

IN THE COURT OF APPEAL OF SEYCHELLES

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**Reportable**

[2023] SCCA 7 (26 April 2023)  
SCA CR 15/2022  
(Appeal from CR 82/2020)

In the matter between

**Vincent Samson**

*(rep. by Mr. Basil Hoareau)*

**Appellant**

and

**The Republic**

*(rep. by Mr. H. Kumar)*

**Respondent**

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**Neutral Citation:** *Samson v R* (SCA CR 151/2022) [2023] SCCA 7 (Arising in CR 82/2020)  
(26 April 2023)

**Before:** Fernando President, Robinson JA, Andre JA

**Summary:** Appeal against conviction for offences of aggravating trafficking of a person  
and trafficking of a person.

**Heard:** 11 April 2023

**Delivered:** 26 April 2023

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**ORDER**

The appeal is partly allowed by quashing the conviction and sentence imposed on count 1 and acquitting the Appellant of the charge levelled against him on count 1. The appeal against the Appellant's conviction on count 2 is dismissed and the conviction on count 2 is affirmed. The sentence of 10 years' imprisonment imposed on the Appellant in respect of count 2 is maintained.

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**JUDGMENT**

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**FERNANDO, PRESIDENT**

1. The Appellant has appealed against his conviction for the offences of aggravating trafficking of a person and trafficking of a person.
  
2. The Appellant was charged as follows:

Count 1

Statement of Offence

Aggravated trafficking of a person contrary to section 3(1)(e), (f), (g) and 5(1)(d), (f) and (g) of the Prohibition of Trafficking in Persons Act 2014 and punishable under section 5(2) of the said Prohibition of Trafficking in Persons Act.

Particulars of Offence

Vincent Wilson Samson of Anse Royale, Mahe, on a date during year 2018 to the month of October 2020 at a place unknown in the Republic on Mahe, Seychelles, recruited, transported, or transferred Marlon Anthony Bertin from Seychelles to Iran or Pakistan by deception, abuse of power or Marlon Bertin's vulnerability or giving payments or benefits knowingly or intentionally to achieve the consent of Marlon Bertin to being controlled, for the purposes of exploitation. The offence of trafficking was aggravated by virtue of Vincent Samson being in a position of responsibility or trust with reference to Marlon Bertin, using violence or threat against a relative or member of Marlon Bertin's family, or on account of the offence being committed by an organized criminal group, namely with Percy Samson, Jean Francois Adrienne, Myriam D'Unienville and others unknown.

Count 2

Statement of Offence

Trafficking of a person contrary to section 3(1)(e), (f), (g) of the Prohibition of Trafficking in Persons Act of 2014 and punishable under section 3(1) of the said Prohibition of Trafficking in Persons Act.

#### Particulars of Offence

Vincent Wilson Samson of Anse Royale, Mahe, on a date during year 2018 to the month of October 2020, at a place unknown in the Republic on Mahe, Seychelles, recruited, transported, or transferred Marlon Anthony Bertin from Seychelles to Iran or Pakistan by deception, abuse of power or Marlon Bertin's vulnerability or giving payments or benefits knowingly or intentionally to achieve the consent of Marlon Bertin to being controlled, for the purposes of exploitation.

3. The Appellant has raised the following grounds of appeal:

- “1. The learned trial judge erred in law in failing to hold that the two counts failed to disclose in detail the nature, and reasonable information in respect, of the offences.
2. The learned trial judge erred in law and on the evidence in failing to hold that the prosecution had failed in respect of both counts to prove beyond a reasonable doubt, the elements of deception, abuse of power over Marlon Bertin's vulnerability and giving payments or benefits knowingly and intentionally to achieve the consent of Marlon Bertin on the part of the Appellant.
3. The learned trial judge erred in law and of the evidence in holding that the Appellant was guilty of the offences of aggravated trafficking of a person, on the basis that the Appellant had used violence or threat of violence against a member of the family of Marlon Bertin.

