

IN THE COURT OF APPEAL OF BELIZE A.D. 2026

CRIMINAL APPEAL NO. 23 OF 2023

BETWEEN:

SABANITO CAL

Appellant

AND

THE KING

Respondent

Before:

The Hon. Mme. Louise Esther Blenman
The Hon. Mme. Minnet Hafiz Bertram
The Hon. Mr. Peter I Foster, KC

Chief Justice
President
Justice of Appeal

Appearances:

Mr. Orson Elrington for the Appellant
Mr. Javier Chan, Assistant Director of Public Prosecutions and
Ms. Maria Nembhard Santana, Crown Counsel, for the Respondent

2026: March 19
June 4

JUDGMENT

Introduction

- [1] **Hafiz Bertram, P.:** Mr. Sabanito Cal ('the Appellant') was convicted, along with three co-accused, of the offence of manslaughter by Justice Moore ('the trial judge') sitting as a single judge in the Southern District of the Supreme Court. The Appellant was sentenced to 15 years' imprisonment. He appealed against his conviction and sentence.
- [2] The issues raised in the appeal are joint enterprise and intention to kill, the element of lawful justification which was not negated, in law, by the Prosecution and whether the Appellant was entitled to an acquittal; no forensic evidence to corroborate the eyewitness testimony, the verdict being unsafe and unreasonable and the manifestly excessive sentence.

[3] The Appellant and his co-accused were charged with murder and the offence was reduced to manslaughter by extreme provocation. Murder as defined by section 117 is “ Every Person who intentionally causes death of another person by unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mentioned.”

[4] The Court heard the appeal on 19 March 2026 and reserved its decision. We now dismiss the appeal against both conviction and sentence. Our reasons are set out below.

The Facts

[5] The Appellant was charged along with Tyrone Ba, Arnold Xol and Leonardo Ba (‘co-accused’) with the offence of murder contrary to *section 117 read along with Section 106(1) of the Criminal Code*.¹ The particulars of the indictment were that the Appellant and the three co-accused murdered Santiago Garcia (‘the deceased’) on 22 April 2017 at Trio Village, in the Toledo District.

[6] The trial commenced in November 2021 and a judgment was delivered in June of 2023. The trial judge found that the Appellant and the three co-accused acted jointly to kill the deceased. However, the crime was reduced to manslaughter by reason of extreme provocation. She found them not guilty of murder but guilty of manslaughter. The Appellant and the co-accused appealed their convictions and sentences². The co-accused withdrew their appeals before the hearing of the appeal.

Prosecution’s case

[7] The prosecution called 11 witnesses to prove its case. These witnesses included PC Julio Sanchez, the investigating officer, Pablo Mai, the Scenes of Crime technician, Jason Hyde, Forensic Analyst, Hector Caal who is the uncle of the Appellant, Jose Caal, Arturo Choc Rax, Corneilo Requena and Dr Loyden Ken Sanchez, the medical expert who performed the post mortem examination on the deceased. Three statements, agreed upon evidence by the Crown and the Defence, were read into the record.

¹ Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011.

² CRIMINAL APPEAL NOS. 23, 26, and 27 of 2023

- [8] The prosecution's case relied primarily on the testimony of three eyewitnesses evidence provided by Jose Caal, Hector Caal, and Arturo Rax. These witnesses were central to establishing the events surrounding the incident, and their testimonies formed the cornerstone of the prosecution's argument in court. They testified that the four accused argued with three men including the deceased and then engaged in a physical fight with them. The deceased fell while trying to flee and as he lay on the ground, the four accused jointly issued lethal machete chops to his head and body.
- [9] Dr. Sanchez testified that based on his examination, the cause of death of the deceased was due to "severe cranio-encephalic traumatic injuries due to multiple chop wounds to the head." The Doctor explained that "cranioencephalic" meant the skull and the brain.
- [10] Mr. Jose Caal testified that on 22 April 2017, about 8.15 am whilst at home he heard a noise outside. When he looked, he saw the first, second and fourth accused, all of whom he identified in court, going toward another group of men. The first accused, the Appellant is his nephew. When he first saw three of the accused, they were about 150 feet away and there was a streetlight that provided light so that he was able to see. Later he saw two men running up the street and noted that they were the second and fourth accused. The Appellant went to his house with what he believed was blood on his shirt and a machete in his hand. He testified that the Appellant went inside of his house (Mr. Caal's house) and shoved his machete into the ashes in the fire hearth. The Appellant then went outside and washed himself after Mr. Caal told him he could not stay at their house if he had done something and so he left the premises. Mr. Caal identified the Appellant in court. He had known him for about 25 years. He also identified the other three accused whom he had known for many years. His testimony remained consistent during cross-examination.
- [11] Mr. Hector Caal is the Appellant's uncle. He testified that on the evening of 22 April 2017, he saw the Appellant go to Jose Caal's house with apparent blood on his shirt and on the machete that he had with him and pushed the machete into the ashes of the fire hearth. Before this, he had seen Leonard Ba (the fourth accused), Tyrone Ba (the second accused) and Sabanito Cal (the first accused) pass by the streetlight, each carrying a machete. He testified that he heard screams after the men walked by, but did not witness anything.
- [12] Mr. Arturo Choc Rax testified that he was among the men whom the accused encountered after passing near Jose Caal and Hector Caal that evening. Mr Rax had earlier been with the deceased and Arturo Choc at a shop in Trio village where they were drinking "bad man." Mr Rax said that the

