

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION- CAYO DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT No. C 0008 OF 2023

BETWEEN:

THE KING

and

MARIO ALCALHA

Defendant

Appearances:

Mr. Cecil Ramirez for the King

Mr. Leeroy Banner for the Defendant

2023: October: 12; 18; 25;

November 15.

JUDGMENT

1. Mario Alcalha, ('the accused'), was indicted for the charge of rape, contrary to Section 46 of the **Criminal Code Cap 101 of the Substantive Laws of Belize(Revised Edition)2020**, ('the Code') ,read in conjunction with Section 71 , which defines the offense. The allegations are that on the 26th of September 2020, the accused raped the complainant in bushes located in Ontario Village ,Belmopan.

2. The accused entered a plea of not guilty, and registered no objection to the indictment; consequently, the matter proceeded to a trial, by judge alone pursuant to Section 65 of the **Indictable Procedure Act Cap 96 of the Substantive Laws of Belize(Revised Edition) 2020**, as amended by the **Indictable Procedure(Amendment Act)Act 2022**.
3. In a judge alone trial, I am the tribunal of both fact and law. As the tribunal of both fact and law, it falls to me to determine whether the essential elements constituting the alleged offense have been proven by the prosecution, beyond a reasonable doubt, to secure a conviction. There is no onus on the accused to prove or disprove anything.
4. Acting in accordance with the guidance of the nation's highest court, the Caribbean Court of Justice, in ***Dionicio Salazar v R [2019]CCJ 15(AJ)*** , the approach taken in determining this matter is first , to analyze the evidence on the Crown's case ,and then only ***if*** that evidence is strong enough to secure a conviction will the case for the accused be considered.

THE EVIDENCE

The Prosecution's case

5. Under the cover of dusk, on September 26th ,2020 at about 4:30 pm, the complainant, a labourer, alleged that the accused, a fellow labourer, followed him into the bushes where he had gone to cut grass. The accused then tied both of the complainant's hands around a tree and inserted his penis into the complainant's anus without his consent.

Evidence of the Crime Scene Technician Antonio Manzanero

6. The first witness called by the prosecution was Antonio Manzanero, a Crime Scene Technician. He testified that he visited the scene of the incident in an area in bushes at Ontario Village , Belmopan , opposite the residence of the complainant's aunt, some 600 feet up a hill , off the George Price Highway. There , the complainant, pointed out an area on the trunk of a tree; he also pointed to a thin black and grey piece of wire on the ground near to a tree. Mr Manzanero said he observed that the grass by the tree appeared to be disturbed. A total of six photographs were tendered:
 1. Photograph 1: a view of the area where they entered the bushes, capturing also a portion of the complainant's aunt's house;
 2. Photograph 2/: a general view of the area;

3. Photograph 3: a portion of the trees and tree trunk as pointed out by the complainant;;
 4. Photograph 4: a close view of the tree trunk pointed out by the complainant, as well as disturbed grass at the root of the tree;
 5. Photograph 5: a piece of black and grey wire on the ground near to the tree trunk , also pointed out by the complainant; and
 6. Photograph 6: a portion of the tree trunk pointed out by the complainant , and also the back of the complainant's aunt's house
7. Under cross examination by Counsel Mr Banner, Mr Manzanero agreed that from the highway there wasn't a clear view of the tree pointed out by the complainant. He disagreed that the black and grey wire was not a phone charger; he maintained that it was 'a piece of phone charger'. He agreed also that the person who took him to the scene (that is, the complainant) 'acted strange'. He further agreed that it was the aunt who 'was doing all the talking'; however, he added that the complainant 'did some talking also; but slow talking'. There was no re-examination of this witness.

Evidence of the complainant

8. The second witness for the Crown was the virtual complainant .He had a speech impediment and a diminished intellect. Despite this however, he appeared to understand the difference between the truth and a lie (evidenced by his repetition of the phrase 'no me lie'). Also, his responses to the questions asked by Counsel for the accused, demonstrated that despite his diminished intellectual capacity ,he understood and fully participated in the proceedings. Counsel for the accused did not oppose the conclusion by the Crown that the complainant had a speech defect but not a mental defect.
9. He stated that he went to chop grass for the horse, on the instruction of his aunt, and that the accused followed him into the bushes. He said the accused then touched him on both cheeks and then on his lips. He also pointed to his groin area, and stated that the accused also touched him there. He placed his fingers on his lips and indicated that the accused motioned to him to be quiet. It was not said at what point this was done.
10. He said he knew the accused before the incident as the accused was always at his aunt's yard. Prior to the date of the incident, he had seen the accused pass by his aunt's house on a bicycle.
11. He said that the accused –whom he referred to as 'Mario', used a phone charger to tie both his hands around 'a bigger tree' that was behind him and 'tek his batty with his cock'. He said that meant that 'Mario pushed his cock in my batty.' When asked by the prosecution if he knew the correct word for 'batty', he responded that the correct word for 'batty' was 'buttocks'. Using a three inch fan inside the court room,

