Neutral Citation Number: [3035] EWCA Crim

Case No: 202401470 B5

IN THE COURT OF APPEAL
(CRIMINAL DIVISION)

ON APPEAL FROM :
The Crown Court at Lewes
HHJ Robert Fraser MVO DL
47CC2982921

Royal Courts of Justice
Strand, London, WC2A 2LL

23 June 2025

Before :

LADY JUSTICE WHIPPLE
MRS JUSTICE CUTTS
and
HIS HONOUR RICHARD MARKS KC COMMON SERJEANT OF LONDON

- -

Between :

YUSEF IBRAHIM	**Appellant**
- and -	
REX	**Respondent**

- -
- -

Mr Adrian Eissa KC (instructed by **Foster & Colman LLP**) for the **Appellant**
Mr Dale Sullivan (instructed by **the CPS Special Crime Division Appeals**) for the **Respondent**

Hearing date : 13 June 2025

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Judgment Approved by the court for handing down (subject to editorial corrections)

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person, shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.

Lady Justice Whipple:

Introduction

1. On 18 March 2024 the appellant (then aged 21) was convicted of three counts of sexual offending against C1, following a trial before HHJ Robert Fraser MVO DL in Lewes Crown Court sitting at Chichester. On 30 April 2024, the same judge sentenced him as follows: on count 1, rape, 6 years imprisonment; on count 2, assault by penetration, 3 years concurrent; and on count 3, sexual assault, 18 months concurrent. The usual consequential orders were made as to which no issue now arises.

2. He now appeals against conviction with the leave of the single judge. He has not renewed his application for leave to appeal against sentence after refusal by the single judge.

3. We informed the appellant at the close of the hearing on 13 June 2025 that we dismissed his appeal and our reasons would follow. These are our reasons.

Facts

4. On Friday 24 September 2021 at approximately 03.18, police were called to Shoosh Nightclub in Brighton. There was a report of a female having been sexually assaulted by a male who was still in the club. When police arrived, they spoke to C1, who was sitting in a hallway behind the main entrance with a friend. C1 was upset and explained to officers that in a cubicle in the male toilets the appellant had digitally penetrated her and forced his penis into her mouth. She also explained that this has caused her to vomit. The appellant was arrested.

5. On 30 September 2021 C1 provided a video recorded interview in which she stated that she was on the dancefloor in the club with her friends. The appellant approached her and was dancing with her from behind. She turned around to dance with him and they started kissing. He asked her to go somewhere 'quieter'. The appellant took her by the hand and walked her into the men's toilets and into a cubicle. As soon as they were in there C1 said she did not want to be in there. He told her to undo her trousers. She said she wanted to leave and he said to her 'well suck my dick then'. The complainant said 'no' and the appellant then moved her top apart and started sucking her breast. The appellant then started undoing her trousers and digitally penetrated her vagina. This was count 3. He removed his fingers and put them in her mouth and down her throat causing her to gag. This was count 2. The complainant said she wanted to go

back to her friends and the appellant pulled down his trousers exposing his erect penis and said, 'You need to suck my dick'. The complainant said 'no'. The appellant then forced her head, pushed her body down and forced his penis into her mouth. This caused her to vomit. He told her to get a tissue and carry on. This was count 1. He told her to come back to his accommodation with him, but she refused.

6. She left the cubicle with the appellant. She was crying and went into the girls' toilets looking for her friends, who she eventually located. They went to the bar and the bar staff noticed she was distressed, and the complainant disclosed the assault to the manager. The complainant gave the description of the appellant and with an examination of the CCTV, security located the appellant in the club.

7. CCTV showed C1 walking to the toilets with the appellant. They entered the toilet at 02:03:10 and left at 02:11:26. When they left, C1 was visibly upset and distressed. She parted company with the appellant soon after exiting the male toilets.

