Privy Council Appeal No. 8 of 1993

Dean Edwardo Vasquez *Appellant*

v.

The Queen *Respondent*

and

Privy Council Appeal No. 9 of 1993

Catalino O'Neil *Appellant*

v.

The Queen *Respondent*

FROM

THE COURT OF APPEAL OF BELIZE

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL OF THE 24TH MAY 1994, DELIVERED THE 29TH JUNE 1994

Present at the hearing:-

LORD TEMPLEMAN
LORD JAUNCEY OF TULLICHETTLE
LORD LLOYD OF BERWICK
LORD NOLAN
SIR VINCENT FLOISSAC

*[Delivered by **Lord Jauncey of Tullichettle**]*

In both these cases the appellants killed their estranged mistresses in somewhat similar circumstances and were convicted of murder in the Supreme Court of Belize. In both cases the question of provocation was raised and in both cases the trial judge directed the jury that the onus was upon the accused to prove extreme provocation on a balance of probabilities. The primary issue before the Board is whether having regard to the provisions of the Belize Criminal Code ("the Code") and the Constitution this direction was sound in law. If it was not, the Crown accept that the convictions for murder cannot stand. In neither case was the primary issue raised in the Court of Appeal, which dismissed both appeals against conviction.

At the conclusion of the hearing their Lordships announced that they were of the opinion that both appeals ought to be allowed to the extent of substituting verdicts of manslaughter for those of murder and that the cases should be remitted back to the Court of Appeal for sentence. Their Lordships have humbly advised Her Majesty accordingly and now give their reasons for this advice.

The Code

Section 113(1) of the Code provides as follows:-

> "(1) Every person who causes the death of another person by any unlawful harm is guilty of manslaughter."

Section 114 defines murder in the following manner:-

> "Every person who intentionally causes the death of another person by any 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."

Section 115 provides that a person shall not be convicted of murder if he was at the time suffering from diminished responsibility. The onus of proof of diminished responsibility is placed upon the defence. Section 116 provides *inter alia*:-

> "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 either of the following matters of extenuation be proved on his behalf, namely -
>
> (a) that he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in section 117; or
>
> (b) that he was justified in causing some harm to the other person, and that in causing harm in excess of the harm which he was justified in causing he acted from such terror of immediate death or grievous harm as in fact deprived him, for the time being of the power of self-control; or
>
> (c) ...
>
> (d) ..."

Section 117 provides *inter alia*:-

> "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; ..."

Section 119 is in the following terms:-

"(1) Notwithstanding proof on behalf of the accused person of such matter of extreme provocation as mentioned in section 117, his crime shall not be deemed to be thereby reduced to manslaughter if it appear, either from the evidence given on his behalf, or from evidence given on the part of the prosecution -

(a) that he was not in fact deprived of the power of self-control by the provocation; or

(b) that he acted wholly or partly from a previous purpose to cause death or harm, or to engage in an unlawful fight whether or not he would have acted on that purpose at the time or in the manner in which he did act but for the provocation; or

(c) that after the provocation was given, and before he did the act which caused the harm, such a time elapsed or such circumstances occurred that a person of ordinary character might have recovered his self-control; or

(d) that his act was, in respect either of the instrument or means used, or of the cruel or other manner in which it was used, greatly in excess of the measure in which a person of character would have been likely under the circumstances to be deprived of his self-control by the provocation.

(2) Where a person in the course of a fight uses any deadly or dangerous means against an adversary who has not used or commenced to use any deadly or dangerous means against him, if it appears that the accused person purposed or prepared to use such means before he had received any such blow or hurt in the fight as might be a sufficient provocation to use means of that kind, he shall be presumed to have used the means from a previous purpose to cause

death, notwithstanding that before the actual use of the means he may have received any such blow or hurt in the fight as might amount to extreme provocation."

