

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC

CO 86/2020

In the matter of:

THE REPUBLIC

(rep. by Hemanth Kumar)

Republic

and

SHYAM BAHADUR CHAND

(rep. by Bryan Julie)

Accused

Neutral Citation: *Republic v Chand* (CO 86/2020) [2021] SCSC 3rd November 2021).

Before: Burhan J

Summary: 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 in paragraph 30 herein. The mental element of the offence (mens rea) 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. In this instant case the prosecution has failed to prove any form of such exploitation. The charge of human trafficking fails.

Heard: 18th 20th 21st 28th 31st May 2021, 9th 16th June 2021 and 9th August 2021.

Delivered 3rd November 2021

ORDER

The accused is acquitted on Counts 1, 2, 3, 4, 5 and 7. The accused is found guilty on Counts 6 and 8 and convicted of same.

JUDGMENT

BURHAN J

[1] The accused Shyam Bahadur Chand has been charged by amended charge sheet dated 27th May 2021 with the following offences;

Count 1

Statement of offence

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

Particulars of Offence

The particulars of the offence are that Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel of Mahe, recruited Ms. SL of Nepali national and trafficked her from Nepal into Seychelles on 20th May 2018 to work as a Slot Attendant with Oasis Entertainment Centre in Seychelles, by fraudulently obtaining Nepalese Rupees 200,000/- (Two Hundred Thousand) from her at Nepal, in making her deposit the said money into the bank account of his agent in Nepal, by way of deception and taking an advantage of her vulnerability, for the purpose of exploitation.

Count 2

Statement of offence

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

Particulars of Offence

The particulars of offence are that Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel of Mahe, recruited Ms. LD of Nepali National and trafficked her from Nepal into Seychelles on 20th May 2018 to work as Cashier with Oasis Entertainment Centre in Seychelles, by fraudulently obtaining Nepalese Rupees 200,000/- (Two Hundred Thousand) from her at Nepal, in making her to deposit the said money into the bank account of his agent in Nepal, by way of deception and taking an advantage of her vulnerability, for the purpose of exploitation.

Count 3

Statement of offence

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

Particulars of Offence

The particulars of the offence are that Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel of Mahe, recruited Ms. SS of Nepali National and trafficked her from Nepal into Seychelles on 20th May 2018 to work as a Slot Attendant with Oasis Entertainment Centre in Seychelles, by fraudulently obtaining Nepalese Rupees 200,000/- (Two Hundred Thousand) from her at Nepal, in making her to deposit the said money into the bank account of his agent in Nepal, by way of deception and taking advantage of her vulnerability, for the purpose of exploitation.

Count 4

Statement of offence

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

Particulars of Offence

The particulars of the offence are that Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel of Mahe, recruited Mr. TK of Nepali National and trafficked her from Nepal into Seychelles on July 2019 to work as a Cook with Amanda Luxury Villa in Seychelles, by fraudulently obtaining Nepalese Rupees 400,000/- (Four Hundred Thousand) from him at Nepal, in making him to deposit the said money into the bank account of the said Shyam Bahadur Chand's agent in Nepal, by way of deception and taking an advantage of his vulnerability, for the purpose of exploitation.

Count 5

Statement of offence

Obtaining money by false pretence contrary to and punishable under Section 297 of the Penal Code.

Particulars of Offence

The particulars of the offence are that Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel of Mahe during the month of November 2019, by false pretence with intent to defraud, obtained a total sum Nepalese Rupees 1,550,000/- (One Million, Five Hundred and Fifty Thousand) from the friends of Mr. TK, who are Nepali Nationals residing in Nepal, in making them to deposit the said money into the bank account of the said Shyam Bahadur Chand's agents in Nepal, by way of deception

and taking an advantage of their vulnerability, falsely pretended that he could obtain good employment for those friends of Mr. TK in Seychelles.

Count 6

Statement of offence

Threatening Violence Contrary to and Punishable under Section 89 (a) of the Penal Code.

Particulars of Offence

The particulars of the offence are that Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel, Mahe during the month of December 2019, with intent to cause alarm, threatened a person namely Mr. TK of Nepali National working in Seychelles, saying that he will throw him into sea if he keep on insist him to return the money to his friends in Nepal, which was taken from them by the said Shyam Bahadur Chand through his agents in Nepal, to obtain jobs for them in Seychelles.

Count 7

Statement of offence

Obtaining money by false pretence contrary to and punishable under Section 297 of the Penal Code.

Particulars of Offence

The particulars of the offence are that Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel of Mahe during the month of November 2019, by false pretence with intent to defraud, obtained a total sum Nepalese Rupees 831,000/- (Eight Hundred and Thirty One Thousand) from the friends and relatives of Mr. BC, who are Nepali Nationals residing in Nepal, in making them to deposit the said money into the bank account of the said Shyam Bahadur Chand's agents in Nepal, and directly received USD 4,400/- (Four Thousand and Four Hundred American Dollars) from the said BC in

Seychelles by the said Shyam Bahadur Chand, by way of deception and taking an advantage of their vulnerability, falsely pretended that he could obtain good employment for those friends and relatives of Mr. BC in Seychelles.