he demonstrated how his hands were tied to embrace the tree. He said that the tree was close to him when he was tied to it and so was Mario. He said also that when the nurse checked his buttocks, there was blood. He said that Mario 'did it' forty (40) times; this meant that Mario inserted his penis into the complainant's anus forty times. He further testified that he told Mario 'fi stop it', and that he did not give Mario permission to have sex with him. He was taken to the doctor and examined about seven (7) hours after the incident.

12. Under cross-examination he admitted that when he was cutting the grass it was already dark. When he was challenged that in those circumstances he could not see who was behind him, he was adamant that it was Mario, and that Mario had raped him. He had seen Mario's face; he said he could see because there was light on the lamp post behind him. He vehemently denied that because the place was dark and bushy he could not see who raped him, reiterating that 'Mario rape mi'.
13. He also strongly denied the suggestion that it was his aunt who told him to say that Mario had raped him. He passionately replied that it was in fact **he** who *told his aunt* that Mario had raped him. When it was put to him that it was his aunt who told him to say that Mario had raped him and he had to oblige her because she took care of him, he repeated that it was the other way around: **he** was the one who **told his aunt** that Mario had raped him. He also said that Mario attempted to give him money (two ten dollar Belize currency) after the ordeal, but he refused to take it. He estimated that the ordeal lasted about ten (10) minutes.
14. He strongly denied the suggestion that Mario did not tie his hands; he maintained that Mario *did* tie his hands. At this point he produced a charger from the pocket of his pants, in an apparent attempt to concretize his evidence that it was a similar item that Mario had used to tie his hands. He even attempted to differentiate between the charger he produced in court, and the one that he alleged that Mario had used, by stating that the latter was 'a thin one'. At the suggestion that if he had in fact been tied up he could easily have burst a thin charger, the complainant proceeded to demonstrate how he was tied up, with a continuous overlaying motion of his hands, and explained that he could not burst the wire because 'Mario wrap up di piece ah wire'.
15. When it was put to him that he was lying about Mario raping him, the complainant replied that he was not lying: 'no me lie; me tell he di truth'.
16. Confronted with the defendant's version that Mario did not touch his penis and body, the complainant repeated that he was not lying: 'no me lie'. Confronted with the final suggestion that that was the reason the doctor did not find any semen when he examined him, the complainant responded that 'the doctor did find something'. The

complainant had also volunteered earlier in his evidence that he told the police that 'Mario's cock had something white on it like sperm'.

17. After cross- examination, two instances of inconsistency in the complainant's evidence remained unresolved:

- (1) Counsel for the accused asked the complainant to address the inconsistency in his statement to the police and his statement under cross-examination, in relation to how many times he alleged that the accused man inserted his penis into his anus. In his statement to the police, the complainant indicated that it was six (6) times, however, in his evidence in court, he stated that it was forty (40) times. When asked to speak to this inconsistency, the complainant went off on a tangent, and spoke about an argument that his aunt had with a relative of the accused;
- (2) When confronted with the inconsistency of telling the court that he had known Mario for about one year prior to the alleged incident, versus the statement that he had given to the police in which he stated that he had known Mario for one week before the incident, the complainant again diverged and started speaking about a conversation he had with the mother of the accused about the incident. Since I appreciated that the complainant's computation of time was flawed because of his child-like intelligence, I did not find that these inconsistencies affected his credibility.

18. This witness was not re-examined.

Evidence of Dr Renee Godoy

19. The evidence of the third witness for the prosecution was heard virtually. Dr Renee Godoy was deemed an expert witness by the Court. He testified that on the 27th September 2020, at 12:38 am , he medically examined the complainant, and wrote a report thereafter. He found that there were bruises on the complainant's lower extremities , back and both wrists. His classification of the injuries was wounding . He found no trauma to the anus , but said that unfortunately it was not firm. He also said that it was full of faeces, which made his examination difficult.

