# SUPREME COURT OF QUEENSLAND

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| CITATION: | *R v GAX* [2016] QCA 189 |
| PARTIES: | **R**<br>**v**<br>**GAX**<br>(appellant) |
| FILE NO/S: | CA No 37 of 2016<br>DC No 187 of 2014 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Appeal against Conviction |
| ORIGINATING COURT: | District Court at Mackay – Date of Conviction: 8 February 2016 |
| DELIVERED ON: | 22 July 2016 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 25 May 2016 |
| JUDGES: | Margaret McMurdo P and Morrison JA and Atkinson J<br>Separate reasons for judgment of each member of the Court,<br>Morrison JA and Atkinson J concurring as to the order made,<br>Margaret McMurdo P dissenting |
| ORDER: | **The appeal against conviction is dismissed.** |
| CATCHWORDS: | CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was convicted of one count of indecently dealing with a child under the age of 16 years who was his lineal descendant – where the complainant gave evidence that the appellant, her father, lay in bed with her and that his fingers were down near where her underwear was supposed to be – where the complainant's mother and sister also gave evidence of finding the appellant in bed with the complainant – where the mother had made a notation on the calendar on the following day to mark the date on which the incident occurred – where there were some inconsistencies between the accounts of the complainant, the mother and the sister – whether, considering the whole of the evidence, it was open to the jury to conclude beyond reasonable doubt that the appellant was guilty of the offence<br><br>CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – INCONSISTENT VERDICTS – where the appellant was acquitted of two similar charges – where the complainant's evidence on these charges was vague and uncertain and not supported by any corroborating |

evidence of other witnesses – whether the verdict of guilty was inconsistent with the two verdicts of not guilty

*MacKenzie v The Queen* (1996) 190 CLR 348; [1996] HCA 35, applied
*R v SBL* [2009] QCA 130, cited
*SKA v The Queen* (2011) 243 CLR 400; [2011] HCA 13, applied

COUNSEL: M J Copley QC for the appellant
S J Farnden for the respondent

SOLICITORS: Macrossan and Amiet Solicitors for the appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **MARGARET McMURDO P:** The appellant was convicted on 8 February 2016 of the indecent treatment of his daughter on a date unknown between 11 and 14 July 2003. He was acquitted of two related counts of indecent treatment of the same girl. He has appealed against his conviction on two grounds. The first was that the verdict was unreasonable and could not be supported by the evidence. The second was that the guilty verdict was inconsistent with the not guilty verdicts.

[2] Unlike my colleagues, I would allow the appeal on the first ground, set aside the conviction and direct a verdict of acquittal. These are my reasons.

[3] A consideration of the first ground of appeal requires this Court to review the evidence at trial relating to this count which was in short compass. The prosecution particularised the offence as the appellant touching the complainant on the vagina.[1] The offence was charged as occurring on a date unknown between 11 and 14 July 2003 when the complainant was 12 years old, a little over a month before her thirteenth birthday. The evidence of the complainant's mother and the prosecution case was, however, that it occurred on Friday, 11 July 2003, the day before the mother put an asterisk on the family calendar.

[4] The complainant was 25 years old when she gave evidence at trial.[2] She described the incident as being the "time where he was caught" and "the last time it happened."[3] She and her younger sister slept in the same bedroom which had no door. Her sister was asleep in her own bed. The complainant said:

> "The light had been turned on and Mum had come in. She pulled the blanket up after seeing [the appellant] just hopping out of the bed.
>
> ...
>
> When she pulled the sheets, my underwear were down at my ankles.
>
> How did your underwear get down to your ankles?---...I didn't know. All I knew was [the appellant] had just hopped off the bed.
>
> What was he doing while he was on the bed?--- Well, I was asleep before and ended up finding out what happened, but ---
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> ...

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1 MFI A, AB 236.
2 AB 22.
3 AB 25.