Count 8

Statement of offence

Obtaining money by false pretence contrary to and punishable under Section 297 of the Penal Code.

Particulars of Offence

The particulars of the offence are that Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel of Mahe between the month of December 2019 and up to the month of May 2020 at Mahe, Seychelles, by false pretence with intent to defraud, obtained a total sum of USD 3,500/- (Three Thousand and Five Hundred American Dollars) directly from a person namely Mr. RT of Nepali National working in Seychelles, by way of deception and taking an advantage of his vulnerability, falsely pretended that he could obtain good employment for those friends and relatives of Mr. RT in Seychelles, who are in Nepal.

- [2] The accused denied the charges and trial against the accused commenced on the 18th of May 2021. The prosecution opened their case by calling witness Ms. SL who stated she is from Kathmandu Nepal and was employed in Nepal, when a friend of hers named Ms. SS who worked in the Casino field, informed her of a vacancy in a Casino in Seychelles. She had sent her CV (Curriculum Vitae) by email to Ms. SS's friend in Nepal and was informed after eight to nine months that she had got the GOP to work in Seychelles. Mr. Shyam the accused had called her earlier on a video IMO call and told her somebody will call her and interview her for the GOP.
- [3] Witness further stated that Mr. Chand was more in touch with Ms. SS throughout the process. She had been told by a person in Nepal that there would be a charge to be paid in Nepal to get the job. She had deposited a sum of two hundred thousand Kathmandu

Rupees in a bank account in Kathmandu on the instructions of Mr. Shyam the accused, in the name of one KM. She stated the government process was done by another Nepali. They had been promised a salary of 800 US dollars a month. When she arrived in the Seychelles on the 19th of May 2018 Mr. Dereck the Amusement Centre Manager was present at the airport to meet them. She had arrived with two other Nepali workers Ms. LD and SS.

[4] They had commenced work and witness identified her GOP (Gainful Occupational Permit) document P1 and stated the GOP was given in the name of the parent company Oasis Entertainment Centre. She stated she is working on Praslin and the police had come and met her one day and asked her to come to Grand- Anse police with her two other Nepali friends. She stated she knew the accused by the name of Shyam and identified him in the photograph shown to her by the police. She stated that everybody who comes for jobs in Seychelles has to pay this money to the agency and they get the free ticket and visa and GOP thereafter. She further stated that Shyam, the accused had never asked her for any money. She also stated it was her friend who had said they would be paid 800 US dollars and not the accused. She further stated it was 8000 SCR that was promised and Mr. Shyam had told Ms. SS the company would pay the tax of 15% but when she arrived the company had said they would have to pay and therefore they received SCR 6800/-. She further stated that their contracts had been renewed by the company and they are still working for the same place Amusement Centre with the same salary. She categorically stated that she had not known the accused and the accused had not met them at the airport nor asked any money personally. She further stated the accused had never phoned her or contacted her or harassed her in anyway.

[5] The next witness Ms. LD too stated that she was a Nepali who had applied for a job in Seychelles and had been informed of it by Ms. SS. She too had spoken to the accused and at the time of her interview which was on a Skype call, the accused and another person had been present. The accused had been by the side of the person who had interviewed her. She had sent the required documents and received her GOP and contract from a friend of the accused in Nepal. She too had paid two hundred thousand to an account in a bank in Nepal as requested by SS She had deposited the money into the name of KMK.

She had come to Seychelles on the same day on the 20th of March 2018 and Ms. SS and Ms. SL had accompanied her. On arrival Mr. Dereck had been at the airport to meet them. She too stated she was told she would be paid SCR 8000 plus an allowance. She stated after deduction of tax, she was paid a sum of SCR 8800/-. Oasis Entertainment Centre was the name of the company that employed them and they worked at Amusement Centre which was part of this company. She produced the Nepali bank receipts in which the money was deposited as P2. She admitted it was SS who had first informed her of the vacancy in the Seychelles. She had met the accused only at the time of the Skype call. She further stated that all three of them got the GOP and the contract was given to her at the airport in Nepal. She further stated that she was initially asked to pay Nepali rupees three hundred thousand but Shyam Chand had reduced it by 100 thousand. She further stated that she had gone to the Department of Foreign Affairs in Nepal with her dad. She stated she did not know who the name of the person who handed over her GOP to her. On arrival in Seychelles they were met by Mr. Dereck not the accused. She stated the accused had contacted them on a few occasions to find out how they were but not asked for any money.

[6] The next witness SGB said he had been working in the Seychelles as a security supervisor for the past two years. He stated the Seychelles police had sought his assistance in the investigation of Ramesh Tappa. He had given money to this Ramesh Tappa. SCR 24,000/ as a loan. Earlier he had given him money and he had given a good rate. He admitted when questioned by Court that the money first went into his account in Nepal and then he had given him the SCR 24,000/. He identified Ramesh Tappa as Shyam Chand the accused.