These sections were first enacted in 1888 and were intended to embody within the Code the common law of England as it was then understood. In terms of section 116(a) provocation which will reduce murder to manslaughter requires two ingredients namely (i) deprivation of the power of self-control, and (ii) extreme provocation causing such deprivation. Section 117 defines what can amount to extreme provocation. Section 119 assumes the existence of a matter which would constitute extreme provocation within the meaning of section 117 but details circumstances in which nevertheless murder will not be reduced to manslaughter. The first circumstance in sub-section (1)(a) is the obvious one, namely where the extreme provocation did not cause deprivation of self-control. However this matter, as the appellants pointed out, has already been addressed in section 116(a).

The appellants argued that the inclusion of paragraph (a) in section 119(1) and the reference in that sub-section to "evidence given on the part of the prosecution" pointed to the fact that section 116 only required the question of provocation to be raised in evidence, after which it was for the Crown to negative one or both of the necessary ingredients. Any other construction it was said would mean that section 119(1)(a) was otiose. However looking at sections 116 and 119 together their Lordships can see no alternative to rejecting this argument. The words "proved on his behalf" in section 116 point strongly to the accused being required to shoulder the burden of proof and the opening four words of section 119(1) assume that the accused has discharged this burden in relation to the second ingredient of section 116(a). If the words in section 116(a) merely mean that the question of provocation must be raised in evidence the words "on behalf of" at the beginning of section 119(1) would be unnecessary. Indeed the word "evidence" could more readily be substituted for the words "proof on behalf of the accused person". The use of the word "proof" in the above passage in contradistinction to the word "evidence" a few lines later further points to the fact that proof means what it says and not something of lesser value. Thus as a matter of construction the Code achieved the intended result of enacting the common law of England as it was in 1888 and indeed until 1935 understood to be. Accordingly their Lordships conclude that the proper construction of section 116(a) when read together with sections 117 and 119 is that the burden of proof of the two ingredients in the first section rests upon the accused. This conclusion necessarily means that there is a measure of overlap between sections 116(a) and 119(1)(a). This overlap, however, is not entirely without logic since section 119(1), by including within it paragraph (a), covers the complete range of circumstances in which the crime of murder does not fall to be reduced to manslaughter, notwithstanding the fact that the second ingredient of section 116(a) has been proved.

In 1935 the common law as to provocation was expounded in *Woolmington v. DPP* [1935] A.C. 462 where it was held that the onus was not on an accused to establish that there existed circumstances relative to provocation which justified reduction of a charge of murder to that of manslaughter. Viscount Sankey L.C. at page 482 said:-

> "When dealing with a murder case the Crown must prove (a) death as the result of a voluntary act of the accused and (b) malice of the accused. It may prove malice either expressly or by implication. For malice may be implied where death occurs as the result of a voluntary act of the accused which is (i) intentional and (ii) unprovoked. When evidence of death and malice has been given (this is a question for the jury) the accused is entitled to show, by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted."

The significance of this decision was that it had previously been assumed that the onus was on an accused to prove provocation on a balance of probability whereas in fact the onus of proof of lack of provocation remains throughout on the Crown. If it appeared either from the Crown evidence or from that of the defence that the accused might have acted under provocation then it was for the Crown to negative such a suggestion if a conviction was to be obtained. However the Lord Chancellor did not say, and their Lordships do not understand it to be the common law, that the Crown must negative provocation where no question of it emerges from the circumstances of the case. It will normally be for an accused to raise the matter, either in cross-examination of the prosecution witnesses or in evidence led on his behalf, and if he does not do so and if the circumstances of the case do not disclose the reasonable possibility of provocation, such as could cast reasonable doubt upon the unprovoked intention of the accused the trial judge will not require to give a direction thereanent. In *Jayasena v. The Queen* [1970] A.C. 618 Lord Devlin, delivering the report of the Board, referred to *Woolmington* as deciding that in a case of murder at common law the prosecution were required to prove that the killing was intentional and unprovoked, and he continued at page 623:-

> "This does not mean, as the House made clear in subsequent cases, that a jury must always be told that before it can convict, it must consider and reject provocation and self-defence and all other matters that might be raised as an answer to a charge of murder. Some evidence in support of such

> an answer must be adduced before the jury is directed to consider it; but the only burden laid upon the accused in this respect is to collect from the evidence enough material to make it possible for a reasonable jury to acquit."