three men left the shop and “went down the street by the Pentecostal Church...by the time we reach the small culvert...then I saw the four persons carrying machetes in their hands...like twenty five feet away.” Mr Rax said these four men attacked him and his colleagues with machetes. He was chopped on his arm and ran, with Arturo Choc (another witness in this case) following him. He further testified that he saw the deceased on the ground and saw the four accused around the deceased chopping him. Mr. Rax named each of the four accused by name and identified each in court as persons he knew before the incident. He said there was a lamp post by the church and the culvert that allowed him to see the incident.

[13] In cross examination, Mr Rax agreed that he too had a machete on the day of the incident but denied pulling out his machete because of a confrontation he had with someone. He denied that he confronted the four men with his machete and that he had attacked them first. Mr Rax claimed he has not seen who chopped the deceased even though in his examination-in-chief he had testified that he saw the accused men chopping the deceased.

[14] Mr Arturo Choc testified that earlier on the evening of the incident he was drinking with the deceased and Mr. Rax at a shop. They were attacked by four men after they left the shop. He identified those men as the four accused which included the Appellant. He said he knew the first accused (the Appellant) for sixteen years since they played football together. He testified that each of the four accused had machetes and they got into a fight in which he was chopped on his forehead by the fourth accused. After he was injured he ran towards the Pentecostal Church. He was able to see the event unfold from the church light. He testified further that the four men chopped the deceased after the deceased ran and fell. In cross-examination, he denied that he was drunk and maintained that he saw the four accused attack the deceased.

Case for the defence/Appellant

[15] The Appellant made an unsworn statement and called no witnesses. The full statement is as follows:

“Your Honour, I will like to say to the Court in respect (inaudible) that on Saturday, 2017, 22nd of April, I was at home in Trio Village. I have no knowledge about the crime of the deceased and I am just accused wrongfully by the witnesses. The witnesses are telling lie against me and to the Court. You and I know to the fact that the witnesses are telling lie to the Court. I am innocent of the crime of the deceased. In respect I say to the Court, Your Honour, thank you very much.”

The trial judge gave no weight to the unsworn statement of the first Accused (the Appellant). She did not believe his alibi.

The decision of the trial judge

- [16] There was no dispute that Santiago Garcia is dead and that he died of harm. The trial judge accepted the testimony for the Crown, mainly the evidence of Jose Caal, Arturo Rax and Hector Caal that it was the four accused who jointly participated in the chopping of the deceased at least by surrounding him and preventing him from escaping. She could not determine from the evidence which of the four accused inflicted the deadly chop wounds. However, she noted that it was clear from the evidence that the first accused, the Appellant, inflicted at least two chop wounds with a machete on the deceased. Further, there was no evidence that any of the four accused effectively withdrew from the crime. All four of them remained on the scene after the chopping and departed together. The trial judge found that: the four accused jointly caused harm to the deceased; that each of the accused intended to kill the deceased when they acted jointly to kill him; and in relation to the element of lawful justification to harm the deceased, the trial judge concluded that the Crown did not negative the existence of lawful justification. She was sure that there was a degree of provocation because of harsh words and stone throwing, but unsure that there was extreme provocation. As such, that finding precluded a verdict of guilty of murder. She found them guilty of manslaughter by reason of extreme provocation.

In relation to sentence, after considering, the sentencing principles and applying the aggravating and mitigating factors of the offence and offender, the trial judge imposed a sentence of 15 years on the Appellant.

The Appeal

- [17] The Appellant appealed his conviction on five grounds:
- (i) The trial judge erred in law in convicting the Appellant of manslaughter after finding that the prosecution failed to negative lawful justification beyond reasonable doubt.
 - (ii) The trial judge misapplied the doctrine of joint enterprise in the absence of proof beyond reasonable doubt that the Appellant shared the requisite intention to kill or cause grievous bodily harm or intentionally assisted or encouraged the fatal act.
 - (iii) The trial judge erred in law in imposing joint criminal liability despite being unable to determine which accused inflicted the fatal injuries.

- (iv) The learned trial judge erred in relying on uncorroborated and unreliable eyewitness testimony in circumstances where there was no forensic evidence linking the Appellant to the fatal injuries.
- (v) The verdict is unsafe and unreasonable having regard to the evidence as a whole.

Sentence

[18] In relation to sentence the ground is as follows:

The sentence imposed is manifestly excessive and/or wrong in principle in that the trial judge failed to:

- (a) Properly account for findings of possible extreme provocation;
- (b) Individualise the sentence to the Appellant's role;
- (c) Accord sufficient weight to relevant mitigating factors.

[19] *Relief sought on appeal*

- (a) That the conviction be quashed and a verdict of acquittal entered; or
- (b) In the alternative, that the sentence be set aside and a substantially reduced sentence substituted or the matter remitted for re-sentencing.

