

**IN THE SENIOR COURTS OF BELIZE
CENTRAL SESSION- BELIZE DISTRICT**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)**

INDICTMENT NO. CR20230042C

BETWEEN:

THE KING

and

MIGUEL PERRERA

Before:

The Honourable Madame Natalie Creary-Dixon, J

Appearances:

Mr. Cecil Ramirez, SC for the Crown

Mr. David McKoy, for the Accused

2024: October 15, 18, 21, 22, 25, 28

JUDGMENT

- [1]** **NATALIE CREARY-DIXON, J:** Mr. MP (hereafter “the accused”) was indicted for the offence of unlawful sexual intercourse contrary to Section 47(2) of the Criminal Code 101 of the Substantive Laws of Belize (Revised Edition) 2020 (“The Criminal Code”), in that, on a day between July and September 2021 in Benque Viejo, Cayo District, he had unlawful sexual intercourse with “EM” (hereinafter “the VC”), a female, under the age of fourteen years to wit: thirteen years.
- [2]** The accused pleaded “not guilty” to the offence and hence a trial was conducted by a judge alone pursuant to the provisions of section 65A of the Indictable Procedure Act, Chapter 96 of the Laws of Belize, as amended by Act No. 5 of 2011.

Burden and Standard of Proof

- [3]** Sitting as a judge alone, I am both the trier of fact and judge of the law. As such, I direct myself and consider throughout my deliberation of this matter that the Prosecutor has the burden of proof in this case. The accused has nothing to prove; rather, it is the Prosecution that has the duty to prove each element of the offence of unlawful sexual intercourse.
- [4]** I further direct myself that the Prosecutor must prove each element of the offence by providing me with evidence of such quality that I can feel sure that this element has been satisfied. Ultimately, if I am sure that each element has been proven, and I have no reasonable doubt, then I can be sure of the guilt of the accused and may convict him. If, however, the Prosecutor fails to make me feel sure and I have a reasonable doubt that the Prosecution has proven any of the elements of the offence, I will be obliged to acquit the accused of the offence of unlawful sexual intercourse.

PROSECUTION CASE

- [5]** At about 4:00 am on a day between July and September 2021, the mother of the VC went to Belmopan with the VC's, sister FC, to see about FC's passport. The VC's (then) brother-in-law, the accused, drove them to a bus terminus, to catch a bus. The VC and her two nieces were left alone at the house.
- [6]** Instead of going by his sister's house as expected, the accused unexpectedly returned to the house where the VC and her two nieces were. She went into the kitchen for a drink of water, and that is when the accused grabbed her and took her to her bed. There he held her with one hand whilst he took off her blouse and brassiere. He then hoisted her skirt, took off her underwear; took off his pants, and inserted his penis inside her vagina. Thereafter, she went to bathe. She is unsure of the exact time but believes it may have been about 8:00 am that he left to go and buy fried chicken. When he returned, he gave her a pink pill to swallow and told her not to tell anyone about the incident or she would know the consequences; according to the VC, she saw that her sister loved him, so she didn't say anything.
- [7]** She cannot recall the exact date, but after the incident, she asked him when he was going to marry her sister; he responded that she (the VC) was the one he wanted to marry, not her sister. The VC's mother overheard that conversation and questioned her incessantly about it until she finally told her mother that the accused had sex with her. The following day, her mother took her to the police station to report the matter.
- [8]** In cross-examination, Counsel sought to discredit the witness by providing a motive for her to lie, as well as pointing out some areas of inconsistencies in her evidence:

- (1) The VC denied that she was making these allegations against the accused because her mother was upset with the accused and did not want him to be with the VC's older sister; in fact, the VC replied that she did not know that her mother did not approve of the relationship between the accused and her sister. The Court observed the manner in which she naturally and flippantly responded to this question, and so the Court does not disbelieve her on this point. She denied that she was lying about anything.