8. During the time that the appellant was with security officers he said he had only kissed C1. When he was being led out of the club the appellant said to others nearby him "I ain't done it anyway – its calm – they can do their DNA tests and all that shit."

9. When interviewed in the afternoon of 24 September 2021 the appellant submitted a prepared statement. We set it out in full:

"a. He denied the allegations of oral rape, sexual assault by penetration. He claimed all sexual acts were consensual.
b. That he met a woman in the nightclub, and they danced and kissed.
c. They walked towards the toilets and went in and kissed.
d. The complainant pulled her top and bra down exposing her breast and she allowed him to suck her nipple.
e. The complainant was grabbing his crotch area through his trousers.
f. He asked if she wanted to have sex, and she said they wouldn't but then grabbed his hand and put it down the front of her jeans and inside her underwear, so he was touching her vagina.
g. The defendant 'fingered' her as they continued to kiss.
h. The defendant then asked her if she would give him oral sex and she responded by dropping to her knees and placing his penis into her mouth giving him oral sex for a minute.
i. The complainant then stood up and kept kissing him and stated she had to go and meet her friends. They then left the cubicle."

Thereafter the appellant answered 'no comment' to the questions asked.

10. The prosecution case was that the jury could accept C1's evidence that she did not consent to counts 1, 2 or 3 and the appellant was aware of that. To prove the case, the prosecution relied on:

    a. The evidence of C1 in her ABE video recording and live cross examination.

    b. The evidence of a friend of C1 to whom C1 spoke soon after the incident, whose statement agreed and read.

c. The evidence of Clive Read (head security supervisor at the Shoosh nightclub).

d. The evidence of PS Lee (who witnessed some comments made by the appellant when the allegations were put) and evidence of PC Zoe Bailie who arrested the appellant and relied on her body worn video evidence of the arrest.

e. CCTV evidence showing the appellant and C1 going into the male toilets and then coming out again, together with a later clip around 3.30 am showing C1 reporting what had happened to the police.

f. The evidence of Amin Nurain (another security manager from the club), whose statement was read but not agreed.

g. Agreed facts.

h. The evidence of DC Elaine Welsh (OIC) who described the police investigation. She accepted that no witness statement was taken from the female behind the bar or the girls in the female toilets to whom C1 said she had spoken as they could not be identified. This officer also interviewed the appellant.

11. The defence case was that it was clear from the CCTV that C1 went with the appellant into the male toilets willingly and voluntarily. The appellant gave evidence and maintained that C1 was consenting and there was a reasonable belief in her consent before they went into the cubicle. At no stage was there any hesitation from either side. The defence pointed out that there were other people in the toilets and the cubicle door could not be locked because it was broken. It was the appellant's case at trial that C1 became upset in the cubicle because she vomited on the appellant during consensual oral sex and that she asked him not to tell anyone that this had occurred. The defence called three witnesses who were present with the appellant on the night of the allegation, namely Gabriel Carey, Daniel Pickup and Jessica Powell. All three witnesses gave evidence as to what they saw and heard in the nightclub.

12. The issue for the jury was whether C1 consented to oral sex with the appellant and if she did not consent whether the appellant reasonably believed that she consented or may have done so and whether this belief was reasonable.

Trial

13. The trial commenced on 11 March 2024. The case was opened and C1's ABE interview was played following which she was cross-examined. At the end of the first afternoon, the prosecution applied to admit the witness statement of Mr Nurain as hearsay. Mr Nurain was abroad at the time of the trial. The importance of Mr Nurain's evidence, on the Crown's case, was that he said in his written statement that: "I told [the appellant] of the allegation that he had forced a girl to give him a blowjob" to which Mr Nurain said the appellant replied: "No. I didn't touch her. I just kissed her." By a ruling given the next day, 12 March 2024, the judge acceded to the prosecution's application and admitted Mr Nurain's evidence which was read to the jury, in material part, on 13 March 2024.

