IN THE COURT OF APPEAL OF BELIZE AD 2015

CRIMINAL APPLICATION FOR LEAVE TO APPEAL NO 3 OF 2013

THE QUEEN Applicant

v

JORGE VIDAL Respondent

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BEFORE

The Hon Mr Justice Sir Manuel Sosa	President
The Hon Mr Justice Dennis Morrison	Justice of Appeal
The Hon Madam Justice Minnet Hafiz Bertram	Justice of Appeal

L Willis, Senior Crown Counsel, for the applicant.
Respondent absent and unrepresented.

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11 March and 26 November 2015.

SIR MANUEL SOSA P

Introduction

[1] These proceedings started as an application by the Crown, filed on 19 August 2013, for leave to appeal from a ruling of Hanomansingh J ("the judge"), made on 29 July 2013, by which ruling he quashed an indictment presented by Her Majesty's Director of Public Prosecutions ("the Director") charging Jorge Vidal ("the respondent") with the murder of Hortencio Contreras on 31 December 2005 in the town of Benque Viejo del Carmen, Cayo District ("the indictment"). (Owing to difficulties encountered by

the police in locating the respondent until 5 March 2015, when service of the relevant notice was finally effected, the hearing of this application was greatly delayed.) At the close of the hearing, conducted in the absence of the respondent on 11 March 2015, the Court announced that it was treating the hearing of the application as the hearing of the appeal which, for reasons which it would be giving in writing at a later date, was allowed and that, in consequence, the ruling of the judge was set aside and the indictment stood. The Court shall now render those reasons.

Background

[2] It was the sworn evidence of Mr Cecil M Ramírez, Senior Crown Counsel in the chambers of the learned Director, that on the date in question, 29 July 2013 as already indicated above, there arose before the judge a question as to the validity of the committal of the respondent for trial and, thus, of the indictment itself.

[3] This is borne out by the transcript of the brief hearing before the judge on the date in question, which discloses that Mr Ramírez read out in court a memorandum purporting to be from the Police Officer Commanding the Benque Viejo del Carmen Police and which stated in terms that, at a Preliminary Inquiry held at the Magistrate's Court in Benque Viejo del Carmen on Thursday 26 July 2007 –

> "… Mr Richard Swift (Resident Magistrate) examined the evidence. There after (*sic*) the Magistrate cautioned [the respondent]. He elected to remain silent and <u>was committed to stand trial</u> at the January 2008 Session of the Central District of the Supreme Court." [emphasis added]

(It is well known in Belize – and was undoubtedly common ground in the instant case – that, in the latter part of 2007, Mr Swift met his most untimely death in very mysterious circumstances at sea.)

[4] The transcript further reveals that Mr Ramírez had either called or was at the point of calling the woman sergeant of police who had marshalled the evidence at the Preliminary Inquiry to testify before the judge when the latter stopped him short, saying that he did not wish to hear her "yet". It can hardly be doubted that Mr Ramírez's wish was to have her testify of, *inter alia*, the committal of the respondent for trial. In the event, the judge did not at any later stage indicate a willingness to hear the testimony of the woman police sergeant.

[5] There were, however, certain documents in the judge's bundle, principal amongst them being one purporting to be a certificate dated 12 March 2009 and signed by another magistrate, viz Mr Earl Jones, which document read as follows:

> "I, Mr Earl Jones for Magistrate Richard Swift for the Cayo Judicial District, do hereby certify the Preliminary Inquiry to (*sic*) the above charge against [the respondent] was held before me on the 26th of July, 2007 and that the depositions of the witnesses for the prosecution were taken by me on the said dates in the presence of the said [respondent]."

[6] The judge heard submissions by Mr Ramírez and Mr Michael Peyrefitte, counsel for the respondent, and proceeded to rule to the effect already set out at para [1], above. In so doing, he rejected the contention of Mr Ramírez that the committal had been made by Mr Swift on 26 July 2007 and was unaffected by anything done or purported thereafter to be done by Mr Jones; and he accepted the submission of Mr

Peyrefitte that there had been no committal, whether on or after the date in question, and that, accordingly, "the indictment cannot stand". (An inquiry by the judge as to whether Mr Ramírez was in possession of any 'document showing a committal by Magistrate Swift' had elicited a reply in the negative.) The judge thereupon discharged the respondent. Whilst the difficulty of the judge was, manifestly, with the absence of what he called a "document showing a committal by Magistrate Swift", there is nothing in the transcript to show that he went so far as to doubt that there had been committal proceedings, even if only defective ones. Quite to the contrary, he spoke, at page 13, of "the evidence that was taken by Magistrate Swift" at such proceedings.

