

**IN THE SUPREME COURT OF BELIZE, A.D. 2022
CRIMINAL JURISDICTION**

CENTRAL DISTRICT

Indictment No. C21 of 2015

THE QUEEN

v.

JOSE LUIS MORENO

- **Rape**

BEFORE Honourable Justice Mr. Francis Cumberbatch

APPEARANCES Ms. Natasha Mohamed – Counsel for the Crown
Mr. Leeroy Banner – Counsel for the Accused

TRIAL DATES 12th March 2020; 21st April 2020; 6th July 2020; 7th November 2020; 27th January 2021; 19th April 2021; 7th, 13th, 22nd, 23rd, and 28th of September 2022; 5th October 2022.

DECISION

{1} The Accused was indicted by the Director of Public Prosecutions for the offence of rape for that he on the 17th day of June 2012, had carnal knowledge of Karoll Mariby Aguilar Ulloa (‘the Virtual Complainant’) a female without her consent contrary to the provisions of section 46 of the *Criminal Code* (Revised Edition)2003.

{2} At his arraignment, 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*.

The Facts

{3} I will summarise the facts of the case for ease of reference. However, in arriving at my verdict I will do so after having considered all of the evidence adduced by both the Crown and the Defence.

{4} The virtual complainant testified that she is a Honduran National and that she along with others left Honduras to travel to Belize to obtain jobs. She went on to state that on the 17th of June 2012, she and one Bella Gutierrez, arrived in Belize. This entry was illegal. They met three gentlemen who transported them in a car to an apartment. One of the men introduced himself to her and Bella and gave his name as, Jose Luis Moreno. She identified the Accused to be that person. They were taken to rooms in the apartment.

{5} The witness went on to say that whilst in her room the Accused entered and told her that they were brought to Belize to be taken to a place to be prostitutes but he could help her to escape. He also said that he was a policeman and was working undercover investigating these kinds of action.

{6} She further testified that, the Accused left the room and when he returned later he was alone with her. He told her they would have to pretend to be having sex so that the other men would not discover him to be a policeman. He then locked the door and turned off the lights. He lay on top of her whilst they were fully clothed and pretended to be having sex. He later removed his clothes and she told him she did not want to have sex.

However, he removed her panty and she felt his penis enter her vagina. She told him many times not to do it and he told her if she does not do it they will kill her and her family. When he closed the door he had sex with her for about 30 minutes and it was only the Accused and her in the room.

{7} The virtual complainant went on to state that she was eventually able to leave the apartment together with Bella and she went to a school building where they met a Lady at the cafeteria who allowed her to use her phone to call her family. On the 24th of July 2012, at about 5:00 p.m., she attended an identification parade where she picked out the Accused who held the number three in a line-up of nine persons as the person who raped her.

{8} Under cross-examination the virtual complainant denied that she was drinking beer that day with the three men. She said there were about seven persons in the apartment. She did not ask the woman at the cafeteria to take her to the police or to the doctor. She agreed that the Accused told her his

full name and allowed her to use his phone to call her sister. She stated that the Accused did rape her and told her he was an undercover police officer. She said, the Human Services personnel took her to the police station and to the doctor. She did not hand over her clothes to the police and the Accused did not use a condom when he raped her.

{9} Under re-examination the virtual complainant said that the Accused asked her for her sister's phone number which she gave to him because he told her he would help her to escape. That was before he had raped her.

{10} **WENCESLADO TEUL** a Crime Scene Technician testified that on the 25th of July 2012, he visited an apartment at the behest of CPL Guido Wright at Guadalupe Street, San Martin. There he photographed the front door, the inside of a bedroom, a bed, the bathroom, and kitchen of the apartment. He was not cross-examined.

{11} **LLOYD ROCHES**, a Crime Scene Technician testified that at around 5:00 p.m. on the 24th of July 2012, he was present at the Queen Street Police Station when he was requested by CPL Guido Wright to photograph the line up at an identification parade at the Ralph Fonseca building at that station. He took the photographs as requested of the nine persons in the room. Each person had a number from one to nine.

{12} Under cross-examination the witness agreed that the men photographed were not in a straight line.

