IN THE COURT OF APPEAL OF BELIZE AD 2016
CRIMINAL APPEAL NO 3 OF 2015

ALPHEUS PARHAM Appellant

v

THE QUEEN Respondent

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BEFORE:

The Hon Mr Justice Sir Manuel Sosa	President
The Hon Madam Justice Minnet Hafiz Bertram	Justice of Appeal
The Hon Mr Justice Murrio Ducille	Justice of Appeal

S Sampson SC for the appellant
C Vidal SC, Director of Public Prosecutions, along with J Chan for the respondent

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29 February and 4 November 2016

HAFIZ-BERTRAM JA

Introduction

[1] On 16 June 2011, Alpheus Parham ('the appellant') was indicted for murder pursuant to section 117 read along with section 106(1) of the Criminal Code, Chapter 101 of the Laws of Belize. The particulars of the crime were that on 9 day of May 2010, the appellant in Caye Caulker, in the Belize District, murdered Alex Goff ('the deceased'). In a jury trial before Gonzalez J, which commenced on 2 February 2015, the appellant was found guilty of manslaughter. On 16 February 2015, the appellant was sentenced to five years imprisonment. The trial judge took into consideration that the appellant had been in custody for four years and ten months before his conviction.

(The trial judge said that the totality of the sentence was 10 years). The appellant appealed against his conviction and sentence on the same day, 16 February 2015. This Court heard the appeal on 29 February 2016, which was allowed. The conviction and sentence was set aside. The Court considered that in all the circumstances, it would not be in the interest of justice to order a re-trial. The Court therefore, directed a judgment of acquittal.

[2] The appellant shot and killed the deceased in a detention cell at the Caye Caulker Police station. According to the appellant's dock statement the deceased was shot as a result of a struggle between himself and the deceased, who attempted to take his firearm.

[3] The evidence of the physician, Dr. Estrada Bran was that in his opinion the cause of death was traumatic shock due to head injuries due to gun shot wound to the head. He testified that the deceased was shot to the right frontal area and the "*entry wound followed a trajectory forward to backward, slightly right to left and horizontal of the brain tissue up to back of the head including the scalp where the slug landed and was retrieved*."

[4] The Prosecution relied mainly on the evidence of Dr. Estrada Bran, a physician, who was deemed as an expert but not an expert in any particular area. It is common knowledge to this Court that his area of expertise was to determine cause of death. In the trial before the Supreme Court, Dr. Estrada Bran who had not visited the crime scene, looked at photographs and determined that the substance he saw on the photograph was blood. Further, he gave contradictory evidence in relation to the position of the appellant at the time of the shooting.

The relevant evidence for the Prosecution at trial

[5] Kenneth Ferguson, who was attached to the Tourism Unit, Caye Caulker Police Station, testified that on 9 May 2010, at about 5.00 pm, when he arrived at work, he

was informed by the appellant of a disturbance by the 'Split' at Caye Caulker. Both of them proceeded to the Split and upon arrival they saw the deceased who was behaving disorderly and he smelled of alcohol. The deceased was taken to the police station and detained in a cell by the appellant and PC Santos.

[6] PC Federico Tush testified that that on 9 May 2010, he was at work when the appellant and Ferguson returned to the station with the deceased. He said that the deceased was under the influence of alcohol and he refused to give his particulars. The appellant and Ferguson placed the deceased in the detention cell. The appellant then left the station to conduct further patrol. PC Tush testified that ten minutes later he heard a loud bang from the direction of the cell block and he took cover under a table. He got up about two or three minutes later and saw PC Fuentes standing at the entrance of the police station. He then went to check "*on the cell block and there I saw a dark skin male person in a sitting position. I saw blood pouring down his face."*He said the blood was pouring down from the forehead. He testified that PC Parham returned to the station two hours later. The prosecution was not satisfied with the answer that the appellant returned to the station two hours later. PC Tush was questioned about the statement which he gave to the police and then he was given the statement to refresh his memory. The witness did not change his answer. The Prosecution applied for the witness to be treated as a hostile witness but this was not allowed by the judge since no foundation was laid for that purpose. In cross-examination PC Tush testified that the deceased was drunk and behaving in a disorderly manner. He said that the deceased was about five feet and four inches tall and slim built. The trial judge questioned PC Tush as to why he put in his statement that the appellant went towards the cell block. PC Tush denied making such a statement.