No amendment was made to the Code consequent upon *Woolmington* and that decision could not result in existing provisions being given a different meaning. The Code is not malleable and subject to evolution like the common law. As Lord Devlin said in *Jayasena* at page 625, "the code embodied the old criminal law and cannot be construed in the light of a decision that has changed the law".

The appellants referred to three cases in support of the proposition that the words "proved on his behalf" in section 116 imposed no more than an evidential burden on the accused, that is to say, that he was required to do no more than raise the possibility of provocation and its mitigating effect. In *Kwaku Mensah v. The King* [1946] A.C. 83 the Board, consisting of three members, were required to consider provisions of the Gold Coast Criminal Code which appear from the report to have been in terms very similar to sections 116, 117 and 119 of the Code. The Gold Coast Criminal Code was dated 1936 but the report does not disclose whether it re-enacted provisions of previous Codes. The reasons for the Board's advice were given by Lord Goddard who, at pages 92-93, equated the provisions of the Gold Coast Code dealing with murder and manslaughter to the common law of England. After summarising the three sections comparable to sections 116, 117 and 119 of the Code he said - "This puts into statutory form what has for long been the law in this country". However, in an earlier passage at page 92, Lord Goddard pointed out that, if there was any evidence which would entitle a jury to return the lesser verdict of manslaughter, "then, whether the defence have relied on it or not, the judge must bring it to the attention of the jury, because if they accept it or are left in doubt about it the prosecution have not proved affirmatively a case of murder". The Board concluded that a direction that manslaughter could only arise if the jury accepted the accused's evidence was wrong. This case is not easy to understand, particularly the statement, ten years after *Woolmington*, that the relevant sections of the Gold Coast Code had for long been the law in England. Indeed *Woolmington* was not referred to by Lord Goddard although there was an incidental reference to it in argument. However, the construction of the relevant sections was not in issue and the appellant's complaint related not to a misdirection as to onus of proof in relation to provocation but to the total absence in the summing-up of any reference to the matter at all. *Kwaku Mensah* was not referred to in *Jayasena*.

The two other cases relied upon by the appellants in this context were *Clarke v. The Queen* [1971-6] 1 L.R.B. 143 and *Ambrose v. The Queen* (1978) 2 O.E.C.S. Law Reports 32 in which the Courts of Appeal of The Bahamas and

Grenada respectively held that in cases of murder the onus of proving that the killing was unprovoked was on the prosecution. In both cases the relevant provisions in the Criminal Code were similar to those in the Code. In neither case, however, was there any detailed analysis of the relevant provisions of the respective Criminal Code.

Their Lordships can find nothing in *Kwaku Mensah* or in the two Caribbean cases which compel them to adopt the construction of section 116(a) advanced by the appellants.

By contrast the Court of Appeal of Belize has always construed the Code as placing the onus of proof of provocation on the accused (*Ellis Taibo v. The Queen* (Criminal Appeal No. 2 of 1980) and *Bowers v. The Queen* (Criminal Appeal No. 13 of 1984)).

The next development in the law of England relating to provocation was the passage of the Homicide Act 1957 and in particular section 3 thereof which, as Lord Diplock pointed out in *R. v. Camplin* [1978] A.C. 705 at page 716C:-

> "[brought] about two important changes in the law. The first is: it abolishes all previous rules of law as to what can or cannot amount to provocation and in particular the rule of law that, save in the two exceptional cases I have mentioned, words unaccompanied by violence could not do so. Secondly it makes it clear that if there was any evidence that the accused himself at the time of the act which caused the death in fact lost his self-control in consequence of some provocation however slight it might appear to the judge, he was bound to leave to the jury the question, which is one of opinion not of law: whether a reasonable man might have reacted to that provocation as the accused did."

In 1980 there was introduced into the Code section 118 which is in the following terms:-

> "Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was extreme enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man."

This section differs from section 3 of the Homicide Act 1957 only to the extent that it includes the word "extreme" which is absent from the latter section.

