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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 2 July 2019

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE LEWIS

MR JUSTICE JULIAN KNOWLES

R E G I N A

v

RYAN MARK P

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Mr D Martin-Sperry appeared on behalf of the **Appellant**
Ms F Chinner appeared on behalf of the **Crown**

J U D G M E N T
(As Approved by the Court)

1. LORD JUSTICE DAVIS: This is a rather unusual appeal which arises against a very protracted course of proceedings.

2. The appellant had faced three counts of rape alleged to have taken place as long ago as 1 September 2013. The jury could not agree at the conclusion of the first trial, on 20 November 2015. A second trial took place in July 2016. Unfortunately the jury had to be discharged after they had retired to consider their verdicts because of a problem relating to a particular juror which may have impacted upon the whole jury. There was then a third and final trial which started on 28 November 2016. At that trial the jury, by a majority of 11 to 1, convicted on count 1 on the indictment and acquitted on counts 2 and 3.

There matters would appear to have rested. But the present application for leave to appeal was then lodged on 5 July 2018, some 18 months out of time.

The grounds were prepared by Mr Martin-Sperry of counsel, who had appeared at the first trial but had not appeared at the second or third trial on behalf of the defence. It appears that trial counsel at the third trial had given negative advice about the prospects of an appeal; indeed his advice has been put into the documents before us.

What was said in the subsequently lodged grounds of appeal prepared by Mr Martin-Sperry was that the appellant "has now sought" the advice of his original trial counsel. That brief statement does not begin to explain so long a delay as 18 months. In the event however, the single judge saw fit to grant the requested extension of time and, of course, we must abide by that. However if, as the single judge clearly considered, there were possible merits in ground 1 being advanced, the better course nevertheless would have been, with respect, given the very great and effectively unexplained delay which had occurred, simply to have referred the entire application, including the application for an extension of time to the Full Court.

As matters stand, however, the extension of time, has indeed been granted. Further permission to appeal on ground 1, to which we will come, has been granted. However, the single judge refused permission to appeal on ground 2 and there is a renewed application on that ground also before this court.

As we have said, the appellant, a man who is now aged 34, had been facing three counts of rape. Two of the counts were said to be vaginal rape, one of the counts was said to be anal rape. All were said to have occurred on effectively the same occasion on the night of 1 September 2013. Having been convicted at the third trial the appellant was in due course sentenced to a term of 8 years and 6 months' imprisonment.

Put very shortly, the background facts are these. We set them out without attempting to replicate the full detail and nuance of the evidential position as it merged at the trial. In July 2013 the complainant, who may be called "E", had moved from Australia, where she had been living with her parents, to live with a paternal grandmother, who may be called "V", and her husband who may be called "M". They lived at an address in Ruislip. The appellant was V and M's son and thus the complainant's step uncle. He also resided at that home address.

The complainant was 17 years old at the time of the alleged incident. On 31 August 2013 there had been a birthday party held at the grandmother's house to celebrate the birthday of her cousin's daughter. The guests variously left; but a number of the adult family members remained at the house drinking and socialising.

The complainant went to bed on her own at around 10.30 pm. There was an amount of evidence to show that she had had a very considerable amount to drink and further, the indications are that she was not experienced in the ways of alcohol.

She was to say that between around 11.30 and 2 o'clock in the morning she had been woken up by the appellant who had come into her room. She was still wearing the dress that she had been wearing at the party. She was to say that he dropped his shorts, got on top of her and began to penetrate her vagina with his penis. That was to be count 1 on the indictment. She also was to say that he anally penetrated her. That was count 2 on the indictment. According to her, the appellant got off the bed, put his shorts back on and left the room but, according to her, he returned around 20 minutes later, removed his shorts and vaginally raped her again.

The following day the complainant was in contact with her cousin, D. She was to say to D that the appellant had raped her. The complainant was taken to Hillingdon Hospital and examined by a doctor and was then referred to the Haven Clinic and further assessed. An examination took place and a number of swabs were taken. She returned to the clinic on 6 September for a follow-up appointment. At that stage, she indicated that she wanted to report the matter to the police.

The appellant was arrested and interviewed on 7 September. It is right to say that he immediately denied all the allegations strenuously and has been steadfast and consistent in his denials thereafter.