14. The jury then heard from Mr Read, the security supervisor at the club. It was his evidence that he told the appellant that he was being detained because "an allegation" had been made against him by a girl and that the appellant replied "No, no, I just kissed her." Mr Read did not remember any discussion between the appellant and Mr Nurain.

15. The appellant gave evidence. In chief, he was asked about his prepared statement relied on at the police interview. He said that he had not mentioned certain things in that statement. He acknowledged that he had not said that C1 had been sick on him. He said his prepared statement was a short summary statement which was about whether the sexual activity was consensual. He accepted that he had not said that C1 had asked him not to say anything about being sick. And he said that he could not remember actually asking the complainant if he could have oral sex "but it may have been implied through the actions" and that "maybe" it was a gesture, or "almost a natural next thing to do". When cross-examined, he was asked about these inconsistencies between his evidence in chief and his prepared statement, in particular about why he had not said in that prepared statement that C1 had asked him not to tell anyone she had been sick. It was put to him that he had not mentioned that in his defence case statement either. The appellant accepted that neither document referred to C1 asking him not to tell anyone that she had been sick. Mr Read's evidence was put to the appellant who admitted telling Mr Read a lie, because he and C1 had done more than kissing. The appellant said the reason he did not say more was that he did not know any detail about the allegations that C1 had made. When Mr Nurain's evidence was put to him, the appellant said he did not remember speaking to Mr Nurain at all and could not remember anyone saying to him that the allegation was of forcing her to give him a blowjob.

16. At the close of the evidence, the judge circulated a draft of his legal directions to counsel. Those directions did not initially contain a direction on adverse inference in relation to the appellant's failure to mention in his defence case statement that C1 had asked him not to tell anyone that she had been sick. The prosecution invited the judge to give a direction that the jury could draw an adverse inference from that failure, relying on sections 6A and 11 of the Criminal Procedure and Investigations Act 1996 ("CPIA"). The defence objected to that direction being given. Having heard submissions on the point, the judge acceded to the prosecution's invitation and ruled that such a direction should be given. In his ruling, he said that the CCTV evidence showed the complainant coming out from the male toilets clearly upset. The reason for C1's upset was plainly going to be an important issue for the jury. The appellant had put forward a reason why she was upset (he said, because she had been sick) and relied on that as part of his case at trial. That had the effect of "placing a spotlight" on previous statements, in particular the defence case statement, where there was no mention of the new assertion that she had asked him not to mention that she had been sick. The judge concluded:

> "I am clear that there has been breach of the requirements of section 11 which attract sanctions of it. The defendant has, on any view, relied on a matter at trial which should have been put in the defence statement but was not. That must be - his position must be safeguarded by a full direction and I am now clear that that is right to protect his position."

17. When the judge came to give his legal directions on 15 March 2024, he directed the jury in standard terms about Nr Nurain's hearsay evidence. He ended that direction with this:

> "So, keep Mr Nurain's evidence in perspective. Obviously, it relates only to one issue in the case, namely what the defendant knew about the allegation that had been made and that is obviously not the only issue in this case or even one of the main issues".

He reminded the jury of the inconsistencies between the appellant's prepared case statement and the appellant's evidence at trial and ended that direction with this:

> "In this case, given that he provided the statement in the way he did, I am going to direct you not to draw any adverse inference from the fact that he then went on to answer no comment to the questions he was asked in his police interview".

He directed the jury that they could draw an adverse inference from the appellant's failure to mention in his defence case statement that C1 had asked him not to mention that she had been sick, and he included the usual safeguards for a defendant as part of that direction. He gave a *Lucas* direction, also in standard terms, dealing with the appellant's admitted lie in telling Mr Read that he and C1 had only kissed each other and included the usual safeguards for a defendant as part of that direction. The judge was not asked by either counsel to give any other legal directions.

18. The jury was sent out on 15 March 2024 and came back on the next working day, 18 March 2024, with unanimous guilty verdicts on all three counts.

