

IN THE SENIOUR COURTS OF BELIZE
CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT
IN THE HIGH COURTS OF JUSTICE

Indictment No. C74 of 2020

Between:

The King

and

[1] **Luis Sanchez**

Defendant

Appearances:

Ms. Natasha Mohamed, counsel for the King.

Mr. Hubert Elrington S.C., counsel for the Defendant.

Dates:

Trial Dates: 2023: October 26 (*Nolle prosequi*)
Judgment Date: 2024:
Sentencing Date: 2024:

DECISION

[1] The Accused was indicted by the Director of Public Prosecutions for the offence of rape contrary to the provisions of section 47 of the of the ***Criminal Code***¹ Chapter

¹ CAP 101 Criminal Code section 47(1)(2) of the Substantive Laws of Belize Revised Edition 2011
47.– (1) Every person who carnally knows a female child under the age of fourteen years, with or without her consent, shall on conviction on indictment be imprisoned for a term which shall not be less than twelve years, but which may extend to imprisonment for life.
(2) Every person who, (a) unlawfully and carnally knows any girl who is of or above the age of fourteen years but under the age of sixteen years; or
(b) unlawfully and carnally knows any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the

101 of the Laws of Belize (Revised Edition) 2011 for that he on the 17 day of September 2018, at St Margaret's Village Cayo raped Geralyn Portillo (the "VC"). To this indictment he entered a plea of not guilty, hence, a judge alone trial was held pursuant to the provisions of section 65A of the *Indictable Procedure Act*² as amended.

The Facts

[2] The virtual complainant testified under oath that she lived at St. Margaret's Village with her husband one, Justin Haynes and 2 children. On the night of the 17 September 2018, one Luis Sanchez came to the house and asked for her husband. She told him Justin was not there, and he left. She said she knew Luis Sanchez through her husband, and she had known him for about one month. She

commission of the crime that the woman or girl was an idiot or imbecile, shall be guilty of an offence and on conviction thereof be imprisoned for a term which shall not be less than five years nor more than ten years, Provided that with regard to paragraph

(a) of this subsection, (i) in the case of an accused person charged with a crime under that paragraph who is under the age of eighteen years, the presence of reasonable cause to believe that the girl was over the age of sixteen years shall be a valid defence on the first occasion on which such accused person is charged with a crime under that paragraph; (ii) in the case of an accused person charged with a crime under that paragraph who is of the age of eighteen years or over, the presence of reasonable cause to believe that the girl was over the age of sixteen years shall be a mitigating circumstance for the purpose of sentence on the first occasion on which such accused person is charged with a crime under that paragraph, and in any such case the mandatory minimum sentence of five years prescribed above shall not apply. (iii) no prosecution shall be commenced more than twelve months after the commission of the crime.

(3) Where a marriage is void in consequence of one of the parties thereto being under the age of fourteen years, a person charged with a crime under this section, or with indecent assault upon a girl with whom he went through the ceremony of marriage, may exonerate himself if he proves that, at the time when the crime is alleged to have been committed, he had reasonable cause to believe that the girl in respect of whom it is alleged to have been committed was his wife.

didn't see him often only when she took lunch for her husband, and she would see him when she on the road.

[3] The witness continued that when she saw Sanchez that night, he was about 6 feet away from her and the light from the moon made it clear. He got to her home on a motorbike. She said she spoke to him for less than three seconds, but she did not see any part of his body. She said that at about 9:00 p.m., Luis Sanchez returned to her home, and she felt her mouth covered. She could see who it was because the door was open a little and moonlight came in through the door. She said she saw his hand haul the mattress on the floor. He then took off his clothes and started to abuse her. He put his penis in her vagina. She screamed and he said he would kill her with the knife he had. She said she could smell him, and she knew he was drunk. He then put on his clothes and left on his motorbike.

[4] Her husband Justin went to burn white lime and around 5:00 p.m., on Sunday he returned home. They went to her mother to wash clothes, and her husband dropped her off there and returned on Monday. She said she didn't want to go back home because she felt bad and ashamed, so she told Justin that his friends are not his real friends. She knew it was Luis Sanchez who came to her house and asked for her husband because she saw him some days before.

[5] The virtual complainant stated that on the night in question she wore her nightgown and underwear. When Luis Sanchez placed his penis in her vagina, she was not wearing her nightgown and underwear because he had taken them off when he took her off the bed. She said she was able to see Luis Sanchez private parts. She said she knew it was Sanchez because she saw him from the

moonlight. She was able to see him for about 4 to 5 seconds. When he was standing in front of her, she said she could not see him.

[6] At this stage Crown Counsel stated that the Crown would offer no further evidence and would close its case. She readily conceded that the Crown was unable to make a case against the Accused because the virtual complainant seemed unwilling to state how and /or why she stated that the person who she said raped her was Luis Sanchez.

[7] Mr. Elrington for the Accused stated that there was no case to answer and that his client should be discharged.

Verdict

[8] It is common ground that no evidence was adduced by the Crown to identify the Accused as the man the VC said was Luis Sanchez. Indeed, Crown Counsel made repeated efforts to get her witness to testify as to how or why she was saying that the person who abused her was the Accused. It is trite law that stating the name of the Accused as her abuser is woefully inadequate to satisfy the burden of proof which is proof beyond reasonable doubt that the Accused was the person who committed this alleged offence as indicted. At the end of the Crown's case, the only evidence adduced as to the perpetrator of this alleged offence was merely a name.

[9] Accordingly, the court finds that a case has not been made out against the Accused for the offence for which he has been indicted. Thus, in the circumstances, the case against him is dismissed and he is found not guilty of the offence for which he has been indicted.

Hon. Mr. F M Cumberbatch

Justice of the High Courts