

SUPREME COURT OF SEYCHELLES

Reportable
CR 53/2018

In the matter between

THE REPUBLIC
(rep. by Ms Rongmei)

Republic

and

NIZZAM UDDIN AHMED
(rep. by Mr Elizabeth)

Accused

Neutral Citation: R v Nizam Uddin Ahmed (CR53/2018) [2023] (6th October 2023)

Before: Govinden CJ

Summary: Accused has a case to answer

Heard: By Written Submissions

Delivered: 6 October 2023

ORDER

GOVINDENCJ

- [1] This is a ruling on a submissions of *no case to answer* by the Accused person. It is his Counsel's submissions that at this stage of the proceedings the Prosecution has failed to prove the *mens rea* and *actus reus* required in law to prove the offences of Trafficking in Persons as, a prima facie basis.
- [2] The Accused stands charged before this Court with seven Counts of the offence of Trafficking in Persons contrary to Section 3 (1) (d) & (g) of the Prohibition of Trafficking in Persons Act 2014 and punishable under Section 5 (2) of the same Act. Each of the counts relates to an individuals, Bangladeshi National, who the Prosecution avers were trafficked into Seychelles on the 21st March 2018 by way of recruiting by fraud and deception by misrepresentation as to the financial incentive and conditions of

misrepresentation as to the financial incentive and conditions of work and were thereafter exploited by way of forced labour and exposed to practices similar to slavery, using threats and being subjected to coercion.

- [3] The Defence's submissions are that the Prosecution's case has shown that the Virtual Complainants were not recruited by the Accused but by a Company, the DNS Farm (PTY) Ltd, of which the Accused was one of its Directors; the other two being Seychellois Directors, Mr Dine and Mr Larue and that all recruitment and employment processes were done through this Company.
- [4] It is further submitted that there was an investment agreement between the three Directors on how their business would operate and what would be the level of investments of each parties in the business. It is submitted that it was agreed that the Accused invests SCR500,000 in various business areas, and that actually the Accused invested much more towards the seven Complainants during their employment with the Company.
- [5] It is also submitted that there is a clause in the Agreement that calls for the creation of a bank account for the Company in which all sales transactions would go through and that payment of the three months salary to the Virtual Complainants was part of Mr Dine and Mr Larues contractual obligation and not his.
- [6] Counsel submitted that the Prosecution has failed to prove the three elements of the "act", "means" and "purpose" of the offences of Trafficking in Persons, as charged.
- [7] With regards to the *actus reus* or "the act" it is submitted that the Prosecution has failed to prove that the Accused committed acts being recruitment, transportation, transfer, harbouring or receipt of persons, namely the seven Virtual Complainants. It is contended that these were committed by the Company and not the Accused as the Gainful Occupation Certificate, the Work Permit, the Letters of Appointments were all issued in the name of the Company.
- [8] With regards to the essential elements of the "means" by which the offences were committed, it is submitted that the second element of the offence, which is the "means" by which that action is achieved, which are by threats, use of force, types of coercion,

abduction, fraud, deception, abuse of power or position or vulnerability and the giving and receiving of payments or benefits to achieve consent of a person having control over that person, has not been proved. To the contrary, it is submitted that evidence shows that he was acting as a father figure to the Complainants and he treated them as his children and was always looking for their general wellbeing.