[7] PC Juan Choc testified that on 9 May 2010, he was stationed at the San Pedro Police Station. At about 5.30 pm whilst speaking to PC Fuentes he heard a bang from the cell block area which was 11 feet away. He went to the cell block after a while and he saw the deceased "*in a seated position with what appears to be blood coming from*

*his head."*He testified that he did not see the appellant go to the cell block area. He said that, "*In my statement from 9/5/10, I can't recall if I gave what appears on line 15 to police."*An application was made to treat PC Choc as a hostile witness and this was granted.

[8] Sergeant Hilberto Romero testified that on 9 May 2010, he received information of a shooting at the Caye Caulker Police Station and he went there with Jiro Sosa, the crime scene technician. He saw a male person in a seated position in the cell with his head bent forward and there was a pool of blood on the floor. He saw a gunshot injury on the forehead and a tooth on the floor. He testified that on 10 May 2010, he informed the appellant of the reason for his arrest and he cautioned him. He also informed the appellant of his constitutional rights and he remained silent. He swore to an information and complaint and arrested him and thereafter charged him for the crime of murder.

[9] Corporal Ian Geban testified that he was the second in charge at the time of the incident at the police station. Around 6.00 pm, he received a phone call and he went to the police station. When he entered the cell block, he observed the deceased in a seated position with blood flowing from his mouth. He checked him and there was no pulse or breathing and the deceased appeared to be dead. He thereafter secured the two firearms from the diarist desk.

[10] Shelmadine Peters, Scenes of Crime Technician testified that on 11 May 2010, she took four photographs of the appellant who had scratches on the right arm.

[11] Jiro Sosa, Scenes of Crime Technician for over ten years, testified that on 10 May 2010, he processed the scene at the Caye Caulker Police Station. The deceased was sitting on the floor with one leg crossed and a wound to the forehead. He said, *"I suspected blood splatter to the front area and to the wall on the right. On the other side of the cell block I saw a tooth"*. He saw drops of red substance. He took photographs of the scene and placed evidence markers. He also took photographs of the deceased at the morgue. All 15 photographs taken by him were admitted into evidence.

[12] Dr. Mario Estrada Bran, physician, testified that he has a degree from the University in Mexico (1974 – 1980). Also, he has a degree in forensic medicine which he did from 1981 – 1982. Upon an application by the prosecution, Dr. Estrada Bran was declared an expert witness. He testified that on 10 May 2010, he performed an autopsy on the deceased. He saw *"multiple bruises and concussions to the body, abrasions to the mouth, an orifice of 9mm by 12mm. On the right frontal area, I also saw some superficial abrasions."* He explained that the injuries he saw were, "Bruises. *There were bruises to the rib and also on the right hand and both arms. The entry wound followed a trajectory forward to backward, slightly right to left and horizontal of the brain tissue up to the back of the head including the scalp where the slug landed and was retrieved. The oral cavity show bruises."* Dr. Estrada Bran testified that in his opinion the cause of death was traumatic shock due to head injuries due to the gunshot wound to the head.

[13] Dr. Estrada Bran testified that the shooter was about three inches from the deceased. In relation to the bruises, he said that those were inflicted prior to the death of the deceased, that is, 74 hours prior to the shooting. Dr. Estrada Bran did not know the height of the deceased. He was asked about the position of the deceased when he was shot and the response given was: "*I would like to say that the weapon was on the level of the victims wound. If the assailant was standing and the victim was standing he would have had to raise his hand to inflict the injury to the forehead.* The following exchange followed among the witness, prosecution and the court:

Q: "Doctor, I want you to take a look at photograph 4. Can you explain to us the blood splatter?

Doctor: First of all I would like to explain to you the position of the victim. If he is seated there would be blood splatter on the back of the entry or below wound and surroundings. There is a level of splash in the level of the wound and the lower wall area as well as floor.

Q. Doctor, can you tell us whether or not those blood splatter is consistent with someone being shot in that position?

(Doctor did not answer the question because of exchange between court and prosecution in relation to whether there was blood on the wall).

Court: On the assumption that this is blood because you cannot say whether it is blood or not, can you?

Doctor: This is blood on these photographs."

