

**IN THE SUPREME COURT OF BELIZE, A.D. 2015**

**CLAIM NO. 351 of 2015**

**SHARIM BAEZA**

**CLAIMANT**

**AND**

**SUPERINTENDENT EUGENE FUENTES  
COMMISSIONER OF POLICE  
ATTORNEY GENERAL OF BELIZE**

**1<sup>st</sup> DEFENDANT  
2<sup>nd</sup> DEFENDANT  
3<sup>rd</sup> DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearings

2016

25<sup>th</sup> February

4<sup>th</sup> March

19<sup>th</sup> April

Written Submissions

18<sup>th</sup> March

Mr. Philip Palacio for the Claimant.

Ms. Trienia Young with Ms. Leonia Duncan for the Defendants.

**Keywords: Tort – Malicious Prosecution – Police Investigator – Reasonable  
And Probable Cause – Conspiracy To Murder – Confession – Other  
Statements made by Accused – Prima Facie Case – Evidence Act Cap 95**

**JUDGMENT**

1. In 2004 Sharim Baeza (Sharim) was a sixteen year old student standing

somewhere on the cusp between boy and manhood. He was arrested, charged, committed, indicted, tried and convicted to life imprisonment for conspiracy to commit the murder of his father. He was also charged for abetment to commit murder. Years later, on appeal, that conviction and sentence were quashed and he was ordered to be retried. On retrial, the judge, having ruled certain statements inadmissible, directed the jury to return a verdict of not guilty. Although Sharim had made bail in 2005 he was later remanded to prison in 2006, (reason not in evidence) where he remained until his acquittal. He therefore found himself a free man on the 24<sup>th</sup> day of June, 2014. He was by then twenty-seven years old.

2. Sharim claims that his charge and prosecution were actuated by malice. He contends that Superintendent Eugene Fuentes (Officer Fuentes or The Superintendent) had no reasonable and probable cause to make the complaint against him and to lay the information before the magistrate, nor, for that matter, to continue to prosecute him. A prosecution which came more than one year after the murder and months after Sharim's mother and uncles had been charged.
3. He advances that The Superintendent had only two pieces of evidence under consideration and neither (singly or combined) was sufficient to give him the necessary cause to prosecute. The first was a statement from Sharim's aunt Judith Baeza which alleged that Sharim had twice confessed his involvement in his father's murder to her. The second was three statements from Sharim himself. The first of which was taken by Officer Fuentes in circumstances where in the wee small hours of the morning only he and Sharim were present and where Sharim alleges he threatened, choked and slapped him.

The second, taken the next day by another officer in the presence of a Justice of the Peace and a Social Worker and the third less than two hours later, where only Officer Fuentes and Sharim's aunt Judith Baeza were present. Sharim says he gave none of these statements voluntarily.

4. As a consequence of the prosecution he was deprived of his liberty, denied the opportunity to receive formal education, injured in his character and reputation, has suffered considerable mental pain and anguish and was put to considerable trouble, inconvenience, anxiety and expense.
5. Accordingly, he seeks the following reliefs:  
Damages, aggravated and exemplary damages, interest, costs and such other relief as the honourable court deems just in the circumstances.
6. The defence vehemently denies any malice and maintain that Officer Fuentes had reasonable and probable cause to prosecute. He acted on his honest belief that Sharim was involved in the planning of his father's murder. This belief was founded on the said statements given by Judith Baeza and Sharim himself.

**Malicious Prosecution:**

7. The law as it relates to malicious prosecution is well settled. There must exist (1) a criminal charge; (2) of which the Claimant had been acquitted or which had been determined in his favour; (3) in circumstances where the prosecutor had no reasonable or probable cause to set the law in motion; (4) and the prosecutor was actuated by malice; (5) resulting in the Claimant suffering damage. A Claimant must prove each of these five elements. Therefore if one element falls, the Claimant fails. There is no doubt that one

and two have been admitted. There has never been raised, as an issue, that Officer Fuentes was not the prosecutor therein. It is accepted in law and in fact that he is. We therefore turn our consideration to the live issues.