Ground 1: The trial judge erred in law in convicting the Appellant of manslaughter after finding that the prosecution failed to negative lawful justification beyond a reasonable doubt.

[20] Learned Counsel, Mr. Elrington for the Appellant submitted that that the trial judge expressly found at paragraphs [41] and [42] of the judgment that: (a) there was evidence capable of amounting to extreme provocation and (b) the prosecution failed to negative lawful justification to the requisite criminal standard. Therefore, where a court is left in reasonable doubt as to whether an accused acted with lawful justification or under extreme provocation, the accused is entitled to an acquittal, not a conviction for a lesser offence. Therefore, the conviction of manslaughter is founded on an error of law.

[21] Counsel further submitted that the burden of negating defences or partial excuses lies with the prosecution. He relied on **Woolmington v DPP**³, **Palmer v R**,⁴ **Bennett v R**⁵ and **Bermudez v R**.⁶

³ [1935] AC 462

⁴ [1971] AC 814

⁵ (1974) 21 WIR 372

⁶ Criminal Appeal No. 19 of 2011

This is not disputed. The trial judge found that the Prosecution did not negative lawful justification beyond a reasonable doubt.

[22] Mr. Chan for the Crown submitted that based on the evidence the trial judge did not err in law by convicting the Appellant of manslaughter after finding that the Crown failed to negative lawful justification beyond a reasonable doubt. He referred to paragraph [41] of the judgment of the trial judge at line 3 where the trial judge said, “.... *the Crown did not negative lawful justification. In my mind, there is evidence that the lawful justification of either self-defence or extreme provocation existed in this case*”.

Murder - Intentional killing

[23] The Appellant was charged for murder. Section 117 of the Criminal Code defines murder as:

“117. “Every Person who intentionally causes death of another person by unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mentioned”.

The sections referred to are section 118 which provides for Diminished Responsibility and is not applicable to this case. Section 119 shows when intentional *homicide* is reduced to manslaughter.

When intentional homicide is reduced to manslaughter

[24] Section 119 of the Criminal Code provides for when intentional homicide is reduced to manslaughter,

“119. A person who intentionally causes the death of another person by unlawful harm shall be deemed to be guilty only of manslaughter, and not of murder, if there is such evidence as raises a reasonable doubt as to whether–

- (a) he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in section 120 of this Act; or
-”

[25] Sections 117 and 119 of the Criminal Code provide for when a crime of murder, an intentional killing can be reduced to the crime of manslaughter and this includes extreme provocation. The trial judge had reasonable doubts as to whether there was self-defence or provocation.

[26] The basis on which the trial judge did not find the Appellant guilty of murder is shown at paragraph [41] of the judgment where she said “.... *the Crown did not negative lawful justification. In my mind, there is evidence that the lawful justification of either self defence or extreme provocation existed in this case*”.

On the evidence presented by the Prosecution, the trial judge was satisfied that there was some degree of provocation but was unsure about extreme provocation.

Provocation – partial excuse

[27] Provocation is defined at section 120 of the Criminal Code:

“120. The following matters may amount to extreme provocation to one person to cause the death of another person, namely–

(a) an unlawful assault or battery committed upon the accused person by the other person, either in an unlawful fight or otherwise, which is of such a kind either in respect of its violence or by reason of words, gestures or other circumstances of insult or aggravation, as to be likely to deprive a person, being of ordinary character, and being in the circumstances in which the accused person was, of the power of self-control;

(b) the assumption by the other person, at the commencement of an unlawful fight, of an attitude manifesting an intention of instantly attacking the accused person with deadly or dangerous means or in a deadly manner;

.....

(e) anything said to the accused person by the other person or by a third person which were grave enough to make a reasonable man to lose his self-control.”

[28] The Prosecution did not negative lawful justification (partial excuse) which in this case is extreme provocation. At [42] of the judgment the trial judge concluded that:

“I am sure based on the evidence that there was a degree of provocation which caused the four accused to approach the threesome of Arturo Choc, Arturo Rax and the deceased...The prosecution has therefore not proven that the harm inflicted was done so without lawful justification, to the required standard in a criminal case. With respect to each of the four accused, this finding precludes a verdict of guilty of murder.”

[29] The trial judge further discussed lawful justification at [55] where she found that the Appellant cannot be found guilty of murder because of the partial excuse of provocation,

“My uncertainty is in regards to the final element of murder, whether there was lawful justification (a partial excuse) on the part of each accused to act as he did at the time of the killing. I cannot be sure there was not extreme provocation acting upon the four accused causing them to lose their self-control and respond as they did. There was hard talking, obscene language and stone throwing. In this scenario, I am not sure who was doing what prior to the machete attack instigated by the four accused so cannot be sure to exclude extreme provocation. Thus, I cannot find any of the accused guilty of murder.”

[30] At paragraph [56] when the trial judge handed down her verdict, she stated “Based on my findings with respect to the first accused, I am sure that he acted jointly with the three co-accused to kill the deceased. But because I find at the time he may have had a partial excuse, I find the first accused not guilty of murder. He is guilty of manslaughter.”