- [9] Finally, Learned Counsel submitted that the Accused has failed to prove the third element with respect to the “purpose”, namely exploitation. He submitted that it follows that if the prosecution has failed to prove the second element of the offences, it would be impossible for it to prove the third element as the two are intrinsically intertwined. He submitted that the Republic has failed to prove that the Accused intended to exploit the seven Complainants and with that intention in mind, engaged in an act of forced labour or servitude or practices similar to servitude or slavery.
- [10] The Learned Counsel concluded that from the evidence adduced there is no possibility for any Court or tribunal to convict the Accused persons as the evidence led by the Prosecution at this stage of the proceedings does not prove the essential elements of the offences charged against him on a prima facie basis. The Learned Counsel referred the Court to the case of *R v Galbraith* [1981] 1 WLR 1039 in support of his submission and stated that the test with respect of *no case to answer* as set out in *Galbraith* has not been met. The Learned Counsel therefore moved the Court to find that the Prosecution has failed to prove the three essential elements on a prima facie basis and the Accused person have *no case to answer* and must be acquitted.
- [11] The Learned Counsel for the Republic, on the other hand, objected to the submission of *no case to answer* and submitted that the Prosecution has proved a prima facie case. The Republic submitted that it was the Accused that recruited, received and harboured the Virtual Complainants. He, however, misrepresented to them the amount of their salaries, financial incentive and work schedule. In that regard, it is submitted that the consent of the Complainants is legally immaterial in law. It is further contended that the reduced salary payments were eventually stopped by the Accused and when they raised their concerns

they were threatened with deportation which created compliance through fear, which proves *mens rea*.

- [12] The Republic submitted that evidence reveals that accommodation, food, water, and work shelter for the Complainants were totally inadequate.
- [13] The Counsel further submitted that evidence shows that the passports of the Complainants were confiscated by the Accused and this constitutes a restriction on the freedom of movements and it is also sign of exploitation.
- [14] It is the contention of the Republic that all these have to be looked at in the context of the vulnerabilities of the victim of the offences, which are lack of education, lack of familiarity of the language, culture, and financial dependency.
- [15] The parties before the court therefore agrees on the applicable law but differs on whether the facts adduced establishes a case for the accused to answer.
- [16] In determining whether an Accused person has a case to answer the Court must make an assessment of all the evidence adduced by the Prosecution and make a determination on two issues. First, whether all the elements of the offence have been established by the Prosecution which establish a *prima facie* case against an Accused. Where the Prosecution's evidence fails to address any particular element of the offence at all, no conviction could possibly be reached and the Court should allow the application of *no case to answer* to succeed. Where there is some evidence to show that the Accused committed or must have committed the offence but for some reason such evidence seems unconvincing, the matter is better left for the end of the trial where the evidence would be weighed and the Court would reach a verdict after assessing the witnesses' credibility together with all available evidence.
- [17] Secondly, where the available evidence has been so compromised by the defence or by serious inconsistencies in the prosecution's testimonies, the Court must determine whether the evidence adduced taken as its highest would not properly secure a conviction. If the Court determines that in such circumstances a conviction could not be secured, the submission of *no case to answer* would also succeed.

[18] In the case of *R v Galbraith* [1981] 1 WLR 1039 Lord Lane C.J. stated the following on the issue:

“How then should a judge approach a submission of ‘no case’? If there has been no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’ reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury ... There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.”

See also the cases of *Green v. R* [1972] No 6, *R v. Stiven* [1971] No 9 and *R v. Olsen* [1973] No 5.

[19] Although in a criminal trial, the standard that must be met by the prosecution's evidence is proof beyond reasonable doubt that the accused person committed the offence charged with, when an accused seeks an acquittal on account of having *no case to answer*, the standard of evidence to be assessed by the Court is not proof beyond reasonable doubt but whether the prosecution has established a prima facie case against the accused person.

[20] I have carefully considered the evidence led before the Court with a view of finding out whether the evidence taken at its highest, is such that a jury properly directed could properly convict the accused upon it. I did this with special emphasis given to the essential elements of the offences charged. Here I wish to place on record the fact that Learned Counsel for the Accused have greatly assisted the Court by succinctly setting out the essential elements of the offences. In my analysis of the evidence I am conscious of the need for this court to be circumspect and not to apply the proof beyond a reasonable doubt test at this moment in time.

[21] Having carried out this exercise, I am of the view that on evidence led before me, taken objectively as a whole, a reasonable tribunal having properly directed itself might convict the Accused. I therefore find that the Prosecution has established a prima facie case against the Accused on all the charges against him and, therefore, the submission of *no case to answer* fails to succeed and is dismissed.

Signed, dated and delivered at Ile du Port Victoria on 6th October 2023.



Govinden R.

Chief Justice