There were a number of strands to the prosecution case. First and foremost, there was evidence from the complainant herself with regard to the allegations. Further, there was evidence from the cousin, D, from the cousin's partner, from the complainant's father and from the complainant's stepmother in relation to complaints made to them by the complainant to be effect that she had been raped by the appellant. Further, forensic examination had indicated evidence of abrasions and bruising to the inner labia of the complainant's vagina; although it is also right to say that there was no DNA evidence of any kind attributable to the appellant. Further, there was evidence to suggest that in the course of the party that afternoon the appellant had been behaving in a somewhat sexually charged way towards the complainant. In addition, forensic examination had revealed the presence of semen on the dress which she had been wearing on the evening in question.

The defence case was that the allegations were false. The complainant had in effect accepted that she had been very drunk at the party. At all events she had gone up to bed. The defence was to say that the appellant later saw her in her bedroom, slumped on her bedroom floor, had picked her up and put her onto the bed. He had also on another occasion gone back into her bedroom to restore some stereo equipment. But the appellant was firm in his evidence that he had not raped her, whether as alleged or at all. In addition, there was some evidence adduced at the third trial from his mother, V, in relation to her interaction with the complainant; and the mother was to say that when she, V, had asked the complainant whether the appellant had raped her, the complainant had said that he had not. There was an amount of cross-examination of V at trial to the effect that she was trying to give evidence to support her own son. She was also asked why she had seen fit to wash the dress of the complainant which the complainant had been wearing that night, that being done it seems by the mother on the following day.

The defence further relied on the lack of any other forensic DNA evidence in support of the

allegations and also on various matters relating to the consistency of the complainant's evidence.

The complainant gave detailed evidence at the trial which for present purposes we do not need further to summarise. In addition, there was evidence from D and from D's partner and some read evidence as well.

Two grounds of appeal have been advanced before us. The first ground, the ground on which the single judge gave permission to appeal, is rather difficult to summarise. But, in essence, it is said there has been an unfairness to the defence arising from the lack of disclosure, as it is said, by the prosecution of relevant medical and social records relating to the complainant and at all events arising from the lack of independent examination of the complainant by a psychologist. It is said that the defence were not in a position properly to pursue what was described as the potential for "confabulation" on the part of the complainant: that is to say, putting it shortly, not that she was deliberately lying but that she had put forward a false account or recollection of events whilst genuinely believing them to be true. At all events the overall argument is that, by whatever means and by whatever approaches to what happened, the conviction cannot be regarded as safe.

The second ground is that the verdict on count 1 is inconsistent with the acquittals on counts 2 and 3. What is said is that this was one of those cases whereby, given that this was in effect all part and parcel of one incident over some 20 minutes, the only logical basis for the jury to approach matters was either to convict on all counts or to acquit on all counts; and an intermediate position was simply inexplicable.

In view of the way in which the case has been presented by Mr Martin-Sperry on this appeal, it is necessary to consider in some detail the chronology of events.

There was regrettably and through absolutely no fault of the defendant, considerable delay before he was charged and before the matter then came on for trial. At all events the defence case statement, served in advance of trial, was to the effect that the allegations of the complainant were "false and fabricated".

Mr Martin-Sperry then took over from counsel previously instructed and appeared at the first trial. That had been fixed to start at the beginning of November 2015. Regrettably late in the day, the defence were supplied by the prosecution with records relating to the complainant's history and other records, concerning her time as a child whilst in Australia.

At all events, on 30 October an application was made by the defence to break the fixture on the grounds that yet further disclosure was needed and that the defence would wish to call an expert psychologist. That was refused in advance of trial by His Honour Judge Wood. But the application for an adjournment was then repeated on two occasions before the trial judge, Mr Recorder Grenfell QC.

When the application was first made the Recorder gave a detailed ruling, which we have seen, explaining his reasons for refusing it. At this stage, Mr Martin-Sperry had made clear that what the defence would be seeking to explore was the issue of confabulation. On the face of the defence case statement, which was arguing that the allegations were false and fabricated, it had by no means been evident that that was the case going to be advanced. But that was the case that Mr Martin-Sperry now wished to advance. He no doubt was well alive to the usual position of the defence in cases such as these whereby the prosecution say to the jury: why would she give a lying account to the jury, why would she want to put herself through all this, in order to lie? Or words to

that effect. The tactical approach of Mr Martin-Sperry, as is to be gathered, was not to say that this teenage girl was lying deliberately but rather to say that she had got it all wrong by reason of confabulation.