4. The decision of the learned trial judge is unreasonable or cannot be supported by the evidence.” (verbatim)

The Appellant has prayed that his appeal be allowed, his convictions quashed and that he be acquitted.

## **Evidence**

4. Ms. G. Rose Bertin, the mother of the victim Marlon Bertin testifying before the Court had stated, that Marlon was the eldest of her 6 children. She had said that Marlon was a mason and used to work with the Appellant and his brother Percy Samson and that Marlon was staying at the Appellant’s place. In the last month of 2018 while she was at the market, Marlon had come to her in the company of the Appellant and asked for his birth certificate. She had then gone with them to the office where birth certificates are issued and Marlon had obtained his birth certificate. He had obtained the birth certificate to get his passport. The other details Marlon told his mother unfortunately is hearsay and could not have been relied on by Court. Ms. Bertin had told Marlon after obtaining the birth certificate to come and see her but Marlon had not come. Ms. Bertin had come to know that Marlon had left Seychelles thereafter. She had inquired from Michael Azemia and Jeff Azemia and they had told her that Marlon had left Seychelles and his whereabouts are not known. One day Ms. Bertin along with her husband David and son-in law Joe had gone to the Appellant’s house at Takamaka. She had no difficulty identifying him as he had a golden tooth which was visible when he spoke. When Ms. Bertin questioned the Appellant as to the whereabouts of Marlon he had at first denied any knowledge of his whereabouts, but when reminded that he came with Marlon to collect his birth certificate, the Appellant had admitted that he paid for Marlon’s passport and flight but does not know where he is.

Before they left the Appellant had told them that he will ask his brother Percy about the whereabouts of Marlon. The next day they had gone to the police and immigration office and learnt that Marlon had left on the 31<sup>st</sup> of December 2018. After September or October 2019, the Appellant had come to her house with Jeff Azemia, Michael Azemia and a small lady. When they came, David her partner, and her two sons, Joseph Estrale and Jean were also there. When Ms. Bertin questioned the Appellant about Marlon, the Appellant had told her that “Marlon went to guarantee drugs for him” and when asked why he allowed “Marlon to get into things like that”, the Appellant had told her “he doesn’t know, may be he needs the money.” Thereafter Appellant had called Marlon from his phone on a video call and showed Marlon to her on WhatsApp, but the picture was blurred. She had not been able to get Marlon’s number. Thereafter Marlon had called her several times on WhatsApp. She had also received video messages from a person by the name of Adi. Each time Ms. Bertin called the Appellant he had said that he will pay the money for Marlon’s return to the Seychelles but he had not done so. Sometime later Ms. Bertin had called the Appellant and the Appellant had told her something to the effect that not to speak for long because the police officers were tracing his phone. The last time she had seen Marlon on video was in 2020 and he looked very thin and weak and it looked his eyes did not open at all.

5. Under cross-examination Ms. Bertin admitted to have said in her statement that Marlon had told her that he was going to Dubai to place tiles at a place. Ms Bertin had confirmed in cross-examination all that she had said in her examination-in-chief, word to word up to the point of the visit of the Appellant to her house in late 2019. It has been suggested by Counsel for the defence that in the conversation that ensued between the Appellant and Ms. Bertin, all that the Appellant had said was that Marlon had gone to guarantee drugs but had never said it was for them. I quote herein from the proceedings what Counsel for the Appellant had said: “But it is my instruction madam that the accused person did not tell you that Marlon

had gone to guarantee drugs for them. He never said he went to guarantee what was theirs. He said that he went to guarantee drugs but he never said that it was for them.” She had also agreed with Counsel for the Appellant that on both occasions that the Appellant had met her, he had promised to assist in finding the whereabouts of Marlon. Ms. Bertin had also agreed with the Counsel for the Appellant that, the Appellant had from a phone that was in his hand, shown her a video in which Marlon was speaking, but said that the visibility was not that clear. Ms. Bertin had admitted that she did know from where those videos came from.