- (2) She was confronted with the fact that in her statement to the police, she said she never saw the accused again after he had relations with her, yet in Court, she stated that she saw him again after the incident. The Court found that this inconsistency was not fatal to the credibility of the VC, because even before she responded that she did not see him again after the incident, she had told the Court that after the incident, she had asked him about marrying her sister; this obviously meant that the victim saw the accused again to be able to ask him that question; whether it is immediately after or hours, weeks or months later, the inference from her response is that the VC saw the accused again after the incident. Further, before being asked if she saw the accused again after the incident, she had told the Court that she could not recall if the day that she asked the accused the question about marrying her sister was the same day of the incident; specifically, she did mention that she was unsure as to when she saw him again to ask him that question. The Court therefore did not find that the VC deliberately lied to the Court on this issue.

- (3) Counsel also mentioned to the VC that in her statement to the police, she had said that the accused was sitting "outside" when she asked him the question about marrying her sister; in Court however, she said that he was sitting around a table when she asked him the question. The VC's response was that it may not be there in her

statement, but she had told the police where the accused was at the time she asked him the question; she was adamant in Court, that she did not tell the police that the accused was sitting outside. However, the police did not write everything that she said. The Court finds no reason to disbelieve this plausible explanation. The Court notes also that this was not an inconsistency on a material fact, and so attributed little weight to it.

(4) Counsel suggested to the VC that there was no place where fried chicken was sold at 4:00 am in the morning. The VC was consistent in her response that she had said sometime around 8:00 am, not 4:00 am.

She denied having a boyfriend or getting money from her stepfather at the time; she denied that it was her boyfriend who gave her the pill to swallow; she maintained that it was the accused.

She was not discredited on these issues, in cross-examination.

Evidence of Cruz Menjivar, mother of the complainant

[9] She confirmed that the VC was 13 years at the time of the incident. She denied taking a red Geo Prizm motor car from the accused, explaining instead that she only sold him the tank, and not the entire car. She recalled going to Belmopan on the day in question, with the accused man's wife, to see about the accused man's wife's passport. She denied receiving money from the accused as payment for the car. She admitted that she did not approve of the relationship between the accused and her daughter. She denied making a report against the accused because she did not like him.

PC Steve Ack

[10] PC Steve Ack recalled that whilst conducting a routine police checkpoint on the George Price Highway on February 19, 2022, he signaled the accused –who was driving a red taxi- to stop. Upon confirming that the accused was wanted by the police for the crime with which he is now charged, he handed him over to PC Carrillo, He identified 2 places that sold fried chicken, and which opened at about 9:00 am He admitted, however, that he did not know all the places that sold fried chicken in that area.

PC Russell Carrillo

[11] PC Carrillo testified that PC Steve Ack released the accused into his custody on February 19, 2022. He also testified that he did not know all the places that sold fried chicken, but for the ones he knew, they opened around midday, and you could not get fried chicken from anywhere at 4:00 am.

Filberto Pott-Crime Scene Technician

[12] This witness stated that he took photographs of the bed, room, and house where the incident is alleged to have occurred. He then prepared a report and handed over the report and its contents to the Investigating Officer M. Coleman.

Investigating Officer - WPC Michelle Coleman

[13] With the aid of Corporal Albert Kelly who translated the statements from Spanish to English, PC Coleman took the statements of the VC and her mother. She also received the medical certificate from the doctor who examined the VC. In the presence of a Justice of the Peace, she also conducted an Interview with the accused (admitted into evidence as 'MC1'). She arrested and charged the defendant some six months after the incident in February 2022. The incident happened in August and the

VC and her mother came to the station In December. The birth certificate was also presented through this witness (“MC2”). There was no explanation given for the reason the report was made some four months after the incident; however, the Court noted that the mother of the VC had questioned the VC incessantly for some time, about the conversation she overheard between the VC and the accused. It is unclear when the VC gave in and told her mother about the sexual offence.