The Recorder, as we have said, gave a detailed ruling saying that it was not appropriate to grant an adjournment. However, a further application was made the following day for an extension of time to allow the defence to prepare a further argument to stand the case out.

It appears that in the meantime yet further material had been disclosed at trial by the Crown to the defence because the Recorder stated this:

> "This morning I was told by the Crown that further material had been served on the defence which in the Crown's view was not strictly disclosable but was served in, as it were, a spirit of openness."

It appears from the Recorder's ruling that there were three tranches of material. The Recorder recorded Mr Martin-Sperry's assertion that the material was relevant and disclosable and should have been served a long time before. In such circumstances, Mr Martin-Sperry asked for an adjournment at least with a view to being allowed to prepare a further application to have the case stood out.

The Recorder summarised the tranches of material that had been provided and which he (the Recorder) had studied. The first tranche were medical records dealing with counselling after the present events which were accepted as irrelevant. The second tranche related to matters raised within the New South Wales Health Authority in 2001 with more details and additional facts in the material. The third tranche related to school records and educational history. It may be noted that even before these tranches of further material were disclosed there had been disclosure of other materials to the defence which, amongst other things, recorded an alleged incident in Australia, in around 2001, when the complainant was around 5 years old, whereby it was suggested that seemingly sexualised behaviour on her part may be attributable to incidents in which there had been penetration by others of her with an object or objects such as sticks. This was recorded in the materials previously disclosed and appears further to have been supplemented in the second tranche of materials that were disclosed late in the day.

Amongst such materials, as is now accepted, there was a statement from a Dr Ingall, a consultant paediatrician in New South Wales, which recorded the behaviour of the complainant in 2001 as observed by her parents. Among other things Dr Ingall had said:

> "[E's] actions are almost always a production of abuse. That is, it is my belief [E] has experienced or seen something which has triggered this behaviour. Her normal examination is certainly consistent with this history given by her mother ..."

There were also other counselling notes.

3. It appears that in Australia at the time there had remained considerable doubts as to whether such incidents of penetration of the complainant at this young age had indeed ever occurred. At all events the matter appears to have been taken no further with the police or other authorities at the time.

4. In addition, the defence also had been made aware, because it is contained in her statement, that D, the cousin of the complainant, amongst other things, had said this about the complainant:

> "She had told me that she had experienced some difficult times in Australia with girls at school, and I believe something similar happened to her with a boy (ie as with Uncle Ryan) in Australia but I don't know the details ..."

No source of the statement of that belief is given.

5. Mr Martin-Sperry wished to follow up these matters with a view to laying the groundwork for arguing that this was or might be a case of confabulation. Before us this morning, he asserted firmly relying on his memory as he told us, that documents such as the report of Dr Ingall had not been disclosed by the Crown at the first trial. As he told us, he had first seen them, or at least first read them, only when they were sent to him by the Court of Appeal office, those documents having derived from the rulings and annexes to such rulings of Mr Recorder Grenfell which had been sent to the Court of Appeal office. However, in the light of subsequent clarification, and as a result of contact by Ms Chinner today over the short adjournment with counsel who had appeared at the second and third trial, the details of which we now need not go into, Mr Martin-Sperry, this afternoon, had to retract such assertion. He now has accepted that all such materials had indeed been disclosed by the prosecution at the first trial. Mr Martin-Sperry nevertheless maintained before us that he himself had not read them; but he accepted that he, or at all events the defence, had possession of them. That, of course, is entirely consistent with what Mr Recorder Grenfell had in terms said; indeed otherwise it would be wholly inexplicable (there being no PII application) that the judge would have had those documents provided to him by the prosecution but the defence not.

6. In the course of that first trial Mr Martin-Sperry also had seen fit to ask certain questions of the complainant about suggested previous traumatic events in Australia and whether they had an ongoing effect on her. Her reaction was, as he told us, that she then behaved in a very emotional way in the witness box. Unfortunately, as we gather, Mr Martin-Sperry had launched upon that line of questioning without obtaining any ruling in advance from the Recorder under the provisions of section 41 of the Youth Justice and Criminal Evidence Act 1999. At all events the Recorder understandably then intervened, the matter was debated in the absence of the jury and such further questioning was not permitted to be resumed. Indeed it is rather difficult to understand how there could be embarkation upon such questioning at all given that, at that stage, Mr Martin-Sperry did not have available to him any expert evidence based on confabulation.

