



brought his appeal under the provisions of sections 49 1(a) and 49 2(b) of the Court of Appeal Act Cap. 90.

2. The Director alleged that the trial judge had erred in law when he held that, in order to prove the offence of abetment of dangerous harm, the prosecution had to lead evidence to show that Delita Chavez had given the machete directly to the person who had committed the offence. The Director further alleged that the judge had also erred when he held that the prosecution had not led any evidence to show that Chavez had abetted the crime of dangerous harm.
3. Chavez was indicted on the second count of an indictment which contained two counts. She was charged with abetment of dangerous contrary to section 20(1)(a) read along with section 82 of the Criminal Code Cap. 101. The particulars alleged that, on 11 July, 2002 Chavez “purposely facilitated the commission of the crime of dangerous harm by providing a machete”. We shall return to these particulars later.
4. Chavez is the daughter of Mehetibel Slusher who was indicted on count one of the indictment with intentionally and unlawfully causing dangerous harm to Kimberly Myers on 11 July, 2002, contrary to section 82 of the Criminal Code. Slusher was convicted on 29 December, 2004 of chopping Myers, her niece on the left

side of her head and her left hand with a machete. She was fined \$5,000 to be paid by March 31, 2005 in default she would serve 5 years' imprisonment. In addition, she was bound over to keep the peace for two years or in default she would pay \$1,000. This sentence was subsequently varied by this Court to two years' imprisonment.

5. The evidence against Chavez disclosed that on 11 July, 2002, Myers was involved in an altercation with one Tanya. This altercation took place near to Slusher's house. During this altercation, Chavez came out of Slusher's house with a machete and threw it to Tanya telling her to chop Myers. Tanya seized the machete and unsuccessfully attempted to chop Myers. However, Tanya was disarmed and the machete was given to Slusher. As stated earlier, Slusher subsequently inflicted injuries on Myers with the machete.
6. At the close of the evidence for the prosecution, counsel on behalf of Chavez submitted that the count against Chavez does not say to whom the machete was provided. In addition counsel alleged that the prosecution brought no evidence to show that Chavez provided the machete to anyone who attempted to commit a crime. He submitted that it appeared from the evidence that she threw the machete on the ground and said some words to Tania. He further

submitted that there was no evidence that Tania committed any offence and certainly not that of dangerous harm.

7. In response, counsel for the crown submitted that the section does not require the prosecution to state that any particular person has been abetted because it only relates to the abetment of any offence. Further, she had submitted that the prosecution need only prove three things in relation to abetment:- (i) that the crime of dangerous harm was committed; (ii) that the accused did an act to facilitate the commission of that crime; (iii) that, at the time she did the act, it was her intention to facilitate that crime. Counsel contended that evidence had been led by the prosecution to satisfy these three elements.

8. In his ruling the judge stated:

“In my view where there is an abettor there must be a person who is abetted and is legally described as a principal whether he or she is alone. It is necessary to name the principal, if he is known, for the Court to decide that the count against the abettor in the same indictment with the accused who has direct connection with the crime committed is properly joined.”

The judge ruled that the particulars were inadequate. The judge however considered that the more fundamental issue was whether Chavez abetted Slusher in chopping Myers. He held that the prosecution had not led any evidence that Chavez had purposely facilitated Slusher in causing dangerous harm to Myers. He accepted that evidence showed that Chavez had thrown the machete to Tanya who attempted to use it against Myers. However, after making several attempts to chop Myers, she did not succeed. The judge therefore concluded that, although Chavez was present when Slusher chopped Myers, there was no evidence that Chavez did anything. The judge upheld the submission that there was no case to answer. He directed the jury to return a verdict of not guilty. It is against this ruling that the Director has sought leave to appeal. By ruling as he did that, where there is an abettor there must be a person who is abetted and who is legally described as a principal, the judge clearly failed to appreciate the elements of the offence of abetment under section 20(1)(a) of the Code.

9. Section 20(1) and (2) of the Criminal Code Cap. 101 provide as follows:

20(1)Every person who;

(a) directly or indirectly instigates, commands, counsels, procures, solicits or in any manner purposely aids, facilitates, encourages or promotes the commission of any crime, whether by his act, presence or otherwise; or

(b) does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of a crime by any other person, whether known or unknown, certain or uncertain,

shall be guilty of abetting that crime and of abetting the other person in respect of that crime.