It was argued by the appellants that section 118 implicitly placed the burden on the prosecution to negative provocation. Their Lordships do not agree. As Lord Diplock stated in relation to section 3 of the Homicide Act 1957, section 118 achieved two results, namely first it allowed words alone to constitute provocation and secondly it provided that if there was any evidence, however slight, that an accused had lost his power of self-control as a result of some provocation, the question of whether a reasonable man might have so acted must be left to the jury. Section 118 has nothing to do with burden of proof and its introduction into the Code cannot affect the construction of section 116(a). This same conclusion was reached, correctly in their Lordships' view, by the Court of Appeal of Belize in *Bowers v. The Queen*.

To summarise this branch of the arguments their Lordships have no doubt that, fairly construed in the context of the Code alone, section 116(a) places the burden of proof of provocation upon the accused and the appellants' arguments to the contrary must fail. However, that is not sufficient to determine the appeals because there remains for consideration a number of detailed attacks on the summings-up as well as a more fundamental argument based on the Constitution. It is convenient to deal with that latter argument first.

The Constitution

Belize became independent on 21st September 1981 upon which date the Constitution came into operation. Section 2 provides that the Constitution is the supreme law of Belize and that any other law which is inconsistent therewith shall to that extent be void. Section 6 provides *inter alia*:-

> " (1) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.
>
> (2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.
>
> (3) Every person who is charged with a criminal offence -
>
> (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
>
> ...
>
> (10) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of -
>
> (a) subsection (3)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts; ..."

Section 134(1) of the Constitution is in the following terms:-

> "Subject to the provisions of this Chapter, the existing laws shall notwithstanding the revocation of the Letters Patent and the Constitution Ordinance continue in force on and after Independence Day and shall then have effect as if they had been made in pursuance of this Constitution but they shall be construed with such modifications adaptations qualifications and exceptions as may be necessary to bring them into conformity with this Constitution."

In order to establish murder against an accused at common law the Crown must prove that the killing was (a) intentional and (b) unprovoked. Lack of provocation may be inferred from the circumstances of the killing or there may be direct evidence to show that the accused intended to kill in cold blood. Section 114 of the Code gives effect to the common law and clearly demonstrates that in the absence of provocation an intentional killing can amount to murder. It follows that the lack of provocation is an essential ingredient of murder. To place the burden of proof of such an essential ingredient of the crime upon the accused was, submitted the appellants, contrary to provisions of section 6(3)(a) of the Constitution. To this the respondent replied that the position was expressly preserved by section 6(10)(a) because the burden cast upon an accused by section 116(a) was no more than "the burden of proving particular facts" within the meaning of that section.

It has been stated by this Board on many occasions that a Constitution should be construed generously in relation to fundamental rights and freedoms of individuals. In *Attorney-General of The Gambia v. Momodou Jobe* [1984] A.C. 689 at page 700 Lord Diplock said:-

> "A constitution, and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the state are to be entitled, is to be given a generous and purposive construction."

Applying this dictum to the two provisions of section 6 of the Constitution which are under consideration, it would follow that sub-section (3)(a) should receive a generous construction whereas sub-section (10)(a) should not be construed in such a way as to emasculate the provisions of the former sub-section. In considering the provisions of Article 11(1) and (2) of the Hong Kong Bill of Rights, which corresponded broadly with section 6(3) of the Constitution, Lord Woolf, delivering the advice of the Board in *Attorney-General of Hong Kong v. Lee Kwong-Kut* [1993] A.C. 951, 962, referred to the observations of Lawton L.J. in *Reg. v. Edwards* [1975] Q.B. 27 at page 39-40 where the Lord Justice, after referring to the fact that the common law had evolved an exception to the

fundamental rule that the prosecution must prove every element of the offence, stated:-

> "This exception, like so much else in the common law, was hammered out on the anvil of pleading. It is limited to offences arising under enactments which prohibit the doing of an act save in specified circumstances or by persons of specified classes or with specified qualifications or with the licence or permission of specified authorities. Whenever the prosecution seeks to rely on this exception, the court must construe the enactment under which the charge is laid. If the true construction is that the enactment prohibits the doing of acts, subject to provisoes, exemptions and the like, then the prosecution can rely upon the exception."

