

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. P.K.G.*, 2025 NSSC 87

Date: 20250306

Docket: CRH 530100

Registry: Halifax

Between:

His Majesty the King

v.

P.K.G.

TRIAL DECISION

PUBLICATION BAN: s. 486.4 and s. 486.5 of the *Criminal Code*

Judge: The Honourable Justice Jamie Campbell

Heard: February 4, 11-13 and 19-21, 2025, in Halifax, Nova Scotia

Counsel: Nicholas Comeau, for the Crown
Nathaniel Spinney, for the Defence

By the Court (orally):

[1] The main witnesses in this case were part of the same family. One complainant, Ms. G, has alleged sexual assault, and her identity is banned from publication. The two other complaints, her sons, are under the age of 18. Their identity is protected as well. In the published version of this decision the family will be referred to by a single initial. The young complainants will be referred to as the elder and younger son or collectively as “the boys”. That is not as a sign of disrespect or to diminish their individual identities. They have the same last names and the same initials. Using those initials would make reading of the decision confusing and difficult.

Background

[2] Mr. G immigrated to Canada from India with Ms. G and their two sons, who were then 8 and 10 years old. They arrived in Halifax on July 25, 2018 with Permanent Resident status. That had been granted before they arrived.

[3] Mr. G has been charged with assaulting Ms. G, choking her, and sexually assaulting her. He has been charged with assaulting each of their two sons and assaulting them both with a weapon. Ms. G and their sons left the apartment that they shared on August 6, 2020 and went to Bryony House, a shelter in Halifax for women experiencing intimate partner violence. On August 17, 2020 Mr. G was served with an Emergency Protection Order, which among other things restrained him from “committing any further acts of violence against the victim”. On August 23 or 24, 2020, and while she was still living with the children in Bryony House, the police took Ms. G to their apartment to retrieve some of her documents. It was determined that Mr. G had left. He had returned to India on August 22, 2020, after buying a ticket the same day. Mr. G’s wife and sons gave statements to the police on August 28, 2020. Mr. G remained in India for three years, until August 2023 when he came back to Canada. He was arrested upon his arrival by Canada Border Services Agency, and he was transferred into the custody of the Halifax Regional Police at the airport in Montreal on August 24, 2023.

Limited Relevance of Evidence Related to India

[4] None of the charges that Mr. G faces relate to anything that happened in India or anywhere else outside Nova Scotia. The Crown applied to lead evidence related to the family’s time in India for the limited purpose of showing that the abusive behaviour that was alleged did not develop suddenly upon arrival in

Canada. The only evidence of that behaviour in India was from Ms. G and the boys. The evidence was the subject of a *voir dire* and was admitted for that purpose (*R. v. P.K.G.*, 2024 NSSC 137). During the trial it became the subject of extensive examination and cross-examination. That ranged from evidence about the uneasy relationship between the extended families and who paid for the birth of the children to who paid for the continuation of Ms. G's education. Evidence about what took place in India, as noted in the *voir dire* decision about its admissibility, is relevant only for the limited purpose for which it was admitted. It provides a narrative context. It does not serve as evidence of propensity to commit offences of this or any other kind, does not serve as evidence of bad character and does not serve as evidence of controlling behaviour.

Reasonable Doubt

[5] The Crown is not required to prove beyond a reasonable doubt every fact alleged as part of the narrative. The focus must remain on the offences and the essential elements of those offences. The Crown must prove each of those elements beyond a reasonable doubt for Mr. G to be found guilty.

[6] Mr. G gave evidence in the trial. He was not obliged to do that and of course was not obliged to prove or disprove anything. The onus remains on the Crown to prove the case.

[7] If Mr. G's evidence is believed so that it raises a reasonable doubt, he must be found not guilty. His testimony is not analyzed within an evidentiary silo, separated from the other evidence in the trial. The credibility and reliability of any piece of evidence, including Mr. G's, can only be properly assessed having regard to the other evidence in the trial. That includes the testimony of Ms. G and their sons. Even if Mr. G's evidence does not in itself raise a reasonable doubt as to his guilt, he must be found not guilty if other evidence in the trial raises that reasonable doubt. That evidence may have been led by him or by the Crown. If neither Mr. G's evidence, nor any of the other evidence raises a reasonable doubt as to his guilt, he must nevertheless be found not guilty if the absence of some evidence related to an essential element of an offence raises a reasonable doubt. Mr. G can be found guilty only if the Crown has proven beyond a reasonable doubt each of the essential elements of an offence.

[8] Ms. G and the two boys testified about what they said were Mr. G's sustained pattern of assaultive and abusive actions toward them. Mr. G denies that. He denied ever touching any of them in the ways that they described. The

difference is not one of nuance, of different people perceiving situations differently or of a misunderstanding. The evidence of Ms. G and the boys cannot be reconciled with what Mr. G said in his testimony. The only logical explanation is that someone is not telling the truth. In a criminal trial that logical explanation does not set up what has been called a “contest of credibility”.

[9] The credibility and reliability of each of the witnesses is important. Credibility relates to whether a person is telling what they know to be the truth. Reliability relates to a person’s ability accurately to observe, recall and relate what they observed. The assessment of credibility and reliability is not done by the activation of a binary switch, so that a person is either entirely believed or entirely disbelieved. Confidence in the credibility and reliability of a witness’ testimony sits on a continuum. It may be in some cases, a very high level of confidence approaching though not reaching certainty. The level of confidence in what other witnesses say may be very low, but again, never reaching absolute certainty in the falsity of what the person has said.