[14] There was questioning from the trial judge to the witness, Dr. Estrada Bran, in relation to the trajectory of the bullet and whether the deceased and the appellant was standing or sitting, as follows:

Court: "If the shooter, in this case, he was taller than the victim. If he were to raise his hand and bring it down to shoot, would the entry be forward to backward or would it be upward to downward? In other words, if you were to be seated and I shoot you, will I be shooting at you straight or will I be shooting in a downward way? How would the hand be?

Doctor: At the same level of the entrance.

Court: Yes, but if a person is seated and I am at this point and I shoot, it can't be at the same level. There is no way because I am much higher than you. The shot must go from upward to downward but in this case it does not go upward to downward.

Doctor: Horizontal

Court: That means straight. How would the entry be then? The trajectory would be from upward to downward.

Doctor: If somebody sitting and I am standing and the entry from the forehead the trajectory will be upward to downwards.

Court: Given the circumstances, the inference can be drawn that the shooter probably dropped on his knees and shot a straight position.

Doctor: Or the person was sitting and then the assailant come and he shoots the target.

Court: What would be the position for instance if there were some sort of struggle. Would he have gotten the shot in that manner?

Doctor: More of irregular trajectory, more incline to the left, or more inclined to the right, or more inclined to upwards to downwards or downwards to upwards.

Court: So this means that this shot had to be while the victim and the assailant were in a stationary way, not moving?

Doctor: The assailant was moving. I cannot say for the other person.

Court: You see, in a struggle there is movement from both parties therefore the injury would be irregular so if his injury was not irregular therefore both of them must have been in a fixed position.

Doctor: That is correct, My Lord.

Court: You are saying from your opinion there was absolutely no movement?

Doctor: Of the deceased.

Court: And what about the accused? I said that means that there was absolutely no movement in respect to the accused and the deceased. I am asking that question as a conclusion to what the doctor said that in this case both persons had to be still when the shot was fired and I am just saying it simply means that there was no movement in respect to both persons otherwise the injury would be irregular once there was movement or are you saying that the movement had to be only in respect to the victim?

Doctor: The movement has to be from both persons, one was moving and the other one was still then the trajectory would be more irregular.

Court: And in this case it was regular. Therefore, it follows they were standing in a fixed position. Mr. Sampson, are you sure don't want to ask anything from what I asked?

Mr. Sampson: My understanding is that the trajectory of that bullet as it entered the head of the victim was 180 degrees, a straight line. Is that your understanding?

Doctor: Yes, sir.

Mr. Sampson: So, therefore your theory is that if you hold a weapon firm and you aim it firm, it is irrelevant how you riddle your body so long as your hand is firm when you pull the trigger?

Doctor: Yes, sir.

Mr. Sampson: Thank you my Lord

Court: Yes, Mr. Banner, anything from what I had asked?

Prosecution: None, My Lord.

Court: Thank you very much, doctor. As usual you have always been helpful.

[15] Eugenio Gomez, testified that he has a Bachelor's degree in biology and was declared an expert witness. He received two envelopes from the Forensic Science office which contained suspected blood swabs. He analyzed the swabs for human blood and to determine the blood type. He concluded that the blood type was "O". He also analysed the tooth and found the blood was blood type "O".

No case submission

[16] A no case submission was made on the basis that Tush and Choc had not testified that it was the appellant who pulled the trigger. Further, that there was no evidence to show that the killing was not accidental or not in self-defence. The prosecution relied on the evidence of the doctor and submitted that the deceased was in a seated position when he was shot and therefore, he must have been shot without a fight. The trial judge relied mainly on the evidence of Dr. Estrada Bran that the deceased was in a seated position when he was shot and ruled that the case should go to the jury.

The dock statement of the appellant at trial

[17] The appellant gave a dock statement. He stated that he had been in the Belize Police Department for 18 years and had no previous convictions. He stated that he was on duty on 9 May 2010 at the Caye Caulker Police Station when about 6:00 pm he heard a person who was detained making a lot of noise and behaving unruly. He said:

> "On reaching at the cell block I spoke to the person telling him to behave himself. The male person told me he wanted to use the bathroom and while doing so the male person approached me and grabbed my firearm which I had on my pants

waist and he said I will shoot you. As I feared for my life there, I immediately grabbed his hand and a struggle engaged between us. As we doing the struggle I managed to slip the firearm from his hand. The male person then again grabbed the firearm from my hand but I did not felt (let) it go. He was trying to take it back. The struggle continued at which point I tried to push up the firearm so the nozzle would be up. When our hands were in the air and I was twisting his hand which was together, he pulled down his hand and mine like so and his hand was steady. Our hands were down to the breast level and I saw his finger slipped and hit the trigger and I heard the explosion. I then see the person go backward into the wall. I was in shock and I see darkness in front of me. The struggle took about 3 to 4 minutes.

