IN THE COURT OF APPEAL OF BELIZE AD 2013
CRIMINAL APPEAL NO 21 OF 2010

DARREL GRANT Appellant

v

THE QUEEN Respondent

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BEFORE

The Hon Mr Justice Manuel Sosa	President
The Hon Mr Justice Samuel Awich	Justice of Appeal
The Hon Madame Justice Minnet Hafiz Bertram	Justice of Appeal

Appellant unrepresented.
C Vidal, Director of Public Prosecutions, for the respondent.

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18 and 19 March and 28 June 2013

SOSA P

[1] On 12 November 2010, after a trial before Lucas J and a jury, Darrel Grant, also known as 'Movado' and 'D Rell' ('the appellant'), was convicted of the murder of Sandra Ruiz; and, on 18 November 2010, he was sentenced to a term of imprisonment for life. By a notice of appeal filed on 23 November 2010, he signified his desire to appeal to this Court against his conviction and sentence.

[2] On 25 May 2011, a stenographer of the court below certified the record of appeal, which thereafter became available to the appellant and the Crown.

[3] The appeal was first called up for hearing at the October 2011 Session of this Court, when it was traversed to the March 2012 Session to give the appellant more time to obtain legal representation. Further traversals were ordered for the same reason at both the March and July 2012 Sessions. At the October 2012 Session, the Court further traversed the appeal without enquiring of Mr Arthurs, counsel assigned to the appellant by the Registrar, whether he was ready to argue it.

[4] When the appeal was again called up on 12 March 2013, Mr Arthurs sought, and was granted, a further adjournment to allow him additional time in which to seek a ground, or grounds, of appeal, he having candidly informed the Court that he had so far been unable, despite diligent effort, to find any.

[5] The appeal was again called up on 18 March, when Mr Arthurs properly informed the Court that, for all his further efforts, he had been unable to identify a single arguable ground of appeal. Mr Arthurs thereupon made application to this Court for leave to withdraw from representation of the appellant; and, upon such leave being granted to him, he proceeded so to withdraw. At that stage, the appellant was asked whether his family had, in the interim, come by the means with which to retain counsel for him and he told the Court that that was, in fact, the case. The Court advised him to make contact with his family so as to be able further to inform the Court on the next morning as to the retaining or otherwise of counsel. He was advised, at the same time, of the fact that the Court was strongly disposed to dismiss his appeal on such next morning. On the appeal being called again on 19 March, the appellant informed the Court that his family did not, in fact, have the means with which to retain another counsel for him. The Court then proceeded to dispose of the appeal in the manner to be set out below.

[6] The evidence adduced by the Crown at trial indicated that Ms Ruiz died of injuries brutally and savagely inflicted on her whilst in the supposed sanctity of her home at No 5664 Meighan Avenue in the King's Park Area of Belize City on the night of Sunday 10 August 2008. Dr Mario Estrada Bran, who performed a *post-mortem*

examination upon her body on 11 August 2008, testified that, in his opinion, the cause of her death was 'trauma shock due to blunt force injuries to the head'.

[7] Also adduced in evidence by the Crown was a statement under caution made by the appellant and recorded by the police at the Queen Street Police Station in Belize City on 11 August 2008. This statement was ruled admissible by the trial judge following the holding of a *voir dire* on the fourth day of the trial proper. Mr Dickie Bradley, counsel for the appellant, after having informed the judge immediately before the start of the *voir dire* that he would be objecting to the admission of the statement on the twofold ground that it had been obtained by 'inducement' and 'threats', proceeded surprisingly to refrain throughout from making even the slightest suggestion that threats of any kind had been levelled at the appellant. He confined himself, instead, to attacking the statement on the ground that it had been given as a result of inducement in the form of a promise allegedly made to the appellant by a Sergeant Palomo. The trial judge, having heard the prosecution witnesses, including Sergeant Palomo, and the appellant himself, evidently accepted the evidence of Sergeant Palomo and rejected that of the appellant in arriving at the conclusion that the Crown had proved beyond a reasonable doubt that the statement under caution was freely and voluntarily made by the appellant. In that statement was an admission by the appellant that he had not only entered the home of Ms Ruiz on the night before but also held her from behind whilst (as it was claimed in the statement) another intruder struck her on the head with a hammer causing her to fall. And the statement went on to say that a chain and 'medal' (an obvious reference to a pendant) found in his possession by the police had been amongst the contents of a box found by him in the house and handed over to his supposed fellow intruder. There was, moreover, in the statement a disclosure to the effect that the appellant had, on the next morning, after bathing, placed his clothes behind his house.

