

**IN THE COURT OF APPEAL OF BELIZE AD 2022**  
**CRIMINAL APPEAL NO 8 OF 2018**

**RANDOLPH COLEMAN**

**APPELLANT**

v

**THE QUEEN**

**RESPONDENT**

**Before**

The Hon Madam Justice Minnet Hafiz-Bertram  
The Hon Mr. Justice Foster  
The Hon. Mr. Justice Bulkan

President (Ag.)  
Justice of Appeal  
Justice of Appeal

L Banner for the appellant

C Vidal SC, Director of Public Prosecutions, for the respondent.

**REASONS FOR JUDGMENT**

7 and 16 June 2022

Promulgated on September 13 2022

**HAFIZ BERTRAM P (Ag.)**

**Introduction**

[1] On 11 January 2018, Randolph Coleman ('the appellant') was indicted for sexual assault and incest, contrary to sections 45A (1)(a) and 62(1) of the Criminal Code,<sup>1</sup> respectively. On 28 May 2018, he was tried before the learned Cumberbatch J ('the trial judge'), sitting with a jury, in the Supreme Court of Belmopan. On the 14 June 2018, the appellant was convicted of sexual assault and incest. He was sentenced to 5 years and 12 years respectively, to run concurrently, less the time spent on remand.

---

<sup>1</sup> Chapter 101 of the Laws of Belize (Revised Edition) 2020.

[2] On 20 June 2018, the appellant appealed against his conviction and sentence. The grounds of appeal filed related only to the appeal against the conviction. This Court heard the appeal on 7 June 2022 and reserved its decision to 16 June 2022. On that date, the Court allowed the appellant's appeal, quashed his conviction and set aside his sentence. The Court ordered a new trial in the interest of justice.

[3] The Court allowed the appeal on the basis that the unrepresented appellant was not given an opportunity to retain an attorney of his choice to represent him at his trial and this led to unfairness in the conduct of the trial. We do not intend to state the evidence since a retrial is ordered. We promised to put our reasons in writing and we do so now.

### **The grounds of appeal**

[4] The grounds of appeal filed on 9 May 2022, in relation to the conviction were:

“1. The Appellant did not receive a fair trial as guaranteed under the Constitution of Belize for the following reasons:

- i) The evidence linking the Appellant to the offences of Sexual Assault and Incest were obtained through a series of leading questions by prosecuting counsel.
- ii) Intervention on behalf of the judge during the evidence-in-chief of the virtual complainant (VC) made the trial unfair to the Appellant and deprived the Appellant of a formal verdict of not guilty.
- iii) The Learned Trial Judge did not properly analyse the Appellant's case and therefore his summing-up was deficient resulting in the Appellant's case not fully put to the jury.
- iv) The overall conduct of the case was unfair to the Appellant.”

## Conduct of case unfair to the appellant

[5] The appeal was disposed of under ground 1 (iv) “*The overall conduct of the case was unfair to the appellant.*” One of the complaints by the appellant under this ground was that he had not been given an opportunity by the trial judge to explain the reasons why he did not have an attorney to represent him when the matter was called up for hearing. This led to an unfairness in the overall conduct of the case.

[6] The learned Director submitted that it is clear from the Record that the appellant was given time to retain Counsel and had failed to do so. She argued that the appellant had been taken into custody on the 11 February 2017 and indicted for the offences on 11 January 2018. The trial commenced on the 28 May 2018. Therefore, the appellant was before the Court for a year before his trial began. Also, that it is clear from the exchange between the trial judge and the appellant at the commencement of the court of the day of trial, the appellant had been before the trial court the week before and had been told that his trial would be starting.

[7] The Director further submitted that at no point during the entire trial process the appellant appeared with an attorney, so clearly, he had not retained one. She submitted that, like the appellant in **Marvin Cruz Reyes v the Queen**<sup>2</sup>, the appellant had sufficient time to retain Counsel and so the trial judge was justified in proceeding with the case.

### *The exchange between the trial judge and the appellant*

[8] The Record at page 1 shows the following exchange between the trial judge and the appellant:

“THE COURT: Appearances?

MS. TILLET: Ms. Tillett for the Crown, My Lord.

THE COURT: **The Accused, you have a lawyer?**

THE ACCUSED: **Not as yet, Sir. I could explain?**

---

<sup>2</sup> Criminal Appeal No. 19 of 2013

THE COURT: **I don't want to hear your explanation. Remember what I told you last week Wednesday?**

THE ACCUSED: Yes, Your Honour.

THE COURT: Good. You have your disclosure?

THE ACCUSED: Yes, Your Honour, right here.

THE COURT: Yes, as I had told you on Wednesday I will be starting this trial today. I think you have had more than enough time to retain counsel. Does he have writing material? Does he have a pad? Hand him a pad so he could write. You have your book?

THE ACCUSED: Yes, sir.