[10] The concept of reasonable doubt means that a person may be found not guilty even though his evidence, or the evidence pointing to his being not guilty, is less credible or reliable than the evidence supporting his guilt, provided that having regard to all the evidence, it is enough to raise a reasonable doubt as to his guilt. The question is not which of the parties is more likely to be telling the truth. An accused person, who is less likely to be telling the truth than the complainants must nevertheless be found not guilty if the evidence is just credible and reliable enough to raise a reasonable doubt. And an accused person must be found not guilty if the evidence led to prove his guilt falls short of the standard of proof beyond a reasonable doubt.

[11] The truth matters. But so does proof beyond a reasonable doubt.

India to Canada

[12] Mr. G and Ms. G were married in 2007, when they were both 21 years old. Mr. G had been married once before and his first wife died in a fire. Mr. G offered that he was found not to have been implicated in her death. That evidence was not relevant and had no bearing whatsoever on this trial.

[13] As was common in India, at least at that time, the marriage of Mr. G and Ms. G was arranged by their parents. Their elder son was born the next year. The couple did not get along well and neither did their families. At trial they agreed on

that much. Ms. G was still a student when they were married and through the first years of the marriage continued in her studies until she obtained the equivalent of a master's degree. Their younger son was born less than 2 years after his brother's birth. The relationship between the parents worsened. Ms. G spoke about physical abuse and controlling behaviour, none of which is relevant to the charges faced by Mr. G. The couple began to consider immigrating to Canada. Her hope was that it would improve the relationship.

[14] The family began to work on their English language skills and prepare for immigration. They were eventually accepted as permanent residents and made the trip to Canada. They arrived July 25, 2018. They stayed in a hotel for 2 weeks. They moved into a 900 square foot, one bedroom apartment in early August 2018. That was the only apartment in which they would reside as a family in Canada, and they remained there for 2 years. The family of 4 slept in the same room on 3 mattresses set out on the floor.

[15] Soon after they got their apartment Mr. G started looking to food banks, clothing banks and furniture banks to fulfill their immediate needs. Both parents soon got call centre jobs in which they worked from home. Ms. G was later able to get better paying jobs.

[16] The immigrant experience was not an easy one. Both parents were under pressure to increase the family income by finding more lucrative employment. Mr. G worked as a design engineer in India but when in Canada was limited to call centre jobs and taking courses to improve his employability. Ms. G's degree was in information technology. She also had difficulty in finding work that allowed her to earn an income commensurate with her credentials. While both boys had some limited proficiency in English they were going to school in a second language and in a strange culture. They were experiencing a vastly different climate and had no extended family to offer support.

[17] The family did receive considerable support from Immigrant Services Association of Nova Scotia (ISANS). Even with that, transitioning to a new country placed the entire family under stress.

The Older Son

[18] Ms. G and her two sons left the home and went to Bryony House on August 6, 2020. She described how they left in the morning being careful not to wake Mr. G. She said that Bryony House sent a taxi to pick them up. She explained that she

had no intention of, to use her turn of phrase, “breaking the family”. In the culture in which she was brought up, she said that once a woman has been married and divorced, she had limited opportunities to remarry, and she was not confident that she could support the boys on her own. She hoped that if she and the boys left for a few weeks Mr. G would understand that physical assaults were not acceptable.

[19] While in Bryony House Ms. G and the boys had spoken with staff and others there. They did not tell anyone there about what they alleged had happened. Both boys expressed some concern that if their father found out that they had told someone else, he would take them back to India. The fear of returning to India was a recurring theme for Ms. G and the boys. That appears to have had something to do with the extended family relationships in India. It was only after Mr. G left and went back to India on August 22, 2020, that Ms. G determined that she and the boys would speak to the police.

[20] Both of her sons spoke to the police on August 28, 2020. The statements were recorded.

[21] The older son is now 17 years old. He adopted the recorded statement that he gave to the police but also noted that he was almost 5 years older and was able to explain and recall some details that he could not as a 12-year-old. He said that most of the statement was “quite accurate” though there were some things that were not included.

[22] In 2020 he told the police that his father beat them up when “we miss something”, like not doing “a lot of homework”. The phrase “beat us up” or “beat us” was repeated by both boys and their mother. The older son said that his father was “very mean” and did not like them. He went on to say again that if they, meaning he and his brother, forgot something, their father would beat them up. He said that he saw his father beat his mother as well. He described being beaten with a wooden stick and how if his mother came in to protect the boys, she would get beaten as well. He said that Mr. G would sometimes use his hand as well and would hit them on the head and on the back of the leg or on the back. The boy reported that Mr. G also sometimes used a “metal tube, like a metal stick”. It would happen every two or three days. The older son said that sometimes if Mr. G hit them too hard it would start to bleed, though that did not happen often. The older boy said that his brother was beaten more than he was because he made more mistakes.

[23] He recalled seeing Mr. G beat their mother. He said that Mr. G used to pull her hair. He said that she would cry when their father did that.

[24] He was asked how many times his father had beaten him since arriving in Canada. He said, "I can't count. It's a lot of times."

[25] In cross-examination the older son was asked if they had been disciplined by their mother as well. He said that she would punish them by withdrawing privileges like going outside or watching television. The only time that their mother would strike them was when their father told her that she had to do that. He recalled an incident when he had been playing video games too long and his father said that his mother had to punish him. She slapped his back, and his father said that she had to hit harder. The older son said that his mother acted as if she were striking harder but did not.