> What do you remember?---When I was laying there, I could feel hands down near where my underwear were – were supposed to be.
>
> Well, what was happening with the hands? ---I can't say. Sorry, I can't say. I don't remember.
>
> So you felt the hands down around where your underwear was supposed to be. Whereabouts? Can you say in particular where the hands were?---His fingers were near my vagina, and I don't remember what was happening. All I remember is his fingers were down there until the light – until we realised that someone was coming down the hallway.
>
> How long were his fingers down there?---I would not be able to recall.
>
> Do you recall how long [the appellant] was in the bed?---My knowledge, it was five minutes, probably five minutes before he then – before that light came on. I don't – I'm not good with time.
>
> ...
>
> And you said something about the doona or the covers?---My mum had pulled the covers up and seen that my underwear – my undies were around my ankles.
>
> Pulled the covers up?---Off – off me.
>
> Off you. Okay. So you were wearing undies when you went to bed?---Yes. I used to wear a nightie.
>
> And do you recall how the undies came down?---No.
>
> All right. When your mother pulled back the covers, where was your father?---He was just next to the bed. He had just hopped off, making himself look like he was picking something up or coming in to check on us."[4]

[5] In cross-examination she agreed that she had a very bad memory.[5] When asked if it was an unreliable memory she said, "not completely."[6] After further cross-examination she agreed her memory was not reliable. She referred to this incident as being the "Main one when he was caught."[7] She agreed that, in 2001, she was easily led and would believe what anyone told her.[8] She agreed that she regularly wet the bed up until she was in high school and it was not uncommon for her to take her underpants off and leave them either in the bed or on the floor. She agreed that her parents would sometimes come into her bedroom to check whether she had wet the bed.[9]

[6] The complainant told police that this incident involved the appellant putting his fingers in her vagina. When her evidence at trial was only that he touched her on the vagina (not that he put his fingers in her vagina) the prosecution amended its particulars for this count.[10]

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4 AB 25 – 26.
5 AB 32.
6 AB 33.
7 AB 33.
8 AB 58 – 59.
9 AB 62.
10 AB 124 – 125.

[7] On 20 July 2013 the complainant and her baby went to stay at her parent's house; soon after, her mother and sister went to New Zealand and the complainant and her baby remained living with the appellant and her brothers for six weeks.[11] She described her relationship with the appellant in 2013 as being "good". In the past, she had described their relationship as "beautiful."[12] She made no complaint to anyone in authority until 2 November 2013.

[8] The complainant's sister gave evidence that she recalled an incident when she was between eight to 10 years old after she had come home in the car with her two brothers and her mother. She and her mother went to the girls' bedroom. Her mother went ahead of her to look for the complainant and turned on the light. The sister saw the appellant facing the wall, away from the complainant, who was on the bed facing up. Her mother asked the appellant what he was doing. He would not reply. The complainant got up from the bed. Her undies were right down and her nightie or shirt was above her boobs. The complainant ran from the room crying. Her mother kept asking the appellant what he was doing.[13]

[9] In cross-examination she agreed that the appellant was in the complainant's bed, either asleep or pretending to be asleep. She could not remember the appellant saying anything in reply to her mother.

[10] The mother gave evidence that she went out, she thought for takeaway food. When she returned home she put the food on the table and called out that dinner was ready. As she could not see the appellant or the complainant, she went upstairs looking for them. Her son was with her and she thought the complainant's sister also came upstairs. The mother turned on the light and walked into the bedroom. She saw the appellant cuddling up with the complainant in the bed with the sheets pulled right up. The complainant's "eyes were scrunched up and [the appellant] just looked asleep."[14] She told them dinner was there and pulled back the covers. She said that the complainant's "knickers were pulled – were folded down," indicating about an inch. Her pink singlet was just normal. She tried to wake up the complainant and she yelled at the appellant. She was in the room long enough to pull the appellant out of the bed. The complainant just lay there with her eyes scrunched up. The appellant got up and went downstairs. He was wearing boxers and a T-shirt which was what he wore all the time.

[11] In 2003 she kept a calendar in which she noted family activities. She put an asterisk on the calendar in the column relating to the complainant the day after this incident occurred.[15]

[12] In cross-examination she agreed that the complainant had learning difficulties and that her long term memory had never been good. She agreed that in December 2013 she commenced a proceeding against the appellant in the Federal Circuit Court claiming maintenance and a division of the property. In an affidavit sworn 21 November 2013 in that proceeding, she attested that the complainant's allegations against the appellant came as complete surprise and she was in shock about them.[16] This contradicted her statements to police in October 2013 that her life was devastated after this incident in the girls' bedroom.[17]

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11 AB 64.
12 AB 65.
13 AB 77 – 78.
14 AB 91.
15 Exhibit 2, AB 221.
16 AB 99.
17 AB 99.