Later at page 969D Lord Woolf said:-

> "There are situations where it is clearly sensible and reasonable that deviations should be allowed from the strict applications of the principle that the prosecution must prove the defendant's guilt beyond reasonable doubt. Take an obvious example in the case of an offence involving the performance of some act without a licence. Common sense dictates that the prosecution should not be required to shoulder the virtually impossible task of establishing that a defendant has not a licence when it is a matter of comparative simplicity for a defendant to establish that he has a licence. The position is the same with regard to insanity, which was one of the exceptions identified by Viscount Sankey L.C. in the passage of *Woolmington v. Director of Public Prosecutions* [1935] A.C. 462, 481, which has already been cited. The other qualification which Viscount Sankey L.C. made as to statutory exceptions clearly has to be qualified when giving effect to a provision similar to Article 11(1).
>
> Some exceptions will be justifiable, others will not. Whether they are justifiable will in the end depend upon whether it remains primarily the responsibility of the prosecution to prove the guilt of an accused to the required standard and whether the exception is reasonably imposed, notwithstanding the importance of maintaining the principle which Article 11(1) enshrines. The less significant the departure from the normal principle, the simpler it will be to justify an exception. If the prosecution retains responsibility for proving the essential ingredients of the offence, the less likely it is that an exception will be regarded as unacceptable. In deciding what are the essential ingredients, the language of the relevant statutory provision will be important. However what will be decisive will be the substance and reality of the language creating the offence rather than its form."

It is to these exceptions referred to by Lawton L.J. and Lord Woolf that section 6(10)(a) is intended to apply and

not to the essential ingredients of an offence. Any other construction would enable the legislature to drive a coach and four through the fundamental provisions of section 6(3)(a) whenever it wished.

In their Lordships' view section 116(a) of the Code, by placing the burden of proof of provocation upon an accused, is in conflict with section 6(3)(a) of the Constitution and must accordingly be modified to conform therewith. Their Lordships consider that section 116(a) should be construed as though the prefatory words of the section read:-

> "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 he was deprived of the power of self control by such extreme provocation given by the other person as is mentioned in section 117; or"

and that the prefatory words of section 119(1) should be construed as though they read:-

> "Notwithstanding the existence of such evidence as is referred to in section 116(a) the crime of the accused shall not be deemed to be thereby reduced to manslaughter if it appear, either from the evidence given on his behalf, or from evidence given on the part of the prosecution -"

It follows that the trial judge misdirected the jury on onus of proof and the conviction for murder must be quashed.

This conclusion will bring Belize into line with the other Commonwealth countries of the Caribbean in all of which the onus of proof of unprovoked killing is placed upon the prosecution either by statutory construction as in Grenada and the Bahamas or by practice as in St. Lucia. It should however be emphasised again that where provocation is not directly raised in evidence or made the subject of submissions to the jury by the defence a judge need not be astute to conjure up hypothetical situations in which it could conceivably have arisen. He should in such circumstances only direct the jury upon it when there is a reasonable possibility that an accused has been provoked.

In fairness to the trial judges and the Court of Appeal it must be made clear that they were not required to consider the constitutional issues raised before the Board and that accordingly for the reasons already given the directions were correct on the basis of the construction of the Code alone.

In view of the conclusion as to the proper construction of section 116(a) their Lordships find it unnecessary to consider a further argument to the effect that sections

116(a) and 119(1) of the Code, when read together, lacked clarity and must therefore, because of the principle of due process of law enshrined in the Constitution, be construed in a manner most favourable to an accused.