Grounds of Appeal

19. In perfected grounds of appeal drafted by Mr Eissa KC, who was not trial counsel but represents the appellant on this appeal, 5 grounds of appeal against conviction are advanced:

1. The judge failed to provide adequate directions in relation to the appellant's prepared statement.

2. The judge's direction about the prepared statement included a matter which was agreed between parties and thus not capable of giving rise to an adverse inference.

3. The judge wrongly directed the jury that they could draw an adverse inference arising from the defence statement.

4. The judge erred in admitting hearsay evidence of Mr Nurain.

5. The judge failed to incorporate the lie the Appellant was alleged to have told Mr Nurain in the *Lucas* direction that he gave.

20. In their Respondent's Notice, the Crown, appearing by Mr Sullivan, who was trial counsel, resist all grounds of appeal. They say that this was a fair trial and that the appellant's criticisms lack foundation.

21. We are grateful to both counsel for the assistance they have given us.

The Appellant's prepared statement, grounds 1 and 2

22. By ground 1, the appellant complains that the judge pointed to certain inconsistencies between the prepared statement (which we have set out in full above) and the appellant's evidence at trial, but failed to direct the jury on how they should approach such inconsistences. Mr Eissa argued that the judge should have given a s 34 direction (pursuant to s 34 of the Criminal Justice and Public Order Act 1994, ie, permitting the jury to draw an adverse inference from the defendant's failure to mention when questioned in interview a fact relied on in their defence) in relation to those inconsistencies, which direction would have included safeguards to protect the appellant, in the form of directions that the jury might or might not draw an adverse inference, and that if they did draw such an inference they should not convict wholly or mainly on the basis of it. His complaint is that the judge gave a "modified adverse inference direction but one without the necessary safeguards" (perfected grounds, p 7), and that without those safeguards the inconsistencies were "floating" without guidance to the jury about how they should approach them. This was, he acknowledged, a submission of some breadth because, if correct, the same point could arise in a variety of different situations in any trial where there were inconsistencies in the evidence.

23. The three inconsistencies identified by the judge in the relevant part of his summing up, comparing the prepared statement with the evidence given at trial, were these: (i) the appellant had not mentioned in his prepared statement that C1 had been sick; (ii) the appellant had not mentioned that C1 had asked him not to mention that she had been sick; and (iii) the appellant had clarified what he meant by "he asked her to give him oral sex" by saying that he did not verbally ask her but just gestured or indicated that he wanted oral sex.

24. We remain somewhat confused by Mr Eissa's case in relation to (i). Mr Eissa accepted, indeed positively asserted, that the fact that C1 had vomited was agreed. By ground 2 he submitted that (i) could not be the subject of a s 34 direction because it was an agreed fact. Ground 2 therefore seemed to be in conflict with ground 1. By the end of argument, we understood Mr Eissa's case to be that the judge should have directed the jury that they *must not* draw any adverse inference from the late appearance of (i) *because* it was an agreed fact.

25. We also remain somewhat confused by Mr Eissa's case in relation to (ii). By ground 3, Mr Eissa argued that an adverse inference direction from the failure to mention (ii) in the defence case statement should *not* have been given; yet by ground 1 he argued that an adverse inference direction *should* have been given in relation to the failure to mention (ii) in the prepared statement. These grounds seemed to be in tension with each other.

26. The Crown resist ground 1. They argue that there was no need for a s 34 direction in relation to any of these inconsistencies in the appellant's evidence. They say that criminal trials often throw up inconsistencies in the evidence and juries are routinely asked to take such inconsistencies into account in their assessment of the evidence without being given any legal direction about how they should do that. Specifically, as to (i), it was agreed that C1 was sick on the appellant so no question of a s 34 direction arose. As to (ii), the judge did invite the jury to draw an adverse inference from the

appellant's failure to mention this point in the defence case statement and there was no need for the judge to direct the jury about the failure to mention it in his statement prepared for interview. As to (iii), this was simply an adjustment to the appellant's case which did not fall within the scope of s 34, which is aimed at facts asserted for the first time at trial.

