SUPREME COURT OF QUEENSLAND

CITATION:	*R v P* [2002] QCA 515
PARTIES:	**R** **v** **P** (appellant)
FILE NO/S:	CA No 341 of 2002 DC No 378 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal Against Conviction
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EXTEMPORE ON:	25 November 2002
DELIVERED AT:	Brisbane
HEARING DATE:	25 November 2002
JUDGES:	McPherson and Jerrard JJA and Philippides J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed**
CATCHWORDS:	APPEAL – PARTICULAR GROUNDS – MISCELLANEOUS GROUNDS ON WHICH NEW TRIAL REFUSED – complainant gave uncontradicted evidence of offences – summing up was a model of clarity – whether there is any basis on which the verdicts can be set aside
COUNSEL:	T Carmody SC for the appellant DL Meredith for the respondent
SOLICITORS:	Ryan & Bosscher for the appellant Director of Public Prosecutions (Queensland) for the respondent

McPHERSON JA: The appellant was convicted after a trial in the District Court of five counts of indecent treatment of a child under the age of 16 years with a circumstance of aggravation that she was under his care. He appeals against conviction on the ground that the verdict is unsafe.

The complainant was the only witness at the trial. The appellant was the complainant's stepfather who had married her mother after forming a relationship with her when the complainant was six years old.

The offences were charged as having occurred over a 21 month period at a time when the complainant was aged 12 or 13. The evidence showed that the last incident took place before May 1999 so that the period was in fact limited to about 12 months. Unlike many cases of this kind the events in issue had not taken place an unduly long time before the trial in October 2002.

Going by the transcript and the printed appeal record, the complainant proved to be a confident witness. Each of the incidents occurred in her bedroom in the house in which the family were living and took place at night when the complainant's mother was at work and absent from home.

The complainant gave evidence of what had happened on each occasion. Speaking generally, what the appellant did was to rub her vagina although in the case of count 4 the sexual activity consisted of touching her breast.

The state of affairs accorded defence counsel little scope for cross-examination. The complainant had however before the trial said that as a result of the appellant's action she had experienced an orgasm on the second occasion, whereas in her

evidence at the trial she said that orgasms had taken place on the occasion of each of counts 2, 3 and 4.

This difference was dwelt on at length in cross-examination and on appeal, but the complainant at one stage said in her evidence that she now had a clearer memory of events having had time to recollect her thoughts. She may have become confused in the course of cross-examination, but the jury evidently accepted the explanation which she gave.

This is not surprising, having regard to the way in which her evidence about the incidents themselves reads in the appeal record. The jury may well have considered that these and other comparatively minor discrepancies in her testimony were more than outweighed by the fact that her evidence was completely uncontradicted.

There is, in my view, no basis on which the verdicts can be set aside by this Court. The summing up was, to my mind, a model of clarity and balance and it has not been challenged on appeal. There was no corroboration of the complainant's testimony but his Honour directed the jury in terms that fully explained to them the need to scrutinise her evidence with great care. I would dismiss the appeal against conviction.

JERRARD JA: I agree.

PHILIPPIDES J: I also agree.