6. Michael Azemia, the cousin brother of Marlon, testifying before the Court after having refreshed his memory by going through his police statement, had said that he knew that Marlon had left the country. He had said that it was Marlon who had introduced him to the Appellant. After about 6 months after Marlon had left the country he had gone to meet the Appellant with Jeff Azemia to inquire about the whereabouts of Marlon at the request of Marlon’s mother. On inquiring the Appellant had told them that Marlon had gone to Pakistan or Afghanistan as a guarantor for drugs for the Appellant. Michael had then corroborated Ms. Bertin’s evidence about the Appellant visiting her house, accompanied by Jeff Azemia and himself. Again corroborating Ms. Bertin, Michael had said, that when he went to Ms. Bertin’s house her husband and her children including Jean were there. At the house of Ms. Bertin, the Appellant had said that he will make Marlon come back and after some hesitation had said that Marlon had travelled abroad as a guarantor for the Appellant’s drugs. He had also said that the Appellant made a video call to Marlon while he was at Ms. Bertin’s house and he could see Marlon. Marlon’s mother and brother had spoken to Marlon.

7. Counsel for the Appellant had not under cross-examination sought to challenge what Michael had specifically said about the Appellant in his examination-in – chief. All that Counsel had tried to make out was Michael, when he met the

Appellant, was only interested in smoking heroin and had not questioned the Appellant about Marlon. This is no challenge to Michael's evidence in examination-in-chief. In re-examination the Prosecutor had got Michael to confirm all that he had said in his examination –in-chief.

8. Jeff Azemia, an acquaintance of Marlon testifying before the Court, had said that he had accompanied the Appellant to Marlon's mother's house in the company of Michael Azemia and a lady, since the Appellant had wanted to meet the mother of Marlon. When they went there Marlon's mother, his step father and brother were there. The Appellant had told Marlon's mother, Ms. Bertin that Marlon was outside Seychelles in relation to the Appellant's drugs and that he had to pay money for Marlon to come back to Seychelles.
9. Jean Bertin, a brother of Marlon, testifying before the Court had said, he was at his mother Ms. Bertins's home when the Appellant came with Michael Azemia, Jeff Azemia and a lady. Appellant had said that Marlon had gone to do a deal for him and would come back. Jean had understood this to be a drug deal. The Appellant while at his mother's place had also made a video call to Marlon on Appellant's phone. Jean had seen Marlon on the video. Some days thereafter since Marlon had not returned, Jean had spoken to the Appellant and blamed him for not making payment, so that Marlon could come back. The Appellant had hung up the phone, after telling him, that if he was looking for trouble he will get it. Under cross – examination Jean had confirmed what he had said in his examination-in chief, namely that Appellant had said, that Marlon had gone to do a deal for him and would come back and that he had understood this to be a drug deal.
10. Mrs. Denise Prea, District Manager at Emirates Airline Office, testifying before the Court had said, that Marlon Bertin had taken a flight on Emirates EK 708 on

31 December 2018 to Dubai and the ticket was paid for in cash at the Emirates town office, in Victoria on the same day, namely 31 December by the Appellant.

11. Fr. Alcindor, testifying before the Court had stated that the Appellant had come to him, requesting him to sign the passport application of Marlon on 27 December 2018, which he did sign.

12. Pam Labrosse, an Immigration Officer, testifying before the Court had said, Marlon Bertin, had come on the 27<sup>th</sup> of December to the Immigration Office to make his application for a passport, but it was the Appellant who came to collect the passport of Marlon Bertin, on the 28<sup>th</sup> of December 2018.

13. The Record of Questions put to the Appellant and his answers thereto on 29<sup>th</sup> October 2020 at 12.15 hrs, had been admitted and produced as **P2** by the Prosecution after a Voir-dire and there is no challenge to it in this appeal. I state below verbatim, the Record of such questions and answers:

“1. Do you know why you have been arrested and been brought to the ANB Station?

I think I had been arrested for Human Trafficking because the Officer who arrested me informed me.

From there the Sections of Law for Human Trafficking and the charges was explained to him by SP N Thaver.