27. We agree with the Crown. We are not persuaded that there is merit in grounds 1 or 2. As to ground 1: the judge was right to remind the jury of the various inconsistencies between the appellant's prepared statement and his evidence at trial. As to (i), the point was important to the case, not because there was any disagreement about whether it had occurred (it was agreed that C1 had vomited) but because the Crown made a point about the timing of the appellant's disclosure that she had vomited: it was the Crown's case that the appellant had only admitted that fact once the police had seized the appellant's clothes with C1's vomit on them and he had to, and that he had not admitted it earlier because that might have corroborated C1's case that she was sick while the appellant was forcing her to have oral sex. The appellant's answer was that his prepared statement was only intended to go to the issue of consent, and that anyway C1 had asked him not to mention that she had been sick. The jury was properly reminded of these exchanges and did not need a s 34 legal direction before considering them. Further, no s 34 direction was sought by the appellant's trial counsel (for reasons we can well understand, because such a direction may not have been considered beneficial to the appellant) and it is too late now to argue that such a direction should have been given.

28. As to ground 2, it is common ground that (i) was an agreed fact and that no s 34 direction would have been appropriate. We are not with Mr Eissa on his reformulated argument that the judge should have directed the jury *not* to draw an adverse inference from the late disclosure of (i) by the appellant. The timing point was part of the Crown's case; we see no reason why it should not have been before the jury. Further and in any event, no such direction was sought by the appellant's trial counsel (again, for reasons we can well understand) and it is too late now.

29. As to (ii), that did become the subject of an adverse inference direction in relation to its absence from the defence case statement (that is the subject of ground 3, which we shall come to). In our judgment, it would have been excessive to give two adverse inference directions in relation to the same piece of evidence. We reject the appellant's submission that the judge was required to invite the adverse inference in relation to the failure to mention this fact in the prepared statement instead of the defence case statement – we can see no reason why the judge should not have focussed on the deficit in the defence case statement. This too was a very important piece of evidence, closely connected with the issue of whether C1 had consented because it went to the reason why C1 had emerged upset from the men's toilets: was it because she had been raped (as she said) or because she was embarrassed about being sick in the course of giving the appellant oral sex (as the appellant said)?

30. As to (iii), we are satisfied that this was merely clarification by the appellant of a point he had made in his prepared statement. It was not a failure to mention something in interview which was subsequently relied on and a s 34 direction would have been inappropriate.

31. The judge very fairly reminded the jury of the prosecution and defence points which related to the prepared statement. He then directed the jury not to draw an adverse

inference from the appellant's no comment interview, given that he had offered this prepared statement setting out his case. Mr Eissa was not able to formulate the precise direction he would have wished the judge to give, marrying the direction about not drawing an adverse inference, which Mr Eissa did not object to, with the proposed s 34 direction Mr Eissa says should have been given. We think it would have been confusing and potentially damaging to the appellant's case for the judge to direct the jury not to draw an adverse inference from no comment answers in interview but then go on to direct the jury that they could draw an adverse inference from the inconsistencies and gaps in the statement prepared for that interview (or the other way around). The appellant benefited from the direction that was given in relation to the prepared statement, and we are not persuaded that a s 34 direction was required to deal with inconsistencies between that statement and evidence given at trial. We dismiss grounds 1 and 2.

Adverse inference relating to Defence Case Statement, ground 3

32. Mr Eissa complains about the adverse inference direction that the judge gave in relation to the appellant's failure to mention in his defence case statement that C1 had asked him not to tell anyone what had happened. The direction started in these terms:

> "Now, in this case the Crown say that the defendant has told you that [C1] asked him not to tell anyone what happened in the male toilets, in other words to keep her confidence. However, he failed to mention that in his defence statement. Now, the prosecution say that is because the defendant has made up that evidence to fit the prosecution case."