[31] The Appellants had an intention to kill the deceased as found by the trial judge but the sentence was reduced to manslaughter by the partial excuse of provocation as shown above. As such, the Court disagrees with Mr. Elrington’s submission that where “a court is left in reasonable doubt as to whether an accused acted with lawful justification or under extreme provocation, the accused is entitled to an acquittal, not a conviction of a lesser offence”. In the view of the Court, the trial judge made no error in convicting the Appellant for manslaughter based on extreme provocation.

Self-defence

[32] Mr. Elrington argues for an acquittal and I will briefly address this point in the context of self-defence. The Appellant did not present a defence of self defence and the trial judge did not address self-defence as a defence. Section 36(4) provides that:

“(4) For the prevention of or for the defence of himself or of any other person against any of the following crimes, a person may justify the use of necessary force or harm, extending in case of extreme necessity even to killing, namely—

....

(c) murder

(d) manslaughter, except manslaughter by negligence;”

[33] There is no evidence in the instant matter that this was a case of self-defence by the four accused including the Appellant. The deceased fell on the ground after he ran away from the four accused. He was chopped on his head and body whilst he was surrounded by the four accused. Based on this evidence, this was not a case of self-defence. Further, the Appellant’s case is that he was not there. His defence was alibi which was given no weight by the trial judge.

[34] The trial judge referred to self-defence only once, and only in the context that she was not satisfied that the Crown had negated lawful justification (a partial excuse). As noted earlier, she stated: “the Crown did not negative lawful justification. In my mind, there is evidence that the lawful justification of either self defence or extreme provocation existed in this case”. In referring to lawful justification, she was not making a finding that either self-defence or extreme provocation had been established. She later found

provocation, while remaining uncertain whether it amounted to extreme provocation, without examining self-defence further. On the evidence, we are satisfied that the Appellant was not entitled to an acquittal.

[35] For those reasons discussed, this ground is without merit and is dismissed.

Ground 2 : The trial judge misapplied the doctrine of joint enterprise in the absence of proof beyond reasonable doubt that the Appellant shared the requisite intention to kill or cause grievous bodily harm or intentionally assisted or encouraged the fatal act.

[36] The *mens rea* required for the offence of murder in Belize is an intention to kill. Section 6 of the Criminal Code provides for the standard test of intention, that is, whether the person, (the appellant in this case) intended to produce the result, that is, to kill the deceased when he chopped him with the machete.

[37] Section 9 of the Criminal Code sets out the approach to be adopted in relation to proof of intention to kill. Section 9 of the Criminal Code provides that:

“9. A court or jury, in determining whether a person has committed an offence-

- (a) shall not be bound in law to infer that any question specified in the first column of the Table below is to be answered in the affirmative by reason only of the existence of the factor specified in the second column as appropriate to that question, but
- (b) shall treat that factor as relevant to that question, and decide the question by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.”

[38] The relevant question and factor in this case is whether the person charged with the offence (the Appellant) intended to produce a particular result by his conduct (question) by the “fact that the result was a natural and probable result of such conduct.” (appropriate factor). The trial judge correctly applied section 9 of the Criminal Code to the evidence in this case.

[39] Mr. Elrington submitted that joint criminal liability was imposed without proof beyond reasonable doubt that the Appellant shared a common intention to kill or cause grievous harm or intentionally assisted or encouraged the acts that caused death. He relied on **R v Jogee and Ruddock v The Queen**.⁷ He argued that mere presence or foresight is insufficient. The learned judge therefore erred in law by imputing joint liability in the absence of the necessary *mens rea*.

⁷ [2016] 2 ALL ER 1.

[40] Mr. Chan in response submitted that the test in **Chan Wing-Siu**⁸ of foresight is applicable in this case.

[41] In the view of the Court, the trial judge meticulously addressed *mens rea* (intention to kill) and drew inferences from the evidence on the question of intention to kill, contrary to the submissions of Mr. Elrington. This can be seen at [39] to [40] of the judgment:

[39] I now turn my attention to whether each accused intended to kill the deceased when they acted jointly to inflict the deadly harm on him.

Intention to kill is the *mens rea* for murder in our jurisdiction. It is essential that the Prosecution provide evidence that makes the trier of fact feel sure that when the accused caused the fatal injury it was with the specific intention to kill the deceased. If this element is not proven an accused may be guilty of manslaughter and not murder, depending on the remaining circumstances.

The law guides the trier of fact to look at all of the surrounding circumstances in an incident to try and determine the intention of the accused. Section 9 of the Criminal Code says that to determine if an accused person intended to produce a particular result by his conduct, it must be decided by reference to all the evidence, drawing such inferences from that evidence as appear proper in the circumstances. I have directed myself in this regard in deliberating on the element of intention.

Further, I am mindful that I am not bound to infer an intention to kill from the mere fact that death was in my opinion a natural and probable result of the action of the accused persons. This is however a fact that is relevant to the question of intent and I would have to take it into account when considering all the evidence and the proper inferences to be drawn from that evidence.