2. Do you know Marlon Bertin?



I know him, he was doing some masonry work at my place. He is a very good mason and he worked at my place for a month or two.

3. How do you know Marlon?

I knew Marlon through a guy named Jeffrey, but I do not know his surname. Marlon worked at my brother's place, before coming to work at my place.

4. How do you pay Marlon?

I paid Marlon in cash. About 500 rupees a day.

5. Did you know Marlon has left the country?

No, I did not know. I do not know anything about it.

6. Did you help him in any way for him to obtain his passport?

I helped him by taking him to the Immigration Office. I showed him where the office is.

7. Do you know how he went to the airport?

(At first, he said he did not know how Marlon went to the airport and who took him there).

I took him to the airport by car. I dropped him off there and I left.

8. Have you heard from Marlon?

I have never had any other communication with Marlon after that.

9. Do you know any of Marlon's relatives?

I do not know any of Marlon's relatives. I have never met any of them.

10. How else did you know him?

I knew him through someone by the name of Michael, but I do not know his surname. I do not know if he is back, I have not heard anything about him.

Vincent Samson was invited to add anything he might know in regard to Marlon and he stated:

“How can helping someone to better his future to work in Dubai be an offence, as he is a grown up.”

11. Would you like to give a written statement?

No, I am not ready to give it. I know I have a right to have a lawyer present.

The Officers complied to his right.”

14. At the close of the prosecution case the Appellant had informed Court that he will remain silent and will not be calling witnesses.

15. The unchallenged and uncontradicted evidence against the Appellant can be summarised as follows: The Appellant had admitted at P2 that prior to him being questioned by the Police that he knew that he had been arrested for human trafficking, as the Officer arresting him had told him and that even the law of Human Trafficking had been explained to him and for what he was being charged, by the Officer. The Appellant had admitted that he knew Marlon Bertin, that Marlon worked as a mason for him and he used to pay 500 rupees a day for Marlon. The Appellant had admitted that he took Marlon to the Immigration Office. He had also admitted that he took Marlon to the airport, having earlier denied any knowledge of it. He had not said that he was the one who took Marlon's passport application to Fr. Alcindor for signature and that he was the one who collected Marlon's passport from the Immigration Office and that he was the one who paid for Marlon's air ticket to travel to Dubai. The Appellant had denied any knowledge of Marlon having left the country, that he had any communication with Marlon after he took him to the airport, that he knew any of Marlon's relatives or ever met them. His denials when taken into consideration with the uncontradicted prosecution evidence undoubtedly will be seen as lies. It is the uncontradicted prosecution evidence that it was the Appellant who came with Marlon to look for his birth certificate, that he took him to the Immigration Office, that he got Fr. Alcindor to sign Marlon's passport application, that he went to collect the passport of Marlon, and paid for his air ticket to go to Dubai and dropped him off at the airport. The Appellant had admitted to Ms. Rose Bertin, the mother of Marlon, at Ms. Bertin's house that "Marlon went to guarantee drugs for him". While at Ms. Bertin's house the Appellant had called Marlon from his phone on a video call and showed Marlon to Ms. Bertin on a WhatsApp video call. Sometime later when Ms. Bertin called the Appellant, the Appellant had told her not to speak for long because the police officers were tracing his phone. What is of paramount importance in this case is the suggestion made by Counsel for the defence to Ms. Bertin, at the trial, on the instructions of the Appellant, namely:

“But it is my instruction madam that the accused person did not tell you that Marlon had gone to guarantee drugs for them. He never said he went to guarantee what was theirs. He said that he went to guarantee drugs but he never said that it was for them.” Ms. Bertin had also agreed with Counsel for the Appellant that on both occasions that the Appellant had met her, he had promised to assist in finding the whereabouts of Marlon. The unchallenged evidence of Michael Azemia has been that the Appellant had told him that Marlon had gone to Pakistan or Afghanistan as a guarantor for drugs for the Appellant, when he inquired about Marlon from the Appellant. Michael had corroborated the evidence of Ms. Bertin, that the Appellant had made a video call to Marlon while he was at Ms. Bertin's house and he could see Marlon. Jean Martin has also corroborated the evidence of both Ms. Bertin and Michael. Jeff Azemia had also corroborated Ms. Bertin's evidence that the Appellant had told Marlon's mother, Ms. Bertin, while at Ms. Bertin's house that Marlon was outside Seychelles in relation to the Appellant's drugs and that he had to pay money for Marlon to come back to Seychelles.