Dr. Guillerma Rivas

[14] Having examined the VC on February 1, 2022, the doctor found that her hymen was not intact; he found hymenal tears, which he explained, occur when the hymen has suffered penetration; the type of penetration can be with an object, finger, and penis. Under cross-examination, he mentioned that he did not find any evidence of trauma, blood, or sexual abuse. The evidence showed “something that happened some time ago; it showed a sexually active person or a person who has had previous sexual intercourse. He indicated that in this case, the penetration would have taken place some time ago.

Corporal Albert Kelly

[15] Corporal Kelly informed the Court that he is fluent in both the Spanish and English language. He has been speaking both for the past twenty-nine years. He recorded the statement from the virtual complainant and translated it from English to Spanish. He admitted, however, that he was not a certified Spanish translator.

DEFENSE CASE

[16] The accused gave sworn evidence. He explained that, in August of 2021, he lived at the house where the incident occurred, with his wife, mother-in-law, the complainant, and her two nieces.

- [17]** At about 4:00 am on the morning of the incident, he said he was in bed with his wife FC. He left the house at about 6:00 am to take his wife and mother-in-law to the bus terminal; they arrived at the terminal at 6:05 am. They could not have left before because a curfew was in place.
- [18]** After the bus left, he struck up a conversation for about three minutes with a Security Guard whom he knew before, and who asked him “how comes he would not work” that morning; he explained to the Security Guard that his face was burnt. The accused explained to the Court that whilst the mechanic was fixing the accused man’s car, the accused man opened the radiator on the car and it emitted steam which severely burnt his face.
- [19]** He left the terminal at about 6:20 am and went to his sister Katherine Perrera’s house, for her to administer cream to the burns on his face. He left his sister’s at 6:40 am to operate his taxi, as he did not have sufficient funds, and he did not want to stay home alone.
- [20]** At about 7:00 am his wife called and asked him to take fried chicken to the VC for lunch since they had not left her with any money. At 11:30 am, he drove back to the house with the fried chicken. He remained in his car and delivered the chicken to the VC from there.
- [21]** The interaction with his mother-in-law was not friendly because one day the accused, his wife, and her mother, all heard the VC shouting at her stepfather because he told her he only had \$5 to give her that day. The accused submitted that the VC was receiving money from her stepfather; he hinted at a possible intimate relationship between the two.
- [22]** Under cross-examination, he admitted that in the Notes of Interview conducted by PC Coleman, he said that the time that his wife and mother-in-law left for Belmopan was at 4:45 am, whilst, in Court, he said they left at 6:00 am; his explanation for this inconsistency was that he was incarcerated and did not get an opportunity to confer with his wife as to

what time they had left; he further attempted to explain by saying he was not well, he was frightened and did not know anything about the case. He denied giving her a pink pill to drink.

[23] He denied going back to the house after he was charged; he denied being asked by the VC when he would marry her sister, and he denied replying that it was the VC he wanted to marry and not her sister.; he denied returning to the house after he dropped off his wife and mother-in-law that day and having intercourse with the VC.

Evidence of FC - wife of the accused

[24] FC told the Court that at 4:00 am on the morning in question, she was in bed with her husband. At about 6:00 am, her husband drove her and her mother to the bus terminal to catch a bus to Belize City. At about 7:00 am, she called her husband who told her he was at his sister's house. That was the only call she made to him early. She then called him at 11:00 am and asked him to take chicken to the VC on that day, because she was home alone with the children, she asked the VC if the accused had ever disrespected her.

[25] On cross-examination, she denied going to Belmopan that day and said she went to Belize City. She doesn't recall the exact time she left with her husband, but it may have been between 5:45 and 6:00 am. She was sure that when he told her he was at his sister's at 6:30 am, he was in truth there because she heard his sister's voice. Otherwise, she couldn't verify where he was at any particular time before she returned home in the afternoon.

[26] In re-examination, she spoke on the relationship between her mother and the accused. She said they did not have a good relationship as her mother was always finding "defects" with him such as saying he is too "mean", because he said he was saving to buy something and couldn't spend his money.