{13} **SUPT ALEXANDER COWO** testified that in July 2012 whilst a sergeant 327 he was requested by CPL Guido Wright to conduct an identification parade. He agreed to do so and contacted one Jose Villagran, a Justice of the Peace to be present thereat. The Accused was the suspect and he informed him that he was detained for an alleged act of rape committed in June 2012. The Accused agreed to participate in the parade after he was informed of his rights and chose the number three. The Accused was introduced to the Justice of the Peace who remained present during the process.

{14} The virtual complainant was called upon to view the parade. She looked at the parade and picked out the Accused at number three as the man who raped her. The witness said he asked her if she was sure and she said, “yes”. He then informed the Accused that he was identified and asked him to step forward. He asked him if he was satisfied with the manner in which the parade was conducted and he said, “it’s okay”. He also signed a document to that effect.

{15} **UNDER CROSS-EXAMINATION** the witness stated that he also conducted another identification parade in which one, Victor Guzman, was the suspect. That parade was also witnessed by Jose Villagran, Justice of the

Peace. Guzman also held number three on the parade. The virtual complainant picked out Victor Guzman who also held number three. The same Justice of the Peace witnessed both parades.

{16} **UNDER RE-EXAMINATION** the witness said Guzman was asked to choose any number he wished. He said he did not assign any number to Guzman, he picked out his own number. He stated that he used the same persons on both parades and that the room is completely enclosed.

{17} The witness in reply to questions by the Court said that the virtual complainant attended both parades. Guzman, was identified by her and by another witness. The virtual complainant also picked out the Accused on an identification parade. There was also another witness who attended the identification parade. The Court invited Counsel to ask the witness any further questions they wished arising from the questions asked by the Court.

{18} **JOSE VILLAGRAN** testified that he has been a Justice of the Peace from the year 1991. On the 24th of July 2012, he was requested to witness an identification parade for the offence of rape which allegedly took place on the 17th of June 2012. He said he was introduced to the Accused and was present when he was told of his rights and the Accused agreed to participate in the parade. He chose the number three in the line-up.

{19} The virtual complainant was asked to view the line-up which she did and she identified number three. The Accused was told that he had been identified and he agreed with the conduct of the parade.

{20} **UNDER CROSS-EXAMINATION** the witness said that before he witnessed the identification parade for the Accused he witnessed one for one Guzman. There were two female witnesses. The first witness was the virtual complainant and the second was Bella Gutierrez. He said SGT Cowo told the virtual complainant she described a male person to the police who she said was inside the room while she was being raped. Both the virtual complainant and Bella picked out Guzman but he cannot now remember if he was only a witness.

{21} There was no re-examination.

{22} **SGT GUIDO WRIGHT** testified that on the 19th of June 2012, he received information of two Honduran females suspected of trafficking of females in Belize. He spoke with officers attached to Human Services. They introduced him to the virtual complainant and Bella Gutierrez and he interviewed them.

{23} On the 18th of July he recorded a statement from the virtual complainant. The female persons were counselled by Human Services officers before he

recorded statements from them. He said that on the 20th of June 2012, he recorded a statement from Bella Gutierrez.

{24} On the 24th of July 2012, the Accused was detained. He was cautioned and told of his rights. On the following day the Accused was escorted to the Queen Street Police Station for an identification parade. He requested SGT Cowo to conduct the parade and he was told that the Accused was positively identified on the parade. On that same day, he formally arrested and charged the Accused for rape of the virtual complainant.

{25} **UNDER CROSS-EXAMINATION** the witness said that on the 19th of June 2012, the virtual complainant told him the Accused raped her. At that time because of an ongoing investigation for human trafficking he did not arrest the Accused. The statement was recorded after the victim was counselled by Human Services. The Accused was not charged for human trafficking offences. He said it was not in the virtual complainant's statement that Bella was in the room when she was raped. He said whatever the virtual complainant said he recorded in her statement.

{26} The witness stated that he cannot recall that the Accused offered to give him his DNA to be tested. He said his report states that the Accused remained silent. The witness said he took statements from other persons. He does not recall taking a statement from a Lady at the school cafeteria. He did not take

a statement from anyone at a school. He agreed that the correct procedure is to take the victim to be medically examined.

