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Representations of justice in sexual abuse cases

Sinead Ring on the need for appellate guidance for trial judges in historic childhood sexual abuse cases

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Last week the Irish Times [reported](#) a case that has been before the courts in various guises for over 5 years. Christopher Cosgrove, a 66 year-old former Marist Brother, was sentenced at Dublin Circuit Criminal Court to twelve months' imprisonment having been convicted in March of 35 charges of indecent assault. The abuse was perpetrated on four boys more than 40 years ago while Mr Cosgrove was a teacher at a primary school in Sligo. The prosecution involved a huge investigation, with police interviewing some 200 people. The case is of interest for a number of reasons, chief among them the antiquity of the offences, the number of charges and complainants, and the fact that this was the fourth time Mr Cosgrove had gone before the courts in relation to charges of child sexual abuse at the Sligo school. This post sets out the history of the case and offers some brief comments and preliminary observations on what it tells us about the possibility of justice in historic childhood sexual abuse prosecutions.

Original Trial and Appeal

In January 2005 Mr Cosgrove was convicted of 180 counts of indecent assault against six complainants over a nine-year period. RTE News' report of the trial can be accessed [here](#) and the Irish Times Report is [here](#). The time elapsed from the dates of the alleged incidents until the trial ranged from 28 to 37 years. Two of the complainants had no memory of the abuse when they were initially approached by gardaí. In March 2005 Mr Cosgrove was sentenced to eight years' imprisonment. However in February 2006, having served one year of his sentence, his conviction and sentence were quashed by the Court of Criminal Appeal (CCA). The judgment, *People (DPP) v C.C. [2006] I.E.C.C.A. 1* is available on the Courts Service website [here](#) and is reported at [2006] 4 I.R. 287. Quashing the conviction, the CCA held that the trial judge should have dwelt "at some length" on the difficulties facing a defendant in old cases, particularly where no complaints were made in the aftermath of the offences and where there were few islands of fact which would enable a defendant to address his mind in a specific way to the presence or otherwise of "certain physical arrangements or features of the environment in which it is alleged the various offences took place." I discussed the judgment other historic cases involving multiple complainants, in a recent article in the *Judicial Studies Institute Journal*,

[available here](#). For present purposes the key point is the CCA's emphasis on the need for the trial judge to deal reasonably fully with the various problems caused by a delay in the making of a complaint of sexual abuse.

Subsequent Failed Trials

In 2006 an application by the defence to have the trial transferred to Dublin because of concerns relating to juror's recollections of the original trial and conviction was granted. See the RTE report [here](#). According to the Irish Times, a 2008 trial collapsed because of inappropriate remarks made a witness and another trial last year also failed when both counsel for the defence and counsel for the prosecution were forced to withdraw for ethical reasons.

Trial and Conviction in 2010

In February of this year Mr Cosgrove went on trial in Dublin Circuit Court on 55 charges of indecent assault at the Sligo school on dates between July 1, 1968 and June 30, 1977. The Irish Times report of the trial, including an account of the victims' distressing testimony is [here](#). Trial Judge Patrick McCartan withdrew 20 charges from the jury, including all charges relating to one complainant. The paper reports that the jury of seven men and five women took seven and a half hours to return unanimous verdicts on the remaining 35 charges on day six of the trial. As is the practice, at the sentencing hearing, Mr Cosgrove's counsel highlighted the testimony of friends and family on his client's behalf. The themes of violence, retribution and appeals to mercy surfaced in counsel's reference to Mr Cosgrove's fear of prison, following an attack in which his throat was slashed by a fellow prisoner while serving his original sentence at Castlerea Prison. (The Independent's report on the incident is [here](#).)

Judge McCartan praised the victims, saying they were remarkable men for coming forward and telling their story so long after the assaults had taken place. He said that all four complainants told an arrestingly similar story of difficulties in forming relationships and finding stability "because of the poison introduced to their lives at an early stage." Judge McCartan agreed with prosecution counsel that the imposition of consecutive sentences would not be appropriate given the number of victims and assaults. Furthermore, because the offences occurred over 40 years ago, the law provided for a maximum sentence of two years in the case of sexual assault. He also took account of Mr Cosgrove's age and medical problems. Judge McCartan imposed a twelve-month sentence and ordered that his name be entered in the Sex Offenders Register. Mr Cosgrove was allowed to walk free from the court, having served already one year under the previous conviction.

What does this case tell us about the Irish criminal justice system's treatment of historic childhood sexual abuse?