[13] In re-examination she explained that she was shocked, not about the content of the allegations but that the complainant had taken her allegations to police.

[14] The appellant gave evidence that none of the offending alleged by the complainant happened. In respect of this count he stated that there was no incident where he was lying beside the complainant in her bed when his wife came into the room and turned on the light. He did not touch the complainant on or near her vagina.[18] In cross-examination he confirmed that he had no recollection of any incident where he was lying in bed with the complainant.[19]

**Conclusion**

[15] The first ground of appeal requires this Court to consider whether on the whole of that evidence it was open to the jury to conclude beyond reasonable doubt that the appellant was guilty: *SKA v The Queen*.[20]

[16] The jury were entitled to reject the appellant's evidence, especially as he denied any incident where he was lying with the complainant in her bed. Given the evidence of the mother and the sister, it seemed implausible that there was no incident in the bed. The jury were entitled to conclude that there was an incident with the appellant in the complainant's bed the night before the mother put an asterisk in the calendar. But this did not mean he was guilty of the charged offence.

[17] The jury was required to consider whether the prosecution evidence established beyond reasonable doubt that the appellant touched the complainant on the vagina on the night of 11 July 2003. The only evidence of that touching came from the complainant. Particular caution was needed before accepting her evidence because of the 10 year delay between when the alleged offence occurred and the complaint was made. Other concerns were that at the same time as the complaint to police, the mother commenced a property and maintenance claim against the appellant and the complainant was prone to suggestion. Further, she had a very poor, unreliable long term memory. In her complaint to police she said the appellant put his fingers in her vagina. But her evidence at trial was that she could feel his hands down where her underpants were supposed to be; she did not remember what was happening; she remembered his fingers were near her vagina; she repeated that she did not remember what was happening; his fingers were "down there"; and she could not recall how long his fingers were there.[21] This evidence in combination raised real uncertainty as to what, if anything, happened with the appellant's fingers. Another concern was that the complainant's evidence was that she was asleep and "ended up finding out what happened."[22] This raised the reasonable possibility that she reconstructed what happened after her mother understandably reacted emotionally and angrily to finding the appellant in bed with the complainant.

[18] Of further concern were the inconsistencies between the complainant's evidence and that of her mother and sister, some of which, I consider, were more than minor. The mother described the complainant's underpants as rolled or folded down an inch whereas the complainant described them as down near her ankles and the sister described them as "right down." The mother said the complainant's pink singlet was

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18 AB 136.
19 AB 138.
20 (2011) 243 CLR 400, [20] – [22].
21 See [4] of these reasons.
22 AB 25.

"just normal" whereas the sister said it was above the complainant's "boobs." The complainant, however, said her sister was asleep in her own bed, at the time.

[19] After rigorously reviewing the evidence relevant to this count, I consider a jury could be satisfied beyond reasonable doubt that the mother found the complainant and the appellant in the complainant's bed that evening, was understandably distressed and suspicious and put an asterisk on the family calendar; and that this was "the time when [the appellant] was caught" and "the last time something happened." But I do not consider the jury could have been satisfied beyond reasonable doubt of the reliability of the complainant's account that she actually recalled the appellant touching her on the vagina that night. The real possibility that this was a reconstruction rather than her actual memory cannot be excluded beyond reasonable doubt.

[20] I consider the complainant's evidence was insufficient to satisfy a jury of the appellant's guilt beyond reasonable doubt. I would therefore allow the appeal against conviction, set aside the guilty verdict and instead enter a verdict of acquittal.

[21] **MORRISON JA:** I have had the advantage of reading the reasons of Atkinson J. I agree with those reasons and the order her Honour proposes.

