

In the Supreme Court of Belize
(Criminal Jurisdiction)

Central District

Indictment No C83/2013

THE QUEEN

AND

DIONICIO SALAZAR

BEFORE: **The Hon. Chief Justice Kenneth Benjamin.**

June 29, 2015.

Appearances: Mr. Linbert Willis, Senior Crown Counsel, for the Crown.
 Mr. Oscar Selgado for the accused.

RULING

[1] On an indictment laid by the Director of Public Prosecution for the offence of murder, it is alleged against the accused that on June 28, 2004, he murdered Rodney August in San Ignacio Town, Cayo. The trial commenced. The Crown has closed its case after calling nine witnesses.

[2] The Defence has submitted that on the evidence led by the Prosecution, there is no case to answer. Learned Counsel submitted that the Crown had not proved the elements of the offence save for proof of the death of Rodney August. He went on to

use language to suggest that the evidence was deficient, as taking it at its highest, it would be unsafe to leave the case for determination by the Jury.

[3] In his response, Learned Senior Crown Counsel highlighted the evidence of the witnesses, Pedro Ical and Desol Neal as being part of the *res gestae* and probative of the identification of the accused as the person who caused the death of Rodney August. Further, it was urged that the deceased having announced to Desol Neal and his mother, Elizabeth Mejia that he was dying, provided another evidential avenue for proof of the accused having caused the death of the deceased. As regards the *mens rea* for the offence, it was submitted that the circumstances described by the witnesses and the nature of the injury given in the testimony of Dr. Mario Estradabran provided ample evidence upon which a jury could conclude that whoever inflicted the injury intended to cause the death of Rodney August.

[4] In a short reply, learned Counsel for the accused asserted that there was no evidence to establish a link between the alias 'Life' uttered by the deceased and the accused upon an examination of the evidence of Pedro Ical and Francisco Patt. Also the deceased's mother, Elizabeth Mejia, at no time stated that she had been told by her son that 'Life' was the person who injured him.

THE LAW

[5] The Defence exercised its right at the close of the Crown's case, to submit that the evidence does not disclose a case to answer for the offence of murder against the accused. The applicable test is set out in the classic statement of Lord Lane, CJ in **R v Galbraith [1981] 1 WLR 1039** at p 1042 B-D. His Lordship said:

"How then should a judge approach a submission of 'no case'?"

(1) If there has been no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or

vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury ... There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge."

The first limb focuses upon the absence of evidence to support one or more of the essential ingredients of the offence and, if supported, results in a conclusion that the accused has not committed the crime alleged.

[6] Learned Counsel for the accused at the beginning of his submissions argued that the witnesses for the Crown failed to prove that the accused caused the death of the deceased or that he had the requisite *mens rea*. However, he did mention that two of the Crown's witnesses had identified the accused but that a jury properly directed would not convict on such evidence. Coupled with the reply to the Crown, it is fair to say that the submission is to be treated as being made under the second limb of the test enunciated by Lord Lane, CJ.

THE EVIDENCE

[7] Sgt. Pedro Ical (then a Corporal) was the first Police Officer to attend the scene where the deceased was found still alive in the shallow water of the Macal River. He was lying faced down wearing no shirt and only a pair of long pants and sandals. The Sergeant questioned the deceased as to his name and age and as to his address. He pointedly asked the deceased who inflicted the injury and the response was as follows:

'He said that he was along with a female Janelle (last name unknown to him) when a male person came from behind and chop him with a machete. He added that he know the person as 'Life' or 'Vida' in Spanish. He said that he is the guy that inflicted the wound on his back.'

His testimony went on to say whom he concluded to be the person being referred to as 'Life'. That is what he said:

"When he told me those words or the name 'Life' or 'Vida' a person came to my mind as Dionicio Salazar, Jnr., who I know as Life or Vida, he lives in San Ignacio Town. I knew the person Dionicio Salazar, Jnr. prior to that date. There is no one that I know by that name that lives in Santa Elena Town – no other person by the name of Dionicio Salazar or Life or Vida that lives in San Ignacio Town."