16. The lies uttered by the Appellant when questioned by the Police as a suspect for human trafficking, in denying any knowledge of Marlon having left the country, that he had any communication with Marlon after he took him to the airport, that he knew any of Marlon's relatives or ever met them, in my view amounts to corroboration of the prosecution case in view of the nature of the rest of the evidence. In **R V Lucas (1981) QB 720 Lord Lane CJ** said: *“to be capable to amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realization of guilt and fear of the truth. The Jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behavior from the family. Fourthly the statement must clearly be shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission*

*or by evidence from an independent witness.”* This case thus falls on all fours with the pronouncement made in *R V Lucas*.

17. *Lucas* was applied in the Singaporean case of in **PP v Yeo Choon Poh [1994] 2 SLR 867**. There, it was said: “lies can in certain circumstances amount to corroboration because it indicates a consciousness of guilt.” Also in **PP v Chee Cheong Hin Constance [2006] 2 SLR 24** it was held that when a lie offers corroboration, it does that by corroborating some existing evidence. The Supreme Court of New South Wales in the case of **R V Heydie NSWLR 1990 (20)** has held following *R V Lucas* that it is open to rationally conclude that a consciousness of guilt motivated the lie.

18. In view of the suggestion made by Counsel for the Appellant to Ms. Bertin, and the uncontradicted evidence for the prosecution referred to above, the Appellant has accepted everything that the prosecution witnesses have said save the fact that Marlon did not go to guarantee drugs for them or that the drugs were theirs. This argument has then to be considered as against the uncontradicted evidence of the Appellants’ involvement in sending Marlon to Dubai, the Appellant being in contact with Marlon and thus being in a position to show Marlon to his family members on WhatsApp video and his admission to having to pay money for Marlon to come back to Seychelles and his willingness to do so.

19. I wish to state at the outset, that count 1 of the Indictment has been wrongly drafted as there is no separate offence as Aggravated Trafficking in the Prohibition of Trafficking in Persons Act, 2014. Section 5 of the said Act merely states that an offence of trafficking in person is deemed to be aggravated in the circumstances set out in section 5(1)(a) to (h) and provides for an enhanced sentence in such circumstances. I am also of the view that the basis that the Appellant had used violence or threat of violence against a member of the family of Marlon Bertin is

unsupported by law and the evidence to make the offence of trafficking in person one of aggravated trafficking. Section 5(1)(f) states: “*An offence of trafficking in person is deemed to be aggravated if...the accused person uses violence or threat of violence against a relative or any member of family of the victim of trafficking.*” Jean Bertin’s evidence that the Appellant had hung up the phone after telling him that if he was looking for trouble he will get it, has to be understood in the light of his evidence that he had blamed the Appellant for not making payment so that Marlon could come back. I therefore strike out count 1 of the Indictment, allow the grounds of appeal based on count 1 and the **third** ground of appeal and quash the conviction of the Appellant on count 1.

20. According to **section 3(1)(e) and (f) of the Prohibition of Trafficking in Persons Act, 2014** “*A person who recruits, transports, transfers,...another person by... (e) deception; including any misrepresentation by words or conduct as to financial incentive or promise of reward or gain and other conditions of work... (f) abuse of power or of another person’s position of vulnerability... for the purposes of exploitation, commits the offence of trafficking*” Subsections (1)(a)-(d) and (g) make reference to other means by which the offence of trafficking in persons may be committed. **Section 3(2)** states: “*Where it is proved to the satisfaction of the Court that any of the means referred to in subsection (1) (a) to (g) has been used in committing the offence of trafficking, it shall not be defence that the trafficked person consented to such act.*” It is clear that the established facts in this case, as set out above, falls within the provisions of section 3(1)(e) and (f).