7. In that regard, as we gather, Mr Martin-Sperry had had discussions at the outset of the first trial with a Sue Rutter, who is, as were told, an expert psychologist who takes considerable interest in the subject of confabulation. Mr Martin-Sperry had been hoping to obtain an adjournment so that that particular expert could then be instructed. But, as we have said, the application to break the fixture and adjourn was refused. At

all events, the trial then proceeded. In the result the jury were unable to agree and were discharged.

8. That being so, all the problems about the defence seeking leave to adduce expert psychological evidence would appear to have fallen away. Indeed, as the chronology provided to us shows, the Recorder himself, following the trial, directed that any experts' reports for the forthcoming retrial were to be served by 1 February 2016. The defence were thus put in a position whereby they now could put in expert evidence, if they saw fit, on the issue of confabulation. Mr Martin-Sperry, at this stage, however now ceased to be counsel instructed and further counsel, Mr Cross, was in due course instructed in his place.

9. At all events, and for reasons which have never been explained before us, the defence did not thereafter put in expert evidence by 1 February 2016, as the Recorder's direction had permitted. Indeed the defence only served the report of an expert, Dr Ho, on 14 July 2016. So this was not a report from Ms Rutter but a report from Dr Ho. Moreover Dr Ho is not a psychologist but a psychiatrist, specialising in particular in diseases of the mind and personality disorder matters. Further, Dr Ho had not examined or interviewed the claimant personally and there is no indication in the papers that the defence had asked the prosecution whether the complainant would be willing to be examined by Dr Ho. Dr Ho's relatively brief report in fact seems to have focused almost entirely, even if not solely, on the issue of mental health and personality disorder issues.

10. In the opening paragraph of his report he says that he has been instructed to address the issue of possible confabulation by the complainant. He then goes on to say that he had not assessed the complainant and "as such there are limitations with regard to extrapolating specific conclusions". He also indicated that he had had no opportunity to conduct a full psychiatric assessment. But, based on the available evidence, he concluded that there did not appear to be any symptoms of personality disorder. He then, at a later stage, refers to the suggestions of a similar incident occurring in the past in Australia. He commented that it was difficult to establish the veracity of the statement relating to that and then said this:

> "However it is known that children who undergo stressful life events including abuse (physical, sexual or emotional) have a higher tendency to develop maladaptive coping mechanisms, leading to personality difficulties in adulthood."

11. In paragraph 7.7, where he eventually returns to the issue of confabulation, he says this:

> "As such, with regard to the instructed issue of confabulation, it is entirely possible that previous sexual or traumatic incidents could have a bearing on a person's perception of the world and subsequent experience. Whether the complainant in this case has developed a personality disorder, which is known to further present with behavioural and emotional inconsistencies, is difficult to establish conclusively at this stage."

Not only are such comments as Dr Ho makes on confabulation entirely generalised, he does not explain what expertise, if any, he has in that subject at all.

12. At all events that report having been obtained very much out of time, there were further applications on behalf of the defence. On 12 July 2016, in fact, newly instructed counsel had lodged a written application under section 41 of the 1999 Act seeking, based on the disclosure made by the prosecution, to put in evidence, and then to ask questions about, the incidents in 2001 relating to the complainant allegedly occurring in Australia. There was also sought to be permitted to ask questions about possible more recent sexual abuse, in the light of the rather vague comments made by the cousin, D, in her witness statement.

13. On 15 July 2016 Judge Edmunds QC, in advance of the second trial, was faced with an application seeking to adjourn and also to put in the report of Dr Ho. Judge Edmunds rejected the applications. Amongst other things he said this:

> "... it is far too late for the defence to introduce expert evidence. New counsel may have been instructed only three weeks ago but this issue was raised repeatedly during the first trial and absolutely no reason has been advanced as to why any evidence to be relied on was not served. In any event, I am far from satisfied that the report of Dr Ho is admissible at all. He does not, in fact, identify any grounds for concluding that the complainant does suffer some disorder which raises confabulation only that personality disorders cannot be completely ruled out. The lines of authority... do not indicate that speculative evidence about possible psychiatric conditions for which there is no evidential foundation would be admissible."