Evidence of Carlos Carra - 3rd witness for the defence

[27] Mr. Carra recalled seeing the accused at the terminal with his wife and mother-in-law at about 6:05 am on the morning in question. He asked the accused about the burns on his face; the accused explained that they had been burnt by a radiator and that he was on his way to his sister's for her to work on his face. "He also stated that the bus would have left at 6:00 am.

[28] He confirmed the evidence of the accused and the accused man's sister by saying that the accused left the terminal at about 6:15 - 6:20 am. This he could confirm because he was wearing a watch. Thereafter he did not see the accused for the rest of the day.

Katrina Perrera - 3rd witness for the defence

[29] Ms. Perrera, the sister of the accused, supported his story that he visited her house for her to dress the burns on his face. According to her, at 6:30 am her brother came to her house; he stayed for half an hour for the lotion that was applied "to work on his injuries". At 7:00 am, he told her that "he went to taxi" ...and she saw when he left.

[30] Under cross-examination, she confirmed that on the morning that she put the crème on his face, the accused was living at his mother-in-law's house.

[31] She acknowledged that she had not seen him between 4:00 am and 6:30 am that morning. She expressed again that the accused left her house at 7:00 am. However, when confronted with the statement that Mr. Perrera said he left her house at 6:40 am, she then said that she did not agree; it was then that she gave an explanation that he left her house at 6:45 am, after checking the oil in the car.

THE LAW

Elements of the Offence of Unlawful Sexual Intercourse

[32] Section “47(1) Every person who, with or without consent, has sexual intercourse with a person who is under the age of fourteen years commits the offence of unlawful sexual intercourse and is liable on conviction on indictment to imprisonment for a term that is not less than twelve years but may extend to imprisonment for life.”

[33] The ingredients of the offence, in the context of this case, are: (i) the accused had sexual intercourse with EM, and (ii) EM was under 14 years old.

ANALYSIS

The Prosecution witnesses

[34] The Court has directed itself that the accused is presumed innocent with regard to the charge on the indictment and has nothing to prove. The Court has directed itself that the obligation is on the Crown to satisfy it so that it is sure of the guilt of the accused, and if there is any reasonable doubt the Court must acquit him. The Court has warned itself that it should not be prejudiced by the mere allegation of a sexual offence involving a child.

[35] The Court is of the view that the consideration of the Crown’s case -that is – satisfying all the elements of the offence - against the accused revolves largely around its finding as to the credibility of the Crown’s witnesses.

[36] The Court in assessing credit and reliability, must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. The Court notes, however, on the authority of the Belizean CCJ decision of August and Anor v R that it need not comb the record

for inconsistencies or contradictions. The Court directs itself that if there are inconsistencies and discrepancies the Court must look to see if they are material and if they can be resolved on the evidence. The Court must consider whether inconsistencies or discrepancies arose for innocent reasons, for example through faulty memory or lack of interest in what is transpiring, or if it is because the witness is lying and trying to deceive the Court. Unresolved inconsistencies or discrepancies would lead the Court to reject that bit of evidence or all of the witness's evidence entirely. The Court must also consider the cumulative effect of those inconsistencies or discrepancies on a witness's credit and reliability. If the Court finds the evidence of a witness implausible it will reject either that witness's evidence entirely or that bit.

Element #1: that the accused had sexual intercourse with EM

- [37]** Firstly, the medical report supported the Crown's case that the VC was carnally known.
- [38]** The complainant detailed that "the accused grabbed her and took her to her bed. There, he held her with one hand, whilst he took off her blouse and brassiere". The Court observed EM's manner and demeanour whilst giving evidence and found her to be forthright and credible. She was unshakable in cross-examination.
- [39]** The defence challenged the credibility of EM by pointing out that she could not recall certain important details of the incident, such as the exact date of the offence and whether her question to the accused about whom he will marry occurred on the same day of the assault or after, or whether he was inside or outside of the house when this question was asked; the VC responded that it was a long time ago (three years), and so she could not recall. This explanation was understandable and acceptable to the Court, especially since the VC was able to recall the other sordid details of the offence very vividly; she remembered, for example, seeing "a slimy

liquid being emitted from his member after the act; she recalls that same liquid being mixed with her own blood when she went to take a bath; she recalled that her nieces were on the bed when the offence took place.