{27} There was no re-examination.

{28} The Court granted the Crown leave to close its case without calling the witness Bella Gutierrez who cannot now be located and Minor Cruz who is now Deceased. There was no objection by the Defence.

{29} The Accused was told of his rights and elected to make an unsworn statement from the dock. He completely denied the allegation of rape made against him by the virtual complainant. He agreed that he had told the virtual complainant his name and provided her with his phone number to communicate with her relatives in Honduras. He called no witnesses.

{30} The Court thereafter heard closing addresses by Counsel on both sides and thereafter set a date to render its decision.

The Law

{31} Section 46 of the *Criminal Code* provides *inter alia* that anyone who commits rape shall on conviction be liable to a maximum penalty of life imprisonment. Section 71 describes rape as “*carnal knowledge of a female without her consent*”. Carnal knowledge means, “*the penetration of the female vagina by the male penis*”. Section 73 of the *Criminal Code*

provides that the carnal knowledge shall be deemed complete upon proof of any or the least degree of penetration only.

{32} Thus, the Crown's case must satisfy me to the extent that I feel sure that all of the aforesaid ingredients of the offence of rape have been proven and that it was the Accused who committed this offence.

{33} In this regard, I shall consider and analyze the evidence adduced by the Crown from its witnesses aforesaid. I must also take into account the unsworn statement of the Accused.

Analysis of Evidence

{34} First of all, it is common ground that the Accused gave the virtual complainant his name and cell number. Defence Counsel contends that this behaviour is not consistent with that of a person who intends to rape the virtual complainant.

{35} The holding of two identification parades is a matter which I must carefully consider as it has caused me some measure of concern at the investigation. The virtual complainant in her testimony did not speak of attending more than one identification parade. She said at that parade she identified the Accused as the man who allegedly raped her. She made no mention of a second identification parade at which she picked out one, Victor Guzman.

{36} The evidence of the conduct of a second identification parade involving Guzman was adduced by SUPT Cowo who whilst under cross-examination said Guzman was another suspect. The obvious question which arises is, why was Guzman placed on identification parade when no mention was made of him by the virtual complainant or SGT Wright as a participant in this offence? Was he an accomplice or just a suspect? Cowo stated under oath that Guzman was a suspect on the second identification parade.

{37} The Justice of the Peace whom I consider to be a neutral party, stated under oath that at the identification parade in which the virtual complainant picked out Guzman, she did so after to see if she could identify the male person whom she had told the police was present in the room when she was raped.

{38} The virtual complainant under oath in answer to a direct question from Crown Counsel stated that no one else was present when she was raped by the Accused. I find this assertion by the virtual complainant to be wholly inconsistent with the evidence of the SUPT Cowo that he held another identification parade at which Guzman was the suspect and that he was picked out by the virtual complainant. Moreover, this evidence was supported by the testimony of the Justice of the Peace who said that prior to the virtual complainant identifying Guzman at the parade she was told that she described to the police another male person who was in the room while

she was being raped. Both the virtual complainant and Bella Gutierrez picked Guzman as that man.

{39} SGT Guido Wright, who was the investigator made no mention of Victor Guzman being a suspect or person of interest in this matter. Indeed, he only testified of requesting that an identification parade be held in respect of the Accused and after he was identified he formally arrested and charged him for the offence of rape of the virtual complainant. So the unanswered question is, under what circumstances and for what purpose was Guzman placed on an identification parade to be viewed by the virtual complainant in this matter?

{40} I find that after having considered the evidence as a whole, I do not find the virtual complainant to be a reliable witness. Moreover, the evidence that at the time the virtual complainant was being raped that Victor Guzman was present and so was Bella Gutierrez completely changes the landscape touching and concerning this alleged offence.

{41} Accordingly, after having carefully considered all of the evidence adduced by the Crown, I am not satisfied to the extent that I feel sure that the offence of rape against the Accused has been proved.

Verdict

{42} In the circumstances, the Accused is found not guilty of the offence of rape as indicted.

Dated this **5th day of October 2022.**

Honourable Justice Mr. F M Cumberbatch
Justice of the Supreme Court
Central Jurisdiction
Belize C.A.