20. When asked by the Judge to explain what was meant by his observation that the anus was not firm, he said it meant that the consistency is not a healthy one; that the anus should not be dilated or loose(as the complainant's was).It should have a certain strength to hold back the faeces in the bowels; this was not present in the complainant. He did not have that firmness of the muscle in the anus. In response to the second question posed by the Judge, he replied that a loose anus could be caused by :

(a)incontinence; (b) a condition you are born with; or (c)repetitive trauma over a long period of time.

21. Under cross examination, he agreed that having examined the complainant on the 28th September 2020, at 12:38 am, there was no sign of bleeding, only bruises; no signs of trauma to the anus; no sign of semen, and no sign of recent sexual activity.

Evidence of the Investigating Officer, Sergeant Benedict Castillo.

22. _The investigating officer's statement was agreed evidence which was read out in court. The Officer indicated that acting on information received, he proceeded to the residence of the complainant .
23. That same evening, at 8:15pm, the accused was located at his house and detained pending investigation into 'unnatural crime'. The officer stated also that the complainant was taken to the Western Regional Hospital, along with a medical form and rape kit, where he was swabbed and treated by Dr Renee Godoy.
24. ON Sunday September 27, 2020, the scene was visited and processed by Mr Manzanero, and a long black and grey wire was found near to where the assault is alleged to have taken place.
25. A white, sealed , sexual assault evidence collection kit box for the complainant was handed to Sergeant Norman Coy. A statement was recorded from the complainant on September 28, 2020. At 7:30 pm that same day, a warrant was executed upon the accused for the crimes of wounding and unnatural crimes. When he was cautioned and asked if he had anything to say, he requested a phone call, which was granted to him.
26. Mr Manzanero handed over the photographs and three (3) pages of report ,to the Investigating Officer.

Defense's case

27. After being informed of his three options, the accused opted to make an unsworn statement from the dock. He disclosed that he had a common law wife and a nine (9) year old daughter, who lived with her mother in Toledo District .He flatly denied the allegations and stated that he was a Christian of the Seventh Day Adventist faith .
28. Both parties gave closing arguments.
29. The prosecution stated that the elements of the offense had been made out. Although the complainant identified the defendant by dock identification, sufficient

evidence had been led to show that the complainant knew the accused before: he would see the accused raking his aunt's house daily; he saw him pass by the house on a bicycle not long before the incident occurred; and he had known him for at least a week before the incident. I was asked to take judicial notice of the fact that 4:00pm in Belize is not dark, and in any event the lamppost close to the tree where he was violated had light. He also said that he saw Mario's face; that Mario has long hair and that the entire ordeal lasted ten minutes.

30. The prosecution submitted that by the complainant's own assertion, there was sexual intercourse as the accused put his penis in the complainant's buttocks. There was no consent as the complainant himself said he did not give the accused permission and in fact told him to stop; that he first tied him up with a charger, before raping him; that he told him to be quiet; threatened to kill him and offered him money afterwards; and that the complainant refused to take the money. It is for these same reasons that the prosecution concluded that the accused knew that the complainant did not consent, and was reckless as to whether the alleged victim was consenting.
31. With respect to the findings of the medical report, the prosecution stated that the absence of recent sexual intercourse is a matter of opinion, for the determination of the tribunal of fact and law.
32. In sum, the prosecution alleged that the eye witness testimony and the circumstantial evidence were very strong against the accused.
33. Conversely, the defense argued that the evidence against the accused was not cogent enough to convince the tribunal of fact and law such that I am sure, that on the 26th September 2020, the accused raped the complainant.
34. Firstly, defense counsel stated that the credibility of the complainant was severely undermined by the doctor, in that, according to the doctor, after conducting an examination of the complainant (within mere hours of the ordeal), there was no sign of recent sexual activity, semen or bleeding, all of which were alleged by the complainant to be present after the ordeal.
35. Further, there was no trauma to the anus according to the doctor, and no reasonable explanation was given by the Crown for this absence where the complainant alleged that he was raped.
36. He went further to say that the results of the rape kit were not called into evidence or even mentioned by the Crown, if it could have supported their case. He argued that the fact that none was submitted is quite telling. He cast doubt on whether the complainant recalled what happened that evening, and that his assertion of rape may be a figment of his imagination.