21. In response to the **first** ground of appeal I wish to state that the Appellant having pleaded to the charge and not having raised any ambiguity as to the particulars of the charge during the trial and having proceeded along with the trial, without complaint, cannot now be heard to complain about it on appeal. It has been stated

in **R V Chapple and Boling broke (1892) 17 Cox 455** that the proper time for making an application to quash an indictment is before the plea is taken. It is my view that otherwise accused may be encouraged to go through the whole trial process, knowing that the charge is defective, but hoping to take it up on appeal in the event of a conviction. The Appellant has not complained and I also do not find that the charge in count 2 is a nullity (i.e. where an indictment discloses no criminal offence whatever or charge some offence which has been abolished), that the indictment has been preferred without jurisdiction, nor that any prejudice or embarrassment has been caused to the Appellant. I am of the view that there is no necessity to specify in the charge the manner of deception, and the amount, or currency of payment, as these are matters to be established by evidence.

22. The fact that one of the elements of the offence set out in count 2 and more fully described in section 3(1)(g), namely, “*giving or receiving of payments or benefits, knowingly or intentionally, to achieve the consent of a person having control over another person*” had not been established beyond a reasonable doubt does not make the conviction bad. The Prosecution was entitled to charge the Appellant by stating the different acts by which the offence could be committed and prove any one of those acts in view of the provisions of section 114(b)(i) of the Criminal Procedure Code. **Section 114(b)(i) of the Criminal Procedure Code** states as follows:

“Where an enactment constituting an offence states the offence to be an omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matter stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence;”

23. Commenting on an identical provision in the Indictment Rules 1971 of UK, it is stated in **Blackstone's Criminal Practice 2010 D 11.49**: *"What is required, therefore, is a correct assessment of whether a statutory provision is creating one offence that may be committed in a number of alternative ways, or is creating several separate offences. If the former, these statutory alternatives may be particularised as alternatives in one count; if the latter, the rule against duplicity applies and each alternative the prosecution wish to put before the jury must go into a separate count"*. In **Naismith (1961) 1 WLR 952**, **Ashworth J**, in determining whether an allegation that N had 'caused grievous bodily harm, to H with intent to do him grievous bodily harm, or to maim, disfigure or disable him' was bad for duplicity had said: *"It seems to this court that the proposition with which [counsel for the crown] started his argument is the right approach. That approach is to keep in mind the distinction between a section creating two or more offences and a section creating one offence but providing that the offence may be committed in more than one way.....so far as the intents specified in section 18 are concerned, they are variations of method rather than creation of separate offences in themselves. It is probably true to say that the species of assault mentioned in that section, of which there are three, are each in themselves different offences, that is to say, wounding, causing grievous bodily harm and shooting, but that difference does not affect the result of this case in the least because the only act or species of assault alleged was causing grievous bodily harm"*. **Lord Widgery CJ in Jemmison V Priddle [1972] 1 QB 489** said: *"I agree ....that it will often be legitimate to bring a single charge in respect of what might be called one activity even though that activity may involve more than one act"*. In a similar vein, **Lord Diplock** had said: *"Where a number of acts of a similar nature committed by one or more defendants were connected with one another, in the time and place of their commission or by their common purpose, in such a way that they could fairly be regarded as forming part of the same*



*transaction or criminal enterprise, it was the practice, as early as the 18th century, to charge them, in a single count of an indictment”. Blackstone’s Criminal Practice 2010”at D 11.44 states: “In summary, the conclusion in DPP V Marriman (1973) AC 584 was that a count is not to be held bad on its face for duplicity merely because its words are logically capable of being construed as more than one criminal act. This applies whether a count is against one accused or several.” A similar view was held by this Court in the case of Dubois & Others V Republic (SCA 7 of 2014) [SCCA 6 April 2017].*