**The Issues:**

8. The issues for the court to determine are few but fraught:
  1. Whether Sharim Baeza was maliciously prosecuted.
    - (a) Whether Officer Fuentes had reasonable and probable cause to charge Sharim Baeza.
    - (b) Whether in laying the charges(s) against Sharim Baeza, Officer Fuentes was actuated by malice.
  2. If Sharim Baeza was maliciously prosecuted what, if any, loss has he suffered and what, if any, damages is he entitled to.
    - (a) Whether in addition to general damages Sharim Baeza ought to be awarded aggravated/exemplary damages.

**Whether Sharim Baeza was maliciously prosecuted:**

**(a) Whether Officer Fuentes had reasonable and probable cause to charge Sharim Baeza:**

9. *In Hicks v Faulkner (1878) 8QBD 167 at 171* Hawkins J defined reasonable and probable cause as “*an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead an ordinary prudent and cautious man, placed in the position of the accused, to the conclusion that the person charged was probably guilty of the crime imputed.*” Lord Atkins approved and adopted this definition in *Herniman v Smith 1938 HL 305* and it has been the principal definition even today. It indicates an objective

and a subjective test - the person prosecuting must have an actual belief, however, based on the circumstances, that belief must be reasonable.

10. Reasonable and probable cause could properly be broken into two questions. The subjective one: whether the prosecutor had an honest belief in the relevant charge; and the objective: whether the circumstances were such that they would lead an ordinary and prudent person to believe in the charge. What matters in relation to the second question is whether the material before the prosecutor would be sufficient to warrant the preferring of a criminal charge, even though it might not be sufficient to justify a finding of guilt
11. Lord Denning in *Glinski v Mclver (1962) HL 726* explains that to satisfy the element of actual belief the prosecutor need only be concerned that “*there is a case proper to be laid before the court.*” Guilt or innocence remains within the purview of the tribunal not the prosecutor.
12. However, the onus of proving that more probably than not the prosecutor acted without reasonable and probable cause and that the prosecution was actuated by malice lies always with the Claimant. Innocence alone is insufficient. One must therefore consider not only the circumstances leading up to the prosecution but also the material that was available to the prosecutor at the time. The query becomes ‘was all the material carefully collected and objectively assessed.’ These, are of course, all issues of fact. Facts which must prove to the civil standard that the prosecutor had no honest belief or no sufficient basis for holding such belief. It demands an intense and complete scrutiny of the evidence. One can scarcely look to

decided cases for guidance as the issues turn entirely on the special circumstances of each case.

**The Evidence:**

13. Now the evidence, as it unfolded, indicates that Judith Baeza's statement was the first and only independent evidence which Officer Fuentes had against Sharim. Her statement was made almost one year after the murder.
14. Officer Fuentes investigated the murder of Sharim's father. His investigation led to the arrest and eventual charge of Sharim's mother Thomasita Villanueva for conspiracy to commit murder and abetment to murder. Her brothers Geovanni Villanueva and Thomas Villanueva were charged for conspiracy to commit murder and murder. The brothers were eventually convicted, one for murder and the other for conspiracy. The mother was subsequently released.
15. The Superintendent agrees that during the initial stages of his investigation Sharim co-operated and at that time Sharim's name was never mentioned in a manner to arouse his suspicion. It was Sharim who showed him where the deceased had allegedly kept his firearm and who gave him a witness statement relating to that firearm in the presence of a Justice of the Peace Idalicia Zetina. None of which he says was particularly helpful to the investigation.
16. However, on 15<sup>th</sup> July, 2004, Judith Baeza came to the Corozal police station and gave a statement in relation to the murder. Officer Fuentes says: *based on this statement Sharim Baeza was a suspect in the murder of his father ...*"