[7] The next witness TK stated he had learnt from a man power agency in Nepal that there were job opportunities in the Seychelles. They had told him to pay 4000 dollars. After he had submitted all his documents, he had suddenly received an IMO call from the accused Shyam who had told him to pay only 3500 dollars. The man power agency was being run by one Dilip Pariyar. He had deposited the money in Dilip's account and had to pay money to obtain some Ministry documents. In all he had paid 4000 dollars. He had done all this in May 2019 and come to the Seychelles in September 2019. He had worked as a

cook at Amanda Luxury Villa. He had seen the accused for the first time at the airport and he had assisted him to buy a SIM card. Thereafter, he had left and his company persons had come and collected him from the airport. He used to meet the accused thereafter on his holiday every week.

[8] Witness stated the accused Shyam had offered to find jobs in Seychelles for his friends in Nepal. He had given Shyam's contact number to them and asked them to contact him. Around ten to eleven of his friends were interested in coming. Only one person obtained a GOP and had paid 4500 USD. The others had given 1000 USD and deposited the money in bank accounts in Nepal on the accused Shyam's instructions. However when he had queried for Mr. Shyam why his friends had not yet come, Shyam had said he was unable to bring them due to the Corona epidemic. He had told him to return their money and two of his friends had got their money back. When he kept insisting Shyam had told him he will kill him and throw him into the sea. He denied he had tried illegally to get persons down to Seychelles. His friends had deposited money in several accounts on the instructions of Shyam including the account of the wife of the accused. In his case his airline ticket and contract was given by Dilip Pariyar.

[9] The next witness called by the prosecution Mr. BC stated that he was a Nepali and presently working as a security guard at UAE embassy in the Seychelles. He had come to Seychelles on the 9th of February 2019. He had met the accused in July 2019 and been a good friend of his. The accused had asked him if he had any friends from Nepal for jobs in the Seychelles that he could help if they wanted to come to Seychelles. His friends had shown interest and he had referred them to the accused. The accused had asked for documents from them which were sent by his friends by DHL to the accused. He said about 10 persons including his relation and friends and neighbours had sent documents. The accused had provided bank account details to these persons telling them to deposit money for obtaining visa to enter Seychelles. These people had deposited 1000 US dollars into the bank accounts in Nepal given by the accused. He referred to the names of several accounts in different banks in Nepal to which money was deposited on the instructions of the accused. He stated that even though they had deposited the money the accused was unable to get them down to Seychelles.

[10] It is apparent from his evidence that a certain amount of money deposited in the accounts in Nepal had been returned by the account holders. Witness stated a sum of 831,000.00 Nepali Rupees still remains to be paid back. Witness stated he had given the accused a sum of 4,400 US dollars to get his relatives and friends down to Seychelles but he could not remember the date but remembered it was in November 2019. Witness further stated that he paid to get his cousin down to the Seychelles but the accused was not able to get him down. Under cross-examination, he stated he collected the 4,400 dollars from tips he received. He stated he received 2000 dollars from a friend on loan. He stated the persons who had deposited money were harassing his wife and children to have their money back. None of the 12 persons he wanted to get down got their GOP even though they had sent their documents by DHL. It appears one Eroj a cousin of the witness had collected the money from the relatives in Nepal. He admitted under cross examination the accused was not the one who had taken money from his relatives in Nepal but money was banked into accounts in Nepal on his instructions.

[11] Witness Frank Norcy Cedras stated that he is in the construction business and he had been approached by the accused to recruit Nepalese as construction workers. The accused had undertaken to pay for their airfares, medical expenses and GOP and to get them down, witness would have to pay back the money back only if he was satisfied with the person recruited. Witness stated that they were about to recruit some persons and had paid for medical and searched for a house when the Covid -19 situation came and everything had to be cancelled. Under cross examination he described the procedure followed to recruit persons. The first step was to advertise locally for workers and if there were no applications they had to seek approval to recruit expatriates. Thereafter their medical reports had to be submitted and a house for workers to stay had to be organized. He stated there was no agreement on his part to pay the accused anything for the trouble taken in bringing such persons. It is apparent from his evidence that he had not made any recruitments through the accused.

[12] The next witness Pierre Molle stated he owned the JPM Security business. The accused had met him and introduced himself as Ron and had offered to recruit persons for him. However it appears from his evidence that even though he had checked the procedures

involved in such recruiting and even though he had signed contract for three Nepalese with Krishnamart, no one was got down to work for his company. DD giving evidence stated that he was working as a bartender in Dolce Vita restaurant. He had resigned and had one month notice prior to leaving and during this time he had sent his CV to several places in the hope of finding a job. He had met the accused who had introduced himself as Ramesh Takari and told him he can find him a job at Four Seasons Hotel. He had met him in September 2018.