37. He also challenged the complainant on the issue of his identification of his attacker. The defense contended that since the complainant conceded that it was dark when he went into the bushes, and from the photographs tendered there was no lamp post observed in the bushes, then the complainant had no idea who assaulted him, if indeed he was assaulted.
38. The defense also commented on the absence of the results of the rape kit and the swabs taken. The court was urged to consider the view that if the results could have aided the Crown then surely it would have been placed in evidence; conversely, the fact that the results were not relied upon, it meant that the results could be adverse to the Crown. Conclusively, it meant there was no evidence that the accused raped the complainant.
39. When asked by the judge to comment on the bruises to the complainant's wrists- which could support his recollection that he was tied up, and then raped-Counsel responded that the accused is not before the court for wounding, but for rape; that the bruises to his wrists do not prove the elements of rape.
40. The Crown had a parting shot, replying that the doctor did not say that there was no sexual activity; he said he did not *see any signs*; and those statements have two different meanings.
41. Both counsel were also invited to comment on the apparent retarded development of the accused, and his appreciation of the trial process. There was no opposition taken by the defense to the Crown's conclusion that the complainant had a speech impediment and not a mental deficiency which prevented him from understanding and participating in the trial process.
42. Having heard all of the evidence, the question to be answered now is, whether, even before considering the defence's case, the prosecution has discharged its burden of proving all of the elements of the offense of rape, such that I feel sure that the accused raped the complainant on September 26, 2020.
43. To answer that question, the credibility of each witness had to be assessed in detail. In assessing credit and reliability, I must examine inconsistencies and discrepancies, in the evidence of the witnesses. If these exist, I must look to see if they are material and if they can be resolved on the evidence. Unresolved inconsistencies or discrepancies would lead to a rejection of that part or all of that witness's evidence. A witness's credit and reliability is determined by the cumulative effect of those inconsistencies and discrepancies.

THE LAW

44. The Code defines the offence of rape as follows:

- ‘ 71.-(1) Rape is the penetration of a person's mouth, vagina or anus, with a penis, without that person's consent.’

Section 46 outlines that :

‘Every person who commits rape or marital rape shall on conviction on indictment be imprisoned for a term which shall not be less than eight years but which may extend to imprisonment for life.’

45. Therefore, the prosecution needed to prove the elements of the offense of rape thus: .
- (1) that the accused Mario Alcalha was the person who sexually assaulted the complainant;
 - (2) that there was sexual intercourse in that the accused inserted his penis into the complainant's anus;
 - (3) that the complainant did not consent; and
 - (4) that the accused knew that the complainant did not consent; and that the accused intended to have sexual intercourse with the alleged victim without the complainant's consent or was reckless as to whether the complainant consented.

Were the Crown witnesses credible?

46. There was no reason to doubt the credibility of the technician, the doctor and the investigating officer, as their evidence was reliable and they were unshaken during cross examination. They presented as credible witnesses overall. There was one bit of discrepancy between the investigating officer's evidence and the complainant's, in that the Investigating Officer's statement said that the complainant was tied up twice . whilst the complainant relayed being tied up once. However, this minor discrepancy between the Investigating Officer's evidence and the complainant's evidence, did not go to the root of the Crown's case, and was not so divergent as to cast doubt on their entire evidence..The credibility of the witnesses were assessed under each heading of the elements of this offense of rape.

ELEMENT 1: Mario Alcalha was the person who sexually assaulted the complainant.

47. Whilst it was not disputed that the complainant knew the accused, it was unclear for how long he had known him before the incident occurred. The complainant gave inconsistent and unclear statements about the length of time for which he had known the accused : ‘he used to see the accused pass by his aunt's house’; ‘the accused worked for his aunt’ ;(unchallenged by the defense); ‘he had known the accused for a week’; ‘he had known him for a year. ‘ The length of time for which the complainant knew the accused was never clarified by the complainant;

however, because I “took the victim as I found him”, and because I found that owing to his diminished intellect his appreciation of quantity or amount was unreliable and confused throughout the trial, ¹I did not put much weight on this inconsistency, as it did seem clear to me that the complainant knew the accused before the ordeal. It was not disputed that he and the accused worked together, and that he had observed him on a number of occasions at work and outside of work.