17. Sharim does not speak to this particular piece of evidence anywhere in his evidence-in-chief. He offers nothing as to why this statement ought not to have been acted upon by the Officer. He does not deny making such a confession to her nor does he urge perhaps that her statement must have been a complete and utter fabrication. It is only when directly questioned under cross-examination that he denies this confession.
18. Sharim's aunt and guardian Judith Baeza testified about becoming suspicious of Sharim's behaviour after his father's murder when he began seeing his mother behind her back and asking her (Judith) for money to pay for his mother's attorney. She explained that in her view it would be natural to want to see one's mother under normal circumstances. Obviously, where one's mother is charged with conspiracy to murder one's father, the circumstances are not normal. Sharim's testimony under cross-examination however, was that he never communicated or had a close relationship with his mother after his father's death.
19. Judith Baeza said that having become suspicious she pressed Sharim to tell her the truth. In fact, she says she confronted him and told him if he did not tell her the truth he would go back to live with his mother. Sharim then told her that after the murder he had deleted calls made from his father's phone to hers (Judith's). Next, he confessed to having planned his father's death with the assistance of his mother and her brothers. He explained how he had looked for a gun but could not afford one and how he had sneaked out of her home to be present at his father's home when he was killed. Finally, he revealed to her that his uncle Geovanni was the one who had executed the

murder but the original plan had been not only to kill his father, but to kill Judith and her mother (his grandmother) as well.

20. He described how he had left Judith's back door open in furtherance of that plot. She says she was in shock, she did not believe Sharim, she felt the entire thing was Sharim's mother's fault. She spoke to her own mother several times and based on her advice she never reported what Sharim had told her to the police. She continued to live in the same house with Sharim whilst being at all times aware that there was an urgency to reporting the matter. However, when Sharim again confessed to her while he was in Guatemala, she made a decision to go to the police. She gave a statement to the police accordingly.
21. I found Judith Baeza to be an honest and forthright witness. She stood firm under cross-examination and I believed her testimony.
22. The next piece of evidence was the three statements given by Sharim himself. There really can be nothing more as Officer Fuentes admitted under cross-examination that between the date Judith Baeza gave her statement and when he took a statement from Sharim on the 4<sup>th</sup> August, he had done no further investigation into the matter. Sharim Baeza testified that he was always co-operative with the police during the investigation. He gave two statements to the police in the initial stages. One related to his father's gun, the other to regular family activity.
23. He says that having been arrested on other unrelated charges in August 2004 Officer Fuentes came to his cell block and with some profanity, indicated that he needed to talk with him. He was taken upstairs to a room in which

he and The Superintendent were the only occupants. This was around 10'clock in the morning. There, The Superintendent accused him of killing his father, he denied it and maintained his denial throughout. Suddenly, The Superintendent held him by his collar and started choking him. He then threatened him that if he didn't tell him what had happened he would make his night a living hell. More specifically, if he didn't tell him what he wanted to hear he would beat him up. The Superintendent walked around his chair and slapped him twice on the upper side of his head. When his head slanted leftward he slapped him again, this time connecting with the bottom side cheek.

24. He says he was alone in that room with Officer Fuentes for almost two hours. He was not cautioned. Tired, sleepy and scared he eventually broke down and gave a statement. He felt sure he would be hurt otherwise. Officer Fuentes then instructed him to give two other statements. He obediently complied. He was eventually charged on the 5<sup>th</sup> August. He exhibits all of the statements.
25. The first and longest was an ordinary witness statement, not taken under caution and in which it is stated as having been recorded at 3 a.m. on the 4<sup>th</sup> August, 2004. This supports Sharim's testimony as to the time and circumstances (only he and Officer Fuentes being present) which existed. The statement details how Sharim had been approached by his mother around the end of June 2003. She invited him to imagine how much money could be gotten if he assisted her in killing his father. She approached him the following day and this time discussed how the murder would be executed. He offered that he had a friend with a gun but they would need

money to purchase same. He subsequently found out that it would cost \$5,000.00 but his mother felt that was exorbitant and sent him to someone else. Although he made two attempts with this person he was unsuccessful. The first attempt failed because the person seemed uncooperative, the second because the person was not at home.

