IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION- BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

INDICTMENT NO. C 0047 OF 2020

BETWEEN:

THE KING

and

ALBERT MORREIRA

MURDER

Before:

The Honourable Mr. Ricardo Sandcroft, J

Appearances:

Mr. Riis Cattouse and Mr. Robert Lord, State Attorneys

Mr. Oscar Selgado, for the Accused Persons

2022:

JUDGE ALONE TRIAL – RULING ON NO-CASE SUBMISSION

Background

[1] Albert Morreira ('the Accused') is charged with the offence of murder contrary to section 106(1) of the Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011('the Criminal Code') read along with section 117 of the Criminal Code which defines the offence of murder.

[2] As stated in the Particulars of Crime, the Crown's case is that the Accused murdered Felina Margarita James, on a precise date unknown between the 10th day of October 2018 and the 13th day of October 2018, at La Democracia Village, in the Belize District, in the Central District of the Supreme Court.

[3] The Crown's case in this matter, as it relates to the Accused and his co-accused is founded on the written caution statements of both the Accused and his co-accused purportedly made on the 24th of August 2019, followed some time thereafter, within the space of about a month, by a written statement allegedly made by the co-accused to Sergeant Orlando Bowen, and in his presence, and in the presence of Sergeant Renee Cu, as he then was. So that is the strength of Prosecution's case.

[4] In an attempt to prove its case, the Crown called a total of eight viva voce (8) witnesses. Namely, Mr. Jermaine Hyde ('PW21'), Mr. Alexander Mejia ('PW2'), Mr. Cornell Brown ('PW3'), Mr. Gayland Gillett ('PW4'), Mr. Michael Carrillo

('PW6'), Sergeant Orlando Bowen ('PW9'), Ms. Lucia Bolon ('PW15') and Dr Loyden Ken ('PW22'). Thereafter, the Crown closed its case.

[5] Upon closure of the Crown's case, the Learned Defence Counsel, Mr. Oscar Selgado, indicated his readiness to make submissions on behalf of the Accused relating to a 'no case to answer'. It was Mr. Selgado's submission that the essential ingredients of the offence of murder had not been established by the evidence led by the Crown so as to warrant putting the Accused to his defence.

Relevant Principles

[6] I reminded myself that the general approach to be followed where a submission of 'no case to answer' has been made was described by Lord Lane CJ in **R v Galbraith**[1] where his Lordship stated: -

> "(1). If there is 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 nature for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.
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> (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury

[1] [1981] 1WLR 1039

> properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.
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> (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's 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 to the judge."

[7] This principle had been further applied in the case of **Doney v. The Queen**[2], where the High Court of Australia said, at page 214 to 215:

> "It follows that if there is evidence, even if tenuous or inherently weak or vague, which can be taken into account by the Jury in its deliberations, and that evidence is capable of supporting a verdict of guilty, the matter must be left to the Jury for its decision".

[8] Or to put the matter in more usual terms, a verdict of not guilty may be directed only if there is a defect in the evidence, such that taken at its highest, it will not sustain a verdict of guilty. Even though the dicta from **R v Galbraith** and **Doney v. The Queen** refer to trials before a jury, the principles are equally applicable to judge alone trials such as the instant one.[3]

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[2] [1990] HCA 51; 171 CLR 207; 65 ALJR 45

[3] See: ***Chief Constable v Lo*** [2006] NICA 3, which was referred to with approval by the editors of the Criminal Bench Book for Barbados, Belize and Guyana

[9] This Court also found reliance on the case of **The Queen v. Morris**[4], where Justice Ipp, in delivering the leading judgment, said at pages 416 to 417:

> "When a no-case submission is made at the end of the Crown case, the test is not whether upon the whole of the evidence it will be open to the Jury to be satisfied beyond reasonable doubt that the accused was guilty. The test, as I have pointed out, is whether the Defendants could lawfully be convicted and the trial Judge at that stage is required to take into account all inferences, most favourable to the Prosecution, which could reasonably be drawn from the primary facts".

In keeping with the approach in **The Queen v. Morris**, this Court similarly takes into account all inferences most favourable to the Prosecution which could reasonably be drawn from the primary facts.