[13] RT stated he had come to work as security in the Seychelles. He had met the accused who had introduced himself as Roshan who had asked him if he knows of anyone who would like to work in the Seychelles. He had spoken to 5 of his friends who had got in touch with the accused. He had said he would get them down and witness had decided to pay for them as they were his cousin brothers and he had given the accused in total 3500 dollars. Between the period December 2019 and May 2020. However the accused failed to get any of them down to Seychelles. Only when he had gone to the police did he get to know that his real name was Shyam and not Roshan.

[14] Ms Hua Sun stated she is the owner and running a business by the name of Amanda Luxury Villa, a guest house. She had met a man in early 2019 who she identified as the accused who had stated he had a very good cook who could cook Chinese, International and Creole food. He had told her to employ him and she had said okay and gone through the usual procedure and employed him. She had obtained the GOP (P5) and the air ticket for him. The man she had employed as cook was Mr.TK. She had not authorised the accused to take money from him nor had she paid the accused anything. She stated that she is happy with the worker. Under cross examination she stated that the accused had not taken money from her. The next witness Dereck Franchette stated he was the Operations Manager at Amusement Centre. He stated the Official name is Oasis Entertainment Centre which is placed in Praslin. He had informed one Leonard Pool a Seychellois, to assist him to recruit some Nepali persons with experience to work in their Casino. After three weeks he had come with documents and said he had four candidates. Witness had proceeded to HR section and given them the green light for the four of them to be recruited. He had met them personally with Mr. Leonard Pool at the airport. They

had put them on the flight to Praslin. Witness further stated the accused would frequently approach him telling him he could bring people from Nepal to work for his company but it appears witness had brushed him off saying he has no time. He categorically stated the accused had not helped him to get down Ms LD, and SS. Under cross examination he stated that Mr. Pool had not asked him for any money for their recruitment. He further stated he had no dealings with the accused in recruiting anyone.

[15] The next witness Mr. Laporte stated he worked at the Immigration Department for 19 years and was a Senior Immigration Officer. On the 28th of October 2020, a Seychellois lady had called him and stated that Mr. Chand was extorting large sums of money from other Nepali nationals in the country and threatening them. She had given him Mr. Shyam Chand's telephone number. He had immediately alerted his Superior Officers including the Principal Secretary Immigration and Chief Immigration Officer by e-mail. Mr. Shyam Chand had been called to the Office and subsequently apprehended by the enforcement Officers. He produced his email as P8.

[16] The Principal Immigration Officer Ms Dufrene next gave evidence. She identified her report prepared by her in respect of Mr. Shyam Chand as P9. She stated Mr. Chand first entered Seychelles in December 2013. From 2013 to 2016, he was employed as a Prison Officer in the Seychelles with the Police services. He had left the country at the end of his contract with the Prison Services on the 19th of November 2016. He was employed with Eden Blue as a Security Officer. Thereafter the accused was issued a GOP and he re-entered the country on the 1st of December 2016. His GOP was extended up to 14th November 2019. After he finished his employment at Eden Blue, he applied for a visitors permit for three months but was given only two weeks from the 14th of November 2019. Thereafter he received at least four extensions of his visitors permit. This extended his permit up to November 2020 as the visitors permit may be extended up to 12 months. She explained that a person is not immediately given 12 months but successive three month extensions may be given. She stated the visitors permit was extended due to a foreigner requiring time to dispose of his car but in his case, it was continually extended as borders used to close down due to the Covid-19 epidemic which was the main reason for his extension to be granted for so long. She further stated that a person is only allowed

to do work as specified in his GOP permit. The permit did not allow the accused to bring or recruit persons of his own nationality for employment in the Seychelles.

[17] The next witness Corporal Bethew produced photographs taken by him of the vehicle used by the accused, documents recovered from the accused, in an album marked P10 (photos 1 to 39). He explained what each and every photograph was. The accused had been present at the time the photographs were taken. Detective Police Constable Shane Tambara attached to the Criminal Investigations Department (CID) stated that he had arrested the accused on the 29th of October 2020. He had recorded his statement after following all formalities of reading the constitutional rights to the accused and cautioning him. The statement under caution of the accused was produced as P11 and P11a (typed statement). The voluntariness of the statement was not challenged. Under cross examination witness denied the suggestion that 10,000 dollars written in the statement was a typing error and that it should read as 1000 dollars. He also stated under cross examination that the name given was Raj Khatri as set down in the statement.

[18] The next witness Rudy Pillai stated that the Immigration Office had requested police assistance to deal with the accused Shyam Chand. They had received information from the Immigration authorities that elements of human trafficking were present in the allegations against the accused. Their investigation further revealed that the accused had come from Nepal and was initially working as a Security Officer and thereafter as a Prison Security Officer and then as a Security Officer at Eden Island. After his contract had finished, he had continued to remain in the Seychelles on a visitors permit. The accused had been using an 10 Hyundai grey in colour. He had opened the car for them and they had taken into custody DHL packages containing documents such as medical reports, passport photos, picture of passports and other documentation in the car concerning multiple persons. He was assisted by WPC Sheryl Hoareau. They had seized the documents. Thereafter Corporal Bethew had taken photographs of the car and the documents. Witness recognized and identified the photographs. They had thereafter conducted a search on the residence of the accused at Pointe Aux Sel and recovered more documentation which was handed over to Officer Sheryl Hoareau.

