

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 19

CO 62/2018

In the matter between

THE REPUBLIC

(rep. By Ms Rongmei)

Republic

and

Israel Labrosse

(rep. By Ms Parmentier)

ACCUSED

Neutral Citation: *R v Labrosse* (CO 62/2018) [2021] SCSC 19 (4 February 2021)

Before: Govinden J

Summary: Trafficking in persons; evidence reveals the existence of the “action”; the “means” and the “purpose” essential elements of the offence. Conviction of the accused person.

Heard: 14th October 2019; 24th February 2020

Delivered: 4 February 2021

ORDER

The accused is convicted of the offence of trafficking in persons contrary to and punishable under section 3 (1) (a), (b) read with section 5 (1) of the Prohibition of Trafficking in persons Act 2014.

GOVINDEN CJ

Introduction

[1] Human trafficking is increasing worldwide and it violates basic human rights and causes immeasurable trauma to the victims involved. Seychelles joined many nations and signed the UN Convention against Transnational Organized Crime in 2000. To supplement the Convention, the UN Protocol to Prevent, Suppress and Punish Trafficking in persons, especially Women and Children directly addresses the crime of trafficking in persons. In

attempts to address the issue of human trafficking, Seychelles adopted the Prohibition of Trafficking in Persons Act 9 of 2014 which mirrors the key aspects under the Protocol.

[2] The UN Protocol defines trafficking in persons broadly to include:

“...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs...”

[3] This definition is wide and covers direct, more coercive cases where force is used on the victims to cases where deception, abuse of power and manipulating the vulnerability of the victims is used. As will be seen below, this crime involves three main components namely the action or recruitment; the means threat and the purpose or exploitation.

The Charge

[4] The Accused person in this case is Israel Labrosse, of Anse Aux Pins, Mahe and he has been charged with 3 counts of the offence of Trafficking in persons contrary to and punishable under section 3 (1) (a), (b) and read with section 5 (1) of the Prohibition of Trafficking in Persons Act 2014.

[5] The 1st count is particularized as follows; *“Israel Labrosse of Anse Aux Pins, Mahe, Director of Isra Construction, Anse Aux Pins, in April 2017, trafficked one MD Selim Reja, a Bangladeshi national, by recruiting him through deception and misrepresentation of financial incentives and working conditions and thereafter harboured and exploited him through forced labour, by the use of force and threats”*.

[6] The second and third counts are the same as the 1st count in terms of its content save that the persons alleged to have been trafficked are respectively Ali Houssein and Alauddin Mondal.

Burden/ standard of proof

[7] This is a criminal case and the prosecution bears the burden of proving that the Accused committed the alleged crime beyond a reasonable doubt.

Essential elements of the offences

The actus reus

[8] That the Accused person did the physical act of recruitment each of the Virtual Complainant and harboured them and compelled them to carry out forced labour with the use of force and threats.

The mens rea

[9] That the Accused person did the recruitment with intent to deceive and misrepresent to them their future financial incentives and working conditions and following that intentionally exploited them by subjecting them to hard labour using force and threats. The intention to deceive and the consequential exploitation is the crux of the prosecution's case.

The Prosecution's case

[10] The 1st witness called by the prosecution was Ms Shami Jumaye who is an officer of the Public Health Services, working with the Public Health Authority. She recalled having carried out investigation in respect of some Bangladesh employees working with Israel Construction. The witness issued a letter to the Accused in that regard, being a letter dated the 5th of June 2016. This document was tendered in evidence as exhibit P1. In the letter, the Accused was informed that the complainants had lodged a case with the Public Health office regarding the accommodation facilities provided for the workers. An inspection was conducted on the premises on the 4th of June 2018 by officers from the Public Health Services. Upon the investigation it was noted that three foreign workers were residing in a bedsitter and sharing all the facilities with the uncle of the Accused. The letter recommended that the Accused must provide to each of his workers separate facilities, including kitchen; sleeping area; toilet; bathroom and dining area.

- [11] In the letter, it was further noted that the room was stuffy, overcrowded and dirty. Cooking and washing up area were being carried out inside the same sleeping room. Food items were stored under the bed and the toilet and shower were dirty. The letter concluded that the dwelling house was not up to the required standard and was in a bad state of hygiene and cleanliness. The state of the house was further found to be contrary to part 4 and 5 of the Public Health Act. The Accused was therefore requested to seek an alternative accommodation for his workers which would have the approval of all relevant agencies. In addition, the witness testified that the premises was not the same approved by the Public Health Authority prior to the issue of the Gainful Occupation Permit (the GOP) to the workers.
- [12] The second witness, Mrs Simone Mal Brook works in the Ministry of Employment and Industrial Relations as a Competent Officer. According to her, she conducted a mediation in a dispute between Israel Labrosse and the three Bangladesh nationals who are the Virtual Complainants in this case. After this mediation, three written Mediation Agreements were signed by each of the representatives with the Accused. These agreements were tendered in evidence. According to the witness the Accused person gave his assurance, through those agreements that he will pay the 3 workers the outstanding amounts in monthly instalments of SCR 4,500 each month. However, he failed to abide to his undertaking and the matter is now pending before the Employment Tribunal.
- [13] The third witness for the Prosecution was Mr George Felix Fideria works for the Department of Employment in the labour migration section. He has conducted an investigation in respect of the working and living conditions of the expatriates' workers of the Israel Construction. According to him, on the 24th of August 2018, he was alerted by Ms Karen Pillay of the Immigration Department that there was a situation at a company at Anse Aux Pins that needed investigation. He proceeded to the scene and saw three workers who informed him that they were not getting their salaries for the past three months. From his observation of the facilities, there were four people living in the house, three foreign nationals and a Seychellois. The cooking facilities and their sleeping area was dirty. He completed his Report and a copy of the Report was admitted in evidence. According to his Report, as per their contracts of employment, the workers'