[26] On cross-examination the older son said that there were too many instances to count. "We got used to it", he said. He said that they were not allowed to cry when they were struck and crying or making a noise would result in a worse beating being inflicted. Similarly, he was asked if he had ever told anyone else about this. He said that he had not because if his father found out, "he would kill us". He said that Mr. G often threatened to kill them. It was pointed out to him that he had not mentioned that threat when he spoke to the police as a 12-year-old. He replied that at that time he was afraid that his father would find out about what he had said and would take them back to India if he found them. It is not clear why he believed that what he had told the police in his statement was less likely than the report of the death threats to have the family sent back to India. They were then living at Bryony House at the time. By the time the statements were made to the police Ms. G, and the two boys were aware that he had left Canada, but they had no idea as to when, if at all, he might return.

[27] He was asked why, if the beatings had caused bleeding, he was not taken to see a doctor. He said that a doctor would have asked how it happened and that would result in more trouble and possibly result in their father taking the family back to India. No pictures were taken of injuries to either of the boys or their mother because as the elder son said, Mr. G had access to their mother's phone.

[28] He described one incident in which his mother was beaten. He said that he and his brother were in the living room with both parents. Mr. G grabbed their mother's hair from the back. He began to strike her, and she was crying and telling

him to stop. After Mr. G hit her, she fell and tried to escape. As she was crawling away Mr. G kicked her in the back and then hit her on the face with his hands.

The Younger Son

[29] The younger of the two boys is now almost 15 years old. Like his brother, he is a soft spoken and articulate young man. He also adopted the statement that he gave to police on August 28, 2020, when he was 10 years old. At that time, he said that their father used to “beat” them, using his hands or something made of wood, that was later clarified to be a spatula. On cross-examination he called it a wooden spoon and said that it was kept in a drawer in the kitchen. It was used to flip chapattis. He also said that their father told the boys that if they screamed, he would beat them harder. He was asked why he had not said that in the statement given almost 5 years ago, when he was 10. He said, “I didn’t know that much back then.”

[30] In the recorded statement from August 2020, he was able to say that a beating had last happened two or three days before they “left him” and that had been about 15 or 17 days before the statement was given. He said that he had been beaten on the back or on his legs and that it had left marks. He explained that he was not taken to a doctor because if he had told anyone else what happened he believed he would have been beaten even more. He was asked how things were since he, his brother and mother had left the apartment where their father lived. He said, “Amazing. That’s like the time I became free.” Those were the words of a 10-year-old boy uttered about three weeks after he, his brother and his mother went into Bryony House.

[31] He believed that if they went back to his father, he would take them back to India.

[32] As a 15-year-old, in 2025 the younger boy agreed that there were things he spoke about that had not been included in his statement to the police given when he was 10. He said that he had just given examples. One was being beaten when he spilled water but there were others. He volunteered that one incident took place when he saw his father in the kitchen with an alcohol bottle. He was struck in the face by his father.

[33] The younger boy spoke about his father beating his mother. He told the investigator that when their mother would come to “save” them, he would beat her as well. He would grab her hair and beat her on the face a lot. In cross-examination

he said that his father would often pull his mother's hair, tried to gouge her eyes with his thumbs and used to kick her a lot.

Ms. G (R.P.G.)

[34] Ms. G provided background about the marriage in India in 2007. Both Mr. G and Ms. G confirmed that it was not a particularly happy marriage. There were issues from the very beginning about the payment of dowry by Ms. G's family and payment for expenses related to the birth of both sons. She said that the physically assaultive behaviour that she alleged took place in Canada was a continuation of what was happening in India, and she had hoped that a move to Canada would offer a better life. Evidence about details of the relationship or the assaults as alleged in India are not relevant to the charges against Mr. G. It is enough to note that her evidence was that the assaults on herself and the boys did not start upon arrival in Canada.

[35] Ms. G noted that she did not remember the assaults in chronological order. They were, she said, commonplace. Each one would stand out from the other only by the surrounding circumstances, not the specific date. She did not, as she said, keep a diary of the ongoing assaults. She gave evidence by talking about incidents as she remembered them and not in any order. They can be placed in roughly chronological order with reference to surrounding circumstances from which Ms. G was able to infer an approximate date but that was not how she recounted them in her testimony.

[36] The first in time incident that Ms. G could specifically recall she said took place in September 2018, soon after the family got an apartment in Halifax. The boys were each required to do some household chores and both Mr. G and Ms. G testified to that. The younger boy was vacuuming the couch in the living room. She went into the living room and when Mr. G came in, she immediately became tense. She said that Mr. G accused the boy of missing the area at the top of the couch back. Ms. G said that Mr. G started by pulling the boy's ears. The boy made a noise and Mr. G went into the kitchen to get the wooden spatula. He took the spatula into the living room and started beating the boy "on his butt". She said that he hit the boy 20 to 25 times. Ms. G said that she was in the living room but was not able to say anything. Mr. G was shouting at the boy about why he did not care about his work. She said that she was not allowed to comfort her son. She said that whenever she tried to do that Mr. G would accuse her of trying to show the boys that she was "the nicer parent", so that "the kids would hate him".

[37] Her memory of one assault on her was anchored in the filling out of an online job application and she was able to date it to the fall of 2018 with reference to the job itself for which she got an offer in November 2018. There was a dispute in which Mr. G said his wife was asking him to help with the completion of the form and he thought that because it was her job it was appropriate that she fill out the form herself, so she would be familiar with the information if she were to be asked about it. During the argument Ms. G said that Mr. G dragged her from the bedroom into the living room by her hair, by grabbing her ponytail. She said that he hit her “hard on the stomach”. She was on the floor, and she said that he kicked her 15 to 20 times. She tried to protect her heart while that was happening because she is a heart patient. She said that she tried to stand, and he started slapping her in the face. She recalled 15 to 20 slaps, from both sides of Mr. G’s hand. She said that the next day her face was swollen, and she had a mark on her cheek from the stone in Mr. G’s ring.