Their Lordships would normally hope to have had the assistance of the local Court of Appeal in dealing with any question under a Constitution but as has been pointed out the question was never argued in Belize. Although certain sections of the Constitution dealing with the role of the Supreme Court and the Court of Appeal in relation to the Constitution were referred to in argument, the Board was not asked to remit the matter to the Court of Appeal and in view of the fact that the offences are of a capital nature and that a decision of the Court of Appeal on so important an issue would be likely to be brought back before the Board by one or other party, their Lordships considered that it would be most convenient if they dealt with the matter when it was before them and that they were not inhibited by the Constitution from so doing.

The foregoing conclusion makes it unnecessary to consider the further detailed attacks made by both appellants on the summings-up and, in particular, an argument in relation to diminished responsibility advanced on behalf of O'Neil. However there remains to be considered an argument relating to self-defence advanced on behalf of Vasquez.

Self-defence

There was evidence from two women that Vasquez appeared in the house in which they and the deceased were living, drew a knife from his trousers and aimed to stab one of them. He then went into the deceased's bedroom, stabbed her many times, dragged her while still stabbing her through the hall onto the verandah and then kicked her so that she fell on to a bridge. One of the two women said that she saw nothing in the hand of the deceased who was unarmed. The doctor who carried out the post mortem examinations spoke to finding multiple stab wounds on the face, the back, anterior regions of the chest and the front part of the chest, the biggest injury being $2\frac{1}{2}$ inches in length and 1 inch wide. In an unsworn statement from the dock Vasquez claimed that earlier in the day when he had been at work the deceased had defecated in the cooking pot in his house and as a result he had gone to see her. He then said:-

> "I went inside of the room and closed the door behind me and I asked Shimay why she had shit into the pot. She began cursing me telling me that if I was there she would have shit upon me too. The argument began from there because I wanted to know why she had shit in the pot. She began to fire box at me and kicked me in my genitals and I went down in pain. She pulled a

> knife out of her bosom and fire a stab at me then another one and I ducked from it. She is taller than me. I had to stab her to defend myself as there was no space to run as the room is small and I had nowhere to run. The way how she attacked me if I wasn't sharp enough she definitely would have hurt me. I didn't mean to kill her. She was taller than me. There was no space. She cause me to loose my self control at that moment. When she dropped on the bed I walked and went through the door with my knife in my hand. There were two knives. She had one and I had one. That's all."

Vasquez did not claim that he had been injured by the knife which he alleged that the deceased was carrying.

In directing the jury on self-defence the trial judge stated the test as being whether the accused had "a reasonable apprehension of his death at her hands" and that "if a man reasonably believe that his life is in danger or he is in danger of receiving dangerous or grievous harm which is really serious harm endangering his life or limb". This was a misdirection, argued the appellant, in as much as the proper test was subjective not objective, honest belief rather than reasonable belief. This submission is undoubtedly correct as was accepted by the Crown (see *Solomon Beckford v. The Queen* [1988] A.C. 130 at pages 145H and 147B-C) and there was accordingly a misdirection. It was also argued that the trial judge failed properly to direct the jury that they must not weigh in too fine a balance the reactions of the accused to the actions of the deceased. Even assuming that there was a further misdirection in this respect their Lordships do not consider that the two misdirections require that the conviction be quashed. Given the multiplicity of stab wounds inflicted on the deceased and the absence of any similar wounds on the accused, together with the evidence that the deceased was unarmed whereas the accused continued to stab her while dragging her through the hall, it is difficult to imagine that the jury could have reached a different verdict even if they had been properly directed upon the two foregoing matters. In their Lordships' opinion no substantial miscarriage of justice has occurred and this is a clear case for the application of the proviso contained in section 31(1) of the Court of Appeal Ordinance.

Costs

It only remains to deal with the matter of costs. When granting to the appellants special leave to appeal as poor persons on 27th October 1992 the customary recommendation was made that funds be made available by the Belize Government for the conduct of the appeals. When such a recommendation is made it is the normal practice for the Government of the country concerned to

accept the responsibility of providing funds. The Government of Belize were not represented at the hearing on 27th October 1992 and have taken no steps to comply with the Board's recommendation. In these circumstances it appears to their Lordships appropriate to make the unusual order that the respondent ought to pay the costs of the appellants before the Board on the standard basis and they so direct.