48. . To avoid the risk of any injustice in this case, such as has happened in many a case, I must therefore warn myself of the special need for caution before convicting the accused in reliance on the evidence of visual identification. A witness who is convinced in his own mind may be a convincing witness, but may still be mistaken. The witness can also make a mistake in the recognition of someone known to the witness: a close friend or relative. I must therefore carefully examine the circumstances in which the identification was made. I should consider :
- 51, (a) for how long did the complainants have the person he identified as the accused under observation? Although there was no specific time line mentioned, the complainant did say that the entire ordeal lasted for about ten minutes. He also said he saw the accused man’s face. Although I admit that he would have had his back turned to the accused whilst the accused inserted his penis into the complainant’s anus more than once, the complainant did say that the accused ‘followed him into the bushes’. If he followed him, then at some point the inference can be drawn that the complainant would have been aware that it was the accused who was behind him. He would have seen his face at some point; but the witness also explicitly said that he saw the accused man’s face. Further, the accused touched him on either side of his face and on his chest. It is unclear for how long that tender moment lasted. However, that information is important in that it indicates that at some point they were face to face, even though we do not know the duration. The complainant did also state that he turned around at the end of the act and saw something white on the accused man’s penis. However, I note at that point that he did not indicate that he was looking at any other part of the accused man besides his penis, to be able to ground recognition. Lastly however, the accused man did say that whenever he saw the accused man prior to the incident, he would see his face. I accepted the veracity of this recognition. I found the complainant’s evidence to be credible and reliable in this regard.
52. (b) At what distance was the accused observed? The complainant’s intellectual disability was considered here. He was not able to give accurate distances or even estimates of distances. He did indicate however, that the tree to which he was tied was ‘close’ to him; he also said that the accused was ‘close behind’ him when he was raping him. .

¹ This witness also said in court that hat he was raped “40 times” , but in his out of court statement he said he was raped“six times”

52. (c). But what were the lighting conditions at the time of the alleged assault? Sadly however, the complainant's credibility was severely affected here when he spoke of being able to see from the lamp post nearby. In fact, he said that the lamp post was close to the tree where he was assaulted. From the photographs tendered, there was no lamp post observed in the bushes, or anywhere close to the alleged scene of the incident. Also, the foliage and the darkness could surely have impeded the witnesses' observation of the accused at the relevant time. This is not a material issue that went to the Crown's case however, as it is possible that the photographs did not capture the lamp post; more importantly, there was other information identified above, which aided in the complainant's identification of the accused. So I accepted that the accused and the complainant were in the bushes contemporaneously. The third element of the offence which speaks to what happened in the bushes-if anything-will now be examined.

Element #2: That there was sexual intercourse in that the accused inserted his penis into the complainant's anus

53. The credibility of the complainant, supported by the documentary evidence of the medical report, is critical to proving this element. The medical report speaks to bruises on the complainant's face, back, buttocks and limbs; laceration to his left and right wrist, both legs; bruise to his left lumbar region; clothes stained with debris; his buttocks was dilated and full of faeces. There was a bruise on his left lumbar region.

54. It was noted that the medical report did speak to lacerations to the complainant's wrists, which would support his assertion that he was tied up by the accused prior to being raped. However, this court concurs with Counsel for the accused in that those injuries could go towards proving a case of wounding, but do not prove the offence of rape for which the accused is charged. The Belize Court of Appeal decision of **Alex Guzman v R Criminal Appeal No 10 of 2015** supports this fact; the explanation of the learned Judge at the trial in the Supreme Court is on point. In that case, the complainant was cuffed in the eyes and punched before being raped. As a result of the punches, she suffered injuries to her eyes, which injuries were supported by the medical report tendered; however, the learned Judge had this to say

'Please bear in mind that if you accept the evidence of the physical punching on A.S. by the accused; that is, the choking and cuffing her in her eyes, that in no way is proof of the offence of carnal knowledge of a female child which is what he is charged for. The medical evidence supports the punching, but that by no means establishes the carnal knowledge. There must be penetration; even the slightest will satisfy this requirement.'

The medical report in the present case does support the injury to the complainant's wrists, but it does not prove penetration.

55. Importantly, there was no swelling or active bleeding. The doctor explained in court that there was no trauma to the anus. I hold the view that if there was bleeding as the complainant stated, it was expected that there would have been bruises, bleeding or some trauma to the anus at the time that the complainant was examined; none was observed by the doctor. This made the complainant's assertion of rape a bit dubious. The doctor did, however, say that the examination was difficult; at the same time, he did **not** say that he was unable to fully examine the complainant nor that the examination was aborted, such so that he was unable to properly observe if there was trauma. The doctor was not questioned on the effect of a loose anus and visible signs of trauma mere hours after an alleged rape; would he, for example have been able to see trauma or recent sexual activity in a loose anus after an alleged rape?