33. Mr Eissa complains that the wording of the direction is unclear because "what happened in the male toilets" is a reference to sexual contact as to which there is no dispute.

34. This is, in our judgment, a baseless criticism, because the next parts of the judge's direction make clear that the point relates to the appellant's assertion that she asked him not to tell anyone she had been sick, a point which was anyway fresh in the minds of the jurors having very recently emerged in the appellant's oral evidence:

> "Well, the defendant, as you know, denied that the reason was that he made it up. The defendant's reasoning in his evidence was that in the defence statement it is stated that the complainant was upset and embarrassed *and that her asking him to keep the confidence was contained within that conversation.* Now, when it was put to him that the conversation didn't happen, the defendant said, 'It happened then in the same bit where she was upset and embarrassed. It happened then'.
>
> Well, it is for you to consider why the defendant had not mentioned that matter in his defence statement. The defendant said that the defence statement was his defence summary and that he had mentioned the upset and embarrassment *about being sick* within it. Well, if you accept the defendant's account was or

> may be true then you should obviously ignore the failure to include that matter in his defence statement." (emphasis added).

35. The main focus of Mr Eissa's argument is on section 6A(1)(ca) of the CPIA which requires a defendant to set out particulars of the matters of fact on which he intends to rely "for the purposes of his defence". Sections 11(2) and 11(5) of the CPIA permit an adverse inference to be drawn when there has been a breach of s 6A. Mr Eissa submits that there was no breach of s 6A here. He says that the defence case statement is not a proof of evidence and the appellant was not required to include in his defence case statement facts going to credibility; the assertion he later made in evidence that C1 had sought his confidence was not anyway a point which the appellant relied on in his own defence so much as a point relied on in anticipation of C1's case at trial.

36. The Crown resist this challenge. They say that the appellant did rely, as part of his defence, on the assertion that C1 had asked him not to mention that she had been sick. This was an assertion of fact inseparably linked with the appellant's case. It explained, on his case, why C1 had emerged upset from the men's toilets. In addition, it went to credibility because it explained, on his case, why he had lied to the security guards on duty that night. It should have appeared in the defence case statement.

37. In our judgment, the judge was justified in concluding that the jury should be directed that an adverse inference could be drawn against the appellant arising from his failure to mention this fact and directing the jury accordingly. The appellant had submitted a detailed defence case statement, running to many paragraphs. The relevant part of the appellant's defence case statement said this:

> "ff). While this [oral sex] was happening, the Complainant gagged and ended up being sick on the Defendant a little bit.
>
> gg). The Defendant perceived the Complainant to then become upset about being sick on the Defendant, and apologised for this. The Defendant reassured her that it was okay, while cleaning himself up.
>
> hh). The Complainant then suggested to the Defendant that they leave the toilet."

38. Despite the detail offered about this part of the night's events, the defence case statement did not say that C1 had asked the appellant not to tell anyone that she had been sick. We agree with the Crown that this fact was highly relevant to the appellant's case: it could explain C1's tears and upset in the immediate aftermath as seen on CCTV, which went beyond mere credibility. We have already recited the relevant parts of the judge's ruling in reaching the conclusion that such a direction should be given. We find no fault in that conclusion. We therefore dismiss ground 3.

Mr Nurain's evidence, grounds 4 and 5

39. Mr Eissa submits that the judge was wrong to admit Mr Nurain's evidence, because he did so on the understanding that Mr Read could answer questions about what Mr Nurain had said, but it turned out that Mr Read had not heard those exchanges and could not answer those questions; Mr Eissa submits that it should have been clear from the outset,

from a careful reading of Mr Read's statement, that Mr Read would not be able to help; and that posed a difficulty for the appellant which should have been taken into account in deciding whether to admit Mr Nurain's evidence as hearsay (noting section 114(2)(h) CJA 2003).

