

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO67/2016

[2018] SCSC 946

THE REPUBLIC

versus

FAISAL ALAM
Accused

Heard: 13 August 2018, 15 September 2018
Counsel: Mrs. Lansinglu Rongmei, Assistant Principal State Counsel for the Republic
Mr. Guy Ferley Attorney at Law for the Accused
Delivered: 19 October 2018

JUDGMENT

Burhan J

[1] The accused Faisal Alam has been charged as follows:

Count 1

Trafficking in persons contrary to Section 3(1) (a) , (b) & (e) as read with Section 5(1) of the Prohibition of Trafficking in Persons Act, 2014 and punishable under the Section 5(2) of the same.

Particulars of offence are that, Faisal Alam, a Bangladeshi national, residing at Anse Aux Pins, Mahe and holding GOP (Gainful Occupation Permit) as Director, Dove Alliance Ltd. Anse Kerlan Praslin, trafficked Mr. AR (name withheld) a Bangladeshi national from Bangladesh into Seychelles on the 15th October 2015 by way of recruiting the said Mr. AR by misrepresenting as to financial incentive and conditions of work and thereafter exploiting the said Mr. AR by forced labour and to practices similar to slavery using threats and subjecting to coercion.

Count 2

Trafficking in persons contrary to Section 3(1) (a), (b) & (e) as read with Section 5(1) of the Prohibition of Trafficking in Persons Act, 2014 and punishable under the section 5(2) of the same.

Particulars of offence are that, Faisal Alam, a Bangladeshi national, residing at Anse Aux Pins, Mahe and holding GOP (Gainful Occupation Permit) as Director, Dove Alliance Ltd. Anse Kerlan Praslin, trafficked Mr. FC, a Bangladeshi national from Bangladesh into Seychelles on the 23rd February 2016 by way of recruiting the said Mr. FC (name withheld) by misrepresenting as to financial incentive and conditions of work and thereafter exploiting the said Mr. FC by forced labour and to practices similar to slavery using threats and subjecting to coercion.

Count 3

Trafficking in persons contrary to Section 3(1) (a), (b) & (e) as read with Section 5(1) of the Prohibition of Trafficking in Persons Act, 2014 and punishable under the section 5(2) of the same.

Particulars of offence are that, Faisal Alam, a Bangladeshi national, residing at Anse Aux Pins, Mahe and holding GOP (Gainful Occupation Permit) as Director, Dove Alliance Ltd. Anse Kerlan Praslin, trafficked Mr. LM, a Bangladeshi national from Bangladesh into Seychelles on the 1st March 2016 by way of recruiting the said by misrepresenting as to financial incentive and conditions of work and thereafter exploiting the said Mr. LM by forced labour and to practices similar to slavery using threats and subjecting to coercion.

Count 4

Trafficking in persons contrary to Section 3(1) (a), (b) & (e) as read with Section 5(1) of the Prohibition of Trafficking in Persons Act, 2014 and punishable under the section 5(2) of the same.

Particulars of offence are that, Faisal Alam, a Bangladeshi national, residing at Anse Aux Pins, Mahe and holding GOP (Gainful Occupation Permit) as Director, Dove Alliance Ltd. Anse Kerlan Praslin, trafficked Mr. MH, a Bangladeshi national from Bangladesh into Seychelles on the 1st March 2016 by way of recruiting the said Mr. MH by misrepresenting as to financial incentive and conditions of work and thereafter exploiting the said Mr. MH by forced labour and to practices similar to slavery using threats and subjecting to coercion.

THE EVIDENCE OF THE PROSECUTION

- [2] The accused denied the charges and the prosecution called several witnesses Stephanie Agathe, Karen Pillay, Cecile Hoareau, Vanessa Dugasse, Judith Joanneau, Ronny Baker, George Fideria, Lucy Surman, Flint Gappy, Kevin Pompey, victims of human trafficking AR, FC, LM, MH, and Francois Freminot.
- [3] Stephanie Agathe gave sworn evidence that on 10 August 2016, she was on duty at the SSCR (Scientific Support and Crime Record Bureau) and she took photographs at Caryole Estate, Anse Aux Pins, at the request of Sub Inspector George. The photographs were produced as P1 (1 to 15). She gave evidence that the building was under construction at the material time and there was no bedroom other than the one she was asked to photograph by SI Gappy and PC Tambara. In cross-examination, she testified that she did not recall whether there were other rooms in the house.
- [4] Karen Pillay gave sworn evidence that she was working as an Immigration Officer at the material time, entrusted with the task of issuing Gainful Occupation Permits (GOPs) to expatriates working in Seychelles. In June 2015, she received a tip-off from Lucy Surman

that 8 expatriate workers for Dove Alliance were being mistreated in terms of their living condition and by virtue of not being paid their salaries at Anse Aux Pins.

[5] Witness had then perused the work permit file for the said company and found that all the work permits were in order, including photographs, the completed work application forms, payment receipts of the required fees, passport copies, medical certificates, and police and schooling certificates. The licence, certificate of incorporation for Dove Alliance and article of association for the same, and labor approval document dated 27 July 2015 for one director, one plumber, two supervisors, 5 masons, 4 carpenters and 1 electrician for a period of 2 years were also on file produced as P2. Faisal Alam's work permit was for 31 August 2015 to 30 August 2017. On his own GOP application, Faisal Alam signed as the employer. Alam, a Bangladeshi National, had 40% shares in Dove Alliance, and Kishna Esther, a Seychellois, had 60%. Both Alam and Esther were appointed as directors on 9 February 2015. Alam signed the Particulars of Directors as secretary thereof. Esther wrote to the witness's division on 7 December 2015 stating that he was no longer a shareholder, and that he was not responsible for the recruitment of expatriates produced as exhibit P8.

[6] Dove Alliance applied for the GOP of the company's expatriate workers, namely LM, MH, AR, and FC. MH arrived in Seychelles at the end of March 2015, LM arrived in the first week of March 2015, AR around October 2015, and FC in January 2016. AR had a 1-year-GOP to work as a carpenter with Dove Alliance (approval letter dated 2 September 2015) and his application was signed by Faisal Alam exhibit P3. FC was granted an extension period of 3 months (26 January 2016-25 April 2016) to work for the company as a mason (approval letter dated 30 May 2016); Alam was the applicant in this application and Alam made the necessary payment for the application. Alam signed as employer in the application produced as exhibit P4.

LM was granted a 3-month GOP (approval letter dated 4 May 2016) to work for Dove Alliance as a supervisor. The application was signed by Faisal Alam exhibit P5 MH was granted a 3-month GOP (approval letter dated 12 May 2016) to work for Dove Alliance as a mason and foreman. The application was signed by Faisal Alam as employer exhibit P6.

- [7] Witness Karen Pillay further stated she had referred the matter via email on 9 June 2016 to Cecile Hoareau, the Director General of Employment, who deals with the welfare of expatriates working in Seychelles.
- [8] In cross-examination, witness stated she did not take part in any subsequent investigation done by Cecile Hoareau. Furthermore, she agreed that the GOP applications were genuine and she did not believe that she was misled by Alam. She admitted that she did not receive complaints from the workers, nor from anyone at the Labor Department or Health Department.
- [9] Witness Cecile Hoareau, the Director General for employment promotion in the Department of Employment, corroborated the testimony of Karen Pillay in that she was notified by witness Karen of the complaint pertaining to the expatriate workers employed by Dove Alliance formally on 9 June. Following receipt of the said complaint, she initiated investigation into the same. Ronny Baker from the Labor Monitoring and Compliance Unit and George Fideria, a welfare officer from the Labor Migration Unit, conducted an investigation into the case. On the basis of the final draft of the report that Baker and Fideria compiled, the witness was satisfied that there was enough evidence of human trafficking to refer the matter to the police. The indicators of human trafficking she identified included the restriction of movement, passports being taken away, failure to provide decent accommodation, retention of wages, and failure to pay overtime. She wrote a letter to the Commissioner of Police dated 18 July 2016 produced as exhibit P9 including a copy of the report thereto.
- [10] In cross-examination, witness stated that she compared the report compiled by Fideria and Baker to the UNODC Human Trafficking Index to determine whether or not this could be a case of human trafficking. She confirmed that she had received a week-long training in human trafficking with the Internal Law Enforcement Academy in Botswana. She stated that they took the complaint seriously because the contractors failed to notify the Ministry of Labour that the workers' accommodation had been shifted from Praslin to Mahe, and the Ministry only became aware of the shift once the complaint was received.
- [11] Witness gave further evidence in cross-examination that it was only after the complaint was made about the expatriates living in deplorable conditions that Alam moved them to

another accommodation. She confirmed that she never met the expatriates, nor did she follow up about the case once it had been referred to the police, and that it is not uncommon for disputes regarding non-payment of salary to arise between employers and employees. She was aware that the expatriates went to the employment tribunal for redress, but stated that this is not her division so she was unaware of the claim and the result. She was not aware whether the expatriates' families were paid directly, and had entrusted the task of further investigation to the police. She confirmed that, as per the recommendation in the report that the expatriates were given a choice to either remain in Seychelles working or to return to their home country once they are paid all their dues, and that the expatriates chose to remain in Seychelles to work for a different company.