This is what I know of this incident. Put yourself in my shoe where my life is in great danger. What would you do? I only acted in self-defence."

The grounds of appeal

[18] Mr. Sampson SC filed five grounds of appeal on behalf of the appellant. The issues raised under these grounds as shown by the submissions of the learned Director are as follows:

1. The sufficiency and effect of the direction on self-defence given by the trial judge;
2. The sufficiency and effect of the direction on accident given by the trial judge;
3. The sufficiency and effect of the direction on provocation given by the trial judge;
4. The failure of the trial judge to give a modified good character direction; and
5. The cumulative effect of the foregoing on the trial itself.

The modified good character direction

[19] Learned Senior Counsel, Mr. Sampson submitted that the appellant suffered a miscarriage of justice when the trial judge erred in law by not giving a modified good character direction as the appellant in his dock statement revealed that he had no previous conviction. Senior counsel submitted that because the main plank of the

prosecution evidence was the controversial and very contradictory opinion of the doctor which was aided and abetted by the trial judge, a good character direction on the propensity limb should have been given. The jury would have been more likely to accept the appellant's version given in his dock statement if that direction had been given. Learned Counsel relied on the authority of Paulino **Assi v The Queen**, Criminal Appeal No. 6 of 2011.

[20] Mr. Sampson submitted that the conclusions reached by Dr. Estrada Bran on the most crucial and germane issues were not based on proven facts and is tantamount to mockery. These issues were conclusions reached on blood spatter and position of the appellant and the deceased. Mr. Sampson submitted that Dr. Estrada Bran had not visited the locus, but when he looked at photographs taken of the crime scene shown to him by the prosecution, which were almost five years old, he arrived at the conclusion that, "*This is blood on these photographs...From my expertise and the type of liquid, it is blood."*

[21] Mr. Sampson further submitted that the discussion between the trial judge and Dr. Estrada Bran after cross-examination by the defence confused the jury instead of clarifying the issue regarding the position between the shooter (the appellant) and the target (the deceased). He referred the Court to page 50 (from line 15) to page 53 of the transcript which shows the questions asked by the trial judge and the response given by the doctor. (See paragraphs 13 and 14 above). Mr. Sampson contended that it was never resolved how Dr. Estrada Bran's opinion on the 180 degree trajectory can be reconciled with the rest of his evidence. Further, the intervention by the trial judge produced a most prejudicial effect.

[22] Dr. Estrada Bran was deemed an expert witness after stating that he is a physician and that he did forensic medicine from 1981 to 1982. He was not deemed an expert in any specific area. He gave evidence as to the cause of death of the deceased which he is entitled to do since he performed the autopsy. In his opinion the cause of death was "*traumatic shock due to head injuries due to gunshot wound to the head*."

[23] It was not established by the prosecution that Dr. Estrada Bran was an expert in forensic science, or other related fields, in particular, reconstruction of a crime scene and blood spatter analyst. Dr. Estrada Bran's evidence in relation to the blood spatter was purely speculative as he had not visited the crime scene and gave an opinion based on photographs that was shown to him by the prosecution. Further, his evidence in relation to the position of the appellant and the deceased when the shooting occurred was contradictory and very prejudicial to the appellant. Dr. Estrada Bran was questioned extensively by the trial judge in relation to the position of the deceased at the time of the shooting and the trajectory of the bullet. In response, he reconstructed the crime scene, an area in which he was not an expert, and without any data (such as height of the appellant and the deceased) arrived at an opinion that the deceased was sitting when he was shot to the forehead, frontwards to backwards and completely horizontal. The Court was of the view that this evidence was highly prejudicial to the appellant. The jury could have been influenced by the evidence of the doctor who was not deemed an expert in forensic science (criminalist). The prosecution had no eyewitness to the crime to the shooting and relied mainly on the evidence of Dr. Estrada Bran. In such circumstances, the propensity limb direction was crucial.