[8] Despite the reference to a fellow intruder supposedly surnamed Saragosa in the statement, it was not in fact the Crown case that the appellant had been part of a joint enterprise. Consistently with this, the Crown called as one of its witnesses a certain

Dale Saragosa who testified that he was an acquaintance of the appellant but had had nothing to do with the murder of Ms Ruiz on the night in question, which night he had spent at his home in Ladyville. No suggestion to the contrary was put to this witness in cross-examination, the not uncomplicated position of the defence being that such witness was not the Saragosa mentioned in the statement under caution, which the appellant had, in any event, been induced to make.

[9] There was also undisputed evidence from several Crown witnesses that, on the morning next following the slaying, the appellant was in possession of a chain and 'medal' identified through other evidence as the property of Ms Ruiz. One such witness was Kayla Davis, a nurse who gave evidence that she knew the appellant 'very good' and was even on speaking terms with him. It was her further testimony that the appellant was in conversation with her on the morning in question when police officers came up and asked him where he had obtained a long chain he was wearing at the time. She had found it necessary to contradict him when he replied that he had obtained it from her.

[10] Derek Sánchez, an inmate at the Central Prison in Hattieville, also gave evidence that, on the morning of 11 August 2008 in Ladyville, the appellant offered to sell him certain items of jewellery, including a chain. He bought none of the items for the reason that the appellant 'already told me where he get it'. Counsel for the appellant did not, in cross-examination, suggest to this witness that his evidence was untruthful in any respect.

[11] Two police officers gave similar evidence. The first, a Corporal Cawich, testified to having arrested the appellant in a yard in Ladyville on the morning of 11 August 2008. At the time, the appellant was wearing 'a gold chain with a heart medal', of which the corporal proceeded promptly to relieve him. The evidence of the second officer, Sergeant Palomo, was that he was present in Ladyville on 11 August 2008 and saw Corporal Cawich remove from around the neck of the appellant a chain that was gold in

colour. This chain was tendered in evidence through Corporal Cawich and admitted as such, as exhibit 'CC1'.

[12] Another such officer, an Inspector Romero, later gave evidence that, on 4 November 2010, that is to say during the course of the trial, he, at the request of prosecuting counsel, showed exhibit 'CC1' to Ms María del Carmen Ruiz, who identified it as a chain and 'medal' which had belonged to the deceased Ms Ruiz. Ms María del Carmen Ruiz then testified that she was the mother of the deceased Ms Ruiz and identified exhibit 'CC1' as jewellery which had belonged to the deceased and which she had last seen the deceased wearing as shortly before her death as 7 August 2008.

[13] The remaining evidence adduced by the Crown included that of Ms Brenda Palacio, which was to the effect that, at about 10.35 pm on 10 August 2008, she saw the appellant emerge, trotting, from the back of her yard and proceed towards and unto Vásquez Avenue, the street in front of her house. Although she admitted in cross-examination that the appellant is a 'black Belizean like myself' and not light-skinned, as she had said in a statement recorded from her by the police on the day after the murder, the obvious strength of her evidence of visual identification lay, in large part, in the nature of her acquaintanceship with the appellant. She claimed to have known him from birth and to have watched him grow from a child to a young man on Gentle Avenue, a period of some 22 – 23 years, in her estimation, during which, on her evidence, she saw him 'practically every day' and spoke to him just as often. None of these claims was controverted by the appellant, who was, in fact, later specifically to admit, in cross-examination, that he was living on Gentle Avenue on 10 August 2008.

[14] Ms Palacio's evidence would also have derived much force from the stark geographical facts in the area in which Ms Ruiz lived her last days. Her home and those of the appellant and Ms Palacio at the material time were all located in a relatively small area comprising the junctions (at unusually close quarters) of Gentle and Vásquez Avenues with Meighan Avenue and their most immediate common vicinity. The evidence of Corporal Cawich was that Ms Palacio's house was only about forty to fifty

feet away from Ms Ruiz's. And he further estimated that the house at 5652 Gentle Avenue (behind which, on his testimony, he found a bloody T-shirt and pants and at which, according to the unchallenged evidence of Mr Wellington Neal, the appellant lived in August 2008) was only about fifty to seventy feet from that of Ms Ruiz. If, as Ms Palacio testified, the appellant was indeed trotting from the back of her yard to Vásquez Avenue at about 10.35 on the night in question, that would mean that he was then proceeding from, rather than towards, the general direction of his house and that of Ms Ruiz.