- [12] In re-examination, the witness clarified that the expatriate workers were working against their GOPs because they were being offloaded to a third party and being made to work for that third party while they were contracted to work for Dove Alliance.
- [13] Vanessa Dugasse, Director for Labor Migration at the Employment Department, was responsible for the processing of applications for the employment of foreign workers. Dove Alliance had requested 17 foreign workers to work on projects in Praslin and had received approval from the Praslin officer. Witness confirmed that employers are meant to submit the contract of employment to the officers for attestation within one month of the employee's arrival in the country, but that Dove Alliance had failed to submit the contracts.
- [14] Cecile Hoareau had informed the witness about the complaints brought against Dove Alliance and its director, Faisal Alam, and that she subsequently instructed two of her officers (Fideira and Baker) to conduct a visit of the premises. Reference was made to the findings of the officers and the witness confirmed that 3 of the 4 accommodations visited were still under construction and the workers were living in these incomplete buildings on which they were working. Furthermore, witness confirmed that the employer had no projects for the workers to work on, but had contracts with Randy Alphonse, Jefferson Nganga and Marine Trophy Indian Ocean Pty Ltd to effectively rent the workers out to third parties.

- [15] Witness Vanessa Dugasse further confirmed that the officers found the following indicators of human trafficking to be present during their site visit, which included the accused had confiscated the passports of eight workers, the workers were reluctant to answer the questions of the officers, one of the workers stated that the accused threatened their family members in Bangladesh if they were to report him to the authorities, workers were constantly moved from one site to another, making it difficult for them to know their address, workers on site were reluctant to answer the questions of the officers and gave the officers the number of the accused, workers were not supplied with personal protective equipment and had not received salary for the past two months, upon inquiry about necessary equipment or salary workers were threatened to be sent back home, and 3 out of 4 accommodations visited (2 at Anse aux Pins and 1 at Les Cannelles) were far below the standard requirements of public health authorities.
- [16] Based on these findings, the Report recommended that (1) the accused and all accomplices are referred to the police on the grounds of human trafficking and or aiding in human trafficking, (2) the GOP of the accused is cancelled and he is declared a prohibited immigrant, (3) the employer is compelled to provide the workers with suitable accommodation until it is decided what will happen to them, (4) all workers are either repatriated after having been paid the dues owed to them or moved to another company based on their preferences.
- [17] Witness stated that, based on the findings of the report, she was convinced that human trafficking had indeed taken place, as 10 of the 30+ indicators were found to be present. She clarified that while the individual issues themselves would not suffice to indicate such a finding, the fact that so many indicators at once were present in her opinion permitted such a conclusion and distinguished the case at hand from other cases.
- [18] In cross-examination, Witness confirmed that the accused had been advised to find alternative accommodation for the workers after the visit on 1 July and that by the 19 July the accused had found accommodation for the workers that the Health Department certified as suitable. Witness further stated that the supervisor, Mr. Karim, spoke English very well and that the officers were able to communicate with the other workers using

sign language and broken English, and stated that her workers communicated with foreign nationals on a daily basis and knew tactics to communicate effectively.

[19] Witness Judith Joanneau testified that she lived at Au Cap with her husband. They ran a carpentry workshop from their home. Prior to this, she worked at Airtel. She gave sworn evidence that she knew the accused person briefly. She had met him first when she was still working at Airtel. He came to Airtel to look for work, and then later, as a customer. At the time, they had ongoing construction work at her home, and he had offered to provide them with construction workers. They agreed to sign on one worker to help with carpentry work and the duration of the contract was 6 months to 1 year.

[20] The contract was signed in April, and a security deposit of SCR 10, 780 was paid. It was agreed that the salary would be paid in monthly instalments when the work commenced. They anticipated that the worker would start soon after the contract was signed. However, they had difficulties with Alam in getting the worker to start, and even threatened to end the contract. The worker in question, AR, did not attend work after the contract was signed. Therefore, they called Alam to enquire about the worker's whereabouts. Finally Alam turned up with the worker, and the worker began work from 2 June 2016.

[21] She further testified that AR resided at Anse Aux Pins. They often picked him up at the bus terminals there. His working hours were from around 08.30 to around 15.30 and his salary was paid to Alam. The full contracting price, per month, was SR10, 780.

She further stated that AR's command of English was not good, but they could communicate in 'broken English' and some sign language. In her observation, he was enthusiastic about his work, and respectful toward them; he was a hard worker.

[22] When the month ended, AR informed her that he had not been paid a salary. He later told her that he had not been paid for any work that he had previously done. They reacted by calling Alam to try and find out why he was not being paid. Alam then paid Ahmed one month's salary and AR returned to work for them, despite his complaints about previous salaries that had not been paid. AR would sometimes skip a few days of work, informing them that he did not come because he had not been paid. They again called Alam to discuss the situation. AR continued working for them until 6 August 2017, and they paid

Alam for this period. This she stated was also the time when the investigation commenced. A group of people arrived and questioned AR, and also them, about AR's working conditions.

[23] In cross-examination, the witness stated that on 16 September they ended the contract with AR, and that Alam paid them the security deposit. She also testified that the parties to the contract, as indicated therein, were Dove Alliance on behalf of Alam, and their company, Marine Trophy.

[24] She further testified that, although there were issues with payment, AR was eventually paid all his salaries. Furthermore, Alam would text them to state that AR was ill whenever he failed to show up to work. However, AR would later tell them that he had not been sick, but had absconded because he had not been paid by Alam. She did not think AR was forced to work. She also testified that AR never complained to them about being treated 'like a slave' his main complaint was in respect of payment.

[25] Witness Ronny Baker, Assistant Employment Officer appointed by the Ministry of Employment, testified that he had been employed by the Department since February 2013. His duties included investigating complaints received, and doing inspections in accordance with the Employment Act.

[26] He testified that an investigation were done into the company owned by Alam the accused, in relation to the treatment of non-Seychellois workers. There had been a complaint from the Public Health Authority's Management, Vanessa Dugasse and Cecile Hoareau, and the Employment Department had issued a directive propelling the investigation into the conditions of non-Seychellois workers.

[27] He started investigations with the help of a colleague, George Fideria. They went to the working site at Au Cap, where they found 4 non-Seychellois workers. They asked questions, like which company they worked for, but the workers seemed afraid to respond, and told them to call Alam, their boss. The workers' names that he could recall were MH, FC and LM. He testified that although the workers had difficulties with communication in English, they knew some, and could answer some questions. The

workers informed them that they had not been issued with personal protective gear and were not provided with a scaffold to prevent falls on the construction site.

[28] They proceeded to the accommodation site based at Anse Aux Pins, which comprised of a 3 bedroom house which had not been completed; it had no tiles and no electricity. Witness believed that the workers were also fixing this house. The workers said that they lived there. Witness said that he conducted the interview with the workers, and his colleague interviewed Alam. The workers told him about not getting paid their salaries, and that they feared Alam, who they alleged threatened their families and them with deportation if they did not do what he required. They also said that their passports were in the possession of Alam.

[29] They then went to Alam's accommodation, where they spoke with Alam and Ms Anna. They asked them for the workers' passports. Alam refused to show these and only provided copies. They informed Alam that it was illegal to hold the workers' passports. Alam also provided them with copies of the workers' contracts. They took the copies and proceeded to accommodation based at Reef Estate.