[38] Ms. G said that she was not able to cry.

[39] It was then around 2 am. She recalled just sitting in a small chair afterward, covering her face. She said that Mr. G then threatened to take the family back to India. She said, “My body went cold because that scares me a lot.” She said that she decided not to go to work that morning because of the marks on her face.

[40] Mr. G acknowledged that there had been an argument but absolutely denied ever striking his wife.

[41] On the third day of the trial Ms. G spoke about “sexual abuse”. She said that because her children had been in the courtroom the previous day, she did not feel comfortable talking about it. She gave an example from what she believed to be January or February 2019, though she said that similar incidents took place over the 2 years that the family lived together in Halifax. The family slept in the same room and there was not very much privacy. Ms. G said that Mr. G was interested in having sex. Mr. G grabbed her from behind, but she said, “I escaped myself” and went into the kitchen. The younger of the boys was not yet asleep and she did not want to have sex. Mr. G followed her. Their son came into the kitchen to see what was going on. Ms. G said that it was awkward. She said that Mr. G was angry because the boy was not sleeping. Mr. G drank some liquor that was in the kitchen cupboard and their son saw that. Mr. G was angry and slapped the boy on the face 2 or 3 times. Ms. G said that she was crying because of this. That is generally consistent with what the younger boy described in his evidence.

[42] That did not detail anything that would likely be described as sexual assault, even though Ms. G had introduced it that way. She appeared hesitant to speak about sexual matters. She said that Mr. G would ask for “things” that she was not willing to do because it was, to use her term, “dirty”. She did not immediately volunteer what he had asked or demanded of her. Crown counsel asked her to elaborate. She said that he asked her to “do sex orally” which she refused because she said it was “disgusting”. When she said no, he grabbed her by the ears and squeezed them. She could not make any noise, or she would wake the children who were also in the same bedroom. He moved her mouth toward his penis, and she said, forced her to perform oral sex. He ejaculated in her mouth. She said, “I was hating myself for that”. She said, “I told him I do not want to do these things.” She said that Mr. G told her that as a wife she was supposed to do that. Ms. G said that this was a regular occurrence.

[43] When speaking about those incidents Ms. G said, “For me there was no escape.” Ms. G said that she did not consent to sexual contact of that kind and said that it was frustrating for her because “he never loved me he just wanted sex.”

[44] Ms. G recalled another incident in early 2019. She could not remember the exact date but again placed it in time based on a new job that she had started. She said that she remembered having an argument with Mr. G related to what he was able to do. That was as specific as she could make it. She said that she remembered him asking her how she knew what was or was not possible and saying that he would show her what was possible. He dragged her into the kitchen and turned on the electric stovetop. He put his hand on the back of her neck and pushed her face close to the hot electric coil. She said that she tried to push herself back, but this went on for about 3 to 4 minutes. Her face was close enough to the coil that her eyelashes and eyebrows were singed. She used the word “eyelids” rather than “eyelashes” but in the context it was clear that she referred to hair growing close to her eyes. She had started a government job and was embarrassed to go to work because of her eyebrows and eyelids.

[45] Ms. G testified that she got out of the kitchen and went into the living room. She said that Mr. G “beat” her in the living room but the danger involving the stove had gone. She remained in the living room for about a half hour, during which time Mr. G was using “bad words” directed at her.

[46] Mr. G denied ever having done anything like that.

[47] Ms. G said that sometime around March 2019 an incident took place on a day when school had been cancelled because of weather. Mr. G had asked her to make tea and she said that he was upset when she sent one of their sons to bring it to him. She said that Mr. G said this was disrespectful on her part. He grabbed her cheek and slapped her on the face in front of the children.

[48] Mr. G denied having done that.

[49] Ms. G testified to another example of assault in December 2019. She recalled it taking place around the couch in the living room. She said that Mr. G interlocked his fingers with hers and pushed her fingers back toward the back of her hand. He pulled her hair on that occasion, and she said that he also pushed her eyeballs with his thumbs. She specifically recalled hearing a noise from her back when she was thrown onto the couch. Ms. G said that Mr. G placed his right hand around her throat. The motion she made when describing it was that of the hand grasping the windpipe. She said that she was unable to eat solid food for some days afterward. Mr. G denied having done any of that.

[50] Ms. G spoke about an incident that she said took place in March 2020. It centred around a family vacation in Prince Edward Island. Mr. G said that the trip to PEI was in the summer. His dating of the trip seems much more likely given that it was intended as a beach vacation. The dispute centred on packing. Ms. G said that Mr. G had refused to do anything about packing for the trip and she and the boys waited in the car for hours while he got ready to go. Mr. G recalled a dispute but it was about whether they should take beach chairs. In any event, Ms. G's testimony was that during the argument Mr. G slapped her on the face several times and the ring on his finger cut her cheek. Mr. G denied ever having struck his wife and specifically denied striking her on that occasion.

[51] Ms. G said that in June and July of 2020 she began to prepare herself for getting out of what she said was an "abusive environment". She, like the boys, made it clear that the examples she gave were just that, examples.

[52] She started to collect the things that she and the boys would need. On August 6, 2020 they got up at about 6 am. She made food and fed the boys. At 8 am they left. Mr. G was still asleep. She said that she did not have her health card or some other documents. She went into the bedroom and retrieved some of them. Other documents like her passport were locked in a suitcase and she could not safely get them. She described that she and the two boys ran down the corridor of

the apartment building and met the taxi that Bryony House had sent. Bryony House had arranged for a hotel for them until a spot became available at the shelter.