[24] The learned Director rightly conceded that the appellant who did not give evidence was entitled to a propensity limb direction. The appellant in his dock statement said that he had been in the Belize Police Department for 18 years and had no previous convictions. In the **Paulino Assi** case, the appellant had given evidence and was entitled to a full good character direction since he was of good character. In this case since the appellant had not given evidence and was of good character, the Court was in agreement with both sides that the appellant was entitled to the propensity limb direction. The appellant had raised his dock statement his good character and the trial judge failed to give such a direction.

Consequences of failure to give propensity direction

[25] The learned Director referred the Court to Marlon **Harris v The Queen,** Criminal Appeal No 3 of 2010, where the Court had considered the failure to give the propensity limb of the good character direction. The propensity limb direction as stated in **R v Vye** [1993] 1 WLR 471 at 479, is a direction as to "*the relevance of his good character to the likelihood of his having committed the offence charged is to be given whether or not he has testified.*." The Court considered the evidence in **Harris** case and found that the failure of the trial judge to give the direction did not affect the fairness of the trial as it was outweighed by the evidence led by the prosecution.

[26] The Court examined the evidence in the instant case as suggested by the Privy Council in **Nigel Brown**, and as rightly pointed out by the learned Director, the evidence led by the prosecution was not overwhelming. The evidence led by the prosecution from Dr. Estrada Bran was the only evidence led to dispute the statement made by the appellant from the dock. As shown above, the evidence led by the doctor was highly prejudicial to the accused. If the jury had been given a direction that the appellant was a police officer for 18 years and had never engaged in conduct similar to what he had been charged, and therefore, he was less likely to have committed the act alleged by the prosecution, this may have impacted on the manner in which the jury viewed the version of events as stated by the appellant. In the view of the Court, if the direction had been given, it is likely that the jury would have accepted the appellant's version of events and returned a favourable verdict. Hence the reason, the propensity limb direction was crucial in this case. In the opinion of the Court, the lack of propensity direction had affected the fairness of the trial and therefore, the conviction of the appellant was unsafe.

The trial judge's direction on self defence

[27] Mr. Sampson contended that the appellant suffered a miscarriage of justice since the learned trial judge erred in law in his failure to properly direct the jury on the issue of self-defence. The trial judge said:

"…If Alpheus Parham did no more than what he thought was necessary to defend himself at the time of the struggle that is very strong evidence that the amount of force used was reasonable. …If you conclude that he was acting in self-defence or that he may have been acting in necessary self-defence you must acquit him. And if this defence of self-defence cause you not to be sure of the prosecution's case, you will also acquit the accused. The same applies to the defence of negligence."

[28] The case for the appellant was that the deceased finger had "*slipped and hit the trigger and I heard the explosion*." However, at the end of the dock statement he said, *"Put yourself in my shoe where my life is in great danger. What would you do? I only acted in self-defence.*" It was proper therefore, for the trial judge to give a direction on self-defence. However, the directions given were wholly inadequate. In the view of the Court, it was necessary for the trial judge to pose the two essential questions for the jury's consideration, as laid out by the Board in **Norman Shaw v The Queen**, Privy Council Appeal No. 58 of 2000. As shown at paragraph 19 of **Shaws's** judgment, the two essential questions are:

"(1) Did the appellant honestly believe or may he honestly have believed that it was necessary to defend himself?

(2) If so, and taking the circumstances and the danger as the appellant honestly believed them to be, was the amount of force which he used reasonable?"

[29] The trial judge did not direct the jury in relation to the appellant's belief and though he focused on the issue of reasonable force he failed to direct the jury as to what amounted to reasonable force. The learned DPP rightly conceded that the direction was deficient. It was incumbent on the trial judge to pose the above questions, in some form, to the jury. Since this was not done, there was a misdirection.

[30] The question to be asked is whether the misdirection was potentially prejudicial to the appellant. The deceased had no weapon but the version of events as related by the appellant in his unsworn statement showed that there was a struggle and the deceased attempted to take control of his weapon. The jury may have rejected the appellant's statement of self-defence because the deceased was unarmed and he was shot in the forehead. But, since the jury was not directed on the appellant's belief of a threat, this was of some concern especially since the appellant statement was that the deceased and himself were in a struggle for his weapon. The Court was of the view, that the misdirection by the judge was potentially prejudicial to the appellant because the jury could have rejected the appellant's version of events in relation to self-defence on the ground that the deceased was unarmed. Had the jury been properly directed it cannot be said that it was inevitable that the outcome would have been the same.