[30] When they arrived at the place, they noticed that it was in a dilapidated state. This, according to him, was what had caused the Public Health Ministry to alert the Ministry of Employment. It appeared that the kitchen and toilet were in the same place. The place was very dirty. He took photographs of the house with his mobile phone. They thereafter proceeded to another house at Les Canelles, where they found a soak away pit right in front of the house. The water from the pit had drenched the ground, and the state was generally not one where workers could safely reside. He again took photographs, which were admitted into evidence.

[31] Later, they compiled a report of their findings, which they forwarded to their Management a week or two after their investigation. This report was accepted into evidence as exhibit P10. The report intimated the deplorability of the houses, with leaking water, broken washing basin and the lack of storage facilities like fridges. It further indicated that the workers had not received a salary for 2 months. Their passports had been confiscated and they had not been provided with a copy of their contract.

- [32] As far as the work done at Les Canelles was concerned, the owner, Randy Alphonse informed them that he did not know Alam personally, but that they had discussed the possibility of getting some foreign workers to do some work for Alphonse's construction company. They entered into a contract in the amount of SCR 20.000 per month for 2 workers.
- [33] The report also detailed their visit to Au Cap, where they questioned Ahmed and Mr Joanneau, owner of Marine Trophy Indian Ocean (Pty) Ltd. They further interviewed Peter Jules who explained that he had been approached by Alam to rent out his unfinished house. Alam proposed to complete construction of the house, in exchange for free stay.
- [34] They concluded that of all accommodations that they had visited, 3 were still under construction and that the workers who lived there were supposed to be completing these homes, in exchange for rental free stay. They further concluded that Alam's company was involved in human trafficking because (a) the workers could not leave because their passports had been confiscated; (b) they showed fear and anxiety when they were being questioned, and would not answer questions, telling them to ask Alam instead; (c) they were subject to violent offences; (d) one worker had stated that Alam had threatened their family in Bangladesh if they approached the authorities; (e) they had no steady home address; (f) their work conditions were not good, for instance, they were not provided with personal protective gear; (g) they were not allowed to negotiate their working conditions, and were threatened with return to their home countries when enquiring about their salary and protective gear; and (h) their accommodation was of poor health standards.
- [35] He testified that they made 4 recommendations on account of these findings including that Alam and his accomplices be referred to the police for investigation into charges of human trafficking, or aiding in human trafficking. After the report was forwarded to his managers, the National Committee for Human Trafficking got involved, as did the police. He testified that he made a statement with the police.
- [36] Under cross-examination, witness testified that the workers could speak 'broken' English and maintained that all the information in his report came from the workers. He conceded

that he did not do an investigation into the health standard of Mr Jules' house. With regards to the other houses, the suggestion was made that Alam was not responsible for the hygienic upkeep of these, as they were rentals. He did not agree that Mr Jeffrey N'ganga, who was a subcontractor, was responsible for ensuring a safe working environment for the workers. His view was that this was on Alam as the main contractor. He maintained that the reason for the workers' fear was not because of his questioning of them.

- [37] He stated that the workers were interviewed jointly and he only interviewed one worker at Lucy Surman's house individually. He conceded that he could not identify which of the workers he had interviewed were resident at which accommodation. He further stated that his mandate to investigate or inspect was both in respect of labour and safety laws, as well as human trafficking in terms of the Act.
- [38] Regarding the alleged threats made concerning the workers' families, the witness conceded that this was not verified with the families. His view was that the UNODC human trafficking indicators had been met, thus, this was not necessary. During this line of questioning, counsel for the accused conceded that the threat made against the workers was that they would be deported, as 4 others had already been deported. He maintained that his investigation pointed to the workers being forced to work.
- [39] Under re-examination, he reiterated that the workers had told him that they were afraid, that they had been threatened and that their passports were with Alam, who refused to return them. He only gave them the copies. He also said that the workers had a limited right to move around.
- [40] Mr. George Fideria, Employment Officer at the Ministry of Employment, testified that he had conducted an investigation into the living conditions of the workers employed by Dove Alliance on 30 June and 1 July 2016, after reports had been received that their living conditions were substandard.
- [41] He corroborated the evidence of his colleague Mr. Baker in that he went to the site at Anse Aux Pins, where they met a group of workers, including AR, MH, LM, and Mohamed Raza. He corroborated the fact that the workers informed them that they had

not been paid their salaries for some months, they had not been given enough food and they were not given the necessary protective equipment. He also corroborated the fact the workers had informed them that they had to work overtime, and that their families had been threatened by the accused. MH had told him that he had been promised a job in Bangladesh by an agent, who happened to be the brother of the accused and that he had paid USD 5000 in Bangladesh to be offered this job, USD 2500 to the agent and USD 2500 to the accused upon his arrival. MH had further had stated that he was not being paid the full salary that he had been promised by the agent in Bangladesh and that the accused was in possession of his passport.

[42] Witness also corroborated Baker's evidence in that they visited 4 houses together during the course of their investigation, 3 of which they found to be in poor condition: One house was located in Anse Aux Pins and owned by Mr Jules, who explained to them he had been asked to rent out the house by the accused despite it still being under construction and in an not completed. Witness was informed by Jules that the accused did not have to pay any rent for the house as he had proposed to provide the manpower to complete the work on his house. One house belonged to Mr. Brutus and was located in Anse Aux Pins Reef Estate. Witness and Baker found this house to be very dirty and not conducive for living. The house did not have a kitchen and the bathroom was being used as a kitchen. Witness stated that this house was the one they had received the original reports about. Another house was located in Les Canelles and was being provided by Randy Alphonse as part of his agreement with Dove Alliance. Witness stated that the house was in terrible condition and far below the standards of what the Ministry of Health recommends for expatriate workers.

[43] Witness George Fideria confirmed that based on the findings during their investigation, they had come to the conclusion that 10 of the 30+ indicators for human trafficking established by the UNODC were present and thus had recommended that the accused and all of his accomplices, ie the contractors (Nganga, Alphonse, Surman), should be referred to the police on the grounds of human trafficking and/or aiding in human trafficking.

[44] Witness stated that he had received multiple trainings on human trafficking both in Seychelles and abroad, and that he therefore believed that he was able to distinguish

normal labor disputes from cases of human trafficking. He confirmed the arrangements made after the report had been filed, stating that three of the victims were now working for a construction company, while MH was still working for Ms Surman, and that their salaries were now being paid to them directly, and not to the accused.

[45] Witness Lucy Surman gave sworn testimony and stated that she had rented out her apartment to the accused. According to the witness, the accused offered to bring someone in on one of his GOPs to help with the care of her mother if she could pay him. Witness stated that the accused showed her one potential worker (MH), of whom she approved and that they agreed that she would pay the accused SCR 5000 per month, and give him an additional SCR 500 allowance for food, accommodation, etc. Witness later stated that she started paying SCR 1000 allowance instead of SCR 500 allowance on her own, so that MH would be able to have some money for himself to buy data for his phone etc.

[46] Witness accompanied the accused to collect MH from the airport in mid-March, where she saw MH give the accused some cash in dollars. She confirmed that the accused asked MH to give him his passport, which MH did. About a month after MH had started working for her, he told the witness that he was not receiving any money for his work. She suggested that she could speak to the accused about this, but MH declined, stating that he was afraid that the accused would send him back to Bangladesh. Witness stated that every Sunday some of the other workers of the accused (whom she identified as AR, FC, and LM) would come to her house and complain to MH that they had no food and that the money that the accused was meant to send to Bangladesh had never reached their family. Witness learned the content of the workers' complaints through her mother, who spoke Hindi and therefore was able to better communicate with MH. Witness stated that that she had sometimes given the workers food because she felt sorry for them. Witness further stated that she had told Ms Karen about these incidents and had asked her to look into the status of the workers' GOPs.

[47] Witness confirmed that MH was still working for her but that she had now made arrangements with him directly without the involvement of the accused. She now pays USD 350 per month directly to MH, which she sends to Bangladesh on his behalf, gives him an additional allowance of SCR 1000 every month, and pays for his GOP.