24. If at all the reference to section (g) in count 2, can be treated as mere surplusage. In the case of **Dossi (1918) 13 Cr App R 158** it was held that the alleged defect in the charge complained of was mere surplusage and could not be a ground to allow the appeal.
25. It is clear from the case of **Ayres 1984 AC 447** that even if the charge is defective so long as the charge has not caused prejudice or embarrassment to the defence it would not affect the conviction. In the instant case the particulars of offence in the charge could not have left the Appellant in doubt that the substance of the crime alleged against him was one of human trafficking, which according to the Appellant he had been told at the time of his arrest by the police officer arresting him.
26. The case of Leslie Ragain (CR SCA NO: 02/2012) cited in the Heads of Argument by Counsel for the Appellant has no relevance to this case as the misunderstanding of the appellant, who pleaded guilty in Ragain was in relation to the elements of the ‘offence of manslaughter’ with which he was charged. The case of G. R. J. Pothin (CR SCA No: 13/2017) dealt with the particularization of the ‘elements of the offence’ of rape. This Court in Pothin found the charge was not defective. Also in

both these cases, appeals were allowed not on the basis of any defect in the charge, but on other grounds. I therefore dismiss the **first** ground of appeal.

27. In response to the **second** ground of appeal, I state that this was a case that fell within the provisions of section 3(1)(e) & (f) of the Prohibition of Trafficking in Persons Act, 2014 as stated at paragraph 20 above. It was the contention of the Appellant's Counsel that there was no evidence of deception or misrepresentation made to Marlon for the purposes of exploitation, and therefore the mens rea set out in section 3(1)(e) was not satisfied. It is true that Marlon was not before the Court to testify to this effect. The fact that the Appellant had paid for Marlon to travel to Dubai and assisted him to obtain his passport was undoubtedly a financial incentive or promise of gain to Marlon. When Ms. Bertin asked the Appellant why he allowed "Marlon to get into things like that"; the Appellant had said: "he doesn't know, maybe he needs the money". The Appellant had confessed that Marlon left Seychelles as a guarantor of drugs for the Appellant. It is simple common sense that Marlon could not have left Seychelles just to remain hostage in an unknown land. These uncontradicted facts coupled with the lies uttered by the Appellant at P2 as referred to at paragraph 13 above and the Appellant's promise made to Ms. Bertin, that he will pay to get Marlon back to the Seychelles, when the Appellant went to meet her, are indicative of the consciousness of guilt on the part of the Appellant that there had been a deception or misrepresentation of a financial incentive or promise of gain made by the Appellant to Marlon for the purposes of exploitation. In that scenario even if Marlon had 'consented to go' as a guarantor of drugs for the Appellant, as sought to be argued by his Counsel, it would not be a defence in view of the provisions of section 3(2) of the Prohibition of Trafficking in Persons Act, 2014, as stated earlier at paragraph 20 above. If the Appellant had only helped Marlon to better his future as stated by him at **P2**, and was not guilty of deception or misrepresentation for the purposes of exploitation, what was the necessity for the lies and the promise to get Marlon back to the

Seychelles? Again, if Marlon did not go as a guarantor of drugs for the Appellant as suggested to Ms. Bertin by Counsel for the Appellant, but for some others, why was the Appellant so involved in the procedures to send Marlon to Dubai and why did the Appellant make a promise to Ms. Bertin, that he will get him back, when he went to meet her? There is also another aspect to the defence of the Appellant's Counsel, that there was no evidence of deception or misrepresentation made to Marlon. In the absence of Marlon and in the circumstances of this case, the only person who could have testified to this fact, is the Appellant himself. After all there was an obligation on the Appellant to get down Marlon back to the Seychelles as he was the one who sent him abroad as a guarantor of drugs for him, and the only person who knew where Marlon was. The Appellant could easily have said that Marlon was not deceived nor was there any misrepresentation to him, when questioned by the Police as a suspect for human trafficking and since the sections of law for human trafficking and the charges were explained to him. The Appellant had instead chosen to lie. In the given circumstances the only conclusion the Court could reach, is that the elements of section 3(1)(e) of the Prohibition of Trafficking in Persons Act, 2014 have been established.