[10] I also find guidance from three decisions of the Privy Council which were appeals from the British Virgin Islands, Jamaica and Belize (respectively), (i) **Director of Public Prosecutions v Selena Varlack**[5]**,** (ii) **Crosdale v R**[6] and (iii) **Taibo v the Queen**[7]**.** In **Selena Varlack**, Lord Carswell (on behalf of the Board) succinctly restated the Galbraith principles. At paragraph [21], his Lordship said:

> "The basic rule in deciding on a submission of no case at the end of the evidence adduced by the prosecution is that the

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[4] 1997, 98 Australian Criminal Reports, at page 408
[5] [2008] UKPC 56
[6] (1995) 46 WIR 278
[7] (1996) 48 WIR 74

> judge should not withdraw the case if a reasonable jury properly directed could on that evidence find the charge in question proved beyond reasonable doubt. The canonical statement of the law, as quoted above is to be found in the judgment of Lord Lane CJ in *R v Galbraith* [1981] 2 All ER 1060, [1981] 1 WLR 1039, 1042. **That decision concerned the weight which could properly be attached to testimony relied upon by the Crown as implicating the defendant, but the underlying principle, that the assessment of the strength of the evidence should be left to the jury rather than being undertaken by the judge, is equally applicable in cases such as the present, concerned with the drawing of inference**."
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> [Emphasis added]

[11] In **Crosdale v R**, Lord Steyn (on behalf of the Board) elucidated the roles of the Judge and the jury. It bears repeating that these principles are equally applicable in judge alone trials where the Judge sits as both the tribunal of law and fact. At page 285, Lord Steyn stated that:

> "A judge and a jury have separate but complimentary functions in a jury trial. The judge has a supervisory role. Thus the judge carries out a filtering process to decide what evidence is to be placed before the jury. Pertinent to the present appeal is another aspect of the judge's supervisory role: the judge may be required to consider whether the prosecution has produced sufficient evidence to justify putting the issue to the jury. (ii) Lord Devlin in *Trial by Jury* (The Hamlyn Lectures) (1956, republished in 1988) aptly illustrated the separate roles of the judge and jury. He said (at page 64):
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> > '…there is in truth a fundamental difference between the questions whether there is any evidence and the question whether there is enough evidence. I can best illustrate the difference by an analogy. Whether a rope

> will bear a certain weight and take a certain strain is a question that practical men often have to determine by using their judgment based on their experience. But they base their judgment on the assumption that the rope is what it seems to the eye to be and that it has no concealed defects. It is the business of the manufacturer of the rope to test it, strand by strand if necessary, before he sends it out to see that it has no flaw; that is a job for an expert. It is the business of the judge as the expert who has a mind trained to make examinations of the sort to test the chain of evidence for the weak links before he sends it out to the jury; in other words, it is for him to ascertain whether it has any reliable strength at all and then for the jury to determine how strong it is…The trained mind is the better instrument for detecting flaws in reasoning; but if it can be made sure that the jury handles only solid argument and not sham, the pooled experience of twelve men is the better instrument for arriving at a just verdict.' "

[12] In **Taibo v the Queen**, the Privy Council found that there were serious weaknesses in the case for the prosecution, but they were not necessarily fatal[8]. The Board also found that although the case against the appellant *"was thin and perhaps very thin"*, if the jury found the evidence of the witnesses [JC, CG and FV] to be truthful and reliable then there was material on which a jury could, without irrationality, be satisfied of guilt. This being so, the judge was not only entitled but required to let the trial proceed.

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[8] See: page 83 (f-g)

Burden of proof

[13] I remind myself that subject to any exception created by statute or at common law, that it is the Crown that bears the burden of proof on every issue in a criminal case or as Viscount Sankey LC put it in **Woolmington vs. Director of Public Prosecution**[9]:

> "Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception."

[14] It should be remembered that subject to any exception at common law, cases of insanity and to various statutory provisions, the prosecution bears the burden of proof on every issue in a criminal case.

[15] In another case, **Chauya and Another v The Republic**[10], the Honourable Chipeta J (as he was then) stressed that:

> "Criminal law, it should always be recalled, thrives on the noble principle that it is better to make an error in the sense of wrongly acquitting a hundred guilty men than to err by convicting and sending to an undeserved punishment one innocent soul."

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[9] [1935] AC 462
[10] Criminal Appeal No. 9 of 2007

[16] The common thread running through these cases is that the task of a Judge in considering a submission of 'no case' is the balancing one. On the one hand, a Judge should be careful not to usurp the purview of the jury who are the judges of the facts. On the other hand, the judge is duty bound to safeguard accused persons from conviction, on facts which are so precarious, unsafe or insufficient that injustice would result.