26. Sharim's other two statements are both dated the 5<sup>th</sup> August, 2004 and are stated to be under caution and made of his own free will. The first was recorded by Cpl. Canul at 3:00 p.m. in the presence of Alaine Lambey a Social Worker and Idalicia Zetina a Justice of the Peace. It states simply "*I and my mother Teresita Villanueva participated in the plot to kill my father Wilfredo Baeza on 19<sup>th</sup> July 2003. That is all I have to say.*" He was then asked "*what you mean by participated?*" His reply is recorded as "*I mean by participated that my mother was the one who bring the idea of which I agreed. It was on the ending of June 2003.*"
27. The second statement was recorded at 5:17 p.m. and speaks to the day of the murder and the involvement of Giovanni Villanueva, Sharim's uncle, in the plot. He states that on the 19<sup>th</sup> July, 2003 (the day of the murder) on his mother's instructions Sharim approached Giovanni to enquire whether he would still participate. Giovanni was agreeable and indicated that not only did he need the money but he also hated Sharim's father. Sharim relayed Giovanni's willingness to his mother. Later (around 3:00 p.m.) Sharim returned to Giovanni's home to inform him that the plan was going to be carried out. Around 6:00 p.m. his mother called and informed him that his father was dead and Giovanni was on his way over to his aunt's house to kill his aunt and his grandmother. She called again about 10 to 15 minutes later to enquire whether Giovanni had reached. In that interval Sharim had gone

outside and seen that his neighbor was outside her own house with visitors. Giovanni passed by and signaled to him that he would return but he never did.

28. Under cross-examination Sharim revealed for the first time that he had told the witnesses to his caution statement that he was being forced to give it. However, this was never put by his counsel to either Officer Fuentes or Idalicia Zetina. In fact, Officer Fuentes was never cross-examined about beating or threatening Sharim or otherwise forcing him to give the statements. He also admitted that Officer Fuentes had no cause to force the statement from him. Sharim lied about being charged with a particular offence in another matter. When directed to his witness statement he accepted what had been put to him by counsel as the truth. He said he had never gone to Guatemala. I believed Judith Baeza that he had told her he was in Guatemala. He denied absconding but never explained why his bail had been revoked. He denied that his matter was ordered to be retried by the Court of Appeal on the ground of his attorney having removed himself from the record midway through the trial. However, he never addressed the reason in his evidence-in-chief. I did not find Sharim to be completely frank with the court.
29. Officer Fuentes testified that he saw Sharim at the Corozal police station on the 4<sup>th</sup> August, 2004. He called Sharim into an office which had its doors opened and informed him that he would be charged with the crime of murder then he cautioned him. Sharim appeared comfortable speaking to him and said he would tell him what had happened. He, however, informed him that he was *“required to have an adult, a friend, relative or guardian present before he*

*related what happened, since he was below the age of eighteen years.”* A Human Development Officer and a Justice of the Peace Idalicia Zetina were present as he had requested. He had Officer Elizardo Canul record Sharim’s statement in their presence.

30. Sometime after, Sharim’s guardian Judith Baeza came to the station and spoke to Sharim who then informed Officer Fuentes that he had not told officer Canul everything. Officer Fuentes cautioned Sharim in the presence of Judith Baeza and recorded another statement in writing from him. He maintains that this statement was given voluntarily. He concluded at paragraph 22 of his witness statement that *“based on this caution statement and other evidence that our investigations revealed, I swore to an information of complaint, obtained a warrant in the first instance and formally arrested and charged him. He was served with a copy of the charge of abetment to murder of his father ...*

*23. On the 6<sup>th</sup> day of August, 2004 the charges of abetment and conspiracy to commit murder were lodged jointly on Thomasita, Geovanni and Javier Villanueva and Sharim Baeza.”*

31. When questioned, under cross-examination, Officer Fuentes revealed for the first time that he had taken a statement from Sharim on the 4<sup>th</sup> August, 2004. Under re-examination he referred to this statement as an open statement. He accepted that it was not taken under caution and there were no witnesses. He explains his decision to take the first statement as an administrative decision. He says Sharim’s guardian was not available. Judith Baeza says she was contacted by Mr. Fuentes on the 5<sup>th</sup> August and went to the station that same day. I believe her.