[40] The Court also bore in mind that, despite the failure of the VC (and all the other witnesses) to recall the exact **date** in question, the VC-and all the other witnesses-recalled the **day** in question because another memorable event occurred on that day: that is, the fact that the victim's mother and sister left in the wee hours of the morning for Belmopan, on business, and it was the accused who took them to the bus stop. For that reason, the witnesses had no challenge recalling that specific day, albeit not the exact date. The Court therefore rejected the defence's argument that the complainant's failure to recall the exact date was fatal to her credibility. The Court also found that there was no prejudice to the accused and no inability to defend himself because of the uncertainty of the date of the incident; the accused, like all the other witnesses, recalled that day quite well.

[41] The Court noted also that the VC's mother and the accused supported the VC's evidence that her mother and sister went to **Belmopan** that morning. The importance of this is further underscored by the fact that the witness for the defence, FC, the VC's sister, was adamant that she did not go to Belmopan with her mother that morning; rather, she and her mother went to Belize City. Since her mother (with whom she travelled) as well as the accused and the VC all contradicted this part of FC's evidence, the Court concluded that FC was lying about this bit of evidence. The reason was unclear.

[42] The VC's credibility is further supported by the accused himself. Although the accused stated that he left for Belmopan with his mother-in-law and his wife at 6:00 am that morning, the accused was reminded that in his Notes of Interview conducted in February 2022, he stated that the time

he left for Belmopan was 4:45 am. He did not deny this in cross-examination. 4:45 am is close to the time that the VC said that the incident occurred, making her evidence more credible. The Court believes that this therefore lays to rest, the issue of when the accused and others left the house that morning. It also reinforces the conclusion of the Court, that the VC is a credible witness.

[43] In assessing the evidence of a child, it has become generally accepted that the child's capacity to observe, recollect, understand, answer intelligently, and the child's sense of moral responsibility is also considered. The complainant in this matter was not found wanting in these areas; she explained herself satisfactorily and answered the questions put to her under cross-examination well enough to clarify any apparent contradictions in her evidence. In addition, there was no evidence that she was being manipulated or negatively influenced by any adult, as can be the case with child witnesses especially where the child's family has a grievance against the accused.

[44] Element #2: That EM was under 14 years old

It is reasonable to infer also, that having known and lived with the VC for a year, the accused was aware that she was under the age of consent; in fact, he gave evidence of her going to school and having to ask her stepfather for lunch money.

The credibility of the Crown witnesses rested on the evidence given by these two witnesses: the VC and her mother.

As the Court finds these two witnesses to be credible and there is enough evidence to secure a conviction, the Court will now consider the evidence of the defence, as is required by the case of **Dionicio Salazar, Criminal Appeal No.6 of 2016.**

Consideration of the Defence's case

[45] I reminded myself, that the Prosecution has the burden of proof and thus it is their evidence that must make me feel sure of the guilt of the accused; so even if the Court disbelieves the accused and reject his defence of alibi, that does not necessarily mean that he committed the offence.

[46] The Court found inconsistencies and lies in the evidence of the defence. However, the Court reminded itself that persons accused of criminal offences may lie for reasons other than guilt. They may fabricate defences and alibis for reasons such as to bolster a weak case, to protect someone, out of panic, or to cover up bad behaviour. **R v Lucas [1981] 2 All ER 1008, [1981] 3 WLR 120**

[47] One of the major inconsistencies in the evidence of the defence is the inconsistency in the time that the accused stated that he left the house: according to him, he could not get in touch with his wife whilst he was in prison to verify the time that he truly left the house that morning, and so he told the police in his notes of interview, that it was 4:45 am. This is inconsistent with the 6:00 am that he said in Court and directly affected his credibility. The Court finds it uncanny that during his interview, the accused would pick a time that is close to the time period stated by the VC (4:45am) if he had not indeed left the house at that time. The Court believes that in Court, he deliberately lied about the time he left the house, to “cover his tracks”, and make it seem that he was in bed with his wife at the time period in question, and further, that at the time in question, his wife and mother-in-law were also present in the house, reducing the likelihood of him assaulting the VC.