[17] On a submission of 'no case' to answer, the question to be decided by the trial judge is whether a properly directed jury could convict on the evidence adduced by the Prosecution at the close of their case. The Judge does not have to find at this stage that the Prosecution has established the ingredients of the offence beyond a reasonable doubt. This is never a determination for a judge to make on an indictable trial. To do so will amount to a usurpation of the jury's function. As stated in **Taibo** [supra], the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt, if there is, the judge is required to allow the trial to proceed. In other words, the judge is merely to consider whether a *prima facie* case has been established by the evidence adduced by the prosecution.

Standard of proof

[18] As an initial point, a distinction needs to be made between the determination made at the halfway stage of the trial (i.e. after the Crown has closed its case), and the ultimate decision on the guilt of the accused to be made at the end of the case. Whereas the latter test is whether there is evidence which satisfies the Court beyond a reasonable doubt of the guilt of the accused, the Court recalls that the objective of the 'no case to answer' assessment is to ascertain whether the Prosecution has led sufficient evidence to necessitate a defence case, failing which the accused is to be acquitted on one or more of the counts before commencing that stage of the trial. It therefore considers that the test to be applied for a 'no case to answer' determination is whether or not, on the basis of a *prima facie* assessment of the evidence, there is a case, in the sense of whether there is sufficient evidence introduced on which, if accepted, a reasonable Trial Court could convict the accused. The emphasis is on the word 'could' and the exercise contemplated is thus not one which assesses the evidence to the standard for a conviction at the final stage of a trial. For the present purposes, the Court therefore need not elaborate on the standard of proof for conviction at the final stage.

[19] The commonwealth legal colloquialism ‘no case to answer’ is aptly descriptive of the matter. The matter is whether the case for the Prosecution—at its closing—has been so deficient in the evidence as to make it virtually vexatious, inappropriate, inefficient and/or pointless to prolong the proceedings into the case for the Defence. The essence of the motion, then, is that the evidence tendered in the Prosecution case has not raised any serious question of guilt that the Defence should be put to the trouble of answering. Hence, it is said, the case for the Prosecution has raised 'no case' for the Defence ‘to answer’. In the result, the motion urges the Court to enter a directed judgment of acquittal, at the close of the case for the Prosecution, without the Defence being or feeling called upon to commence their case.

[20] It thus affords a stronger reason to say that a ‘no case to answer’ motion must necessarily fail, when the case for the Prosecution is found to have established the prospect of guilt at the civil standard of proof. For, that is a level higher than the parity of likelihoods of guilt and innocence—since the prospect of guilt (at that level) appears to be ‘more likely than not’.

[21] It may be noted, of course, that the standard of proof that has established guilt at only the level of ‘more likely than not’ will be inadequate for a criminal conviction. In order to convict an accused of a crime, the tribunal of fact needs to be

satisfied beyond reasonable doubt as to the guilt of the accused. But, strictly speaking, that is an irrelevant consideration for purposes of motions of 'no case to answer'. This is because the question of conviction of the accused is not engaged immediately upon the close of the case for the Prosecution (when the motion of 'no case to answer' is made), before the conclusion of the case for the Defence. It is therefore correct to observe, that the exercise contemplated is thus not one which assesses the evidence to the standard for a conviction at the final stage of a trial.

[22] The question whether there is a case to answer, arising as it does at the end of the prosecution's evidence in chief, is simply the question of law whether the defendant could lawfully be convicted on the evidence as it stands, - whether, that is to say, there is with respect to every element of the offence some evidence which, if accepted, would either prove the element directly or enable its existence to be inferred. That is a question to be carefully distinguished from the question of fact for ultimate decision, namely whether every element of the offence is established to the satisfaction of the tribunal of fact beyond a reasonable doubt[11]. The ultimate question of fact must be decided on the whole of the evidence.

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[11] See: **May v O'Sullivan** [1955] HCA 38; (1955) 92 CLR 654

[23] The indicated standard, rather, is proof on a balance of probabilities. Indeed, that proposition was so clearly stated in **Wilson v Buttery**[12]:

> "The expression used by Blackburn J., in *R v Smith*, (1865) 34 L.J. M.C. 153, with reference to a criminal case, is that which would be used in a civil case, namely, that "there must be more than a mere scintilla of evidence before the case is submitted to the jury." At this stage and for this purpose the question is not, are the facts proved by the prosecution capable of any reasonable construction consistent with innocence? but this, do they establish a substantial balance of probability in favour of the inference which the prosecution seeks to draw?"