[40] The following are the factors that I considered in deliberating the element of intention to kill: **(a) the deceased was chopped repeatedly (six times to the head, two to the back, one to the left hip, and one defensive wound to the right forearm); (b) the deceased was chopped multiple times in his head; (c) according to the doctor, all but one of the chop wounds to the head was made using “severe force”; (d) the item used to cause the injuries was a sharp edged pointed heavy object; (e) each accused was aware that their compatriots possessed machetes at the scene and were using the weapons against the deceased; and, (f) none of the accused assisted the deceased but rather left him seriously injured on the road.**

Based on all of these circumstances discussed, I am sure that when the four accused participated together to cause the deadly harm to the deceased they each did so with the intention to kill him.”

⁸ [1985] AC 168

[42] This Court is satisfied based on the evidence of the Crown which the trial judge accepted at [40] of the judgment that the Appellant participated together with the other accused to cause the deadly harm to the deceased and they each did so with the intention to kill him. It was the only inference to be drawn from the evidence. As such, the Court is of the view, that there was no misapplication of joint enterprise as argued by Mr. Elrington, as intention to kill was properly inferred by the trial judge based on the evidence. She was satisfied beyond a reasonable doubt on the Appellant's intention to kill.

[43] For those reasons, the ground is without merit and is dismissed.

[44] Before leaving this ground, we note that the **Chan Wing-Siu** test of foresight which discussed principal and accessory, relied on by the Crown, is inapplicable to this case where a lower mental threshold was required for guilt in the case of an accessory. **Jogee and Ruddock** relied upon by Mr. Elrington “rationalised the law as to secondary participants, removing the anomaly produced by **Chan Wing-siu** whereby a lower mental threshold was required for guilt in the case of an accessory than for a principal. ... What **Jogee** did was to correct this imbalance, establishing that foresight is not to be equated with intent to assist. This does not mean that foresight is now irrelevant; rather, it is to be treated as evidence of intent. In other words, while foresight is not to be inevitably equated with intent, it can certainly provide strong evidence thereof.”⁹ In the instant case, there was no secondary participants, only principals. The Court sees no need to discuss these authorities any further.

Ground 3: The trial judge erred in law in imposing joint criminal liability despite being unable to determine which accused inflicted the fatal injuries.

[45] Mr. Elrington submitted that the trial judge at paragraph [31] accepted that she was unable to determine which accused inflicted the fatal injuries and found that the Appellant inflicted at least two chop wounds, without identifying their lethality.

[46] The joint enterprise in this case was an agreement to murder the deceased as shown by the evidence of the Prosecution. There was no other plan, for instance to rob and a murder was committed during the robbery. On the evidence of this case it was “a paradigm case of joint enterprise liability” which Lord Hoffman described in **Brown & Isaac v The State**¹⁰ at [13] as the “**the plain vanilla version of joint**

⁹ Eli Avila Lopez & Milton Maza Criminal Appeal No. 22 & 23 of 2018 at [38]

¹⁰ [2003] UKPC 10

enterprise: a plan to commit the actual offence charged.” There was no secondary participants. Each of the accused in the present case shared the intention to commit the offence of murder.

[47] The trial judge correctly discussed the legal principles of joint enterprise at paragraphs [30] to [33] before concluding that the four accused acted jointly to cause the harm to the deceased. At [30] she considered the different forms of joint enterprise, principal and secondary liability. She correctly explained that a “plan or agreement between the parties does not necessarily entail formality or even spoken words, but rather may be made with a nod or a wink or a knowing look between the parties. The agreement may be inferred from the behaviour of the parties.”

[48] The trial judge stated that joint liability for the crime required that each accused shared the intention to commit the crime and participated in some way to achieve the crime. The evidence she found credible were that the four accused were observed at the scene moving together on the night of the incident and concluded from all the evidence that they were not only present but jointly attack the deceased. She said,

“[31] .. They would each have been aware that the others were in possession of machetes. Witnesses saw the machetes (although Requena claims he saw nothing in their hands). In the course of the attack, they all participated in the chopping of the deceased at least by surrounding him and preventing him from escaping. From the evidence, **I cannot determine which of the four inflicted the deadly chop wounds, although it is clear from the evidence that the first accused inflicted at least two chops wounds on the deceased.**

[32] There is no evidence that any of the four accused effectively withdrew from the crime. Rather, they each remained on the scene after the chopping. Thereafter, they departed together, separating only afterwards.

[33] **I am sure that each of the accused contemplated, even if only in the split second of the occurrence of the chopping, that it was within the scope of the joint criminal enterprise that they would kill the deceased. As the deceased lay helpless on the ground and they each surrounded him and inflicted multiple machete blows to his head and body, they participated jointly in causing the harm that killed him.** I have inferred this from the behaviour of the four accused persons and determined that the moment each accused saw their co-accused inflicting injuries on the deceased that each accused possessed the requisite intention and acted jointly to kill the deceased.”

[49] In her conclusion from paragraphs [34] to [38] she discussed the evidence of the Crown which she accepted and found that, "After reviewing all of the Crown evidence regarding this element and taking the "interest to serve" warning into account, I am sure that the four accused acted jointly to inflict the harm that resulted in the death of Santiago Garcia, the deceased."

[50] The Appellant's complaint is that the trial judge at paragraph [31] accepted that she was unable to determine which accused inflicted the fatal injuries. In the view of this Court, in a case of joint enterprise, it was not necessary to prove who delivered the fatal injuries. All four accused chopped the deceased whilst he was lying on the ground. It would have been impossible to determine which chop killed the deceased. As such the trial judge could not determine if the two chops from the Appellant killed the deceased.