- [48] Upon cross-examination, Witness clarified that she was not certain whether MH averments that he was not being paid were actually true, but that this was merely what MH had told her. MH had expressed his desire to her to return to Bangladesh after he had been working for her for 1 1/2 months because he was not earning any money and therefore felt that he had to go back to Bangladesh to provide for his family, but that he would stay if he were paid. In her opinion, MH was not forced to stay in the country and he could have left if he wanted to.
- [49] Mr. Flint Gappy, a police officer assigned to investigate the allegations of human trafficking brought against the accused on 5 August 2016, gave sworn evidence that during the interview with the workers, he was informed that they had been working for approximately 6 months but had been paid only for 2 months. Witness inspected the house in which they were staying and confirmed that the house was still under construction, that it had no furniture and no tiles on the floor. The workers reported that they worked on construction sites during the day and at night and on the weekends had to work on completing their own house. Witness expressed the view that the workers looked “thin”. He stated that he had barely seen any food in the fridge in the house and that the workers had informed him that they were hungry. Witness stated that he mainly communicated with FC as his English was the best and that FC would translate for the other workers. Witness further stated that the workers told him that they worked for the accused, and that he himself met the accused when he proceeded to his residence at Anse Aux Pins to collect his passport.
- [50] After his interview with the workers, witness made arrangements with the Immigration Department for them to be put into different accommodation facilities at Roche Caiman, because the Act required victims to be properly housed for the duration of an investigation and a trial, and he felt their current living situation did not constitute proper housing. He also did not want the workers to be in contact with the accused to prevent any risk of intimidation. Witness stated that further arrangements were made to obtain an interpreter in order to properly interview the victims, and that this was his last involvement in the matter before the matter was referred to someone else.

- [51] Witness Kevin Pompey gave sworn testimony that he worked for the Public Health Services and that he coincidentally came across the workers at Anse Aux Pins when he was conducting a visit at a different site for a building application. He stated that he investigated the matter because part of his job entailed providing certificates for the accommodations of foreign workers to the Ministry of Labor and that they therefore kept a record of all the accommodations where foreign workers were staying. He stated that upon his inspection of the premises, he found several deficiencies, such as too little space for the amount of workers staying there (the place would have been suited only for 2 people instead of the 5 people that actually stayed there), lack of hygiene, rodent activity, mould growth, lack of running water in the kitchen, lack of living areas etc. Witness further stated that he tried to speak to the workers but that this was made difficult by the language barrier.
- [52] Witness was given the telephone number of the accused by the workers, with whom he then scheduled a meeting at the Ministry of Health. In said meeting, witness reported the deficiencies to the accused and told him that he should vacate the premises where the workers were living. He gave the accused a week to find alternative accommodation, whereupon the accused suggested moving the workers to the property at Les Cannelles where other workers of his were already staying. Witness told him that certain repairs would be necessary to render said property adequate. When he tried to follow up on whether the re-allocation had taken place, he found that none of the suggested repairs had taken place at the Les Cannelles/Anse Royale property and that the original problematic accommodation was now locked, so that he was unable to verify whether there were still workers living there. Witness stated that he compiled a report about the matter, in which he stated that the premises were unfit for human habitation. The report was issued on the 27 June 2016 and addressed to the Managing Director of Dove Alliance Construction Company. A week after said report, the witness was contacted by the accused who stated that he had found alternative accommodation at Anse Aux Pins/ Bodamien, which was approved by the witness by letter from 19 July 2016.
- [53] AR a worker gave evidence that he came to the Seychelles with the help of Marsud Alam, to whom he was introduced by Halal Ahmed who had come to the Seychelles previously with the help of Marsud Alam. Witness stated that he wanted to work in

Seychelles in order to finance his father's medical treatment and confirmed that he was the sole breadwinner of the family. He stated that he paid Marsud Alam 4000 Laks of Bangladeshi Takka (for which he took up a mortgage on one of his properties), who then helped him obtain a GOP and paid for his ticket. He stated that of the money that he had given to Marsud Alam, USD 3000 was returned to him for him to give to the accused together with his passport upon his arrival in the Seychelles. He stated that he did as told when he arrived at the airport in Seychelles, where the accused collected him. He stated that in Bangladesh he had been told that he would be working as a carpenter and that he would be earning USD 500 per month and that he would be provided with food and lodging.

[54] He stated that he was not told who owned the company for which he would be working prior to his departure. Upon his arrival, he spent 1 ½ months on Praslin doing masonry jobs, for which he was later paid by way of the accused sending the money (SCR 4800) to his family in Bangladesh with the help of the brother of the accused, Marsud Alam. After the 1 ½ months on Praslin he was brought back to Mahe to work for the construction company of Mr. Jefferson for 8 to 9 months together with LM, FC and MH. He stated that during this time, he received his salary (SCR 4800 per month, which was once again sent straight to his family in Bangladesh) for only 6 months, while he did not receive any salary for the other 4 months.

[55] He stated that while working for Mr. Jefferson, he was residing in Au Cap in one small room with 4 other men (one of whom had to sleep on the floor) without any proper kitchen facilities or windows and with running water only available sometimes. He slept on the top bunk in the left hand corner and water dripped through the ceiling onto his bed whenever it rained. He stated that they received food from the company, but that the amount of food was not enough. He stated that when they brought the matter to the attention of the accused, he told them they could have one chicken for the five of them, and if this was not enough for them, they could go back to Bangladesh.

[56] Witness AR further stated that after nine months, two of the workers filed a complaint with the Ministry of Employment. Thereafter the Ministry of Employment investigated their accommodation and they were moved to another accommodation in Anse Aux Pins,

where they stayed for 1 ½ months. The witness stated that the new accommodation had just been built and was not yet connected to electricity or water, and that they were made to work on the house, e.g. build a septic tank, furniture, and do tile work. He stated that they usually worked for another lady from 7 am to 4pm, after which they worked on the house together with LM and FC from 5 pm to 8, 9 or 10 pm. On the weekends they also worked on the house, which prevented them from doing work for others on Sundays like they used to before to obtain more food. Witness stated that during this time despite the fact that the lady he was working for said that she was paying the accused, he himself was not being paid any salary and that his family did not receive any money either. The witness stated that when they asked the accused for money, he threatened to kill them and showed them a knife. The witness stated that he had asked the accused for his passport back, but that the accused had refused to give it to him. Only after the police investigation had taken place did he give the passport back to him. The witness stated that he was now working for another company, which is providing different accommodation for him.

[57] Witness AR confirmed that they had gone to Mrs.Surman's house on about 15-16 occasions to look for food and that she had given them some food on these occasions. The witness confirmed that two officers from the Labour Ministry had conducted an investigation at the premises at Anse Aux Pins, and that they had told them of the various issues regarding salary, food and accommodation. The witness confirmed that thereafter a settlement regarding the unpaid salary for the period of April – August 2016 and the 256 hours overtime was made during a mediation conducted at the Employment Tribunal with the help of the Labor Union. Pursuant to the terms of the settlement, he was paid SCR 12, 478.42, i.e. salary only for two months and not the requested five and a half months. Witness stated that he did not sign the settlement agreement but that it was signed by Ms Myriam from the Labor Union, whom he however did not authorize to sign on his behalf.

[58] In cross-examination, witness identified Marsud Alam in an ID document, noting that this was the name of the person holding the bank account that was used to transfer the money to his family in Bangladesh. Defence pointed out discrepancies between the statement the witness made to the police and the one given in court regarding the amount of money paid to Marsud Alam, to which the witness stated that he had included the expenses incurred to obtain the manpower card from Bangladeshi authorities. Witness clarified that

he obtained the money for Marsud Alam through the mortgage but that he borrowed money from his brother-in-law for other expenses. Witness gave evidence that he was given his passport back just for the purpose of the travel between Mahe and Praslin, but that it was confiscated again once he was back in Mahe.