[24] There is indeed a storied value to the pronouncement that 'there must be more than a mere scintilla of evidence before the case is submitted to the jury'. Its value resounds in the very definition of a *prima facie* case, at every stage where that concept is in play.

[25] The assessment to be undertaken is made more difficult by the circumstantial nature of the Crown's case. As will become apparent, whether the facts can prove the circumstance of murder involves issues of degree upon which reasonable minds may differ. This highlights the importance of not drifting unwittingly into the role of the jury, or the judge in a judge-alone trial, as the ultimate arbiter of fact.

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[12] [1926] SASR 150, at p 154

[26] The well-known test to be applied to a no case to answer submission was described in **Doney v The Queen**[13] as follows:

> "…[i]f there is evidence (even if tenuous or inherently weak or vague) which can be taken into account by the jury in its deliberations and that evidence is capable of supporting a verdict of guilty, the matter must be left to the jury for its decision. Or, to put the matter in more usual terms, a verdict of not guilty may be directed only if there is a defect in the evidence such that, taken at its highest, it will not sustain a verdict of guilty."

[27] I find it useful to refer to the following passage from "Acquittals by Direction" (1986) 2 *Australian Bar Review* 11 at 12, namely:

> "…The trial judge never asks himself the question whether the facts and inferences which the Crown evidence is sufficient to establish are reasonably open to an explanation consistent with innocence ... Whether the Crown has excluded every reasonable hypothesis consistent with innocence is a question not for the judge, but for the jury."

[28] The same conclusion was reached by the Full Court of the Supreme Court of Victoria in **Attorney-General's Reference (No 1 of 1983)**[14]. That decision was approved by the High Court in **Doney *v* The Queen**. Indeed, King CJ in "Questions

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[13] (1990) 171 CLR 207 at 214–215
[14] [1983] 2 VR 410 at 415

of Law Reserved on Acquittal" (No 2 of 1993) referred to that decision with evident approval earlier on the very page containing the passage I have quoted.

[29] The principles, in summary form, as follows:

(i) If there is direct evidence which is capable of proving the charge, there is a case to answer no matter how weak or tenuous the judge might consider such evidence to be.

(ii) If the case depends upon circumstantial evidence, and that evidence, if accepted, is capable of producing in a reasonable mind a conclusion of guilt beyond reasonable doubt and thus is capable of causing a reasonable mind to exclude any competing hypotheses as unreasonable, there is a case to answer.

(iii) There is no case to answer only if the evidence is not capable in law of supporting a conviction. In a circumstantial case that implies that even if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt.

[30] In the decision of the Queensland Court of Criminal Appeal in **R v Stewart; ex parte Attorney-General**[15] McPherson J, as he then was, with whom Andrews CJ and Demack J agreed, said at 592:

> "…Only if the evidence had been such that an inference to that effect was incapable of being drawn beyond reasonable doubt could it be said that there was in law no material on which a verdict of guilty might be found; that there might remain a possible inference consistent with innocence did not serve to remove the question from the province of the jury."

[31] As to the standard of proof required in criminal cases Denning, LJ (as he then was) had this to say in **Bater v Bater**[16]:

> "It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases, the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear".

That passage was approved in **Hornal v Neuberger Products Ltd**[17], and in **Henry H. llanga v M. Manyoka**[18]. In **Hornal v Neuberger Products Ltd**, Hodson, L.J.,

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[15] [1989] 1 Qd R 590
[16] [1950] 2 All E.R. 458 at 459
[17] [1956] 3 All E.R. 970
[18] [1961] E.A. 705 (C.A.).

cited with approval the following passage from **Kenny's Outlines of Criminal Law**[19]:

> "A larger minimum of proof is necessary to support an accusation of crime than will suffice when the charge is only of a civil nature. in criminal cases the burden rests upon the prosecution to prove that the accused is guilty 'beyond reasonable doubt'. When therefore the case for the prosecution is closed after sufficient evidence has been adduced to necessitate an answer from the defence, the defence need do no more than show that there is reasonable doubt as to the guilt of the accused. *See R. v. Stoddart* (1909) 2 Cr. App. Rep. 217 at p. 242.
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> > [I]n criminal cases the presumption of innocence is still stronger, and accordingly a still higher minimum of evidence is required; and the more heinous the crime the higher will be this minimum of necessary proof."