[22] **ATKINSON J:** The appellant, GAX, was convicted of one count of indecently dealing with a child under the age of 16 years who was his lineal descendant. That offence occurred between 11 and 14 July 2003. It was count three on the indictment. He was acquitted on counts one and two on the indictment which were similar charges except that count one also contained an allegation that the complainant was under 12 years of age. The date on which count one was alleged to have occurred was between 19 February 1998 and 20 February 2000 and on count two, between 31 December 1999 and 20 February 2003.

[23] The grounds of appeal are that the verdict on count three was unreasonable and could not be supported by the evidence (ground one) and that the verdict of guilty on count three was inconsistent with the verdicts of not guilty on counts one and two (ground two).

[24] The complainant was born in August 1990 and so was aged 12 when count three was committed. That offence was able to be dated with a degree of specifity because the complainant's mother made a note of it on a calendar on the day after the incident. Nevertheless, no complaint was made about it to any one in authority until 2 November 2013. The complainant was 25 years old by the time of trial.

[25] Because of the grounds of appeal it is necessary for this court to consider the whole of the evidence relevant to count three as well as some of the evidence relevant to counts one and two to determine whether or not it was open to the jury to conclude beyond reasonable doubt that the appellant was guilty of count three: *SKA v The Queen*.[23] The second ground also involves a consideration of the evidence relevant to all the counts to determine whether the conviction on count three is consistent with the acquittals on counts one and two: *MacKenzie v The Queen*.[24]

**Count 3**

[26] The complainant's evidence was that the incident the subject of count three was the last incident of sexual misconduct towards her by the appellant. It occurred, she said,

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23 (2011) 243 CLR 400 at [20] to [22].

24 (1996) 190 CLR 348 at 366-368.

when she and her sister, who was then aged 11, were asleep in the bedroom which they occupied, the first bedroom as one walked down the hallway from the top of the internal staircase of their house. The bedroom did not have a door. Each of the sisters slept in separate beds.

[27] The evidence-in-chief given by the complainant with regard to count three was that she was lying in her bed and could feel hands down near where her underwear was supposed to be. She said her father's fingers were near her vagina but she could not remember what was happening. All she remembered was that his fingers were down there until they realised that someone was coming down the hallway. She said her father was in the bed with her for about five minutes when her mother came into the room. Her mother turned on the light to the bedroom and pulled back the blanket and sheets. Then the complainant's father, the appellant, "just hopp[ed] out of the bed".

[28] When her mother pulled the sheets down, the complainant says that her underwear was down to her ankles. She did not know how that had happened as she had been asleep before the part which she remembers, which was when she was lying there and could feel her father's hands down near where her underwear was supposed to be. She said that she was wearing underwear when she went to bed.

[29] Importantly, the learned prosecutor interrupted the complainant when she started to say what she was told by asking her to only relate what she remembered. That can be seen in the following passage:

> "What was he doing while he was on the bed? --- Well, I was asleep before and ended up finding out what happened, but ---
>
> No, I don't want you to tell us what you ended up finding out? --- No. I was like ---
>
> What do you remember? --- When I was laying there, I could feel hands down near where my underwear were – were supposed to be."

[30] The cross-examination of the complainant was on the basis, as it was put to her, that the appellant did not touch her inappropriately in the bedroom and that she had a poor memory. She conceded that she had a poor memory but maintained that the incident she described had happened. The complainant also agreed that she was a bed wetter and would take her underpants off when she had wet the bed.

[31] The complainant's sister, D, who was a year younger than the complainant, gave evidence as to coming home in the car with her mother and younger brothers. She went to the bedroom, her mother was in front of her. She saw her sister facing up and her father facing the wall away from her sister. She saw her mother turn the light on. She said that she remembered her mother asking her father what he was doing a few times and that he would not reply and then she saw her sister get up from the bed and that her sister's undies were right down and her nightie or shirt was above her "boobs" and that she ran out of the room crying.

[32] The complainant's mother said that she had been out in the car to buy some takeaway food and came home with her other children. She put food on the table and then called out for people to come to get it. When she got to the girls' bedroom she turned on the light and walked in and saw her husband "cuddling up" to the complainant in the bed and the sheets pulled right up. She said that the complainant was "just snuggled up to him" but her eyes were "scrunched up" and he just looked asleep. The complainant's mother pulled back the covers and saw that her daughter's knickers

were folded down an inch or a couple of inches. She saw that the complainant was wearing a pink singlet and pink knickers. It was a short singlet that was pulled down in its normal position and she saw that the knickers were rolled down. She said that she tried to wake the complainant and yelled at the appellant but the complainant just "lay there with her eyes scrunched up."