The trial judge's direction on accident

[31] Learned Senior Counsel, Mr. Sampson submitted that the trial judge erred in his definition given for accident as he did not give a clear exposition of the concept of accident leaving the jury to interpret and apply their own definition.

[32] The appellant raised the defence of accident when he said in his dock statement, "Our *hands were down to the breast level and I saw his finger slipped and hit the trigger and I heard the explosion*." The trial judge in his direction on accident said:

> "Now in dealing with the accused first defence of accident I need to tell you what constitutes as accident. The law says that if an act is **not intentionally negligent or careless** then it is accidental….If you find that the deceased accidentally got shot or you have a reasonable doubt about it, you must return a verdict of not guilty." (emphasis added)

[33] The learned Director rightly pointed out in her submissions the deficiencies of the directions given by the trial judge in relation to accident. In the view of the Court, the trial judge erred in several respects. The trial judge failed to qualify the act as a lawful

act. Further, the trial judge as can be seen by his direction above added in the word "careless" to the definition of accident. He also failed to explain to the jury the legal concepts of "negligence" or carelessness". It is obvious that the learned trial judge was aware of the cases of **Edward Reyes v The Queen,** Criminal Appeal No. 11 of 2006 and **Carmela Fernandez v The Queen**, Criminal Appeal No. 10 of 2008, which set out the definition of accident, but failed to give the full direction. In the case of **Fernandez,** the court said:

> "[7] It was the duty of the judge to identify the defence and to direct the jury on it and to place it properly before the jury. At no stage in the summation of accident did the judge explain to the jury what was meant by accident. In **R v Bailey** (1991) unreported Carey J.A., in delivering the judgment of the Court of Appeal of Jamaica said in relation to the issue of accident:
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> > "…..having identified the defence as accident, he was in our judgment bound to explain the meaning of accident. No directions in this regard was given to the jury. **He would have had to tell the jury that the killing which occurred in the course of a lawful act and without negligence is accidental which they had to have in mind.** It plainly was not the jury's laymen view of accident which mattered."
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> In **Edward Reyes v The Queen,** Criminal Appeal No. 11 of 2006 this Court endorsed what was said by Carey J.A. in **R v Bailey.**
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> [8] The judge ought to have explained to the jury what was meant by the word accident when he spoke of the defence of accident. He should have reminded the jury of the evidence upon which it could be said that the defence of accident arose."

[34] In the opinion of the Court, the trial judge failed to give the full directions on accident and also failed to tailor his directions to suit accident of another. The statement made by the appellant was that the accident was not his accident but that of the deceased. Though the trial judge repeated the words of the appellant he did not tell the jury that the accident was that of another (the deceased) and not the appellant himself. The failures of the trial judge were material as the outcome could have been different if the jury were told that the actions of the appellant to retrieve his weapon was a lawful act without negligence.

Direction on provocation

[35] The Court did not find it necessary to address this ground since the appellant was convicted for the offence of manslaughter.

The cumulative effect of the deficiencies

[36] Mr. Sampson submitted that the total effect of the misdirections of the trial judge has so contaminated the trial that the verdict of the jury is unreasonable or cannot be supported having regard to the evidence.

[37] The learned Director disagreed that the verdict of the jury was unreasonable or cannot be supported having regard to the evidence. She referred to the evidence of the close range shooting to the head of the deceased and had a difficulty to conclude that the jury convicted of manslaughter because the appellant did not have an intention to kill. She submitted that if the jury convicted based on provocation it must have accepted a part of the version of events given by the appellant.

[38] The learned Director further submitted that if there was the likelihood that the appellant's version of events were not totally rejected, then the prosecution would accept that the deficiencies in the directions given by the trial judge and the absence of the modified good character direction had the potential to make the conviction unsafe.

[39] The learned Director on that basis (para 38) was not prepared to support the conviction of the appellant based on the evidence led by the prosecution. However, she argued that this is a case fit for a re-trial. The Court was of the view that this was not a case for re-trial as the prosecution would be saddled with the same witnesses who testified in the trial, especially the evidence of Dr. Estrada Bran.

[40] It was for these reasons that the appeal was allowed and the conviction and sentence was set aside. The Court considered that in all the circumstances, it would not be in the interest of justice to order a re-trial and as such directed a judgment of acquittal.

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SIR MANUEL SOSA P

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HAFIZ-BERTRAM JA

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DUCILLE JA