[53] She said that she hoped that after a few weeks in the shelter she and the boys could return, and Mr. G would have come to the realization that he could not continue to behave in the way she said he had.

[54] She obtained an Emergency Protection Order granted under the *Domestic Violence Intervention Act*. The granting of that order is not evidence of domestic violence or intimate partner violence. Ms. G went with a police officer to retrieve things from the apartment, and it was clear that Mr. G had left. That was on August 22 or 23, 2020. Nothing related to him remained in the apartment and his two travel bags were gone. She was told by the police that Mr. G had flown to India. She did not see him again until September 2024.

Mr. G (P.K.G.)

[55] When a person denies allegations that have been made against them, there often is not very much that they can say, other than to state clearly the denial. Mr. G did just that. He said that he did not and would not assault his wife and children and did not and would not have sexual contact with his wife without her consent. He confirmed that on some of the occasions on which assaults were alleged to have taken place there were arguments, but he firmly denied assaults of any kind.

[56] He speculated that perhaps Ms. G and their sons bore some animus against him because they disliked his extended family, and it is the case that there was no love lost for that side of the family. He said that Ms. G had high expectations and wanted to open a store or a restaurant or run a farm and they were simply not capable of doing that, either by way of work experience or financial backing. He believed that she was disappointed with the way that things had turned out. Mr. G was not obliged to prove anything and in particular was not obliged to show a motive for Ms. G and their sons to have fabricated the allegations.

[57] Mr. G explained why he left Canada in August 2020. He said that his wife and children left him, and he tried that day, August 6, 2020 to find them and convince Ms. G to return. He had no success with that. He was served with the Emergency Protection Order on August 17, 2020. He sold the family car, because he knew that Ms. G did not have a full driver's license. He spoke with his family in India. He was told that his mother was ill. She had diabetes and was bedridden. He said that her condition was becoming worse, partly because of worry about his

situation. His family encouraged him to return to India. He bought a ticket on August 22, 2020 and travelled the same day. He said that for same day travel to Delhi, India he got the ticket for about \$1,000. It was evidently a one-way ticket. Mr. G did not come back until August 2023, 3 years later.

Assessment of Credibility and Reliability

[58] There are no presumptions about the reliability or credibility of particular witnesses. A complainant is not presumed to be telling the truth so that the onus shifts to the accused to rebut what the complainant has alleged. Equally, the requirement for prove beyond a reasonable doubt does not create a presumption that a complainant is not telling the truth. Reasonable doubt is a standard of proof not a tool for assessing credibility. The evidence of the complainants and the evidence of the accused person are assessed in the same way and to the same standard.

[59] Two of the witness in this case were children when they gave statements to the police in 2020. They are now both young people, under 18, but still very capable of expressing themselves. They have matured and had 5 more years to improve their English language skills. Children are no more or no less capable of being believed than adults. Their evidence must be assessed having regard to their age, level of maturity and their ability to perceive, understand, recall, and explain what they have experienced. There is added complexity when a young person is asked to review evidence they gave when a child. They may recall what they experienced as a younger child but perceive and understand it differently.

[60] Statements given by either children or adults must be considered having regard to the circumstances in which they were made. Both boys had been in Canada for slightly less than a year when they gave their statements. They were understandably shy and reserved, and as they are today, soft spoken. As children, they were being asked to speak about things that they clearly knew were difficult. They both spoke about a pattern of behaviour and tried to provide examples. They could not however provide dates and times. That is hardly surprising. If something happens with the kind of frequency they spoke about, it would be difficult, even for an adult, to separate them into discrete events. The same thing kept happening over and over. That was their evidence.

[61] Five years later each of them was able to provide some additional details. As more mature young people they were able to recount what they perceived, and those details were not inconsistent with what they had said five years before.

Information was added but neither said that what they described in the 2020 statement was inaccurate or incorrect. In 2020 they were not questioned about specific incidents but were called upon to tell the story without the help of any framework in terms of dates or types of incidents. What they gave to the police was essentially a response to the very general inquiry about what happened over the course of 2 years or more. When 5 years later they were asked questions about the statement, they had a framework on which to build while never deviating from the central narrative of commonly occurring physical abuse against themselves and their mother.

[62] Ms. G also gave a statement to the police on the same day. She was asked in cross-examination about elements that were not included in her first statement to the police, 5 years before. She explained that by the time she spoke with the police Mr. G had gone to India. He had sold the car and taken money from the bank accounts. From that it can be inferred that she reasonably understood that he had no plans for an imminent return. Like her sons, she was telling the story of the past two years without a prepared script.

[63] In court she said that these incidents happened frequently, and it would not be reasonable to expect her to recount what had happened in chronological order. People do not remember things that way. She was clearly distressed in giving her testimony about the allegations of sexual assault. She was not comfortable talking about what she perceived as “dirty” and “disgusting”. She appeared to be thoroughly horrified at the idea that she had to disclose such things in public. She said that she was not comfortable telling the police about it in 2020 and with Mr. G gone from Canada she saw no reason to do that.

[64] Mr. G denied all the allegations. A person in his position, who flat out denies what he has been accused of, cannot offer much more than that. Nothing he said was internally inconsistent. His evidence stood in stark contrast with what his wife and their two sons said. His evidence must be tested having regard to their evidence and the indicia of credibility and reliability in his and their evidence.

