miscarriage of justice

The appellant's submissions

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24 [2015] QCA 191 at [19]-[25].

[39] Inconsistency of verdicts is a recognised basis on which a conviction may be held to be unsafe and unsatisfactory. The Crown case depended entirely on the complainant's credibility. It was submitted by the appellant that the evidence given by the complainant's father and paternal grandmother in relation to counts 1 and 2 cast doubt on the complainant's credibility and reliability in respect of those counts and generally. In respect of count 1, their evidence tended to suggest that there was no opportunity for that alleged offending to have occurred in the bedroom. In respect of count 2, their evidence directly contradicted the complainant's claim that she and the appellant had even been at the shops. The complainant's credibility was further susceptible to doubt when regard was had to the evidence of her paternal grandmother that she did not leave the deck and the evidence of her father that he kept the complainant under observation.

[40] The appellant submitted that, in circumstances where the Crown case rested on the complainant's evidence, the acquittals on counts 1 and 2 demonstrate that the jury had doubts about the complainant's credibility and reliability. Given the centrality of the complainant's credibility to the Crown case, it was not open to the jury to find the evidence in relation to counts 3 and 4 more cogent than the evidence on counts 1 and 2. The conviction on counts 3 and 4 was inconsistent with the acquittals on counts 1 and 2.

[41] Both parties relied on *R v GAW*[25] as containing a useful summary of the relevant principles:

> "[19] ... Where alleged inconsistency arises in the jury verdicts upon different counts affecting an accused, the test is one of 'logic and reasonableness'; that is, whether the party alleging inconsistency has satisfied the court that the verdicts cannot stand together because 'no reasonable jury, who had applied their mind properly to the facts in the case could have' arrived at them.
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> [20] However, respect for the jury's function results in a reluctance in appellate courts accepting a submission that verdicts are inconsistent in the relevant sense, so that:
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> > '... if there is a proper way by which the appellate court may reconcile the verdicts, allowing it to conclude that the jury performed their functions as required, that conclusion will generally be accepted. If there is some evidence to support the verdict said to be inconsistent, it is not the role of the appellate court, upon this ground, to substitute its opinion of the facts for one which was open to the jury.'
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> [21] In that regard, 'the view may be taken that the jury simply followed the judge's instruction to consider separately the case presented by the prosecution in respect of each count and to apply to each count the requirement that all of the ingredients must be proved beyond reasonable doubt'. Alternatively, the appellate court may conclude that the jury took a merciful

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25 [2015] QCA 166 at [19]-[22].

> view of the facts on one count; a function which has always been open to a jury.
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> [22] It is only where the inconsistency rises to the point that the appellate court considers intervention is necessary to prevent possible injustice that the relevant conviction will be set aside. While it is impossible to state hard and fast rules, the following provide examples of relevant inconsistency; where the different verdicts returned by the jury are an affront to logic and common sense which is unacceptable, and strongly suggests a compromise in the performance of the jury's duty, or which suggests confusion in the minds of the jury, or a misunderstanding of their function, or uncertainty about the legal difference between specific offences, or a lack of clarity in the instruction on the applicable law."

Consideration

[42] I accept the respondent's submissions that the verdicts of the jury do not represent such an affront to logic or common sense as to suggest that the jury have failed in their task. Rather, in the circumstances of this case, the differing verdicts may be understood as reflecting differences in the evidence that related to each count.

[43] In relation to count 1 (the bedroom incident) and count 2 (the bakery incident), the jury had to consider the testimony of the appellant's wife and the complainant's father to the effect that no opportunity existed for the appellant to offend in the manner described by the complainant. There was a difference in the quality of the evidence as it related to counts 1 and 2, which could have left the jury in a state of doubt without necessarily rejecting the complainant as a credible witness. In contrast, the appellant told the complainant's mother and the police that the complainant had in fact touched his penis during a dinner on the balcony. The appellant's evidence as to counts 3 and 4 involved qualified admissions. It was a matter for the jury whether they accepted his explanation as to the circumstances in which the touching occurred. There was also the consideration that the incidents concerning counts 3 and 4 were the subject of immediate complaint by the complainant to her mother as opposed to the incidents concerning counts 1 and 2. There was nothing in the fact of the acquittals that dictates that those verdicts cannot reasonably and logically stand with the convictions on counts 3 and 4. Ground 2 is without merit.

Order

In my view, the appeal against conviction should be dismissed.