28. I am also of the view that the Appellant had made use of the vulnerability of Marlon, which falls under section 3(1)(f) as set out at paragraph 20 above, despite the fact that the learned Trial Judge holding that 3(1)(f) was not applicable in the instant case. It is clear that Marlon, not only worked for the Appellant and lived at his place but had been dependent on the Appellant to meet his own mother to look for his birth certificate, to obtain his birth certificate, to get his passport application signed by Fr. Alcindor, to collect his passport from the Immigration Office, to pay for his ticket to travel to Dubai and to go to the airport. It is also clear from the evidence of Ms. Bertin that Marlon had little contact with her and did not even inform her before he left Seychelles. All this is indicative of the fact that Marlon, who was also a drug addict, was one who could easily have been manipulated.

29. I am of the view that deception and making use of another person's vulnerability can be inferred from facts and the circumstances of the case, especially where the victim of trafficking is dead and not available to testify in Court. It is similar to inferring malice aforethought in a case of murder from the conduct of the accused and the other attendant circumstances. Malice aforethought is one of the necessary elements the prosecution has to prove in order to establish a charge of murder. Malice aforethought has been defined in section 196 of the Penal Code as follows:

*“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances: —*

*(a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;*

*(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.”*

30. There have been instances in other jurisdictions where accused have been convicted without the testimony of the victim of trafficking. That is on the basis of other evidence. In the Nigerian case of **Attorney General of the Federation V Constance Omoruyi, Case No. B/31C/2004, High Court of Justice Edo State of Nogeria, Benin Judicial Division, 22 September 2006**, the defendant was convicted of an attempt to organize foreign travel which promotes prostitution and an attempt to place the victims in servitude as pledge for a debt. The victims were not called upon to testify in this case but other evidence was considered by the court, including the defendant's statements which were confessional in nature, in

that he admitted organizing foreign travel. (similar to the evidence in this case) The defence raised the claim that failure to call the victims to testify was a fatal flaw in the prosecution's case. The court held that the victims of the offences charged are not the only witnesses by which prosecution can prove its case. It posed the question: *“What if it's a situation where the victim dies, will that be the end of the case? The answer is no”*. I therefore dismiss the **second** ground of appeal.

31. In response to the **fourth** ground of appeal I state that in view of the evidence particularized in paragraphs 4-13, 15, 16 and 18, above it cannot be said that “the decision of the learned Trial Judge is unreasonable or cannot be supported by evidence” in relation to count 2 of the Indictment. I therefore dismiss the **fourth** ground of appeal,

32. In view of that the Appellant's conviction on count 1 has been quashed as stated at paragraph 12 above, the sentence of 15 years imposed on the Appellant stands quashed.

33. The Appellant had been sentenced to a period of 10 years' imprisonment in respect of count 2. There is no appeal against the sentence imposed. I agree with the comment made by the Sentencing Judge that “Human trafficking is a crime where the victim is sapped of all human dignity; where he/she is treated as a mere object just as happened in this case. There was no respect for the life of Marlon Bertin. As a society we cannot condone such act and the Court has to impose a sentence that sends a clear message to those who have been involved or are contemplating such acts that the law will show no mercy on them”. Had there been an appeal against the sentence, I would have been inclined to increase the sentence. I therefore maintain the sentence of 10 years' imprisonment imposed on the Appellant in respect of count 2.

34. The appeal is partly allowed by quashing the conviction and sentence imposed on count 1 and acquitting the Appellant of the charge levelled against him on count 1.

35. The appeal against the Appellant's conviction on count 2 is dismissed and the conviction on count 2 is affirmed. The sentence of 10 years' imprisonment imposed on the Appellant in respect of count 2 is maintained.

Fernando President

I concur:

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F. Robinson JA

I concur:

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S. Andre JA

Signed, dated and delivered at Ile du Port on 26 April 2023.