were to work from 7 am to 4.30 pm from Sunday to Saturday. They were to have a tea break offifteenminutes and a lunch break of one hour. They were to be paid US\$ 400 dollars per month together with a food allowance of SCR 2000. The workers had informed him that instead of the food allowance, the Accused would give them food which lasted only for a few days.They reported that they were not provided with protective equipment and their contract of employment had not been attested by the Ministry. In his recommendation he advised the workers to register a grievance with the Ministry of Employment and he advised the same Ministry to issue a letter to the Accused with regards to the mistreatment of the workers as this was the 2nd time that he had failed to honour the conditions of the approval letter for foreign workers.

- [14] The fourth witness for the Prosecution was Mr Simeon who was the police investigating officer assigned to the case. He is attached to the police criminal investigating unit at Bois de Rose police headquarters. As part of his investigation, he requested for acopy of Isra Construction and Maintenance Registration Certificate from the Registrar of Association. This was produced in evidence. He also put on his investigation file a number of documents relevant to his investigation which included the GOP of the three workers and their passports, which were all admitted in evidence. The Officer also tendered in evidence the Statement under Curation of the Accused, which was not objected to by the defence.
- [15] The prosecution also called Karen Pillay, who is a Senior Immigration Officer in the Enforcement Section of the Department of Immigration. She confirmed that the three Virtual Complainants were each issued with a GOP certificate and that copies of these documents were given to the police investigation officer. She testified on the procedure for the issuance of such certificates.
- [16] The 1st Virtual Complainant to testify was Selim Reja. He is a carpenter and came to know about the prospect of jobs in Seychelles through Hussein a Bangladeshi who was living in Seychelles. Hussein had an office in Bangladesh and his recruitment was done through that office. It was through the office in Bangladesh that a representative of Hussein offered him a job as a carpenter for the salary of US\$ 400 dollars and US\$100

dollars as food allowance. He paid the representative Taka 350,000. He was given his passport; flight ticket and a GOP certificate to come to Seychelles. He was to be employed by Israel Labrosse. He arrived in Seychelles on the 13th of April 2017 and he was met by the accused and one Hussein who informed him that he was going to be employed by a company employing over 200 persons. He also testified that he came with two other Bangladeshi employees. They are the two other virtual complainants. The accused conveyed to and from their work sites from their residence. Their accommodation were tiny and they together with another person had to share all the amenities including the kitchen and washroom.

[17] Selim Reja testified that for the 1st four months, he did not get any salary and the Accused bought the food. After the four months, he received a salary of SCR 4500 and then he was not paid his 5th month salary. As a result during the 6th month, he started employment with another employee. However the accused quarrelled with him and as a result, the police had to intervene.

[18] Following that, he testified that the three complainants visited the Department of Employment and through the intervention of their lawyer, the accused paid them the equivalent of two months' salary in front of the Victoria police station on the same day. Then after that they got a shelter accommodation from Mrs Miriam a person at the employment department.

[19] As a result of the non-payment of his salary, Selim Reja testified that he could not service a loan in Bangladesh. He further stated that no safety equipment was provided by the accused and that these were provided only after the police incident. The case with the Ministry of employment is still pending with the accused only occasionally paying SCR 1,000 or SCR 1,500 to the workers. According to him, he complained to Hussein on the issue of non-payment of salary. He considered Hussein to be a good friend and according to him, Hussein always advised him to continue working and that he would be paid at the end of the month. His complaint regarding the accommodation situation with Hussein also fell on deaf ears. He was hesitant to leave employment because he was to service a

loan in his country with his salary. It was only after four months in employment that he learnt that the accused was facing financial problems.

[20] The next witness who testified is named Alaudd in Mondal. He is a Bangladeshi mason and he made his arrangement to come and work in Seychelles through his brother. He submitted to the latter his passport; medical report and photographs and he paid DAKA 350,000 through his brother to come and work in Seychelles. He arrived on the 13th of April 2017 and he was met by the Accused, his employer. Three of them came to work for the accused from Bangladesh that day. They are Selim Reja and Ali Hussein. From the airport, they were taken to the house of a Mr Hussein and the day after, they were taken by the accused to their residence. As per the contract of employment that he signed with the accused he was to be paid the monthly salary of US\$ 400 dollars and be provided with a grocery allowance of SCR 1,200.