[51] In **Patrick Robateau and Leslie Pipersburgh**,¹¹ Justice of Appeal Morrison (as he was then) at paragraph [71] of that judgment relied upon **Brown & Isaac** in which the evidence did not disclose which of the two appellants had fired the fatal shots in a case of murder by shooting or, indeed, whether both or only one of the appellants had been armed with guns. In order to convict them both of murder, it was therefore necessary for them to be found liable on the basis of joint enterprise., Lord Hoffmann who delivered the judgment of the Board said at paragraph [8]:

"8. The simplest form of joint enterprise, in the context of murder, is when two or more people plan to murder someone and do so. If both participated in carrying out the plan, both are liable. **It does not matter who actually inflicted the fatal injury.** This might be called the paradigm case of joint enterprise liability...."

[52] In the present case, there was only one agreement by the four accused and that was to chop the deceased with the intent to kill him. It does not matter who inflicted the fatal injury. The Appellant acted jointly with the other co-accused to kill him. The evidence proved beyond a reasonable doubt that all four accused were armed with machetes and chopped the deceased whilst he was lying on the ground. As such, the trial judge did not err in imposing joint criminal liability on all four accused. The Court sees no reason to interfere with her finding on joint criminal liability on the four accused including the Appellant. The ground is without merit and is dismissed.

¹¹ Criminal Appeals Nos. 14, &16 of 2011

Ground 4: The learned trial judge erred in relying on uncorroborated and unreliable eyewitness testimony in circumstances where there was no forensic evidence linking the Appellant to the fatal injuries.

[53] Mr. Elrington argued that the prosecution case rested primarily on the testimony of Arturo Choc, Arturo Rax, and Cornelio Requena, each of whom was present at the scene, had consumed alcohol, and had potential exposure to criminal liability. He further argued that although the trial judge warned herself of the danger of relying on such testimony at paragraph [36] of her judgment, she nevertheless convicted the Appellant without independent corroboration. He submitted that exceptional caution is required in such circumstances as shown in **R v Makanjuola**¹² and **Teper v R**¹³.

[54] In the view of the Court, the trial judge adequately addressed the points on consumption of alcohol, witnesses trying to shield themselves from blame, and gave herself a proper direction on the special need for caution before convicting any of the accused. She considered the evidence and was convinced the Appellant and his co-accused were the initiators and aggressors and approached Mr. Coc and Mr. Rax. Nevertheless, she cautioned herself about witnesses with interest to serve. The judge dealt with these issues at paragraphs [36] [37] and [38] of her judgment.

Interest to serve and caution points

[55] The trial judge addressed interest to serve and cautioned herself. She considered the evidence which proved that the Appellant and the other accused acted jointly and approached the deceased. They were the aggressors and initiators. She said at paragraph [36],

[36] As for the witnesses trying to shield themselves from blame, I have considered this as a genuine possibility. However, I have considered how the incident began, with the four armed accused acting together to approach the deceased and his compatriots. They would be seen as the initiators, the aggressors, seeking out the Arturos and the deceased. Once the police gathered all of the statements, they would have been dispelled of the notion that Arturo Choc or Arturo Rax caused any harm to the deceased and these witnesses would no longer have had to fear being blamed for the death.

I accept that the witnesses may have initially been in fear when questioned by the police. After all, their colleague was dead and they were with him at the time. For this reason, I warned myself about witnesses who have an interest to serve. I warn myself of two things in relation to the testimony of Arturo Choc, Arturo Choc Rax and Cornelio Requena. First, it is dangerous to rely

¹² [1995] 1 WLR 1348

¹³ [1952] AC 480

upon their testimony without corroboration and secondly, if I decide that I can rely upon it to convict, I must treat this evidence with exceptional care. This is so because when Requena and the two Arturos gave the police their statements implicating the four accused and also when they testified in court, they may have done so not with the truth in mind but rather for self-serving reasons, i.e. to escape personal culpability. I must and do consider that if these witnesses had an interest of their own to serve, this may have caused each to be untruthful in court. As trier of fact, I keep uppermost in my mind that it is dangerous to rely upon uncorroborated testimony. I further direct myself on the special need for caution before convicting any of the accused relying on these witnesses' evidence and nothing more.

[56] The trial judge also gave herself a further warning at paragraph [38] when she concluded that the four accused jointly caused the death of the deceased.

Alcohol point

[57] The issue of alcohol was addressed at paragraph [37],

“[37] Another submission is that the consumption of alcohol and the intoxicated state of the witnesses prevented them from accurately observing and recalling what happened that night. I have no doubt that alcohol, at least partially, fuelled this incident. There was no evidence at trial that the Caal brothers had been drinking or were intoxicated so this submission would not apply to their evidence. The Crown witnesses who admitted they had consumed quantities of liquor, deny that it impaired their ability to see and recall what happened. I accept this. There was no evidence about the accused persons were intoxicated.”