56. It would have been helpful also, if the doctor had answered a question of whether the faeces were checked for semen. The medical does not support or negate the complainant's assertion of rape. The complainant repeated that it was "40 times" that the accused man inserted his penis into his anus. Given the intellectual deficiency of the complainant, I understood the complainant to be saying that it was a number of times (not literally forty) times that the accused inserted his penis into his anus. He made strong hand movements to emphasize that it was 'a number of times'. However, this casts further doubt on the complainant's version of the events as, if indeed the accused assaulted him so many times, then it is expected that the doctor would have noticed trauma to the anus; but there was none. Then again, would the doctor have been able to see the trauma since the anus was loose and full of faeces, and made the examination difficult? I do not know and I cannot speculate; the effect of that lack of clarity, is that I cannot say beyond a reasonable doubt that there is documentary evidence to support the allegation that the complainant was raped on that day. It goes further.

56. In reviewing the medical report tendered, under the heading 'if sexual abuse occurred within 72 hours', it indicated that the complainant did not bathe, shower, wash himself, or change his outer or inner garments, yet there was no evidence of bodily fluids or recent sexual activity anywhere. It is conceivable, that there should have been some evidence.

57. The veracity of the expert's report having been challenged on cross examination, and found unwavering, I find no reason to disbelieve the doctor's evidence. The expert evidence is usually admissible in order to enable the judge to reach a properly informed decision on a technical matter. In this case, there was insufficient information from the medical report and the doctor's evidence, for me to make an informed decision and feel sure, beyond a reasonable doubt, that the accused raped the complainant whilst they were in the bushes that day. This aspect of the complainant's evidence is rejected, as it does not override the absence of medical evidence.

Element #3: that the complainant did not consent

58. The complainant said that he told the accused :to stop it' and that 'he did not give the accused any permission to insert his penis into his anus. This element is tied to element number 4, which is analysed below.

Element #4: That the accused knew that the complainant did not consent; and that the accused intended to have sexual intercourse with the alleged victim without the complainant's consent or was reckless as to whether the complainant consented.

59. The credibility of the complainant again goes towards proving this element: it is accepted that the complainant was truthful when he said that the accused 'tied his hands before the ordeal'; and that he told the accused 'to stop it'; and that the accused offered him money after the incident, which he refused; and that the accused put his fingers to his lips indicating that the complainant should be quiet . I accept that all of that transpired, and that the accused did something to the complainant against his will; but I do not accept that 'that something 'was to rape the complainant.

60. I had regard to Section 53A Criminal Code (Amendment) (NO. 2) ACT, 2014, which speaks to the evidential presumptions on consent. Amongst other things, this amendment prescribes that ,if in proceedings for a sexual offence to which consent applies, it is proved that **the accused person committed the act**, and, amongst other things, the complainant was unlawfully detained ,as in this case, the complainant is to be taken not to have consented to the alleged offence unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it. Although no evidence was adduced to rebut this presumption, it is unnecessary to further analyse this provision given that the first element – that is, that the accused committed the act-is not met.

VERDICT

61. At the close of the Crown's case, the court is still left in a position where the quality of the evidence presented does not meet the standard of proving the accused man's guilt beyond a reasonable doubt.

61. Given the weakness of the Crown's case, there is no merit in analysing the evidence presented by the accused.

VERDICT

62. In the circumstances, I am satisfied that :

(1) Mario Alcalha was the person who followed the complainant into the bushes on the day in question;

(2) that an act transpired to which the complainant did not consent; but

(3) I am **not** satisfied that that act was the insertion of the accused man's penis into the complainant's anus. I am not satisfied based upon the discrepancy between the medical evidence and the complainant's evidence. I am not satisfied that the Crown has discharged its burden of proving ***all*** of the elements of the offense of rape. I am not satisfied beyond a reasonable doubt, that the accused raped the complainant as alleged in the indictment. Therefore I find the accused **not guilty** of this offense.

63. The accused is hereby discharged.

NATALIE CREARY DIXON

HIGH COURT JUDGE

BELIZE CENTRAL DISTRICT

SENIOR COURTS OF BELIZE