32. He also added that while Judith Baeza could be considered Sharim's guardian he saw her more as providing evidence in the matter – a witness. Yet, it is this same Judith Baeza who, with Officer Fuentes' concurrence, witnesses the second caution statement from Sharim.
33. I did not find Officer Fuentes to be entirely frank with the court about the statement he had taken from Sharim Baeza on the 4<sup>th</sup> August. But his demeanour in the box and his responses led me to believe that he felt he had just conducted a routine investigation in the public interest. He displayed a distinct lack of interest in justifying his actions or making excuses.
34. Elizardo Canul explained his role in the investigation of the murder. He was an assisting investigating officer. It was he who recorded the first witness statement from Sharim in the presence of his aunt Judith Baeza. That was during the initial investigation. On the 5<sup>th</sup> August, 2005, however, he was requested by Officer Fuentes to present himself at the Corozal police station to record a caution statement from Sharim. He recorded that statement in the presence of Idalicia Zetina, the Justice of the Peace and a Social Worker from the Human Development Office. He cautioned Sharim, who volunteered a statement. In the statement Sharim admitted that he and his mother participated in the plot to kill his father. He says that after that statement Officer Fuentes charged Sharim.
35. The court also heard from Idalicia Zetina a registered Justice of the Peace since 1996. She explained that she was present when Sharim gave two statements. One on the 23<sup>rd</sup> July, 2003 (the initial investigation) and the other on the 5<sup>th</sup> August, 2004. On the 5<sup>th</sup> August, she was requested to present herself at the station where she saw the Human Development Officer

and Cpl. Canul. She heard Cpl. Canul caution Sharim whereupon Sharim volunteered a statement in which he stated that his mother Thomasita Villanueva had planned to kill his father. I must state here that the statement recorded by Cpl. Canul does not state this.

36. Under cross-examination she accepted that she never spoke to Sharim alone. She was not aware that he had not yet seen a parent or guardian, although she knew he should. She was not aware how long he had been in custody or that he had given a statement before. She defined her role as looking out for Sharim's best interest but was adamant that her training did not impose a duty on her to have a parent or guardian present.
37. Judith Baeza says she saw Sharim on the 5<sup>th</sup> August, 2004 at the police station having, on the instant date, been informed of his presence there by Officer Fuentes. Sharim was in a room, he smiled at her and said that the police had caught him because his mother had given him up. She urged him to just tell Officer Fuentes the truth. Sharim then said he wanted to tell Officer Fuentes what had happened because he had not told Corporal Canul everything. Officer Fuentes cautioned him and he gave a statement. She testified that in that statement Sharim said that *"on the instruction of his mother he went to ask his uncle if he was still going to kill his father and his uncle said yes."*

**Considering the Evidence:**

38. I state early that I am not called upon in these proceedings to decide whether those statements were voluntarily given or otherwise. That was for the trial judge. Nor am I called upon to decide whether they were true. The Claimant's emphasis seemed always to be on reasons why the statements were, could or should be inadmissible. His submissions seemed unable to

make a viable link between the inadmissibility and malicious prosecution. I daresay this was because there seemed to be a misapplication of the test. One must remember that the test isn't whether on the evidence available a conviction could have been secured. Rather, it is whether there was sufficient evidence to warrant the charge and prosecution.