- [19] Thereafter they had proceeded to record the statements of other witnesses in both Praslin and Mahe. Their investigation revealed that the accused was taking money from other Nepali workers and they were not getting what they were giving money for in return. Mr. Simeon had also assisted them in their investigations. He admitted that the accused should have left the country at the close of his contract but continued to stay and obtain a visitors permit. It was suggested to him that to continue to stay in Seychelles on a visitors permit is not an offence neither is, having documents of others in one's possession or renting a car an offence. Witness further stated the investigations revealed elements of human trafficking and obtaining money by false pretence and on the basis of his investigation, he recommended a prosecution.
- [20] Witness Police Constable Sheryl Hoareau stated she was the Exhibit Officer in this case and had taken into her custody all the documents found in the possession of the accused in his car and in his residence. The investigation Officer in this case Officer Rudy Pillay. She described in detail the procedure adopted in taking into custody the documents found in the car of the accused which included CV's, passports and X – Rays. She stated they were taken to the office at the SSCRB and photographed. She identified the photographs in open Court. After the taking into custody of the documents found in the car of the accused, they had obtained a warrant and searched the house of the accused. They had gone to the house where the accused stayed and taken into custody more documents such as CV's, passport copies and photos. She identified the accused in open court and marked the search warrant as exhibit P12. She described the exhibits she had taken into custody in the presence of the accused at his residence.
- [21] She produced an envelope containing passport size photographs which was marked as P13 and contained 170 photographs. She then produced 17 larger photographs in an envelope marked P14. Five large photographs were produced in an envelope marked P15. She also produced school leaving certificates, CV's with photographs of individuals, medical examination reports, X rays, Forex receipts, Immigration decree of the accused and Eden blue documents in respect of him, police clearance certificates, examination certificates, character certificates, award certificates, bank statements and airline booking documentation, money exchange receipts, letters issued by the Ministry of Health of

multiple individuals as P16 to P71. Thereafter, CVs of various individuals were marked as P73 to P 282 including certificates, passport details, other certificates including school leaving certificates and medical certificates of several persons including eight DHL envelopes were also produced through this witness. Further, a list containing details of bank transactions and money deposits in various banks in Nepal by several persons in the accounts of other multiple persons were produced as P284 to 296. Under cross examination witness confirmed that the name of the accused did not appear in any of the documents indicating money deposits.

[22] Thereafter the prosecution closed its case. Learned Counsel for the accused made a submission on no case to answer and by ruling dated 28th July 2021, this Court called for a defence in respect of Counts 1, 2 4, 5,6,7 and 8 and Court acquitted the accused on Count 3.

[23] The accused in defence gave evidence under oath in defence. He stated his name was Shyam Bahadur Chand and he also has a surname Ramesh Thapa. He admitted that he had come to the Seychelles in 2012. A colleague of his who was working at Montagne Posee prison one Topendra had told him to apply through an agency in Nepal and he had given his documents to the agency and he had got the job. He stated he had to pay the agency. He said the GOP was sent to them by the Seychelles prison. GOP was sent to twelve of them. He stated the agency charged them 5000 dollars at that time. The accused further stated he had started working at the prison for a period of four years. Thereafter, he had resigned as they were going to decrease his salary. He had thereafter worked at Eden Blue Hotel at Eden Island and after he finished working as he had wanted to see the Island, he had asked for his visa to be extended which was done for a period of three months. His landlord Joyce Malbrook allowed him to stay at Point Aux Sel Au Cap. He had left Eden Blue around November 2019. He was unable to leave due to the Corona epidemic and after the Seychelles airport opened in November 2020, he was scheduled to leave on the 29th of November 2020.

[24] On October 28th 2020, witness received a call from Immigration and was asked if he had applied for Nationality. He had replied he had not and had been told there was some good

news for him to come down. When he went there he was arrested by the CID. They had asked him whether he was illegally recruiting persons and whether he was taking money and had arrested him. He admitted they had taken documents from his car. He admitted he knew Mr. TK, the cook in a Chinese restaurant. He admitted he was asked by him to find a job for a friend. He said he knew his name as when they were off he would come to his place and cook Nepali food. He admitted he had told others his nickname was Ramesh some of them referred to him as Roshan and Rohan. He had told TK to tell his friend to send his documents but when the DHL packet arrived there were several packets of documents. He had told his friend whether he thought he was an agency. He stated he kept the documents as even when shopping if he gets a receipt he keeps it.