[59] FC another worker gave evidence that he was the sole breadwinner in his family and that Marsud Alam had told him that he could help him find an employment in Seychelles with his brother and had promised him a salary of 550 USD per month (with food and accommodation being provided, working hours ranging from 7 am to 4pm and overtime being paid extra). Witness stated that he had signed a 2-year contract to this effect back in Bangladesh with Marsud Alam, but that he never received a copy of the same, despite having asked for one. Witness stated that he had been introduced to Marsud Alam by one of his uncles, Mr. Dehli, who knew that Marsud Alam helped to send people to the Seychelles. Witness stated that Marsud Alam organized his GOP for him and that he paid him a total of 480,000 Bangladesh Taka, of which Marsud Alam gave him back 3000 USD to give to his brother, the accused, upon his arrival in Seychelles. The witness stated that the first GOP he received was a fake, and that he had to wait another year before he received the original valid GOP. When he finally arrived in Seychelles, the accused picked him up from the airport on 23 February 2016, whereupon the witness gave the accused the 3000 USD in cash as agreed. Witness stated that he had to hand his passport over upon his arrival in Beau Vallon. The accused refused to give him back his passport despite multiple inquiries and only gave it back after the investigations had commenced.

[60] Witness stated that he stayed in Beau Vallon first for a period of 1 month and 7 days. For the work he was doing in Beau Vallon he was paid 25, 000 Bangladesh Taka, albeit late, which was sent directly to his family in Bangladesh. Following which, the witness was taken to Au Cap to work for Mr Jefferson for 4 months. His salary was only paid for 1 of the 4 months (20 000 Bangladesh Taka was sent directly to his family in Bangladesh via bcash through Marsud Alam, a procedure which the witness stated he had not agreed to). Witness stated that he stayed in a warehouse type of accommodation together with 4 other men. He confirmed that there were only 4 beds, rain water damage on the ceiling, no windows, not enough space and that the washing of the kitchen utensils had to be done in the bathroom as there was no running water in the kitchen.

- [61] After 4 months, they were relocated to another accommodation at Anse Aux Pins because there had been some issues regarding the payment of rent by the accused. Witness stated that the landlord had locked the room because of the rent dispute and that they were therefore forced to sleep outside for 4 days. Witness confirmed that food was provided by the accused but that it was not enough as the accused would give them only one chicken and some rice for all five of them and expect it to last for a few days. He confirmed that they therefore went to Lucy Surman's house to beg for food 3 or 4 times. The witness further corroborated the evidence given by AR in that when they asked the accused about the lack of payment, he threatened to send them back to Bangladesh or kill them. He further stated that the accused told him that he had the police and immigration "in his pocket". Witness confirmed that the accommodation they were taken to after Au Cap was still under construction and that they therefore had to work on completing the house (e.g. lay floor tiles, make furniture etc) from 5 pm to 10 pm after coming back from their regular work. The witness stated that Faisal Alam undertook to pay overtime for this work but never actually followed through on his promise. The witness stayed in the accommodation for 1 to 2 months before being taken to an accommodation at Roche Caiman by the police. Witness further corroborated the evidence given by AR regarding the mediation procedure before the Employment Tribunal, stating that they had asked for 4 months unpaid salary but only received 2 months' worth (amounting to approximately SCR 12 000). He stated that he did not sign anything and did not fully understand what was going on due to the language barrier.
- [62] In cross-examination, witness stated that he did not report the threats made by the accused to anyone because he was afraid, and that he did not want to return to Bangladesh because he would not have any money to provide for his family. He further stated that he signed the pay slips for April and May 2016 but he had not received money for the month of May, and that Salim and Halal were sent back to Bangladesh by the accused because they complained about not receiving payment.
- [63] In re-examination, witness stated that he did not know that his GOP was finished until after the police investigation had already begun, as the police were the ones who told him that it had expired.

- [64] LM another worker from Bangladesh gave evidence that he was the sole breadwinner in his family and that he came to the Seychelles with the assistance of Marsud Alam, to whom he was referred to by one of his brothers. Marsud Alam originally demanded 700,000 Bangladesh Takka from him, but they ultimately agreed on the payment of 500,000 Bangladesh Takka. He was given 3000 USD by Marsud Alam to give to the accused upon his arrival in Seychelles. Witness stated that he had received 2 or 3 fake GOPs before finally being provided with a valid GOP. When he arrived in Seychelles, he was picked up at the airport by the accused, who asked him to give him the money and his passport and then proceeded to take him to Baie Lazare, where he started doing masonry work the next day for Ms Sally.
- [65] Witness stated that he did not sign any agreement in Bangladesh, but that Marsud Alam had told him that he would be paid 500 USD and that he would be working for his brother, the accused, in Seychelles for 2 years. After 2 months in Seychelles, the accused took him to Madagascar to get his permit extended. Upon their return to Seychelles, the accused took all of their passports away and took them to Mr Randy, for whom they worked for 4 months. During that time, they stayed at Au Cap. Witness confirmed that there were 5 workers staying in an accommodation with only 4 beds, that the kitchen and the toilets were in the same room and that there was rain damage on the ceiling. For the first 4 months he received salary amounting to SCR 6000. When they told the accused that this was less than what they had been promised in Bangladesh, he threatened them that he would send them back to Bangladesh.
- [66] Witness confirmed that they did not have enough food and that when they broached the issue with the accused, they were once again threatened with being sent back to Bangladesh. After Anse Au Cap, they were moved to Anse Aux Pins, where the house was still under construction. They were expected to work on the house after already completing a day's work (e.g. completing tile work, making furniture) without being paid for the overtime. Witness stated that after the Central Intelligence Department came, they stayed in the airport for 2 ½ months.
- [67] Witness confirmed that he had signed pay slips given to him by the accused and stated that in May 2016, he signed the pay slip despite not having received any salary. He

further confirmed that despite what was written on the pay slip, he did not work as a supervisor, but was doing masonry work. He did not sign the mediation agreement negotiated at the Employment Tribunal and that they received only SCR 12 000 (i.e. 2 months' salary) despite having asked for 4 months of salary and overtime. Witness further stated that there was no interpreter present at the meeting and that they were not allowed to speak.

[68] In cross-examination, witness confirmed that he was not forced to work either by Ms. Sally, by Mr. Randy or by Mr. Nganga. Witness further confirmed that he was not under constant supervision and that he reached his place of work either by pick-up or by taking the bus. He denied that he received SCR 3600 from the accused via bcash and that he made a statement to this effect to the police. He stated that he did not write his own statement but that another Bangladeshi wrote it for him and that he himself cannot read well. He reiterated that he only received SCR 6000 from the accused, but stated that he had received food money from the persons he was working for (e.g. SCR 3000 for the 2 months that he worked for Ms. Sally).

[69] Witness stated that he did not have any contact with the accused prior to coming to Seychelles and that he had sought out Marsud Alam voluntarily because he wanted to work overseas. He confirmed that it was normal in Bangladesh to pay an agent to help you find employment overseas. He did not know when his GOP expired as he had never been shown the document and stated that he was unaware that Immigration wanted to send him back to Bangladesh in August 2016. Witness stated that he was not told what type of work he would be doing in Seychelles and denied having intentionally misled the agent back in Bangladesh. He confirmed that the Labor and Immigration Department had organized a job for him with a construction company (Franky Construction) and that he was now being paid a salary of SCR 7875 with food allowance. Witness stated he did not have any money to go back to Bangladesh.

[70] MH, a 34-year-old Bangladeshi, testified that he was the sole breadwinner of his family. Prior to coming to Seychelles to work, he was employed by the Bangladesh Railway Corporation as a ticket operator. He first met Mr. Alam while working with the railway in Bangladesh because Mr. Alam was a frequent traveler.

- [71] Mr Alam introduced him to Marsud Alam. Marsud told him that he could send him to Sicily in Europe to work as a caretaker of a house for payment of \$500. For this, he was required to pay 500 000 Bangladeshi Taka. He paid the amount in instalments. He then left Bangladesh for the Seychelles and arrived in March 2016 on a tourist visa. He did not know anything about the country when he first came. Marsud gave him US \$2 500 to give to Faisal Alam the accused.
- [72] When Faisal Alam received him in Seychelles, he took the money and the witness's passport and handed him over to Madam Lucy. Faisal Alam informed him that he would work with Madam Lucy, and that he would meet with him again after 1 week. He started to work as a caretaker and a construction worker for Ms Lucy, although he had no prior construction experience. He started at 6am, with house work and afterwards, from 8am, with construction work. He ended at 5pm with a 1-hour lunch break. He would then clean the yard and the house after 5pm. He was also required to clean up after dinner. He testified that he did not sign any contract, but that it was read to him that he would work from 8am to 5pm for \$500. He was told that the duration was for 5 years, and that he could return to Bangladesh after 2 years. He lived at Ms Lucy's at Anse Aux Pins, together with Alam. He was not paid a separate salary for the cleaning and maintenance he did at the house, though he sometimes got SCR 50/100.
- [73] He testified that he left the country once to go to Madagascar with one other Bangladeshi man. In Madagascar, he was with Alam and a few other Bangladeshi men. They were there for 5 or 6 days. This, according to him, was the only time that he was given back his passport by Alam. However, Alam took the passport back when they returned to the Seychelles. He was then issued with a GOP valid for 3 months.
- [74] His evidence was that he worked for 4 months but was only paid the equivalent of 82 000 Bangladeshi Taka (around SCR 13 400). This was paid to his family in Bangladesh. He complained about his salary to Alam but was threatened with deportation and shouted at. Several of Alam's workers from Bangladesh came the house on different occasions to complain about not receiving a salary, and Alam shouted at them. They asked the witness to help by speaking with Alam, since they lived at the same house. He complained to Ms

Lucy, who informed the police. The police came 2 or 3 times, but he was afraid, so he did not speak with them. Alam had told him not to speak with the police.