[65] Mr. G was served with an Emergency Protection Order on August 17, 2020. That order is not evidence of his guilt with respect to any of the charges. It is evidence that Mr. G knew that Ms. G was, as of that date, making an accusation that he had committed acts of domestic violence. He was in contact with his family in India and they encouraged him to leave Canada and return to India. Mr. G said that his mother was ill and had diabetes. She was worried about him. He did not at

any point say whether his mother had become acutely ill, suddenly requiring him to return after 2 years in Canada. He did not say whether whatever condition had overtaken his mother was eventually resolved or whether she survived it or for how long. He did not say why he remained in India for 3 years after leaving. He said that he returned because remaining outside the country could create problems with his permanent resident status in Canada. But it was not clear why he would not have returned earlier.

[66] Mr. G left in a hurry. He bought his ticket to Delhi, India and flew on the same day.

[67] After the fact conduct of this kind must be considered with great caution when assessing whether it demonstrates consciousness of guilt. A person may flee the jurisdiction because they know that they are guilty of offences and want to avoid the criminal process. A person may also flee because they fear that they have been falsely accused of crimes and are not confident that the criminal justice system will treat them fairly. A person may be convinced by others to leave the jurisdiction.

[68] Mr. G did not say that he was worried about not getting a fair trial in Canada. He knew that allegations of domestic violence were being made against him, because they were specifically referenced in the Emergency Protection Order. Yet he attributed his rushed return to India to his mother's condition and his family's concern for him. He was not clear on the nature and severity of his mother's condition or on the nature of his family's concern for him. He was not clear on why he remained away from Canada for three years. In Mr. G's case his return to India is a factor to be considered when assessing his credibility but it does not overwhelm other considerations.

[69] Ms. G's evidence and the evidence of the boys is different from what Mr. G said. That difference is not one of degrees. Either Ms. G and the two boys have sustained an effort since August 2020 to falsely accuse Mr. G or Mr. G is not telling the truth.

[70] Ms. G went with the boys to Bryony House on August 6, 2020. Victims of sexual assault, and intimate partner violence, respond to those experiences in their own ways, and disclose them in their own time. It is important not to make assessments of credibility and reliability based on false assumptions about how someone is reasonably expected to respond. Evidence about how a person responds may however be a factor in supporting the credibility and reliability of the

allegations that they make. In Ms. G's case, she fled to a shelter in the early morning, with the help of staff from Bryony House who arranged for a taxi to pick her up with the boys. She left important paperwork behind. Her actions infer a sense of urgency that would be less consistent with fabrication and suggest that going to Bryony House was not a performative act intended to support false allegations of domestic violence.

[71] Ms. G did not immediately contact a lawyer. She described her plan, which was informed by her experience as an immigrant who was still very much a part of Indian culture. She did not want to "break the family". She wanted to remain away for a few weeks in the hope that things would get better. Her plan was to go back to Mr. G, with their two sons. She was questioned about why she had not left Mr. G before if things had been as bad as she said, for both herself, and her sons. She provided an explanation. She said that in her culture once a woman has been married and had children, she would have great difficulty finding another husband. She would be left alone with her children and would get no financial support from Mr. G. She could not afford to do that. She was prepared to take the calculated risk that things would improve. Leaving on August 6, 2020 and going to a shelter was to her not a sign that the relationship was over but a step in convincing Mr. G to change. Her reticence about reporting what she said had happened to her and to the boys suggests that this was not a fabricated story.

[72] Ms. G would have had to have explained her circumstances to a Justice of the Peace to have the Emergency Protection Order issued. That enabled her to return to the apartment where it became clear on August 22 or 23, 2020, that Mr. G had left. It was after that she and the two boys gave statements to the police on August 28, 2020. Clearly, as three people living together in a shelter, Ms. G and her sons would have spoken together about the circumstances that had brought them there. It would have been extraordinary had they not.

[73] Ms. G and the boys each used the term "beat" or "beat up" or "beat us", consistently. English is not the first language of any of them. They have since arriving in Canada honed their language skills. It was clear however that the word "beat" was used to cover any kind of assaultive behaviour. While the use of the same word may indeed suggest that they had been talking together about the situation in indicates no more than that.

[74] Nothing about the statements of the two boys suggests that they were working from a script or even an informal outline of what they were supposed to

say. The information obtained from them by the interviewers in 2020 came out organically. They were being asked generally about what had happened over a period of two years. Both talked about physical assaults on themselves and on their mother by Mr. G as being commonplace. When something happens repeatedly, it is difficult, especially for a child, to distinguish one example of the commonplace from another.

[75] The evidence from the boys was consistent with each other and consistent with what Ms. G said at trial. That consistency was not contrived. Each reported the circumstances as they perceived them and reported them as they recalled them, without resorting to identical descriptions of events. Both boys acknowledged that they were more mature and because of that could describe things more accurately and perhaps more completely than when they were younger.

[76] It was suggested that they had some animus or negative feelings about their father and that those attitudes may have been instilled by their mother. Both boys were measured in their recounting of what they said had happened and, in any event, if what they said was true, they would have every reason to harbour negative feelings toward Mr. G.

[77] The evidence of Mr. G was an internally consistent denial of all allegations. On its face and on its own, without regard to other evidence there would still be some reason to doubt it. Mr. G's quickly planned departure from Canada and the explanation that he gave for it provide at least some evidence of a consciousness of guilt. Far more significantly though, his evidence must be considered in light of its stark inconsistency with the evidence of Ms. G and the two boys. Their evidence was highly credible and highly reliable. While a criminal trial is not a contest of credibility, the evidence of the accused must be tested against the other evidence in the trial, including the evidence of the complainants.

[78] In this case the evidence of Ms. G and her two sons was consistent, both internally and with each other. Ms. G provided a compelling explanation for her willingness to remain, with her sons, through the abuse that she and they described. She had every reason not to fabricate a narrative that included assault and sexual assault, because the breakup of the family was very much not in her interest and not what she wanted. The removal of the boys from the family home was, for her, a drastic step, not undertaken lightly.