[48] His lack of credibility on this material point had a direct bearing on the credibility of his wife, to the extent that she supported this part of his

evidence. For example, his wife also stated that they all left the house at 6:00 am that morning. The court, having determined that they left the house sometime after 4:00 am, does not find either of these witnesses to be truthful on this very material aspect of this case. It follows that the Court disbelieved them both when they said that they were in bed with each other at the time that the incident is said to have occurred.

[49] FC also stated that she called her husband at 11:00 am and asked him to take fried chicken to the VC.; in Court, however, the accused had previously testified that she had called him at 7:00 am, to take the fried chicken.

[50] This witness stated that (after dropping her off), she couldn't verify where the accused was at any particular time before she returned home in the afternoon.

[51] This witness was not seen as a witness of truth, as her evidence did not align with her mother's evidence of going to Belmopan, as confirmed by the VC, her mother, and even the accused. Neither was she truthful about the time that the accused took her and her mother to the bus stop that morning.

[52] The 3rd witness for the defence, Mr. Carra, could not account for the whereabouts of the accused when the incident is said to have taken place. Also, contrary to the accused man's assertion that this witness admonished him about opening a radiator, the witness flatly denied that he said any such thing. This witness did not advance the defence's case.

[53] The last witness for the defence, his sister, did not advance his case either. She acknowledged that she had not seen him between 4:00 am and 6:30 am that morning. She expressed again that the accused left her

house at 7:00 am. However, when confronted with the statement that Mr. Perraera said he left her house at 6:40 am, she then said that she did not agree; she then changed her evidence to say that he left her house at 6:45 am, "after checking the oil in the car."

[54] This witness was seen as a witness with an interest to serve, who was not credible and did not support the accused man's defence of alibi.

[55] The accused having given sworn evidence, the Court directed itself that the accused is a man of good character and that a person of good character is less likely to commit a crime, especially one of the nature with which he is charged, than a person of bad character.

[56] The Court is of the view that the good character of the accused is outweighed by the strength of the evidence against him.

Revert to the Prosecution

[57] Having rejected the case for the accused because of the lies told and the inconsistencies in the evidence of the accused and his witnesses, I am obligated to return to and consider the evidence for the prosecution.

[58] The prosecution evidence has made me feel sure and left me without any reasonable doubt that the elements of the offence have been satisfied: the accused had sexual intercourse with the VC, and she was under 14 years old at the time. The VC gave cogent evidence which was not undermined in cross-examination or by the evidence of the defence. On the contrary, parts of the accused man's evidence supported the VC's evidence.

[59] The defence has not given me a reason to doubt the Prosecution's evidence. The good character of the accused has not given me a reason to doubt the Prosecution's evidence. The Prosecution evidence has

convinced me of the guilt of the accused.

[60] The Court now looks at the totality of the evidence to reach a final decision. The Court is satisfied so that it is sure, for the reasons advanced above, that the VC's evidence is truthful and credible. The Court also finds that her evidence is independently supported by the medical report. The Court has rejected the case for the accused, on the strength of the crown's case. The Court is satisfied so that it is sure and accepts the Prosecution's evidence that:

- (1) The accused had sexual intercourse with the VC
- (2) The VC was under 14 years old at the time of the incident

VERDICT

[61] The Court consequently is satisfied so that it is sure of the guilt of the accused on the charge on the Indictment and finds him guilty as charged of unlawful sexual intercourse with the VC, who was then 13 years old.

[62] This matter is adjourned for a separate sentencing hearing as advised by the CCJ in **Linton Pompey v DPP [2020] CCJ 7.**

This is the Judgment of the Court.

Dated this **28th** day of **October 2024**

Natalie Creary-Dixon, J
High Court Judge

By the Court Registrar