[75] He testified that he registered a dispute with the Department of Labour which was settled at mediation. He claimed outstanding payment of 3 months' salary. The claim was by made by him and three other workers, FC, AR and LM. He had previously lived with these 3 workers at Anse Aux Pins for 2 days. This house was not complete and did not have running water or electricity. After the labour dispute, Alam agreed to pay him SCR12 000.

[76] In cross-examination, witness stated that it was common to look for work in other countries with the help of an agent, and that he had previously paid an agent to look for work for him in Libya. He stated that Alam failed to pay the agreed payment amount, which was agreed upon via Whatsapp. He stated that he came to Seychelles to work, and that his main complaint was about the lack of payment and the fact that he had been deceived about the amount that he would be paid. He insisted that Alam did threaten him, and that he even used a knife to do so.

[77] Witness Francois Freminot, the Chief Superintendent of the Police and Head of Detective Services, confirmed that the police had received a letter by Cecile Hoareau on 18 July 2016 (identified by the witness as exhibits P9 and P10), in which she requested the police to conduct a thorough investigation into a suspected case of human trafficking. Thereinafter, one of his police officers, Mr. Gappy Flint, proceeded to visit the site where the alleged victims were staying on 5 August 2016. After Mr. Gappy had informed him of the situation, he himself joined the officer the following day at the site, i.e. the house at Anse Aux Pins owned by Mr. Jules (identified by him as the house in photograph P1).

[78] Witness confirmed that following the visit, they decided to re-locate the alleged victims to the Maison de Football at Stad Linite. He confirmed that the investigation in the case was then handed over to another officer (Inspector Georges) and that he himself was the lead officer in the case. They proceeded to conduct an interview with the 4 alleged victims (whom the witness was able to identify on photographs) with the help of an interpreter and with 2 probation officers, namely Ms. Agathine and Ms. Francis, to assess whether the victims needed any medical or social probation assistance. In the said

interview, the victims explained that they had obtained the employment through a Bangladeshi Agent, Marsud Alam, who had promised them different, i.e. better, conditions of employment. The victims reported that they had given the accused money and their passports upon their arrival in the Seychelles, that they were threatened by the accused and made to live under bad conditions. The witness stated that they thus proceeded with the investigations of the case as “the flags of the element of trafficking in person” were present and that he himself arrested the accused on 19 August 2016.

- [79] Witness stated that they conducted further interviews with the victims (with the help of an UNODC interpreter) and conducted investigations with the relevant Ministries (e.g. the Department of Labor and Immigration) and contractors, before compiling a final report on the 5 October 2016, which was sent to the Attorney-General’s Office. He had requested the Ministry of Health’s assistance with the matter and confirmed that he received a report written by Public Health Officer Kevin Pompey on 27 June 2016 about the conditions of the workers’ accommodation. When asked to describe the demeanour of the witnesses during their interview, witness stated that he had perceived it to be “mixed”, with 2 of them seeming to be really angry and desperate, while 1 was very emotional and even cried during the interview. He stated that their physical appearance seemed fine to him.
- [80] Witness stated that he had received specific training on human trafficking and was therefore aware of what exactly constitutes the offence of human trafficking and conducted his investigation accordingly. He found the GOPs to be “not really satisfactorily in line with the law” as he had come across irregularities e.g. regarding the description of job LM as a supervisor despite the fact that he did not do the work of a supervisor or the description of MH as a foreman despite the fact that he was working as a caretaker.
- [81] In cross-examination, the witness stated that he disagreed with the Ministry of Health’s evaluation as he found the site to be unfit for accommodation purposes based on the fact that it was not furnished and still under construction. He further stated that MH had told him that he was being coerced to work at another site (not while he was working for Ms. Surman) and that his testimony was corroborated by the other victims and by Mr.

Nganga, who admitted that the workers were being forced to work. Witness conceded that the accused was not present when the workers were working for Mr. Nganga and that no physical evidence of forced labor had been found. Witness maintained that this case fell within the ambit of human trafficking and was not a mere labor dispute due to the combination of the various issues.

[82] In re-examination, witness stated that the reason why Mr. Marsud Alam was not contacted was because they were already satisfied that the accused was the person responsible for the trafficking of the victims in Seychelles, as he was the one who received them, provided them to other employers without their consent, was responsible for their treatment and had obtained the GOPs for them.

[83] Thereafter the prosecution closed its case. In defence the accused made an unsworn statement from the dock.

THE DEFENCE EVIDENCE

[84] The accused Faisal Alam stated that he first came to the Seychelles as a tourist, but then saw a business opportunity arise to do construction business with a Seychellois, Mr. Khisnan Esther, with whom he then formed Dove Alliance Limited. He had been informed that applying for a license with the Labor Department would take a long time, so he and Mr. Esther therefore decided to start recruiting on Mr. Esther's license until the license for the company came through. However, as they needed more workers, they applied for licenses for two big projects; a restaurant on Mr. Esther's property and a shop for his brother. They were subsequently granted licenses for 15 persons. He stated that the company had been struggling financially and had no ongoing projects, when Mr. Nganga told him he had several projects in Mahe for which he needed workers. The accused and Mr. Nganga thus agreed that the accused would send 2 of his workers from Praslin to Mahe, where they would work on Mr. Nganga's projects and be accommodated in Mr. Nganga's accommodation, which according to Mr. Nganga had been approved by the Ministry of Health. The accused stated that Mr. Nganga had been in charge of taking the workers to and from the site, and that Mr. Nganga did not want him to come to the projects himself, despite him having asked to be taken along when they had agreed that he would supply Mr. Nganga with more workers. The accused stated that there were

issues regarding payment by Mr. Nganga and that he therefore could not pay his own workers for some time. The accused stated that he himself had to find accommodation for the other workers and that he found a house approved by the Ministry of Health. He further stated that the house had water and electricity at all times and that the workers were able to collect food from his shop on a company cheque and that he sometimes gave them cash (SCR 100 or 200) to buy things they could not get at the shop.

[85] The accused further stated that in Bangladesh only license authorized recruitment agencies can send workers abroad and that he therefore worked with a recruitment agency owned by one Marsudur Rahman and not Alam whenever he needed to procure workers. He stated that he never talked to any of the candidates previously but that he had provided Mr. Rahman with all the details regarding the employment conditions (400 Dollar Salary, food and accommodation provided, flight and GOP paid for). The accused denied that the workers had given him 3000 Dollars upon their arrival. He stated that there had been issues where the recruitment Agency had sent him unqualified workers and that he had then told the Agency that he would not process the GOP for the next batch of workers before he had seen them in action and was satisfied that they could work. The Agency then sent him 4 workers. After he had assured himself that they could work, he tried to apply for a GOP for these workers but was told that they needed to leave the country in order to process the application. He therefore took the workers with him to Madagascar. The accused stated that he had the workers' passports in order to keep them safe and that he did not infringe on any of their freedoms.

[86] He stated that he was staying at Ms. Surman's residence when she asked him whether he could help her to find someone to help take care of her mother as she had been struggling to find anyone capable of doing so in Seychelles. Ms. Surman, together with her daughter Ms. Karen, advised him that he would be able to bring someone in on one of the construction company's licenses. The accused decided to do as advised, and brought in a worker to stay at the house of Ms. Surman to take care of her mother. He stated that the worker was supervised and instructed by Ms Surman and not by the accused himself.