[25] Witness denied contacting the two ladies SL and LD who testified against him by IMO. He stated he never knew them. He stated he was not aware there photos were with him. He denied telling them to deposit money in bank accounts. He stated he was never subject to an identification parade. He denied knowing anyone by the name of SS. He admitted he had helped TK friend by giving his documents to the HR manager at the Chinese restaurant. He stated the Chinese lady had told him she was looking for a person who could cook Chinese and Indian food in her restaurant at Amanda Luxury Villa. They had spoken on the phone but he had nothing to do with his recruitment. He had not taken any money for it. He denied taking money from TK. He denied taking money from one Mr. BC. The accused further stated it was not he who was collecting money but the witnesses as his family was not being harassed but their families are being harassed in Nepal. He admitted giving TK's application to the lady and meeting him at the airport and buying him a SIM card. The accused had not taken any money from him. One HI also came but he had nothing to do with him after he arrived. The accused admitted he only knew TK. He admitted knowing Ron and stated he is a good guy who had been forced to complain against him. He denied signing any receipts in respect of any money and Ron.

[26] Under cross examination the accused admitted his name is Shyam Bahadur Chand. He admitted he was referred to as Ramesh, Roshan and Ron. He stated he sent money to his wife and once to his sister. The vehicle was from a car hire and not his own. He denied

the allegation he accumulated money by getting jobs for his nationality of people in the Seychelles. He stated his first extension to his job was from November 2019 was for three months. Thereafter due to the Corona epidemic he could not leave. He denied the allegation he had not taken any effort to go back to his country. He stated his wife's name was MK. He admitted he knew Mr. Dereck Franchette. He stated even before he came he had to give documentation like what the others had done. The accused denied Mr. Leon Pool was in his local network. It was suggested that documents pertaining to the persons recruited namely SL and LD were found in his room exhibit 141 and 242. He stated that this was a conspiracy against him. He further stated the Chinese lady did her own recruitment and he was not involved. He denied taking money from TK and BC. He stated he did not know how BC documents P187 were found in his premises. He denied knowing anything about BC's friend Eroj. It was suggested to him that the documents P284, 285, 286, 287 and 288 regarding deposits made by Eroj being with him indicated the evidence of BC evidence was true. He admitted knowing RT as a friend but denied getting money from him. He denied defrauding them. He denied trafficking them. Thereafter the defence closed their case and both parties made written submissions.

THE LAW

- [27] The charges against the accused are under sections 3(1)(d), (e) & (f) 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.
- [28] Section 3(1) (a) to (g) read as follows.
- a) A person who recruits, transports, transfers, harbours or receives another person by any of the following means-
 - b) Threat
 - c) of force or other forms of coercion
 - d) Abduction
 - e) Fraud

- f) Deception; including any misrepresentation by words or conduct as to financial incentive or promise of reward or gain and other conditions of work;
- g) Giving or receiving of payments or benefits, knowingly or intentionally, to achieve the consent of a person having control over another person

For the purpose of exploitation, commits the offence of trafficking in persons 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.

[29] 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 SCR 800,000.

[30] 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.

[31] 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 30. 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 30. ***R v Faisal Alam 2018 SCSC 946 [19th October 2018].***

ANALYSIS OF THE EVIDENCE OF THE PROSECUTION AND DEFENCE

[32] Having thus carefully considered the evidence before me, it is clear that the main contention of the prosecution is that the accused a Nepali collected large sums of money from vulnerable persons of Nepali nationality and taking advantage of their vulnerability extracted money from them in securing jobs in Seychelles which in the view of the prosecution is a clear act of exploiting their vulnerability in committing the act of trafficking in persons. The first two witnesses called Ms SL and LD gave evidence under oath that it was one SS who had mentioned that there were job opportunities in the Seychelles. She had voluntarily sent her CV and other documentation to another person known to SS working in the Casino with her. Mr. Shyam Chand the accused had called her on IMO by video call and stated somebody in Seychelles would call her to interview her for the job and she had to send her documents. It appears clearly from the evidence of operations manager Dereck Franchette led by the prosecution there was no deception, fraud involved as his evidence clearly indicates that they were interested in recruiting personal and had entrusted the recruitment to one Leonard Pool. Mr. Franchette on being notified that the four persons including Ms SL and LD were ready to be recruited had given the green light to his HR for them to be recruited. He had even gone to the airport, welcomed them to Seychelles, and looked after their welfare by making the necessary arrangements for their travel to Praslin. It is clear from the evidence of Ms SL and LD that they still work at Amusement Centre and have voluntarily extended their contracts and both do not complain of any exploitation or harassment at the place of work by their employees or by the accused himself after their arrival in the Seychelles. The mere fact that they had to pay tax from their salary cannot be considered to be a ground of exploitation as payment of tax is a legal requirement in the Seychelles.

[33] Further, I observe that it was one SS who had played an important role in communicating to them their terms of employment in respect of their salaries and other particulars including deposit of money in bank accounts in Nepal. It is the evidence of witnesses SL and LD that it was SS who was their contact who had told them most of the details of obtaining employment in Seychelles such as their salary tax and job opportunity in the casino. The witnesses state the accused who they refer to as “brother” had told her all these facts. However, the prosecution failed to call SS to give evidence in Court. Therefore most of the communication mentioned in their evidence between SS and them would amount to hearsay evidence and cannot be accepted by Court.