[8] The evidence of Sgt. Ical as to what the deceased told him was admitted without objection and the Court acquiesced on the basis that the circumstances to support admissibility as part of the *res gestae* had been laid in the witness' testimony. It is for the Jury to access this evidence as it plainly points to the accused as the person who committed the act that resulted in injury to the deceased – namely the large cut wound to his back. There is evidence that the deceased died at or after 11 p.m. on the same day of the incident – June 28, 2004. So said his mother, Elizabeth Mejia. Certainly, he was dead when identified by his father, Alberto August on the next day to the forensic expert, Dr. Mario Estradabran, who proceeded to perform a post mortem examination on the body.

[9] Among the witnesses led by the Crown was Desol Neal. She was attracted to someone's voice coming from the opposite side of the river. She went down the hill to the river side and spoke to a man lying face down sideways near the edge of the river. At an estimated distance of 100 feet she inquired of his name. She took the binoculars she had with her and looked at him. She saw blood on his back. Before the Police arrived she spoke to the person asking "Who did this to you?" She could not understand his reply until he spelt the word L-I-F-E. In cross-examination it was

garnered that the person did not say Life stabbed him but only responded to the questions she put. Here again, the evidence was admitted as part of the *res gestae* and is available for evaluation by the jury as to its evidential value.

[10] The deceased's mother, Elizabeth Mejia, testified that she spoke to her son at the San Ignacio Hospital. She said he told her he was dying. When asked by her "Who did this to you?" his response was one word: "Life". She admitted in cross-examination that she was not told by Rodney August that Life had chopped him or caused the injury. She did not know anyone by the name 'Life'. Her evidence was admitted as part of the *res gestae* and can equally be treated as a dying declaration and thus an exception to the common law rule against hearsay. The testimony having been admitted becomes eligible for consideration as part of the Crown's case.

[11] The main Police investigator was Francisco Patt, then a Sergeant of Police. Acting on information given to him by Sgt. Pedro Ical, he went in search of Dionicio Salazar, Jnr. also known by the nickname 'Life' or 'Vida'. He was located at his parents' home where he was told of the report of the incident and cautioned. No evidence was given of any response. After the deceased passed away on the night of June 28, 2004, Mr. Patt informed the accused of this fact and cautioned him. The accused denied any knowledge of any chopping. The accused was arrested and charged on 30 June, 2004. Later Mr. Patt asked the accused if he was willing to participate in an ID parade, to which he agreed. Mr. Patt explained that he got to know the accused through Sgt. Pedro Ical and another officer. In this regard, his evidence is not from his first-hand knowledge. However, his evidence of having observed a tattoo of the word 'Life' at the back of the accused's neck and on his left hand can be laid before the jury as first-hand evidence. He went on to state that the accused told him that 'Life' was his nickname. These matters as to the tattoos were not challenged in cross-examination.

[12] The substantive issue in this matter is one of identification. There is testimony that an ID parade was conducted by Insp. Puga and witnessed by Mr. Modesto Madrill. Both stated that Ms. Janelle Longworth attended and identified the accused so that he could have heard, though he could not see her. There is some discrepancy as to

whether the identifying witness or Mr. Madrill spoke into the microphone but that is a factual issue to be resolved. It is plain that an issue will arise as to who is Janelle Longworth and again the scant evidence is available for consideration.

[13] The foregoing examination of the evidence as to the identity of the deceased's assailant, in my view, is sufficient enough for consideration of the element of whether the accused caused the death of the deceased.

[14] I agree with the learned Senior Crown Counsel that the injury as observed by Sgt. Ical, shown in the photograph tendered by Martin Rodriguez and detailed in the evidence of Dr. Estradabran are enough for a jury to come to a conclusion as to the perpetrator being possessed of the intention to kill or alternatively the intention to inflict unlawful harm.

[15] In sum, the Crown has led sufficient evidence upon which a jury properly directed can return a verdict of guilty against the accused without irrationality. The submission is overruled and the accused will be called upon to lead a defence in the presence of the Jury.

KENNETH A. BENJAMIN
Chief Justice