[79] The credibility and reliability of witnesses are assessed as they relate to the essential elements of each charge. A witness' evidence may be reliable in some respects and not in others.

Count 1: Assault on Ms. G Between August 1, 2018 and March 31, 2019

[80] The first count on the indictment relates to allegations of common assault on Ms. G, from the family's arrival in Halifax, until the end of March 2019.

[81] Ms. G said that there were several incidents that took place during that time frame. The first was an assault in November 2018, dated with reference to a job application. She said that Mr. G had grabbed her by the ponytail and pulled her into the living room where he struck her on the face and kicked her. Both boys recalled incidents in which Ms. G had been pulled by the hair, struck in the face and kicked by their father. Neither related those specifically to November 2018. They do provide corroborating evidence that Mr. G had done the kinds of things that Ms. G described, and that Mr. G denied having done.

[82] Ms. G testified about an argument in early 2019. She said that she remembered it being about what Mr. G was able to do. She said that he dragged her into the kitchen and pushed her face against the hot electric stovetop. She went into the living room where he continued to beat her for a half hour.

[83] Ms. G said that in March 2019 an incident took place when school had been cancelled because of weather. It involved her making tea for Mr. G. When she did not serve the tea to him, he grabbed her cheek and slapped her on the face in front of the children.

[84] Mr. G's denial was complete. He testified that he never on any occasion struck his wife or sons. Ms. G offered clear and detailed evidence of specific incidents in which Mr. G had, during the time set out in the charge, struck her and otherwise assaulted her. Mr. G's evidence was not only inconsistent with that but inconsistent with that of his sons who each testified that they had seen him "beat" their mother.

[85] Mr. G's evidence does not raise a reasonable doubt as to his guilt with respect to the assault charge, when assessed having regard to the evidence of Ms. G and their two sons. The evidence of Ms. G was not only substantially more credible and reliable than that of Mr. G but was so credible and reliable that Mr.

G's denial did not itself raise a reasonable doubt as to his guilt. I find Mr. G guilty of assault as set out in Count 1.

Count 7: Assault on Ms. G Between March 31, 2019 and August 1, 2020

[86] Ms. G testified to an assault in December 2019 which took place near the couch in the living room. Mr. G interlocked his fingers with hers and pushed her fingers back toward the back of her hand. She said that pulled her hair on that occasion. She said that he also pushed her eyeballs with his thumbs. She specifically recalled hearing a noise from her back when she was thrown onto the couch. Ms. G said that Mr. G placed his right hand around her throat. The motion she made when describing it was that of the hand grasping the windpipe. She said that she was unable to eat solid food for some days afterward.

[87] The older son gave evidence in cross-examination about an incident that was almost identical. He said that it took place near the sofa, and he watched his mother being dragged by the hair. He said that his mother was crying. She fell onto the sofa after Mr. G hit her. He said that his mother tried to escape, and Mr. G kicked her as she was crawling away. He said that Mr. G "got down to her level" and began hitting her on the face with his hands. Ms. G and her son described the same incident. Mr. G denied having done any of that.

[88] Ms. G spoke about an incident that she said took place in March 2020. It was almost certainly in the summer when the family was going to Prince Edward Island. She said that after an argument Mr. G slapped her on the face several times and the ring on his finger cut her cheek. Mr. G denied ever having struck his wife and specifically denied striking her on that occasion.

[89] Again, Mr. G's denial was absolute. His testimony was that he had never struck his wife or his sons. His evidence again, must be assessed having regard to the other evidence, specifically the evidence of Ms. G and the two boys. His denial does not raise a reasonable doubt having regard to the circumstances and the manner in which they each testified. The boys were recorded weeks after arriving at Bryony House. They did not recount their versions of events in a way that was at all consistent with having been coached or scripted. That was the case for their original police statements and for their in-court testimony. They were spontaneous. Ms. G recounted as well what she said had happened in a natural way, tied not to dates but to the surrounding circumstances. Her testimony was given in a non-linear way.

[90] On this count one of the incidents was described by Ms. G and her older son in much the same way. Both sons said that Mr. G had assaulted them both and assaulted their mother, including by pulling her hair. Mr. G's denial does not raise a reasonable doubt as to his guilt. I accept the evidence of Ms. G and the two boys as establishing Mr. G's guilt beyond a reasonable doubt and find him guilty of the charge of assault set out in Count 7.

Count 4: Choking Ms. G Between February 1, 2019 and December 31, 2019

[91] During the course of the assault near the sofa in December 2019 Mr. G placed his right hand around Ms. G's throat and choked her. Mr. G denied that. I accept Ms. G's evidence and find that Mr. G's testimony does not raise a reasonable doubt as to his guilt. The action that Ms. G described would constitute choking contrary to Section 267(c) of the *Criminal Code*. I find Mr. G guilty of that charge.

Count 14: Sexual Assault Against Ms. G

[92] Ms. G described an incident, which she said was repeated many times, in which Mr. G forced her to perform oral sex on him. She said that she did not want to do that and specifically told Mr. G that she did not want to do it. She described it as "dirty" and as "disgusting".

[93] Mr. G said that he never at any time had sexual contact with Ms. G that was not with her consent. With respect to oral sex Mr. G replied to a question from his counsel as to whether he insisted on oral sex. He said "No, never." There was no evidence that the couple had engaged in consensual oral sex or that Mr. G was operating under a mistaken belief that Ms. G consented to it. Mr. G did not say that there had ever been instances of oral sex. He just made the general denial about lack of consent. The issue is not one of a misunderstanding and cannot be about two people perceiving an interaction differently. Either what Ms. G described happened, or it did not.