(2) Every person who abets a crime shall, if the crime be actually committed in pursuance or during the continuance of the abetment, be deemed guilty of that crime.

10. Under section 20(1)(a) the offence is committed where a person directly or indirectly, instigates, commands, counsels, procures, solicits or in any manner purposely aids, facilitates, encourage or promote the commission of any crime (emphasis ours). The wording of section 20(1)(a) does not require a person to instigate command etc. another person (emphasis ours) to commit a crime. The offence under this subsection is completed with the instigation,

commanding counseling procuring soliciting etc. the commission of any crime. The subsection does not require that the crime must have in fact been committed before a conviction may be obtained under its provisions.

11. The provision of section 20 (1) (a) is to be contrasted with the provisions of section 20 (1) (b). Under 20 (1) (b) the offence is committed by doing any act for the purpose of aiding facilitating encouraging or promoting the commission of a crime by any other person (emphasis ours). It is an essential ingredient of the offence under 20 (1) (b) that the aiding etc is the commission of a crime by another person.
12. In relation to 20 (1) (a) there is no requirement that the crime which it is alleged, was abetted, should have actually have been committed. That this is so, is clear from the provisions of section 20 (2) which states that, where the crime abetted has in fact been committed, in pursuance or during the continuance of the abetment, the person abetting shall be guilty of the crime abetted. Section 20 (3) provide for the punishment of a person who abets a crime where the crime has not been carried due to the circumstances prescribed in that subsection.
13. Two separate and distinct offences are created by section 20 (1)(a) and 1(b). Under 20 (1)(a) all that is required is for a person directly

or indirectly to instigate etc, the commission of a crime. It is not necessary to show that the person directly or indirectly instigates any particular person to commit any particular crime. Under section 20(1)(a) the offence is committed where a person directly or indirectly instigates the commission of a crime or where a person purposely facilitates etc the commission of a crime. There is no need that the offence instigated should in fact have been committed.

14. Under section 20 (1)(b) the offence requires an act to be done by a person for the purpose of aiding, facilitating, encouraging or promoting another person to commit a crime. It is an essential ingredient of the offence under section 20 (1)(b) that another person be aided in the commission of a crime.
15. It is necessary to compare this requirement of section 20 (1)(a) and section 20 (1)(b). Under 20 (1)(a) the offence is the instigation etc of the crime. There is no need that any particular person be instigated to commit a crime. The use of the words “instigates, commands, counsels, procures, solicits” all import the concept that the offence under section 20 (1)(a) may be committed by words alone. Under 20 1(b) the offence require that another person be aided or facilitated etc. Further the offence required that it must be



an act done for the purpose of aiding etc. Words alone would not suffice under section 20 (1)(b).

16. In **Cecile Gordon, Michael Gordon, William Field v. R. Criminal Appeals Nos. 3, 4, 5 of 1980** (unreported 1980) this Court said of section 17(1) of the Code (now section 20(1)):

“In our opinion the above provisions clearly contemplate that to be an abettor, the person in question must know that the crime is to be committed or is being committed. The aid he gives has to be given purposely, and any act which he does must be done for the purpose of aiding the commission of the crimes.”

17. In his ruling on the no case submission the judge appears to have adopted the common law approach. In so doing, the judge did not appear to be mindful that the offences are created under the Criminal Code and should be governed by the Code. We remind the judge of what this Court said in **Hector Williams v. R. Criminal Appeal No. 1 of 1980** (unreported 1980). This Court had on that occasion to remind that:

“It cannot be too strongly stressed that the Criminal Law (sic) of Belize is not the Criminal Law of England. The law

in Belize is set out in Criminal Code section 4(e) (now section 3(c)) of which reads:

“In the interpretation of this Code, a court shall not be bound by any judicial decision or opinion on the construction of any other statute or of the common law as to the definition of any crime or of any element of any crime.”

18. The Court granted the Director leave to appeal and treated the application as the hearing of the appeal. We allowed the appeal and ordered a new trial.

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**MOTTLEY P.**

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**SOSA J.**

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**CAREY J.**