[7] Nor does the transcript give any indication that the question of the judge's power to quash an indictment was raised by anyone in the court below.

The relevant law

[8] The law relating to the power of a judge of the court below to quash an indictment underwent significant change towards the end of the last century. As it appeared in the 1980 Revised Edition of the Laws of Belize, section 84 (1) of the Indictable Procedure Act, Cap 93 stated that –

> "No objection to an indictment shall be taken by way of demurrer, but if an indictment does not state in substance a crime or states a crime not triable by the court, the accused person may move the court to quash it or in arrest of judgment as provided in section 146."

The prohibition was, quite plainly, of objection by way of demurrer only. That was much altered by the Law Reform (Miscellaneous Provisions) Act, 1998 (Act No 18 of 1998) which introduced a net much greater in size than that originally cast by section 84 (1).

Act No 18 of 1998 repealed the former section 84 (1) and replaced it with a new one reading as follows:

> "Notwithstanding any rule of law to the contrary, no objection to an indictment shall be taken by way of demurrer or on the ground of any defect in the committal proceedings, but if an indictment does not state in substance a crime or states a crime not triable by the court or the offence charged is not disclosed in the depositions, the accused person may move the court to quash it or in arrest of judgment as provided in section 146." [emphasis added]

As is obvious, the prohibition now extended beyond those objections taken by way of demurrer to those taken on any ground at all relating to a defect in the committal proceedings. The prohibition, thus extended, is now to be found in section 78 (1) of the Indictable Procedure Act, Cap 96 of the Substantive Laws of Belize, Revised Edition 2003.

The arguments advanced in support of the application to this Court

[9] The application of the Crown to this Court was based primarily on these provisions of section 78 (1) of the Indictable Procedure Act which have been in force since the end of the last century but were somehow overlooked by everyone concerned in the court below. The main submission of Mr Willis, for the applicant, was that the judge ought not to have quashed the indictment on the basis of his belief that the committal proceedings were defective. He pointed as well, however, to the fact that the indictment in the present case was not shown to be defective in any of the three respects identified in section 78 (1) and so could not have been quashed under the limited powers given to a judge of the court below by that subsection.

[10] Mr Willis further advanced before this Court an argument to the effect that the judge had erred in refusing to allow the woman sergeant of police already referred to above to be called to testify before him as to the committal proceedings conducted on 26 July 2007.

Discussion

[11] The main submission of the applicant is, in the view of the Court, irresistible. But whilst Mr Willis's difficulty with the ruling of the judge appeared to arise, at least in part, from the fact that the judge acted on a mere belief that the committal proceedings were defective, choosing not to avail himself of the opportunity to hear such evidence as the woman sergeant of police might have given, this Court considers that the true error of the judge was simply to proceed on the basis that a defect in the committal proceedings could be of any relevance to the question of the indictment's validity. To put it slightly differently, the judge was certainly wrong to purport to quash the indictment on the basis of his belief that the committal proceedings were defective. But he was wrong so to do not because a mere belief on his part was not a sufficient basis (and evidence to the contrary appeared to be available) but because, by virtue of section 78 (1), there can be no objection to the validity of an indictment on the ground that there has been a defect in the pertinent committal proceedings.

[12] As the Court sees it, Mr Willis's further point as to the absence, on the facts of this appeal, of evidence showing that the indictment suffered from any of the three types of defects identified in section 78 (1) does not, in strictness, require an answer, given that there was never any suggestion by counsel for the respondent in the court below, or by the judge for that matter, that it (ie the indictment) did.

By way of clarification

[13] For the avoidance of all doubt, the Court would note that, in giving its judgment in the terms already repeated at para [1], above, it kept in mind the explicit prayer of the applicant that it should "set aside the quashing of the indictment and the dismissal of the case" and "order that a voluntary bill of indictment be laid and the trial of the Respondent to continue". The express setting aside of the ruling of the judge and the determination that the indictment stands constitute, to the Court's collective mind, the full grant of the applicant's prayer.

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SIR MANUEL SOSA P

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MORRISON JA

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HAFIZ BERTRAM JA