[33] The complainant's mother kept a calendar in 2003 with columns in it for the activities of each family member. The family at that stage consisted of the appellant and his wife, the complainant's mother, the complainant and her younger sister and younger brothers. Her evidence was that she put a mark on the calendar under the complainant's name the day after she caught the appellant, her husband, in bed with their daughter. She agreed in cross-examination that she had not mentioned this to the police when the complaint was first made to them but said that was because she initially forgotten about the notation. She also agreed that she had not made a complaint to the police or anyone else in spite of opportunities to make complaints to doctors or the school counsellor.

[34] The complainant's mother gave evidence that the reason that her daughters' bedroom did not have a door was because the appellant kicked it in. His evidence was that the door deteriorated and "fell away". The appellant's evidence was that none of the events, the subject of the three counts, had occurred.

**The first and second counts**

[35] The first count involved an allegation that the appellant kissed the complainant on the mouth while they were under a table. The second count involved an allegation that the appellant licked the complainant's vagina while they were on a waterbed which was in the bedroom shared by the appellant and his wife. The complainant's evidence on these counts was vague and uncertain.

**The summing up**

[36] The summing up by the learned trial judge in large part provides an explanation for the different verdicts. There was no complaint about the judge's summing up. His Honour told the jury that they must consider each charge separately and the requirement to deliver separate verdicts which need not be the same.

[37] With regard to the separate counts, the judge said that the Crown case was that the jury would accept the complainant as credible and reliable on all charges but in particular would accept her on count three as the Crown said she was supported by two other witnesses. Also on count three the judge observed to the jury that the Crown case was that they would reach the conclusion that there was indecent treatment or dealing. His Honour told the jury that the Crown said that they would take into account, in that regard, that there was no need for the appellant to get into the bed to check for bedwetting, and they would also take into account the sexual interest evidence as leading to a conclusion of guilt.

[38] His Honour then explained to the jury the defence case that they would not accept the complainant as credible and reliable and would not be able to reject the appellant's evidence beyond reasonable doubt. His Honour made a differentiation of the defence case: with regard to the first two counts, there was no independent evidence to support her allegations whereas, on count three, his Honour repeated the defence submission that they would have doubts about the two supporting witnesses.

[39] His Honour repeated that guilt on one charge did not mean that the appellant was therefore guilty of the others. They must look at the evidence, he told them, relating to the particular count to see whether the Crown had proved its case on that particular count. His Honour told the jury if they did not accept the complainant's evidence relating to one or more of the charges or any other discreditable conduct that they were to take that into account when considering her evidence in relation to the other charges. If they had a reasonable doubt concerning the truthfulness or reliability of her evidence in relation to one or more counts then they should take that into account in assessing the truthfulness or reliability of her evidence generally; but he reminded them that they must consider her evidence in respect of each count when considering that count.

[40] His Honour went on to tell the jury that if for some reason they were not sufficiently confident of her evidence to convict in respect of one of the counts, even if they were inclined to think she was probably right, that meant they would find the appellant not guilty in relation to that count. That did not necessarily mean they could not convict of any other count. They would have to consider why they had a reasonable doubt about that part of her evidence and consider whether it affected the way they assessed the rest of her evidence; that is, to consider whether their doubt about that aspect of her evidence caused them also to have a reasonable doubt about the part of her evidence relevant to any other count.

**The appellant's submissions**

[41] The appellant referred to all the inconsistencies within and between the evidence given by the complainant, her sister and her mother. He submitted that the accounts given by the three witnesses about what occurred when they were all in the bedroom was so starkly different that no rational jury could regard the complainant's evidence as supported by the evidence of either her mother or her sister. He submitted that the possibility of an agreement between them to implicate the appellant was sufficiently tangible for the prosecutor to be concerned to deal with it in his address to the jury. In oral submissions, counsel for the appellant emphasised that the jury could not be satisfied to the requisite standard that the complainant, her mother and her sister were all describing the same occasion and that therefore the complainant's evidence was not independently corroborated and may have just been a reconstruction by her.