[32] Where, on the evidence adduced before Court, there exists only a remote possibility of the innocence of an accused person, it would mean the Prosecution has proved its case beyond reasonable doubt; hence, the Prosecution would have conclusively discharged the burden that lay on it to prove the guilt of the Accused.

[33] I should however point out that while it is advisable and useful for the defence to cause a reasonable doubt to hang over the prosecution case, by "punching a hole", or "laying bare the deficit", in the Crown's case, this does not arise in every case. It

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[19] (16th Edn.), at p. 416

only does so where the Prosecution has put a fairly strong case that may need an explanation from the Accused. This does not amount to a shift of the burden of proof to the Accused; as the burden (save for recognised exceptions where there is a reverse burden) lies perpetually on the Prosecution to prove the guilt of an accused person beyond reasonable doubt.

[34] With respect to the nature of evidence required, the accused persons can only be convicted on the basis of evidence adduced before Court, such evidence must be credible and not tainted by any lies or hearsay, and otherwise it will be rejected by the Court for being false.

[35] The Prosecution must prove all the ingredients of the offence of murder in order to sustain a conviction thereof. In the cases of **Uganda vs. Bosco Okello**[20], and **Uganda vs. Muzamiru Bakubye & Anor**[21] it was held that the Prosecution must prove the following ingredients beyond reasonable doubt:-

1. That the deceased is dead;
2. That the death was caused unlawfully;
3. That there was malice aforethought; and

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[20] [1992-93] HCB 68
[21] High Court Criminal Session No. 399/2010

[36] That the Accused person directly or indirectly participated in the commission of the alleged Offence. It is trite law that prior to placing an accused person to his/her Defence, the Prosecution is required to have established a *prima facie* case against such Accused person. It is now a well-established law that a *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence would convict the Accused person, if no evidence or explanation was set up by the Defence. In **Rananlal T. Bhatt vs. R**[22], the East African Court of Appeal held that a *prima facie* case could not be established by a mere scintilla of evidence or by any amount of worthless, discredited Prosecution evidence.

[37] The decision to discharge an accused person at the close of the Prosecution's case or whether to refuse to do so is a matter in respect of which I must exercise a judicial discretion. The law on this issue is well settled and to the effect that a Court will refuse a "no case" application if there is evidence upon which a reasonable Court may convict. In so doing, the Court will take into account both the direct and circumstantial evidence produced by the Prosecution.

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[22] [1957] E.A. 332

[38] It is agreed and conceded by all that for an accused person to be said to have a case to answer, the Prosecution ought to raise what is known as a *prima facie* case. Failure to raise such a case ought to result into the immediate acquittal of the Accused, while success in raising such a case ought to lead to the Accused being put on his defence.

[39] What, therefore, is a *prima facie* case? Over the years in various attempts have been made to judicially define this concept or expression. In terms of the English Law, from which our criminal law and practice has developed, to achieve uniformity in practice and to reduce blunders in the understanding of this expression, the Lord Chief Justice Parker created and circulated a Practice Direction ('Lord Parker's Practice Direction'). This commendable effort of Lord Parker CJ is reported as Practice Note; (Justices: Submission of no case to answer) [1962] 1 All ER 448, among other Law Reports. It has been welcomed into Belizean Law by this Court in various local cases.

[40] It will be necessary, I think, to set out Lord Parker's Practice Direction for a more pellucid comprehension of the same. It goes as follows:

> "A submission that there is no case to answer may properly be made and upheld (a) when there has been no evidence to prove an essential element in the alleged offence; (b) when

> the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal **could** safely convict on it.
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> Apart from these two situations a tribunal should not in general be called upon to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If however a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) **would** at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer."
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> [Emphasis added]

[41] In the Practice Direction just quoted, I have deliberately underlined the words "could" in the first part of the Direction and "would" in the second part of the Direction. For those of us to whom English is a foreign language it might well not be easy to detect the difference between the use of those two words, but from my reading of the Practice Direction I have always gained the impression that Lord Chief Justice Parker used those two words advisedly and that they each carry their own distinct meaning in the Direction. There is certainly a difference in my view between what a Court "could" do and what it "would" do when a Court must evaluate evidence adduced by the close of the Prosecution's case.