40. The Crown resist this ground of appeal arguing that the judge was right to admit this evidence, and it was properly admitted even if it subsequently became apparent that Mr Read could not answer questions about it. The jury was properly directed on it.

41. Again, we agree with the Crown. In his written statement, Mr Read said that he was with the appellant when he was joined by Mr Nurain. It was reasonable for all parties to infer that Mr Read was in the room with Mr Nurain and would be able to give evidence about the later exchange between Mr Nurain and the appellant. In the event, Mr Read recalled no such exchange and could not answer questions about it. That could not reasonably have been anticipated.

42. The evidence of Mr Nurain passed through the section 116(2)(c) CJA 2003 gateway. The judge had regard to the factors in section 114(2). He considered the evidence of Mr Nurain to be important and to have significant probative value in relation to an issue in the case, which was whether the appellant knew the extent of the allegation made against him when he responded saying that he had only kissed C1. At the stage of his ruling, the judge reasonably predicted that Mr Read would be able to deal with questions about Mr Nurain's evidence. That turned out not to be the case, but that does not mean that the admission of Mr Nurains's evidence was wrong; there were other good reasons for admitting it, most notably its significance to the issue of the appellant's credibility, even if Mr Read could not answer questions about it.

43. When it came to summing up, the judge dealt with Mr Nurain's evidence in clear and comprehensive directions. He reminded the jury that the appellant had not been able to test Mr Nurain's evidence and that the appellant denied the account given by Mr Nurain. The judge stressed the limitations of Mr Nurain's evidence, telling the jury to "keep Mr Nurain's evidence in perspective" because it only related to what the appellant knew about the allegation against him. There was no error in admitting Mr Nurain's evidence and the jury were appropriately directed about the use they could make of it.

44. Next, the appellant submits that the judge failed to include in his *Lucas* direction the lie which the appellant was alleged to have told Mr Nurain (ie that he had only kissed C1). As we have discussed, the judge gave a *Lucas* direction about the same lie which the appellant admitted telling Mr Read.

45. The Crown say this is a bad point: the appellant accepted that he had told Mr Read a lie; by contrast the appellant said he could not recall any exchange with Mr Nurain so there was no admitted lie to which the *Lucas* direction could properly attach.

46. In our judgment, it was not necessary for the judge to give a *Lucas* direction in relation to Mr Nurain's evidence. Unlike Mr Read's evidence, Mr Nurain's evidence was disputed. A *Lucas* direction in relation to Mr Nurain's evidence risked over-complication. But in any event, the judge had just given the jury a lies direction in relation to Mr Read, and he had told the jury to keep Mr Nurain's evidence in perspective and be alive to its limitations. That was sufficient. We reject grounds 4 and 5.

Conclusion

47. We are not with Mr Eissa on any one of his five grounds. In our judgment, the judge correctly focussed on two pieces of evidence which were particularly damaging to the appellant at trial. The first was the appellant's lie to Mr Read and the second was the appellant's explanation for that lie, in the form of his late suggestion that C1 had asked him not to mention that she had been sick. The judge dealt with both of those pieces of evidence in a careful and balanced way, giving a *Lucas* direction to deal with the first and an adverse inference direction to deal with the second. Both directions included safeguards for the appellant.

48. We are not persuaded that any further or different directions were required.

49. In case we are wrong in our conclusions, we have asked ourselves whether the appellant's conviction is or might be unsafe. In our judgment this was a strong prosecution case. There was not only the evidence of C1 about the events in question, but also evidence of her immediate complaint to friends and security staff, coupled with her demeanour that night evident for all to see on the CCTV as she emerged from the men's toilet. The appellant gave his account in evidence, seeking to explain C1's upset, in particular; but the jury self-evidently rejected his account as untrue. This experienced judge tried the case with skill and care. We have no doubt that the trial was fair. This conviction is safe.

50. For those reasons, the appeal has been dismissed.