THE COURT: Wonderful. Yes?"

[9] The Court was of the view that the exchange between the appellant and the trial judge showed that the appellant was desirous of seeking legal representation but was not given the opportunity to explain why he did not have an attorney. He was immediately shut out of the opportunity to have an attorney represent him. It is not for us to speculate on what may or could have happened. It is the fact however that he was denied the opportunity of expounding on his request to provide the court with the reasons as to why "as yet" he did not have an attorney. He was not even given the opportunity to explain why he was not "as yet" being represented by an attorney. He did not say that he did not want an attorney or that he had no intention of engaging an attorney. It is the fundamental right of every accused person to be represented by an attorney of his choice at his expense. Regrettably, the learned trial judge failed in recognising that at the very least, he ought to have heard the appellant's explanation and then make a determination in the interest of justice on how to proceed with the trial.

### *The Constitution*

[10] Section 6(3) of the *Belize Constitution*<sup>3</sup> provides:

"(3) Every person who is charged with a criminal offence-

---

<sup>3</sup> Cap 4 of the Laws of Belize, Revised Edition 2020

.....

- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal practitioner of his own choice;”

[11] A trial judge has a discretion under section 6(3) of the Constitution to grant an adjournment to a person who is charged with a criminal offence so that he can seek legal representation of his choice. The appellant was charged with three serious offences of sexual assault and incest of his stepdaughter and he was denied the opportunity by the trial judge to seek a legal representation.

[12] The Court noted that the case of the appellant was tried in the Supreme Court on 28 May 2018, five (5) months after the indictment dated 11 January 2018. The trial court should be commended for trying matters quickly. However, we are of the view that the trial should have been adjourned for the appellant to seek counsel of his choice. There is nothing on the record to show that the matter had been adjourned frequently over the five months period. It shows that the matter had been called up the Wednesday before and then proceeded to trial on 28 May 2018.

[13] Further, in the view of the Court, the **Marvin Cruz Reyes** case, relied upon by the learned Director is distinguishable from the instant appeal. The ground of appeal in that case was that the trial judge erred when he failed to advise the appellant of the importance of obtaining legal representation for his trial and failed to adjourn the trial to enable representation to be obtained. The Court in that case considered the date the appellant was charged and the date he was tried which was in excess of five years. The Court said at paragraph 17:

“[17] It cannot be overlooked that the particulars of the charge concerned the 26th day of August, 2007 and the trial commenced on the 6th day of November, 2013. By a simple calculation this was in excess of five years. From the time of his arrest, the Appellant would have become acquainted with his right to have

counsel of his choice. It is shocking that a ground of this nature would now be advanced by counsel for the Appellant. We see no merit in this ground given these circumstances.”

**[14]** In the instant matter, the period between the date of the charge and the date of trial was one year, which is not a lengthy period in this jurisdiction. This was not a case of significant delay. The Court was of the view, under the circumstances of this case, where there were not frequent adjournments of a relatively new matter, the trial judge heard the appellant after which in the exercise of his discretion he may have deemed it expedient to grant a reasonable adjournment to give the appellant adequate time to seek legal representation. – section 6(3) (d) of the Constitution.

*The lack of representation led to unfairness of the trial*

**[15]** The Court was of the view that the lack of representation had an impact on the fairness of the trial for these reasons:

- (1) The trial judge upon learning the appellant was unrepresented began the trial immediately without giving him adequate time to prepare his defence for the serious charges of sexual assault and incest - ( s. 3 (c ) of the Constitution);
- (2) The appellant was not granted an adjournment as requested during the trial to review evidence to be led in the trial court;
- (3) The appellant was deprived of the advantage of skilled cross-examination of the victim and her mother who were key witnesses in the trial;
- (4) The outcome of the trial might have been different with legal representation.

**[16]** For the above reasons, the Court allowed the appeal under ground 1(iv). We do not find it necessary to address the other grounds of appeal.

*Retrial ordered in the interest of justice*

[17] The power of this Court to order a new trial is conferred by section 30(2) of the Court of Appeal Act,<sup>4</sup> which states:

“(2) Subject to the special provisions of this Part, the Court shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered, or if the interests of justice so require, order a new trial.

[18] In considering whether to order a new trial, the Court had regard to the circumstances of the case, where the accused is charged for very serious sexual offences against a family member whom he was supposed to protect and the circumstances under which the appeal was allowed, that is, the lack of legal representation which led to the unfairness of the conduct of the trial. Further, the Court was of the view that the matter is not before the court for a lengthy time. We are satisfied that it is in the interest of justice that a new trial be ordered.

### **Conclusion**

[19] It was for those reasons that the Court allowed the appeal of the appellant, quashed the conviction and set aside the sentence and ordered a new trial.

---

HAFIZ-BERTRAM P (Ag.)

---

FOSTER JA

---

BULKAN JA

---

<sup>4</sup> Cap 90