While the 2010 trial was undoubtedly conducted according to due process and fair procedures, there are a few broader issues related to the prosecution of historic allegations of child abuse by multiple complainants generally that are of interest from a criminal justice perspective. There are various representations of justice in operation throughout the sorry history of this case: first, a trial held three or four decades after the alleged offences delivers a guilty verdict of immense proportions - 180 counts of indecent assault. This 'truth' and its repercussions for the complainants and for the defendant is set at naught when the Court of Criminal Appeal finds that the procedures and safeguards fundamental to our concept of fairness have not been adequately adhered to; the trial judge's charge to the jury did not deal properly with the difficulties posed by a trial involving lengthy delay and multiple complainants. Later, in "the interests of justice" the subsequent trial was moved from Sligo to Dublin, amid fears (presumably) that justice would be contaminated by memories of the (quashed) conviction. Two further attempts at trials flounder in circumstances that are not altogether clear. (We only know about them from reports such as the ones [here](#) and [here](#).) Finally in 2010 we have unanimous verdicts on 35 counts of indecent assault against four complainants. Therefore, presuming it will not be appealed, the 2010 verdict represents the ultimate justice in Mr Cosgrove's case. The unanimity of the jury verdict underscores its legitimacy.

In the sentencing hearing we have another representation of justice, in which a number of factors are taken into account in reaching a 'just' result. Central to this representation is the concern for proportionality. Various factors influencing the distillation of sentencing justice come into play at this stage. Judge McCartan's recognition and praise of the complainants' courage and strength in overcoming decades of fear and silence to voice their stories is also a representation of justice. In the judge's comments we see an attempt to further legitimate and acknowledge the complainants' stories of suffering, one that tries perhaps to go beyond the jury's guilty verdict in voicing the community's abhorrence of their victimisation. It is not for me to say if he was successful, but the attempt is laudable. The sentence itself imposes another, perhaps competing, representation of justice in the form of twelve months' imprisonment. However, immediately the custodial sentence is announced, it is asked to play a role arguably beyond its capabilities; its symbolic character is asked to 'stand in' for the (actual) sentence, deemed served because of Mr Cosgrove's year behind bars following the original conviction. It is not clear which representation of justice - verdict or sentence - speaks loudest. Neither is it clear if the symbolic importance of either verdict or sentence can compete with the violence of child sexual abuse.

In the end, it seems that the trial process itself has generated a representation of justice that is multi-layered and important in terms of our understanding of the values at stake. It seems that truth is not a secure category, but is contingent on a variety of fair procedures being observed and applied. In this context the role of the

trial judge in shaping the contours of justice is crucial. In the first trial the judge's role was found to be lacking in that he failed to provide an adequate warning to the jury on the problems arising in delayed cases of childhood sexual abuse. On any analysis, this result was not satisfactory; not only for the defendant who had not received a trial in accordance with due process principles, but also for the complainants, and for the community, who had to endure the subsequent trial(s) in the search for justice.

If we consider that the Cosgrove case was by no means exceptional with regard to the length of the delay involved, and the fact of multiple complainants, the difficulties facing the jury in reaching a decision as to guilt in such cases is of concern. For example, in its [decision quashing Mr Cosgrove's 2005 conviction](#), the CCA held that the prejudice to the defendant caused by delay in the case of a single complainant "can only be seen as exponentially magnified where there are multiple complainants and a single accused. His difficulties of recollection, his difficulties in finding witnesses, or of even remembering the identity of individual complainants are all magnified in direct relation to the number of complainants who come forward. So, while the difficulties of delay may in such circumstances recede to some degree from the prosecution's point of view, they are multiplied and exaggerated from a defendant's point of view."

Trial judges must not only try and bring these perhaps hidden difficulties to the jurors' attention, but must also guide the jury in its consideration of the evidence. Unfortunately, however, there is a paucity of guidance available to trial judges on how to deal with the variety of issues thrown up in historic cases with multiple allegations. The CCA however it has yet to issue a sample direction or charge. Guidance is needed on the nature of the warning to be given in relation to the effect of delay on the defence, how to take into account the effect of the delay when assessing the evidence of witnesses (for the defence and for the prosecution), and how to incorporate the fact of multiple complainants giving similar evidence into their deliberations. Furthermore, despite the probative nature of multiple accusations, jurors should be warned about giving weight to the cumulative effect of evidence of the same character. The provision of proper guidance to trial judges would be welcome in the context of making these challenging prosecutions as fair and as just as possible. This is a goal that must be strived for not only on behalf of defendants, but also for complainants and the community.