39. On considering the evidence what I can say is that Officer Fuentes is a self-proclaimed, experienced serious crimes investigator (in the force since 1985). He admitted that he was aware that Sharim was a minor. Therefore, for him to give any statement to the police certain persons ought to have been present. From what has been presented before this court, I find that there were admitted instances of Officer Fuentes denying Sharim his constitutional rights as a minor. But this is not a constitutional claim. I also find that Officer Fuentes acted inappropriately in recording an ordinary statement from Sharim at 3:00 a.m. in the morning. It was plainly wrong especially in light of his age and the report of a confession which was well within Officer Fuentes' knowledge and which sparked this phase of his investigation.
40. I also find it unacceptable that he would have recorded a statement from Sharim where the very person who reported against him was the witness. What is worse is that Officer Fuentes knew what was proper and lawful but chose to do otherwise. The system which was put in place to protect Sharim's rights, failed him. What I do not find however, is that the result of all this is that there was no probable or reasonable cause to prosecute. Let me explain.

**Determination:**

41. At paragraph 16-40 of *Clerk and Lindsell on Tort 20<sup>th</sup> Ed* reference is made to **Coudrat v Revenue and Customs Commission [2005] EWCA Civ 616** where the Court of Appeal stated, “*that when considering whether to charge a suspect there must be prima facie admissible evidence of each element of the offence. Plainly inadmissible evidence should be ignored, but it is not necessary or appropriate to consider the possibility that evidence might be excluded at the trial after full legal argument, or in the exercise of the judge’s discretion.*”
42. The admissibility of Sharim’s statements were certainly within the trial judge’s discretion. Officer Fuentes, as experienced as he was, must have known that at the very least arguments against their admissibility could have been raised because of the circumstances under which they were taken. Whether or not those objections would have met with success is not important. The issue remains whether or not The Superintendent had sufficient evidence on which to prosecute. More specifically, even if we discard Sharim’s three statements in their entirety was there still a legally strong case against him; one on which he could have been properly prosecuted.
43. To my mind the elements of a conspiracy were all made out in that statement from Judith Baeza. Officer Fuentes through his investigation would have known that there existed evidence of an agreement to murder Sharim’s father and that Sharim’s mother and his uncles were allegedly involved. Judith Baeza’s statement informed that Sharim, by his own confession, was part of that agreement, that he knew what he was agreeing to and when he joined the agreement he intended that some other party to it would carry the

agreement out. In fact, the purpose had been fulfilled – his father had been killed. All the salient ingredients of the offence are present.

44. The law which governs the admissibility of a confession is as stated in section 90 of the Evidence Act. Such a confession, whether supported or not, need only be freely and voluntarily given. If that evidence is admitted it is sufficient for a conviction. Moreover, *A v State of New South Wales [2007] HCA 10* is strong precedent that it cannot be accepted as a rule that there is no reasonable or probable cause to prosecute simply because the prosecuting of the crime was done on the basis of an uncorroborated statement only.
45. In considering what weight Officer Fuentes may have given to Judith Baeza's statement, we must contemplate Judith Baeza herself. She is Sharim's paternal aunt. Her demeanour in the box indicated a caring, sensible woman who loved her family, respected her mother and loved Sharim.
46. This was the person with whom Sharim (by his own admission) lived even before the tragedy. And after the tragedy, it was Judith Baeza and her aging mother who sought to gain legal custody of Sharim when his own mother was arrested and charged. Sharim admitted that they had a close relationship. She even paid for his schooling. She was the one about whom Sharim said: *"I would like to mention that all the while that I resided at Wagner's Youth Facility, my aunt who was my legal guardian never once paid me a visit. She never sent money, food or clothing. I tried to call her by telephone but she never answered my calls."* It was Judith Baeza from whom he expected attention and affection, no one else. That speaks volumes.