[87] The accused further stated that he had only sent money back to Bangladesh for his workers because they had asked him for help as they were being charged SCR 70 every

time that they transferred money there. He denied ever having threatened any of his workers with a knife. Thereafter the defence closed its case and both parties made submissions in writing.

[88] Having thus carefully considered the evidence of the prosecution and defence it would be pertinent to set out the law under which the accused has been charged.

THE LAW

[89] The charges against the accused are under sections 3(1)(a), (b) & (e) read with section 5(1) of the Prohibition of Trafficking In Persons Act No 9 of 2014 and punishable under section 5 (2) of the said Act.

[90] Section 3(1)(a), (b) & (e) read as follows.

(a) A person who recruits, transports, transfers, harbours or receives another person by any of the following means

(a) Threat

(b) Use of force or other forms of coercion

(c) Abduction

(d) Fraud

(e) Deception; including any misrepresentation by words or conduct as to financial incentive or promise of reward or gain and other conditions of work;

For the purpose of exploitation, commits the offence of trafficking and shall on conviction be liable to imprisonment for a term not exceeding 14 years or such imprisonment and a fine not exceeding SCR 500,000.

[91] Section 5(1) sets out the aggravating circumstances of the offence of trafficking in persons and section 5(2) refers to the enhanced punishment in the case of the offence being aggravated being a term not exceeding 25 years and a fine not exceeding SCR800.000.

[92] When one considers the United Nations Protocol to Prevent, Suppress and Punish Trafficking in persons, especially Women and Children, defines trafficking in persons as constituting three elements a) An “act” being recruitment , transportation, transfer, harbouring or receipt of persons : b) A ‘means’ by which that that action is achieved (threat, use of force, types of coercion, abduction fraud, deception, abuse of power or position of vulnerability and the giving and receiving of payments or benefits to achieve consent of a person having control over another person). (c) a “purpose” (of the intended action or means) namely exploitation. This would include sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

[93] It follows that for the offence of trafficking in persons, the prosecution must prove beyond reasonable doubt, the actus reus which is the act and includes recruitment, transportation, transfer harbouring or receipt and the Means set out above in paragraph 92. The mental element of the offence the prosecution has to prove is the intention to exploit either for sexual purposes, forced labour or services, slavery or practices similar to slavery, servitude as set out in paragraph 92.

ANALYSIS OF THE EVIDENCE OF THE PROSECUTION AND DEFENCE

[94] When one considers the evidence lead by the prosecution in this case, it is evident that all four Bangladeshi persons who were alleged to have been trafficked were recruited by an agent from Bangladesh namely one Mr. Marsud Alam for the accused Faisal Alam. The four trafficked persons hereinafter referred to as the victims had paid large sums of money for their recruitment, after mortgaging their assets and borrowing money, they had given large sums of money to Marsud Alam for the purposes of obtaining employment in the Seychelles. The evidence of the victims indicate that from the amount paid by them to Mr. Marsud, he had given them US dollars in cash, ranging from 2500 US dollars to 3000 US dollars to each of the victims, to be given to their employer, the accused Faisal Alam who would be receiving them at the airport in Seychelles.

[95] The evidence of all four victims indicate that on arrival in the Seychelles on different dates, the accused Faisal Alam was at the airport and received them and they had given the cash in US dollars received from Marsud to the accused who had also taken custody

of their passports on arrival in the Seychelles. The evidence of these victims is corroborated by the evidence of witness Lucy Surman who was at the airport with the accused when victim MH had arrived. She had seen MH give the accused Faisal Alam cash in dollars and the accused had asked him to give his passport which MH had handed over in her presence. On being questioned by the immigration investigating officer, the victims had informed them at the very outset of the investigation that their passports were being held by the accused and the passports were not with them. I am satisfied that the evidence of the victims on these issues can be accepted. The evidence that the accused on being aware of an investigation being made against him by officers of the immigration and police had thereafter returned the passports to the victims, does not absolve him of the fact that he was holding the passports of all the victims from the time of arrival of Seychelles until the time of investigation, thereby restricting their movements and greatly limiting their freedoms in their normal pursuits in life. His excuse that he had kept the passports with him for safekeeping purposes cannot be accepted as the evidence of the victims, indicate they had very little choice in the matter as it was taken from them on arrival and never given back during their stay in the Seychelles. The prosecution referred to the case of **Queen vs. Wei Tang (2008) HCA 39 which** held *“The taking of the passports and return air tickets from the complainants can, it is true, be explained in other ways; likewise the confiscation of the funds lent to them to afford evidence upon arrival of an apparent capacity of self-support. However, the consequence of these steps was to remove from the complainants the wherewithal to enquire about or pursue their legal rights or to escape from the conditions in which they found themselves.”*

[96] Although the accused attempted to distance himself from Marsud Alam and deny that he was his brother and only a recruiting agent named Marsudur Rahman who was not performing his task properly by not recruiting suitable persons, the victims identified the person in the picture in D7 as Marsud Alam and further identified him as the brother of the accused and not one Marsudur Rahman as the accused was attempting to show Court by producing document D7. Be that as it may, the transfer of large sums of money in US dollars sent through each of the victims in cash to the accused Faisal Alam, clearly indicates a close connection and alliance between Marsud Alam and the accused. One of the victims MH states that Faisal Alam the accused had introduced him personally to

Marsud Alam when they were in Bangladesh and Marsud had promised him initially to send him to Sicily but subsequently had sent him to work for the accused and also given 2500 US dollars to be handed over to the accused in the Seychelles, dollars which were obtained from the 500,000.00 Bangladesh Taka given by MH to Marsud Alam in order to obtain employment. These facts in the view of this court clearly indicate a close connection between the accused and Marsud Alam and the accused's contention that he was a mere recruiting agent working for a commission, bears no merit and his denial that he received large sums of money in US dollars from the victims sent by this agent when they arrived is not acceptable in the light of the corroborated evidence of the victims.

[97] On consideration of the evidence of the victims set out above it is clear that they were all recruited by one Marsud Alam in Bangladesh for their employer in the Seychelles the accused Faisal Alam. It is also clear that the accused Faisal Alam had met them at the airport and received them and thereafter taken charge of their passports and the victims' themselves. Therefore this Court is satisfied that the acts of recruitment, transfer and transportation from Bangladesh to Seychelles and the fact that the accused received the victims at the airport has been clearly established from the aforementioned evidence.

[98] When one consider the evidence of the victims it is apparent that the 'means' by which they were recruited amounted to deception. It is apparent that they were promised certain specific jobs and payment amounting to SCR 500 to 550 US dollars. It is also apparent that their employer the accused had obtained Gainful Occupation Permits (GOP) for all individuals on the basis that they were being employed by Dove Alliance a construction firm at 400 US dollars a month. The evidence of Karen Pillay Senior Immigration Officer is very specific on this issue and the GOP documents produced corroborate this fact. It is further evident from the evidence of the victims that they were assured at the time they were recruited, that they would receive food and accommodation. However the evidence of the victims as corroborated by the investigating officers from the Employment Department, police officers and Public Health Inspector and the sub contracted employers, indicates that they were accommodated in deplorable conditions and deprived of food.

[99] The evidence of witnesses Ronny Baker and George Fideria Employment officers who conducted investigations and their report P10 sets out the deplorable conditions the victims were accommodated in at Anse Aux Pin Reef Estate, Au Cap and Les Canelles. Some houses were in a dilapidated condition, some were incomplete, 5 persons were accommodated in a single room for two, there was leaking water, kitchen and toilet were in the same place, the soakage pit had overflowed and the places were dirty and victims had to live in incompleted building sites, no electricity and tiles and had to live and work on these sites in their spare time to complete these buildings. Public Health Inspector Kevin Pompey, too gave sworn evidence to the deplorable conditions the victims were living in which included lack of ventilation, rodent activity, mould growth, lack of running water and in his view, the premises were unfit for human inhabitation. In his evidence he further stated that after the accused was informed, he had found alternate accommodation at Anse Aux Pins / Bodamien which he approved by letter dated 19th July 2016. The fact that the accused subsequently after being warned moved the workers to better accommodation does not absolve him of his conduct in accommodating the victims in places unfit for human habitation until detected by the concerned authorities.