[34] It is clear that whatever money transaction or bank deposit made by SL and LD did not occur in the Seychelles but in Nepal not within the jurisdiction of this Court. They admit that the accused did not take any money in the Seychelles or bother them in any way in the Seychelles. Both witnesses further admit they did not pay the accused any money and that usual procedure of persons going abroad is to pay a sum of money to man power through agencies in Nepal and they would not have to pay for their tickets and GOP. I find therefore though there may be evidence that the accused was assisting them in finding a job in Seychelles, there is no evidence that he exploited them on their arrival in the Seychelles. It appears they are happily employed and continue to be so. The mere fact that they paid sums of money to agents on its own does not establish the charge of human trafficking. Although at most, the evidence indicates the accused had played a part in their recruitment, it cannot be said that the accused had the intention to exploit them either for sexual purposes, forced labour or services, slavery or practices similar to slavery, servitude as set out in paragraph 30 herein.

[35] In the **Faisal Alam case (supra)** the prosecution was able to prove that the victims were subject to forced labour without pay, insanitary living conditions, that their freedom of movement was restricted and were subject to control and servitude. Further they have not paid any money to the accused directly in the Seychelles as the deposit of money referred to them occurred in Nepal not into the account of the accused as borne out by the numerous bank receipts produced by the prosecution. There is absolutely no evidence to establish the essential element of exploitation and the failure to call SS as a witness has

resulted in most of their evidence having to be treated as hearsay evidence, which has to be disregarded by Court.

[36] For the aforementioned reasons, I am of the view that the prosecution has failed to prove the offence of human trafficking as set out in Counts 1 and 2 and I proceed to acquit the accused of both Counts.

[37] At the no case to answer stage, this Court has acquitted the accused of Count 3 as the main witness in respect of the Count, SS, was not called by the prosecution. I will next proceed to deal with the evidence in respect of Count 4. Witness TK stated he had learnt from a man power agency in Nepal that there were job opportunities in the Seychelles. They had told him to pay 4000 dollars US. After he had submitted all his documents, he had suddenly received an IMO call from the accused Shyam who had told him to pay only 3500 dollars. The man power agency was being run by one Dilip Pariyar. Witness had deposited the money in Dilip's account and had to further pay more money to obtain some Ministry documents. In all witness had paid 4000 dollars. He had done all this in May 2019 in Nepal and come to the Seychelles in September 2019. He had worked as a cook at Amanda Luxury Villa. He had seen the accused for the first time at the airport and he had assisted him to buy a SIM card. It is clear also from the evidence of the owner of Amanda Luxury Villa Ms Hsua that the accused assisted her in obtaining a cook from Nepal who she was very satisfied with.

[38] Once again the prosecution has established the fact that the accused played a significant role in the recruitment of the witness TK but it clearly appears that he too was happy with the conditions of his employment and even his employer was extremely satisfied with his services. Although at most, the evidence indicates the accused had played a part in his recruitment (actus reus), it cannot be said that the accused had the intention to exploit Mr. TK for either sexual purposes, forced labour or services, slavery or practices similar to slavery or servitude as set out in paragraph 30 herein. Further, he has not paid any money to the accused directly in the Seychelles in respect of his own recruitment, the deposit of money referred to by him occurred in Nepal and not the Seychelles as borne out by the numerous bank receipts produced by the prosecution. The accused has not solicited any

payment of money and the accused had suddenly contacted him and obtained a reduction of 500 US dollars for him. Once again the money was paid into the account of one Dilip Pariyar and not the accused not in the Seychelles but in Nepal. There is absolutely no evidence to establish the essential element of exploitation (mens rea). Mr. TK had nothing to complain against his employer regarding the terms of employment in respect of forced labour slavery or practices similar to slavery. For the aforementioned reasons, I am of the view the prosecution has failed to prove the offence of human trafficking as set out in Count 4 and I proceed to acquit the accused of Count 4 as well.

[39] I will next proceed to deal with Count 5, which is Obtaining money by false pretence contrary to and punishable under Section 297, by false pretence with intent to defraud. Count 5 being obtaining a total sum Nepalese Rupees 1,550,000/- (One Million, Five Hundred and Fifty Thousand) from the friends of Mr. TK, who are Nepali Nationals residing in Nepal, in making them to deposit the said money into the bank account of the said Shyam Bahadur Chand's agents in Nepal, by way of deception and taking an advantage of their vulnerability, falsely pretended that he could obtain good employment for those friends of Mr. TK in Seychelles. In regard to this charge the "friends of TK" have not been named as witnesses nor have their names been included in the particulars of the charge. The entire transaction has occurred in Nepal. It is clear from the evidence that TK himself was instrumental in telling his friends to deposit such money and introducing them to the accused. However, the manner the charge had been drafted in the absence of the "friends" of TK giving evidence this charge as it stands will fail. Although several documents were produced by the prosecution none of these documents were even shown to Mr. TK to identify his friends and include their names in the charge sheet and call them as witnesses. For all the aforementioned reasons this charge cannot be sustained, I acquit the accused of Count 5.