[58] The trial judge accepted the evidence of the Crown witnesses that the alcohol caused no impairment to their ability to see and recall what happened. She found their evidence to be credible.

The point on forensic evidence

[59] Counsel further contended that there was no forensic evidence linking the Appellant to the fatal wounds, no recovered weapon attributed to him, and no independent evidence establishing his role as a principal offender.

[60] There was evidence from Jason Hyde, Forensic Analyst II which showed human blood was found on several items (including clothing, slippers and machetes) but no forensic analysis was done in relation to whose blood it was since no blood samples were taken from the four accused.

[61] The trial judge commented on the absence of forensic analysis at paragraph [29],

[29] Unfortunately, as is true in many of these matters, the forensic analysis only goes so far and no further. Items are collected and tested, generally for the presence of human blood. But once it is confirmed that human blood is present on an item, the inquiry mostly stops there. I am not sure why law enforcement and, I presume, the prosecution, does not utilize the available scientific methods to further test exhibits. This would assist the trier of fact in determining where the truth lies in many cases. In any event, the evidence from the forensic analyst does not provide much help in this trial.”

[62] In the view of the Court, the absence of the forensic analysis of the blood evidence does not weaken the findings of the trial judge. There was sufficient evidence to prove beyond a reasonable doubt that all four accused acted jointly as principals to chop the deceased with machetes on his head and body which caused his death. At the time he was lying on the ground and had no weapon. He had a defensive wound on his arm. This was discussed above under ground 3 and need not be repeated..

[63] For all those reasons the ground is without merit.

Ground 5: The verdict is unsafe and unreasonable having regard to the evidence as a whole.

[64] Having regard to our determination on the other grounds of Appeal in favour of the Crown, this ground cannot succeed. The verdict of the trial judge is not unsafe and unreasonable as there was evidence which proved beyond a reasonable doubt that the four accused, including the Appellant, jointly inflicted the harm that resulted in the death of the deceased, with the intention to kill him.

Appeal against the sentence

The powers of this Court to interfere with a sentence

[65] *Section 216 (3) of the Senior Courts Act 2022, Act No. 27 of 2022*, gives this Court the power to re-exercise the sentencing discretion. It states:

“On an appeal against sentence, the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed and in any other case shall dismiss the appeal.”

[66] The Court would re-exercise its sentencing discretion only if the sentence is excessive. In *Teerath Persaud*,¹⁴ the CCJ at paragraph [46] of that judgment, and other recent cases set out the methodology for applying the sentencing principles to arrive at an appropriate sentence.

Submissions of the Appellant

[67] The Appellant appealed the sentence imposed of 15 years on the ground that it is manifestly excessive and/or wrong in principle in that the trial judge failed to:

- (a) Properly account for findings of possible extreme provocation;
- (b) Individualise the sentence to the Appellant's role; and
- (c) Accord sufficient weight to relevant mitigating factors.

[68] Counsel argued that provocation significantly reduce moral culpability and materially mitigates sentence. He relied on **Lewis v The State**¹⁵ and **Bowe v R**.¹⁶

[69] Counsel further submitted that the trial judge failed to individualise the sentence. That she did not identify the Appellant as the principal killer nor determine that his acts caused the fatal injuries. He relied on **R v Powell and English**¹⁷ and **Reyes v R**.¹⁸

[70] Mr. Elrington further submitted that the trial judge failed to properly weigh the mitigating factors which included (a) Absence of premeditation; (b) Spontaneous confrontation; and (c) No leadership role; (d) (e) No forensic linkage to fatal wounds; and (e) Apparent good character.

[71] Counsel argued that failure to accord proper weight to these factors render the sentence manifestly excessive as seen in **Spence (Newton) v R**.¹⁹ He further contended that the sentence must comply with constitutional proportionality under section 7 of the Belize Constitution.

Respondent's response

[72] The Crown opposed the appeal against the sentence. Mr. Chan submitted that the sentence of 15 years' imprisonment was appropriate and falls within the range contemplated by the present Sentencing

¹⁴ [2018] CCJ 10 (AJ)

¹⁵ [2011] UKPC 15

¹⁶ [2006] UKPC 10

¹⁷ 1999] 1 AC 1

¹⁸ [2002] UKPC 11.

¹⁹ 1999) 59 WIR 216

Guidelines and cannot properly be characterized as manifestly excessive. He helpfully provided the Court with the methodology to be applied.

Sentencing by the trial judge

- [73] The trial judge took into consideration sentencing principles and the aggravating and mitigating circumstances of the offence and the offender:

Aggravating factors of the offence

- (i) Killing is prevalent in Belize;

Aggravating factors of the offender

- (i) Infractions in prison but not of a violent nature;

Mitigating factors of the offender

- (i) Remorse;
- (ii) First time offender and good character;
- (iii) Completion of programs in the prison.