[15] The appellant, who called no witnesses but gave evidence on oath on his own behalf, raised the defence of alibi. His evidence-in-chief nevertheless focused, not on his alibi, but on the events of 11 August 2008, beginning with the arrival of the police at the place in Ladyville at which they found him wearing 'a gold chain'. He testified that he was taken thence by the police to the office of the CIB (Crimes Investigation Branch), where Sergeant Palomo spent about an hour or an hour and a half telling him what he was supposed to repeat, a little later in the presence of a Justice of the Peace and more than a little later as a lying Crown witness in the criminal trial of another, in order himself to be spared from any criminal charge in respect of the chain in question. It was thus, he stated in evidence, that he came to say what he said later that day before the Justice of the Peace. Having alleged, however, that, before the Justice of the Peace, he had only said that which the sergeant had told him to say, he went on to testify that he had, in fact, told that officer some of the very things he so said later on in the presence of the Justice of the Peace. Putting it a little differently, some of the things he was supposedly told by the sergeant to say were, in facts, things that had actually occurred. He had, for example, in truth attended the birthday party of a Muchi Vernon. (Only later on, in cross-examination, however, would he claim that he remained at that party until 'after 11 – 12'.) And he had also been in the company of a Michael Herrera, also known as Honki, at the party. What is more, there was nothing new about the arrangement in question with Sergeant Palomo. He had previously worked with the sergeant as a police informant and Crown witness.

[16] Under cross-examination (which served to extract the appellant's defence of alibi: 'I neva deh deh.'), the performance of the appellant was, on any view, anything but impressive. He effectively agreed that he had had no qualms about giving an untruthful statement under caution to the police in order to be spared from a criminal charge related merely to the possession of a chain which might have been stolen; thus paving the way for a conclusion that he would not be above lying in order to avoid conviction of the far more serious crime of murder. In addition, he agreed that exhibit 'CC1' was the very chain he was wearing on the morning after the killing. And, as regards the naming of a supposed fellow offender, he glaringly contradicted himself, claiming both (a) that he had said all that was contained in the statement (amongst which was the full name 'Dale Saragosa'), albeit in return for a promise made to him by Sergeant Palomo, and (b) that he had only given the surname 'Saragosa' to the sergeant, not the first name 'Dale'. In his words, at p 413 of the record: 'I tell ah I get [the chain] from Sargosa *(sic)* fi mek I sell right.' Bearing in mind his evidence (p 414, record) that this Saragosa was from 'back a Martins' and drawing the irresistible inference that the police were not so told, the latter claim could hardly have commended itself to a reasonable jury. Why would a police informant of experience who could give the police a surname but no first name effectively send them on a wild goose chase by withholding that valuable detail as to place of abode from them?

[17] This Court formed the opinion that, having due regard to the totality of the evidence at trial, as summarised above, a reasonable jury could properly feel sure at the end of the day that the appellant invaded the home of Ms Ruiz on the night of Sunday 10 August 2008 and there, using a hammer, inflicted injuries to different parts of her body, including her head, with the intention to kill her, and that those head injuries in fact caused her death later that same night. The Court considered that the trial judge thoroughly and carefully summed up all relevant evidence for the benefit of the jury and adequately directed them on all legal principles applicable to the issues of fact which arose. Accordingly, the Court could see no reason whatever to interfere with the conviction of murder returned by the jury. Insofar as the sentence is concerned, the Court found itself in agreement with the trial judge that it was not open to him under the

law to impose any lesser sentence than that of life imprisonment. (For the sake of completeness, the Court notes that there were in this case no 'home-made' grounds of appeal such as were recently referred to by the Board in *Taylor v The Queen* [2013] UKPC 8.) It was for these reasons that the Court dismissed the appellant's appeal and affirmed his conviction and sentence.

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SOSA P

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AWICH JA

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HAFIZ BERTRAM JA