[42] With regard to ground two, the appellant submitted that the availability or otherwise of evidence independent of the complainant which provided some support for her evidence that she was indecently dealt with would be the obvious explanation for the combination of verdicts. However, he submitted that no rational jury could regard the complainant's evidence as supported by either her mother's evidence or her sister's evidence in view of the substantial and important discrepancies between her account and their accounts and between the two accounts given by the two witnesses. That would then just have left the complainant's evidence for consideration. The appellant submitted that, as the jury was not satisfied beyond reasonable doubt of her truthfulness or reliability in relation to those counts where there was no independent supporting evidence, the jury should logically have acquitted the appellant on count three as well.

**Consideration**

[43] The complainant's evidence was supported in important ways by her mother and sister who saw the appellant in bed with her, at a time when they were not expected

to be in bed together with the mother having arrived home with dinner and calling out for people to come to eat. Any suggestion that the appellant was checking the complainant's bed to see if she had wet the bed by lying in it was not suggested by him and had it been it would have been plainly ridiculous. His case was that the incident described in count three, where he was lying beside the complainant in her bed when his wife came into the room and turned the light on, did not happen.

[44] The conviction on count three can be accounted for by the fact that the complainant's mother and sister found the appellant in a compromising position with the complainant in bed, with the covers over them, and the complainant's underpants down. The relatively minor inconsistencies between their versions of events rather tends to suggest that they did not collude and that they were, nevertheless, describing the same occasion. The jury were entitled to accept that the risk of reconstruction was avoided by the prosecutor directing the complainant to only give evidence of what she remembered.

[45] The evidence given by the mother that she had made an asterisk on the calendar on the following day to mark the date when she had caught the appellant sexually abusing their daughter was capable of acceptance by the jury and added credibility and reliability to the complainant's evidence in relation to count three.

[46] The difference in the strength of evidence on count three readily accounts for the difference in the verdicts. The different verdicts tend to suggest that the jury faithfully followed the careful instructions given to them by the trial judge to consider each count separately. There was a rational distinction between the strength of the evidence on each of the three counts on the indictment. The fact that the appellant was acquitted on the first two counts is not a positive finding that those events did not occur but a finding that the jury was not satisfied beyond reasonable doubt that the acts alleged in those counts occurred, or occurred at the times or in the circumstances particularised in those counts.[25]

[47] The evidence given by the complainant was much more detailed with regard to count three and it was supported by the evidence of the mother and the sister. In *MacKenzie v The Queen*,[26] Gaudron, Gummow and Kirby JJ observed at 367:

> " … 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. In a criminal appeal, 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 applied 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' view of the facts upon one count: a function which has always been open to, and often exercised by, juries."

[48] The cases in which inconsistency of verdicts undermine the legitimacy of a guilty verdict are found in the following circumstances:[27]

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25 See *R v SBL* [2009] QCA 130 at [31]-[32].

26 (1996) 190 CLR 348.

27 *MacKenzie v The Queen* (1996) 190 CLR 348 at 368.

> "…where the different verdicts returned by the jury represent, on the public record, an affront to logic and commonsense which is unacceptable and strongly suggests a compromise of the performance of the jury's duty. More commonly, it may suggest confusion in the minds of the jury or a misunderstanding of their function, uncertainty about the legal differentiation between the offences or lack of clarity in the judicial instruction on the applicable law. It is only where the inconsistency rises to the point that the appellate court considers that intervention is necessarily required to prevent a possible injustice that the relevant conviction will be set aside."

[49] This is not such as case. The different quality of the evidence for count three and the support given by the evidence of two other witnesses provides a rational basis for convicting on count three notwithstanding the acquittal on the other two counts. It also shows that the verdict of the jury should not be set aside on the ground that it was unreasonable or could not be supported having regard to the evidence.

[50] True it is, as the President has observed, that in later years the complainant enjoyed a cordial, even close, relationship with her father but that in no way suggests that the count on which the appellant was convicted did not occur but that it was rather, as she and her mother testified, the last occasion on which he molested her.

[51] I would dismiss the appeal.