Whether the sentence is excessive

- [74] The maximum sentence allowed under the law for manslaughter is life. Section 108(1) (b) of the Criminal Code provides that anyone who commits manslaughter shall be liable to imprisonment for life. This is the maximum sentence and applies to the ‘worst of the worst’ cases of manslaughter. The trial judge was of the view that “I don’t think in this case, it should be so severe that it discounts the circumstances.”
- [75] The trial judge stated that the sentence range for manslaughter which she would consider is between 15 and 20 years. In a recent judgment of this Court, **Jose Ricardo Mendoza v The King**²⁰, this Court stated that the range for manslaughter cases in Belize is 15 to 25 years as shown by case law at the time. The trial judge, in the instant matter, having considered the mitigating and aggravating factors including provocation, remorse, first time offender and completion of programs, imposed a sentence of 15 years on the Appellant.

²⁰ Criminal Appeal No. 4 of 2024,

[76] Further, she considered the purpose of sentencing and applied the sentencing principles. In relation to rehabilitation she considered that the Appellant and his co-accused have been rehabilitated. She did not follow any particular methodology by using a starting point and making adjustments for the aggravating and mitigating factors of the offence and offender. Nevertheless, she considered all the factors in a general manner. Further, at the time there were no Sentencing Guidelines in Belize. The sentence imposed on the Appellant was 15 years less the time spent on remand. This was on the lowest end of the scale of 15 to 20 years which she applied in this case.

Extreme provocation point

[77] The Appellant contended that the judge failed to properly account for findings of possible extreme provocation. That provocation significantly reduce moral culpability and materially mitigates sentence. In the view of the Court, there was no failure by the trial judge and the sentence was significantly reduced because of provocation. The judge in her sentencing judgment stated that, “ In fact, originally, the four convicted persons were charged with murder. And it is only because I found that there was some provocation and uncertain about whether it amounted to extreme provocation, but believing that perhaps it did, that this was reduced to a conviction of manslaughter. So the offence is very serious and I have to take that into consideration.” It is clear from that statement that the murder charge was reduced to manslaughter because of the trial judge’s uncertainty as to extreme provocation. The trial judge also acknowledged that manslaughter is at the border of murder and can result in a sentence as high as 25 years. In **Mendoza** there was an element of provocation and the starting point was 20 years. This was one stab wound. In the present case, the chopping of the deceased on his head and body by four persons jointly was far more egregious and could have resulted in a higher sentence based on case law in this jurisdiction at the time.

The point on Individualization of the sentence to the Appellant’s role

[78] Mr. Elrington contended that the trial judge failed to individualize the sentence to the Appellant’s role. The Court disagrees. As discussed above under the ground of joint enterprise all four accused were principals. It matters not if the accused fired two chops. The judge was not required to identify who caused the fatal injuries. I need not rehash what is already stated.

Did the trial judge properly account for the mitigating factors?

- [79] Mr. Elrington submitted that the trial judge failed to properly weigh the mitigating factors which included (a) Absence of premeditation; (b) Spontaneous confrontation; (c) No leadership role; (d) No forensic linkage to fatal wounds; and (e) Apparent good character.
- [80] In the view of the Court, the mitigating factors resulted in a sentence on the lowest end of the range which is 15 years. As discussed before, the trial judge considered: provocation; joint enterprise where all principals are liable for the offence charged; and no forensic analysis. Good character was also considered as the trial judge stated that, "In this case, none were known to the law previously, none had any convictions on their records. So were persons of good character up until this point. And the Court certainly looks at that." In relation to premeditation, the trial judge did not mention absence of it in the sentencing judgment. Nevertheless, the court does not see this factor tipping the scale below 15 years.
- [81] In our view, the trial judge gave sufficient weight to the mitigating factors which she considered in relation to the Appellant. This is evident from the 15 years sentence which is at the lowest point on the sentence range she applied.

The application of the present General Sentencing Guidelines

- [82] The General Sentencing Guidelines empower the Court of Appeal to use the sentencing guidelines to review sentences imposed before their entry into force. The Court notes that on the facts of this case, as correctly submitted by Mr. Chan, that the culpability falls within Level B – medium culpability, having regard to the provocation which the trial judge found present in the circumstances of the case. This level of culpability carries a starting point of 15 years' imprisonment, with a range of 14 to 18 years. In our view, a starting point of 16 years (in the mid-range) is appropriate under the circumstances of this case.
- [83] The relevant aggravating factors relating to the offence include the persistence of the violence and the use of a machete by the Appellant. The Court agrees with Mr. Chan that an upward adjustment of two years would be appropriate, bringing the notional sentence to 18 years' imprisonment. The Court would have reduced the sentence by one year for the absence of premeditation as a mitigating factor of the offence thus reducing the sentence to 17 years.

[84] In relation to the mitigating factors of the offender as shown at paragraph [72] we would have reduced the sentence by 2 years (there being no aggravating factor of the offender) which would bring the notional sentence to 15 years imprisonment which is the same as imposed by the trial judge.

[85] The trial judge gave the Appellant credit for the time spent on remand. We do not consider the constitutional proportionality argument advanced by the Appellant to apply in this case.

Conclusion on the sentence

[86] For all the above reasons, the sentence imposed on the Appellant is not manifestly excessive. The Appeal against the sentence is dismissed.

Disposition

[87] The Appeal against the conviction and sentence is dismissed and affirmed.

Minnet Hafiz Bertram

President

[88] I concur.

Louise Esther Blenman

Chief Justice

[89] I concur.

Peter I Foster KC

Justice of Appeal