The judge also went on to reject a defence application to vacate the trial, so that the complainant could be examined by Dr Ho. The judge described that particular application as "hopelessly late". We should also add that Mr Martin-Sperry, before us, has made clear that he raises no challenge to that ruling of Judge Edmunds.

14. The second trial then proceeded in the Crown Court on the 18 July 2016 before Judge Molyneux. It is not clear if any renewed application to adjourn was made before her. If it was, it clearly was rejected. Presumably also, although we have not seen the ruling, the judge dealt with the outstanding section 41 application. However, as we have said the jury had to be discharged towards the end of that trial when in retirement.

15. Following that trial, and before the further re-trial, Mr Cross, who had appeared at it, put in a further advice on evidence, dated 3 August 2016 which has been included in our papers. Amongst other things, he expressed the view that instructing solicitors should seek the prosecution's agreement to allow Dr Ho to examine the complainant and further should seek up-to-date copies of the complainant's medical and Social Services records. Quite what further records there could be is unclear: because it is plain that Mr Cross had available, as he has recently in effect confirmed, all the records that had been provided at the first trial. The advice also said that Dr Ho should be

asked to review and comment on such matters and comment to the extent to which a personality disorder might lead to possible confabulation.

16. Notwithstanding that, there is no evidence whatsoever that the defence sought further to approach the prosecution with a view to Dr Ho examining the complainant. Further, it appears that no further report of any kind from Dr Ho was put in. At all events the third trial then started on 28 November 2016 in the Crown Court before His Honour Judge Simon Davis and a jury. It appears that no further application to adjourn was made and no expert evidence on the subject of confabulation was sought to be advanced. It also would appear, although we have not ourselves seen the actual ruling, that His Honour Judge Simon Davis refused the application made by reference to section 41 of the 1999 Act to permit questioning of the complainant about the past alleged incidents in Australia.

17. No ground of appeal has been formulated with regard to that particular ruling and, Mr Martin-Sperry before us, has said that he raises no challenge to it. Thus, at this stage, the defence still had not advanced any positive case supported by expert evidence on the whole subject of "confabulation". Given that, it was surely inevitable for that reason alone, that the judge would have ruled adversely to the defence on the section 41 application. At all events, it was at the conclusion of that trial that the jury convicted on count 1 albeit acquitting on counts 2 and 3.

18. A negative advice on appeal, included in our papers, was given by trial counsel on 18 December 2016. He, amongst other things, pointed out that Dr Ho had not in any way been able to provided support for a defence of confabulation or to develop an argument of confabulation.

19. Given all those circumstances, it is difficult to understand the basis for the present ground 1 of appeal. As we have said, at the first trial Mr Martin-Sperry had indeed sought to promote a possible issue of confabulation and furthermore had sought an adjournment for that purpose. He failed in that. But the point remains that after the first trial the defence had been in a position, if it saw fit, to adduce expert evidence on that issue.

20. Mr Martin-Sperry sought to say that what happened at the first trial (and unfortunately it appears that relations between Mr Martin-Sperry and the judge had not been good at that trial) had, as it were, infected all that followed thereafter. We simply cannot follow that. The first trial having ended inconclusively, the retrial would be an entirely new trial. The defence would have been in a position to start, as it were, from scratch on the issue of confabulation and to advance a case, supported as appropriate by expert evidence, on confabulation. That did not happen. Thereafter, Dr Ho's late report was not permitted by Judge Edmunds to be put in; and no such evidence was adduced at the final trial.

21. The position at all events, we are entirely satisfied, is that the defence had at all relevant times been given full and proper disclosure. It may well be that disclosure had regrettably been late at the first trial and that may well have created some difficulties at that time for the defence. But no such difficulties would have been in place by the

time of the second trial, let alone by the time of the third trial. Mr Cross in fact has, as we have already indicated, very recently confirmed that he recalls that he had seen all the materials on which Mr Martin-Sperry has sought to place much emphasis today, including the statement of Dr Ingall in Australia.

22. Mr Martin-Sperry nevertheless continues to complain that, in what was a word against word case, there had been inadequate verification of the psychological makeup of the complainant. He says that that in effect shut out the defence from saying that the evidence of the complainant was not deliberately false but based on confabulation. But as we have said, the defence had been amply in a position to advance such a defence with appropriate expert evidence and that they had not done, notwithstanding they had been given permission to put in further expert evidence after the first trial. Moreover, it is entirely obvious that given the lack of expert evidence on confabulation, if for no other reason, the various applications under section 41 of the 1999 Act were properly rejected. It was difficult not to gain the impression that at some stages in his argument Mr Martin-Sperry was in reality seeking to complain at the restrictive ambit of that statutory provision. That is, of course, in some quarters regarded as a controversial provision. But that is the law and the judges have loyally to abide by the law which Parliament has laid down.