47. Judith Baeza explains that even after Sharim's confession she kept his secret on the advice of her mother and because she blamed Sharim's own mother for what had happened. She says she only went to the police after Sharim confessed a second time and she was aware that he was in Guatemala and far away from the long arm of the law.
48. Even under cross-examination she referred to herself as Sharim's next of kin. She said she was aware that he had other adult relatives but he had always been around her. It was also with Judith Baeza that Sharim's mother Thomasita Villanueva stayed after the tragedy. It was at Judith's home that she was taken into custody. She, Judith, was the person to whom Sharim turned in his effort to solicit money to pay for his mother's attorney.
49. This was no ordinary or arbitrary person giving a statement. Any reasonable person receiving such information from a woman of her calibre and relation to the accused would be compelled to put much stock in its truth. What ulterior motive could she have had to implicate her nephew and ward in this dreadful way. She stood to gain nothing and was clearly trustworthy. To my mind more than a reasonable suspicion would, in this regard, be aroused.
50. Regarding Judith Baeza's statement the closing submissions filed on behalf of the Claimant states at paragraph 21:
- "It is our respectful submission that it is at this point that the first Defendant had come to a settled conclusion that the Claimant would be charged in relation (sic) the death of his father based on the statement."*
51. Then at paragraph 24 *".... We further submit that the Claimant would have been charged whether he gave a statement or not."*

52. The submissions do not go on to explain why it would have been improper to hold such a view or to pursue such a course of action. Instead, they raise the issue of conflicting statements made by the Claimant as proof that Officer Fuentes could not have been fully convicted. They rely on *Neville Williams v Janine Fender, Carlton Henry and the Attorney General of Jamaica (Claim No. 2005 HCV 00126)*. But this case does not assist them at all since it deals with conflicting statements made by the accuser not the accused. Had Judith Baeza made a series of conflicting statements then there would certainly have been need for further investigation so as to inform Officer Fuentes of the real state of the case. I reject his submission wholesale.
53. This brings me to the issue of the need for further investigations which the Claimant urges upon the court. They claim that Officer Fuentes was hasty and ought properly to have spoken with the other accused persons or persons whose names had been revealed by the Claimant in his statements.
54. In *A v State of New South Wales [2007] HCA 10, 2007 81 at 86* the court stated:
- “It is clear that the absence of reasonable and probable cause is not demonstrated by showing that there were further inquiries that could have been made before a charge was laid. When a prosecutor acts on information given by others it will very often be the case that some further inquiry could be made.”*
55. This statement echoes and expands on Lord Atkins’ statement in *Herniman and Smith* *ibid* - *“It is not required of any prosecutor that he must have tested every possible relevant fact before he takes action. His duty is not to ascertain whether there is a defence but whether there is reasonable and probable cause for the prosecution.”*

56. I am of the view that by seeking a statement from Sharim, Officer Fuentes was attempting to get some confirmation, some corroborating evidence and he was successful. He reasonably required nothing more. Perhaps he was overzealous, but undoubtedly what operated on his mind was justice he *“wanted the truth and honesty of the situation.”* I believe him. He had no proven personal interest in the matter, no personal knowledge of the parties or the alleged events other than that gleaned through his investigation. He had no interest in Sharim as a suspect before Judith Baeza made her report.
57. He was simply performing a public duty. This was not a case where crucial facts were or could have been within his personal knowledge. He relied on information which he obtained. He has not been proven to have known some fact which was inconsistent with Sharim’s guilt. What he did know was that there was a strong connecting factor between Sharim and those associated with the murder.
58. I could find nothing which affected the cogency of Judith Baeza’s statement – her credibility was not tenuous. She had no axe to grind with Sharim and neither did Officer Fuentes.
59. I am convinced that after careful and anxious thought and after consideration of all that was available to him, Officer Fuentes had an honest belief in the charges he was preferring and he likewise believed that he had a reasonable and probable basis upon which to lay the charges. This belief, when assessed in light of all the circumstances, was to my mind, a reasonable one to hold.

60. For all these reasons, the Claimant has not convinced me on a balance of probability that Officer Fuentes had no reasonable or probable cause to prosecute. Therefore, I need not enquire into malice or damage to the Claimant. The claim has failed. There will be no order for costs as I am of the opinion that although this claim has not been made out, Sharim, as a minor and as an accused person has suffered a wrong by the police and the State. I will not add to his burden.
61. The Order of this court is as follows:
1. The Claim herein is dismissed.
  2. No order as to costs.

**SONYA YOUNG  
JUDGE OF THE SUPREME COURT**