[40] In respect of Count 6 threatening violence on Mr. TK, in his evidence Mr. TK states that he was threatened by the accused when he asked the accused to return the money to his friends who had deposited money in Nepal but had not been given jobs in the Seychelles. When one considers the evidence as a whole against the accused Shyam Bahadur Chand not only Mr TK but other individuals namely BC and RT had all lodged similar

complaints and gave evidence on similar lines that the accused had taken money from them on the pretext of recruiting their friends and relations for jobs in the Seychelles but had not done so and had not returned the money up to date. The fact that he was threatening Nepali nationals is also borne out by the evidence of Senior Immigration Officer Mr. Laporte who in his evidence stated the first complaint received by him on the phone against the accused also referred to the fact that the accused was threatening other Nepali nationals in the Seychelles. I am therefore satisfied that the prosecution has proved all the elements of Count 6 beyond reasonable doubt and proceed to find the accused Shyam Bahadur Chand guilty on Count 6 and proceed to convict him of same.

[41] The next charge Count 7 is *Obtaining money by false pretence contrary to and punishable under Section 297 of the Penal Code*. Once again the particulars of the charge read *Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel of Mahe during the month of November 2019, by false pretence with intent to defraud, obtained a total sum Nepalese Rupees 831,000/- (Eight Hundred and Thirty One Thousand) from the friends and relatives of Mr. BC, who are Nepali Nationals residing in Nepal, in making them to deposit the said money into the bank account of the said Shyam Bahadur Chand's agents in Nepal, and directly received USD 4,400/- (Four Thousand and Four Hundred American Dollars) from the said BC in Seychelles by the said Shyam Bahadur Chand, by way of deception and taking an advantage of their vulnerability, falsely pretended that he could obtain good employment for those friends and relatives of Mr. BC in Seychelles.*

[42] It is clear that in the particulars of the offence, facts relevant to two different charges have been included together. The particulars of the offence include facts that a sum of Nepalese rupees 831,000/ has been taken from the friends and relatives of Mr. BC which transactions occurred in Nepal and also combines the facts of another charge where a sum of USD 4,400 has been taken from Mr. BC in the Seychelles. I find a clear duplicity in the particulars of offence and I am of the view that the charge is bad in law and should be dismissed.

[43] I will next proceed to deal with Count 8, which is *Obtaining money by false pretence contrary to and punishable under Section 297 of the Penal Code.*

The particulars of offence are that Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel of Mahe during the month of December 2019 and up to the month of May 2020 at Mahe, Seychelles, by false pretence with intent to defraud, obtained a total sum of USD 3,500/- (Three Thousand and Five Hundred American Dollars) directly from a person namely Mr. RT of Nepali National working in Seychelles, by way of deception and taking an advantage of their vulnerability, falsely pretended that he could obtain good employment for those friends and relatives of Mr. RT in Seychelles, who are in Nepal.

[44] Witness RT stated he had come to work as security in the Seychelles. He had met the accused who had introduced himself as Roshan who had asked him if he knows of anyone who would like to work in the Seychelles. He had spoken to five of his friends who had got in touch with the accused. He had said he would get them down and witness had decided to pay for them as they were his cousin brothers and he had given the accused in total 3500 dollars between the period December 2019 and May 2020. However the accused failed to get any of them down to Seychelles. When he had gone to the police did he get to know that his real name was Shyam and not Roshan.

[45] When one considers the evidence of this witness RT together with the evidence of other witness TK and Mr. BC it is clear the modus operandi of the accused was to collect money from individuals in the Seychelles on the pretence of finding jobs for their relations and friends living in Nepal. The large quantity of documents taken from his custody clearly indicate this fact. The money given in the Seychelles falls under the jurisdiction of this Court. It is clear that the accused after collecting such money from witness RT failed to get down the individuals to Seychelles. The evidence further indicates he had failed to return the 3,500 US dollars given to him in Seychelles to the complainant even though he requested to do so. Further the evidence of the Principal Immigration Officer called by the prosecution and the evidence taken as a whole indicates he had no permit or licence to engage in such recruitment and therefore such

recruitment was illegal and he had no authority to recruit persons abroad. However, on the false pretence that he could, he proceeded to collect money from individuals BC and RT in the Seychelles. The accused has even given different names to different persons indicating his fraudulent intentions. On the facts before Court, I am satisfied that the prosecution has established the elements of the charge contained in Count 8 beyond reasonable doubt. I proceed to find the accused guilty on Count 8.

[46] For all the aforementioned reasons I proceed to acquit the accused on Counts 1,2,3,4,5 and 7. I proceed to find the accused guilty on Counts 6 and 8 and proceed to convict of same.

Signed, dated and delivered at Ile du Port on this 3rd day of November 2021

Burhan J