[100] It is pertinent to mention at this stage that the other shareholder of Dove Alliance Khisnan Esther had by his letter P8 dated 7th December 2015, informed the Director of Immigration that the business of Dove Alliance Ltd had ceased to function and he would not be held responsible for Mr. Alam staying in the Seychelles anymore. However this information as part of the deception was withheld from the victims. It is also in evidence that the accused having got the victim's GOP on the basis they were working for Dove Alliance Ltd, sub contracted the workers without their consent to other individuals like Lucy Surman. Mr. Jefferson, Judith Joanneau, Randy Alphonse and obtain large sums of money monthly and the accused did not pay the victims their salaries. In certain instances he saved on rent by getting the victims to live on the premises they were building as agreed with Mr. Peter Jules. The evidence further reveals that they were deprived of food and were hungry and had no money to spend on their daily requirements of food and were dependent on the kindness and generosity of the persons they had been sub contracted to like Lucy Surman and Judith Joanneau who testified under oath to these facts, thereby corroborating the evidence of the victims.

[101] Further, their salaries as agreed upon and overtime payments were not paid on time for long periods of time. The victims stated they were not given the jobs they were promised and salaries were not paid. One victim AR stated for 4 months he was not paid and when he attempted to question the accused, he was threatened with a knife. It is apparent that some of the victims had even to work after their usual hours at places they were subcontracted to (7am to 4pm). When they got back from work they and had to work from 5pm till 10 pm to complete the incomplete houses they were occupying. They were threatened with deportation and even threatened physically by the accused himself when they complained. The elements of threat coercion on the part of the accused towards the victims is therefore apparent.

[102] The background of all four victims as described in their evidence, clearly indicate their vulnerability as they were persons from the lesser socio economic bracket, had borrowed large sums of money which they were desperate to repay and therefore would be more servile and desperate as they lacked education and familiarity of language and culture in the environment they were subject to work in and had total financial dependency on the accused who was acting more as their a master and not their employer in the view of this court.

[103] All the aforementioned facts in the view of this Court, clearly establish deception and includes misrepresentation by words or conduct as to financial incentive or promises and other conditions of work promised to the victims; The fact that they were subsequently compensated to a certain extent by the Employment Tribunal does not absolve the accused from his actions of deception and misrepresentation practiced on the victims in respect of their financial incentives and promises in respect of food and accommodation and conditions of work and welfare.

[104] Another element to be proved by the prosecution is exploitation for a purpose. In this instant the case the prosecution has attempted to establish the intention of the accused to exploit the victims for forced labour services and practices similar to slavery by using threats and coercion. It is clear when one considers the evidence of the victims that their freedoms were restricted in that they were not given their passports and financially they were constrained as they were not paid for months. The fact that salaries was not given to

their hand for several months and instead a lesser amount than agreed, occasionally sent to their family which was not a part of the agreement, further indicates the financial control and financial dependency being exercised over the victims to prevent their freedom of movement. This control over their resources prevents their will to get away and make them more subjective to the employer. It is apparent from the above facts the control of the victims, on matters concerning their own welfare and daily needs and requirements was being removed and controlled, instead, by the accused in this instant case.

[105] From the evidence adduced during the trial, these Bangladeshi Nationals were sub-contracted to third parties following their arrival into Seychelles, contrary to their agreement with the accused and seemingly without their consent (see exhibit P10 & testimonies of the complainants). Exhibit P10 further shows that the accused entered into agreements with other parties to sub-contract his workers. The terms of the said agreements appear to shift the obligation of housing and feeding the accused's workers onto the third parties, despite these being the obligations of the accused himself; the costs for accommodation and food allowances were to be paid by the third parties, as per the terms of these agreements. This means that the accused was profiting from the outsourcing of these obligations onto the third parties. The accused, through these agreements, also attempted to shift the obligation of ensuring that the workers had a safe environment to work in onto the third parties.

[106] However one would observe that the agreements also explicitly provide that salary payment to the workers must go to the accused directly, and not to each sub-contracted worker. This was confirmed by the witness testimonies of Judith Joanneau and that of Lucy Surman, who gave evidence that they each employed one of the complainants through the accused, and that the monthly salary was paid directly to the accused. They further stated that the sub-contracted employee would report to them that they were not receiving a salary from the accused. Contrary to victim MH's GOP, which granted him permission to enter into the country and remain gainfully employed as a Foreman with Dove Alliance, witness Lucy Surman gave evidence that MH was sub-contracted to her to care for her mother. Accordingly, he was not being made to do the work that he was

granted permission to do by the relevant authorities, nor was he being made to do work for the company that had been granted permission to employ him.

[107] The Court takes the view that the workers were recruited and transferred to Seychelles on the misconception that they would be employed by the accused's company, namely Dove Alliance, for the purpose for which they were recruited and to receive the salary that they expected to receive. This was done for the purpose of their labour being exploited by the accused upon their arrival into Seychelles. In essence, they acted on the basis of false promises by the accused. Furthermore, they were not paid directly by the third parties they were sub-contracted to, and the accused would sometimes go months without paying them a salary. This necessitated the involvement of the Ministry of Employment to assist them with the recovery of their missing salaries, though they were not satisfied with the result of this intervention because of the language barrier and because they did not receive the entire sum requested. Therefore there is evidence, in addition, that labour laws have been breached by the accused in entering into such subcontracts and not paying the victims their dues despite receiving the money from the subcontracted parties.

[108] The **UNODC Anti Human Trafficking Manual for Criminal Justice Practitioners** sets out the pointers one must look for in coming to a conclusion whether persons have been trafficked and whether such persons have been trafficked for the purpose of labour exploitation. Several of these pointers have already been referred to by the official witnesses who have undergone training in investigations of this kind. The pointers present when considering the evidence in this case in its totality follows. The prosecution evidence clearly indicates that the victims were made to work against their will. The evidence show that the movements of the victims were being controlled as they could not leave, as their passports were taken from them and showed anxiety and fear when being questioned by the authorities. The victims were forced to work under conditions which they had not agreed on and were deprived of the power to negotiate on their working conditions and were threatened with deportation and even physical assault.

[109] It is also apparent from the evidence taken in its entirety that the victims received little or no payment and had no access to their earnings and were compelled to work excessively long hours. According to the evidence before Court, it is clear the victims were living in

substandard, degraded accommodation not fit for human habitation of which they had no control or choice and were always in a situation of dependence both in financial and matters concerning their food and welfare. The evidence clearly indicates the victims had no access or control over their earnings, conditions of employment, food and accommodation and had no freedom of movement, all of which was being controlled by the accused Faisal Alam. The evidence also indicates working excessively long hours when the victims were completing the construction of houses they were forced to live in and the absence of protective equipment normally given to construction workers and had to virtually sleep where they worked. It is also apparent that labour laws were being breached as brought out by the evidence that a settlement was reached in the Employment Tribunal in regard to the money due to the victims. Therefore it is the view of the Court that the evidence set out in detail in the foregoing paragraphs shows several indicators to establish the offence of Human trafficking for the purpose of labour exploitation by way of practices akin to slavery, thereby establishing the mens rea of the offence of trafficking which is the intention to exploit the victims in conditions conducive to forced labour and services. The combination of the above factors adequately satisfy the UNODC human trafficking indicators, and also raise red flags in terms of particular indicators for people who have been trafficked specifically for labour exploitation and forced labour.

[110] For all the aforementioned reasons based on the evidence and case law the defence of the accused that the prosecution has failed to prove slavery as defined in the Oxford dictionary fails. There is no burden on the prosecution to prove the offence of slavery. I proceed to reject the defence for reasons set out above and proceed to accept the corroborated evidence of the prosecution. I see no material contradictions in the evidence of the prosecution to completely reject the prosecution case in its entirety.

[111] Therefore this Court is satisfied that the prosecution has proved all the elements of the offences contained in the charges in Counts 1 to 4 beyond reasonable doubt and finds the accused Faisal Alam guilty on Counts 1, 2, 3 and 4 and proceeds to convict him on all four Counts.

[1]

Signed, dated and delivered at Ile du Port on 19 October 2018

M Burhan
Judge of the Supreme Court