[42] My overall understanding of Lord Parker's Practice Direction herein is that it is sufficient in a Criminal Case for the Court to put the Accused on his/her defence if, on the evidence, a reasonable tribunal could, as opposed to, would, convict on it. Thus, for a *prima facie* case to be said to have been established in any given case, the evidence need not be such as would cause a reasonable tribunal to convict, as was partly argued by Mr. Selgado in this case. It is sufficient if it is merely such as could achieve such a result. The distinction may be fine but, in my understanding, "would" carries with it an element of more certainty than "could", which appears to connote mere possibility, does and, according to the accepted test for discovering whether or not in any given case a *prima facie* case has been made out, it is the "could" and not the "would" degree of evaluation that must be applied, per Lord Parker's Practice Direction.

[43] I am also guided by the procedure laid down in Lord Parker's Practice Direction , wherein his Lordship opined that a submission of no case to answer may be properly upheld when there has been no evidence to prove an essential element in the alleged offence and also when the evidence adduced by the Prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could convict on it.

Discussion

[44] In advancing the no case submission, Mr. Selgado made submissions on whether the Prosecution established a *prima facie* case, based on the evidence of its eight witness, which warranted the entry of a defence on the part of the Accused. Learned defence counsel submitted that from the totality of the evidence of the Prosecution's witness, none of the said witnesses pointed to the Accused (or his co-accused) as the one who caused the death of the deceased and as such a prima facie case was not made out against them.

[45] Further, Mr. Selgado contended that the position at law is clear where there are material inconsistencies in the Prosecution's evidence. In the instant case he argued that there was material inconsistency relating to the identity of the assailants. He pointed out that the law provides that such inconsistencies ought to be resolved in favour of the Accused and this proposition had been cited and applied in the case of **Republic *v* Mankhanjiwa Confirmation Case**[23] , the High Court stated it as a matter of principle that where there are material contradictions in the evidence given

[23] No. 811 of 1979 (unreported)

by the witness or witnesses for the Prosecution, a Trial Court must acquit the accused person without calling him to enter a defence.

[46] It was further submitted that when the Trial Court also considers the first argument that the Prosecution has not established the identity of the actual assailant who caused death of the deceased herein, then the Prosecution's evidence has failed to establish one of the essential elements of the offence charged. That is to establish as a fact that the death of Felina Margarita James ('the deceased') was caused by the accused man. The Prosecution having failed to establish an essential element of the offence of murder, the Accused herein ought to be entitled to an outright acquittal.

[47] I have carefully evaluated the Prosecution's evidence. I find that, in the absence of any explanation to the contrary from the Defence, the Prosecution's evidence does not establish the two (2) ingredients of the offence of murder. It is not in dispute that there was death as a result of an attack. On the question of the Accused's participation, this Court finds that, in the absence of any evidence to the contrary, the evidence of Mr. Alexander Mejia ('PW2'), Mr. Cornell Brown ('PW3'), and Mr. Gayland Gillett ('PW4'), does not establish participation of the Accused. In arriving at the above conclusions, I do recognize that at this stage, the standard of proof is not proof beyond reasonable doubt as required for a full-fledged

criminal trial. Rather, what is essential is such evidence which if taken literally or on the face of it would establish the essential ingredients of the offence of murder, and in particular the Accused's participation therein.

[48] This Court has carefully considered the evidence of the Crown and entirely agrees with the submissions of Learned Defence Counsel that there is no evidence pointing to the Accused herein as being the assailant herein. None of the Prosecution's witnesses who were present at the time of the fateful events resulting in the death of the deceased, testified to seeing the Accused at the scene of the crime.

[49] Consequently, this Court finds that there is no sufficient evidence for this Court to call on the accused men to give an explanation. This Court agrees with the submissions of Learned Defence Counsel and finds that a *prima facie* case has not been established against the Accused at this stage. The Accused is accordingly acquitted on the charge herein.

DETERMINATION

[50] I accordingly **ACQUIT** you **ALBERT MORREIRA** of the Offence of Murder that you are charged with and set you free unless there are other Charges against you.

Dated the day of October, 2022

RICARDO O. SANDCROFT

Justice of the Supreme Court