[94] There was no evidence from either of the two sons about their parents' sexual contact. Ms. G provided detailed and compelling evidence that Mr. G forced her to perform sexual acts to which she did not and would not ever have consented. She very much did not want to talk about the subject. It made her thoroughly uncomfortable. That was entirely inconsistent with a fabrication.

[95] Mr. G's denial is not sufficiently reliable to raise a reasonable doubt. I believe what Ms. G said. I do not believe Mr. G's denial and it does not raise a reasonable doubt. I find Mr. G guilty of sexual assault as set out in Count 14.

Count 10: Assault Against the Younger Son, Between August 1, 2018 and August 1, 2020

[96] The younger of the two boys adopted the statement that he gave to police on August 28, 2020, when he was 10 years old. Both he and his brother said that their father had regularly beaten them both. The older brother said that his brother was beaten more often because he "made more mistakes". Ms. G gave evidence about seeing Mr. G strike both of their sons and of her being unable to intervene or simply too afraid to intervene for fear that it would make matters worse for them. The evidence of those three witnesses was consistent. All three said that it was so common that it was difficult to isolate specific examples. It just happened all the time.

[97] As a 15 year old in 2025, the younger son was able to describe an incident where he was struck or beaten because he had spilled water and another when he saw his father in the kitchen with an alcohol bottle. That incident was also described by Ms. G. The boy was struck on the face several times.

[98] Mr. G denied striking his son. He did not suggest that he had used physical discipline that was reasonable in the circumstances. He said he never struck either his sons or his wife.

[99] Once again, this is not a situation in which there could be a misunderstanding or misperception of what had happened. Either Mr. G struck his son, or he did not. The evidence of Ms. G and both boys, given as children 5 years ago and confirmed as young people now, had none of the hallmarks of a fabrication. Ms. G took her sons to Bryony House. That was not a performative act. It was a last resort. All three would have had to have colluded in creating a story that they were able to sustain over a period of five years. They provided details about the circumstances but properly acknowledged that when something happens regularly it is impossible to provide dates and times. Each gave their evidence in a way that allowed information to come forth naturally, as they recalled it and not as part of a prearranged script. The evidence of Ms. G and the two boys is highly credible and highly reliable.

[100] Mr. G's evidence that he did not strike his sons, and his wife must be assessed in light of their evidence. It is not credible and is not even sufficiently credible to raise a reasonable doubt as to his guilt. I find Mr. G guilty of assault as set out in Count 10.

Count 12: Assault with a Weapon Against the Younger Son Between August 1, 2018 and August 1, 2020

[101] The younger boy testified that their father used to "beat" them, using a spatula or wooden spoon. That was confirmed by Ms. G and the older son, who both saw the boy struck with that wooden item. Mr. G denied hitting his son at all, much less with a wooden spoon or a spatula. He did not suggest that the item was used as part of disciplining the boy. The wooden implement meets the definition of a weapon and for the reasons noted with respect to the common assault charge, I find Mr. G guilty of assault with a weapon against his younger son as set out in Count 12.

Count 11: Assault Against the Older Son Between August 1, 2018 and August 1, 2020

[102] Crown counsel acknowledged that the evidence with respect to assaults on the older son was more general.

[103] He told the police in 2020 that his father beat them up when "we miss something". When asked how many times he said, "I can't count. It's a lot of times." In cross-examination 5 years later, he confirmed that there were too many instances to count and offered, "We got used to it." Both his mother and his younger brother confirmed that they had seen the older boy being struck by Mr. G. Mr. G denied any hitting and did not in his evidence say that he had hit either of the boys in the course of physically disciplining them.

[104] Again, there is no room for misunderstanding between Mr. G's version and the version told by Ms. G and the boys. Either Mr. G struck the boy, or he did not. Either Ms. G and the boys have held together a consistent intentionally false narrative or Mr. G's denial is simply not true. Mr. G's evidence does not need to be more credible for him to be found not guilty. It just needs to be credible enough to raise a reasonable doubt. It is not. It is contradicted by compelling evidence of three witnesses who provided evidence of a sustained pattern of domestic violence. I find Mr. G guilty of assault against his older son as set out in Count 11.

Count 13: Assault with a Weapon Against the Older Son, Between August 1, 2018 and August 1, 2020

[105] The older boy described being beaten with a wooden stick. It would happen every two or three days. That “stick” appears to have been the same item that was used to hit his brother. The spatula or stick meets the definition of a weapon. I find Mr. G guilty of assault with a weapon against older son as set out in Count 13.

Counts 2, 3, 5, 6, 8, and 9

[106] At the invitation of the Crown not guilty findings were entered at trial with respect to Counts 2, 3, 5, 6, 8, and 9. The indictment included several counts charging the same offences with different incident dates. The charges were amended to include broader ranges of dates on the counts for which guilty findings have been made. The counts as noted were no longer required in the final disposition of this matter.

Summary

[107] The *Criminal Code* charges on the indictment for Mr. G will be recorded as follows:

Count 1, s. 266 – Guilty
Count 2, s. 266 – Not Guilty
Count 3, s. 266 – Not Guilty
Count 4, s. 267(c) – Guilty
Count 5, s. 266 – Not Guilty
Count 6, s. 266 – Not Guilty
Count 7, s. 266 – Guilty
Count 8, s. 266 – Not Guilty
Count 9, s. 266 – Not Guilty
Count 10, s. 266 – Guilty
Count 11, s. 266 – Guilty
Count 12, s. 267(a) – Guilty
Count 13, s. 267(a) – Guilty
Count 14, s. 271 – Guilty

Campbell, J.