23. Accordingly, we can see no unfairness at all in what occurred. Mr Martin-Sperry also invited the court to adopt a "stand back and consider" approach. He said that, without pointing the finger at anybody, the fact is, as he would say, the defendant had been deprived of an opportunity to advance a case properly open to him. But it remains to this day complete speculation as to whether or not confabulation was an available theory to advance in this case. It has never been properly evidenced. Moreover, to the extent that aspects of the argument of Mr Martin-Sperry might be taken to suggest default on the part of the defence team privilege in this regard has never been waived. We have no basis for thinking that the defence team, after Mr Martin-Sperry had dropped out of the picture, had failed to approach matters properly. Mr Martin-Sperry says that had he only continued to be instructed then he would have pressed for a report from someone like Ms Rutter rather than a psychiatrist such as Dr Ho. May be that is so: but that is not the course that the defence adopted and there may well have been good reasons (which necessarily we do not know) for that. Accordingly, even adopting a stand back and consider approach, as Mr Martin-Sperry urges, we can see no basis for thinking that this conviction is unsafe on the ground advanced.

24. We turn to the second ground which is advanced by way of renewed application, permission having been refused by the single judge. What is said is that the verdicts are inconsistent given the scenario of events argued for by the prosecution. It is said that it is incomprehensible that the jury could accept the complainant's evidence so as to be sure on count 1 but not so as to be sure on counts 2 and 3.

25. In his summing-up Judge Davis had said this:

> "... you know you have three counts on this indictment. Please, they are all separate counts. They require your separate consideration, they require your separate verdicts. Your verdicts in relation to those counts

> may all be the same, guilty or not guilty. They may not be the same. Given the issues in the case, you may come to the conclusion that all your verdicts will be the same, one way or another. That is entirely a matter for you to decide. Please, you must approach them separately, separate consideration, separate verdicts. Please do not just lump them all together, I am sure you would not have any way."

On our query Mr Martin-Sperry confirmed that he did not challenge the way in which the summing-up was put on that point.

26. In any event, the approach to matters such as inconsistency of verdict is, on authority, very strictly circumscribed - see cases such as R v Fanning [2016] 2 Cr App R(S) 19 and R v Fletcher [2017] EWCA Crim 1778.

27. In the present case one can see a logical basis whereby the jury could reach the conclusions they did reach. It is plain enough that the jury may have been looking for some corroboration of the complainant's account. There were, of course, a number of strands of evidence capable of supporting the prosecution case, although equally a number of strands of evidence were capable of supporting the defence case. But part of the corroboration available to the Crown included the evidence of abrasion to the vagina. Mr Martin-Sperry speculated - and speculation is what it was - that that may be explicable by the complainant's own conduct with regard to herself having regard to her antecedent history, whatever in point of fact that might be. That is nothing to the point. The point is that the jury had evidence which they would have been entitled to regard as supportive of the complainant's account of vaginal penetration: whereas so far as anal penetration was concerned there was no such available evidence. Furthermore, in so far as the jury convicted only on one count of vaginal penetration, there was also evidence to the effect that, in her subsequent complaints, on some occasions the complainant may have reported in terms of being raped once rather than more than once, albeit she had complained of more than one rape on other occasions as well. At all events, having regard to the strict approach which the court take with regard to inconsistency of verdicts, there is no basis for saying that the convictions are unsafe on that ground. So we refuse the renewed application on the second ground also.

28. Our overall view is that most of the points that Mr Martin-Sperry raised towards the conclusion of his address, though eloquently put, were in reality jury points. The jury had much to consider. They had properly been directed in law. There had been no unfairness in the trial approach. There was no expert evidence before the jury of confabulation. The jury were entitled to reject the evidence of the appellant to reach the conclusions they did. It is not for this court in this case to set aside the conclusion which is properly the province of a jury, properly directed in law, which had heard all the evidence at trial.

29. In the result therefore, this appeal is dismissed and renewal application refused.

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