[21] However according to him, he was not paid any salaries for the first five months. Feeling frustrated he narrated that they approached the labour union office and the department of employment, which pressured the accused, who then gave them some money. The total amount that was owed to the three of them for the five and a half months of employment was SR 24,700 and they were paid that amount. Soon afterwards however, the accused stopped making payments of the three workers' salaries. In addition, he stopped providing him with the food allowance, but was giving him some food stuffs. According to him, the accommodation consisted of a small room which accommodated four persons. He also testified that occasionally, they would stay in places where they were carrying out work. After they had complaint with the Employment Department, the accused promised to move them to a better facility but this was never effected. Following the five and half months of employment, they worked another eight and a half month with the accused. During this time he testified that he got paid around SCR 300 every day of work, but he was not paid the promised food allowance.

[22] As a result of the above, he and the two others stopped working for the accused and came to live in a shelter after the police had taken them from the accused premises at Anse Aux Pins. He does not know the outstanding amount of salary still owed to him by the

accused. Lastly, he testified that the accused had informed him from the beginning that he was having some financial problems and occasionally the accused's sister helped out with food.

[23] The next witness was Ali Hussein who is the third Virtual Complainant. He is a Bangladeshi national and a mason by profession. He said that a person by the name of Hussain helped him to come to Seychelles. In doing that he gave his passport photocopy and his medical report to Hussain. He also paid 300,000 Bangladeshi Daka, in consideration for the arrangement for him to come and work in the Seychelles. Following this payment he got the GOP certificate and arrived in Seychelles in 2017. He was contracted to work for the accused together with Alauddin and Selim. The three of them arrived on the same flight and they were met by Hussain who brought them over to the accused.

[24] According to his further testimony the accused had informed him that he would get a salary of US\$ 450 dollars and SCR 1,500 as a food allowance. The day after they came the accused brought them to their accommodation. It was a small room for four people to live. He got his first salary only after 5 or 6 months after his employment. He was not provided with the food allowance as per the agreement. The accused brought them food. After the first 6 months he only got SCR 9000. In total he worked for the accused for about 14 months and after the first payment, he got probably around SCR 9000 as salary. Lastly, he testified that the accused still owes him salaries.

[25] After the 14th month they were taken to a shelter at North East Point by the police as the accused was not paying their salaries and due to the bad state of their accommodation. The witness admits that he was incapacitated as a result of a work accident for one month and that the accused covered all the medical expenses. He further testified that he socialized with the accused whenever they met and they drank beer together.

The defence case

[26] The defence made a no case to answer submission which was dismissed by the court. Following that, the accused exercised his right to give an unsworn statement from the

dock. Such statement is subject to certain infirmities in that it is not subject to cross examination. In the case of **R v Campbell 69, CR APP r 221**, it was held that a jury cannot be told to disregard such a statement altogether. They must be told to give such weight as they think fit. However, the unsworn statement cannot have the same value as sworn evidence which has been tested by cross examination. I will accordingly consider the Accused person's statement in the context of all the facts of the case, whilst bearing in mind that the statement has not been given under oath, and hence not under a compulsion to tell the truth.

Accused statement under caution

[27] In his statement, the Accused admitted that the three Virtual Complainants were in his employment. He is a maintenance contractor and the three expatriates were two carpenters and a mason. He did their recruitment procedure through an intermediary of Bangladesh origin named Hussein. He paid their GOPs of SCR 7000 per person. Upon coming into the country, they were housed in his bed sitter at Anse Aux Pins. He signed employment contracts with each of the workers in which he undertook to pay US\$ 350 dollars per month. According to him, he was to supply them their food and they were to work from Monday to Friday from 07h00 to 16h00 and on Saturdays from 07h00 to 13h00. According to his statement, they were all to get Sunday off. They started working in April 2017.

[28] He stated that in terms of his agreement with Hussain, Hussain was supposed to pay the workers their salaries from April 2017 to September 2017. However, as he was approached by the Ministry of Employment on the matter, he decided to pay them the sum of RS 81,000 by instalments. After failing to meet his further salary deadline in March 2018, he entered into an agreement with the Ministry of Employment in which he undertook to pay a sum of SCR 13,500 to each worker. This would amount to a sum of SCR 40,500. Out of this sum, he only managed to pay SCR 9,100 per worker. According to him, his problem aggravated when the Ministry of employment compelled the workers to leave his premises. As a result, he failed to generate any income. He claimed that he always treated his workers well and that he never attempted to beat up Salim Raja. He

claims that he is ready to settle the outstanding sum of SCR 31,400 with the Ministry and pay for their airfares.

According to the accused's unsworn evidence, he started his business in 2016 as a contractor and had a horrific accident in the same year. As a result of the accident, he was crippled for almost year. In 2017, he had a foot injury and had a surgery which resulted in him failing to manage the business. He stated that he sought seek and unsuccessfully tried to get a small business finance. He noted that he wrote two letters seeking financial help because he had a project, but did not manage to receive the financial help. He noted that the three Bangladesh employees came in the same year when he was on crutches. He denied the statement by one of the witnesses that when the three Bangladeshi came to the Seychelles he was not on crutches. The accused continued with his unsworn testimony and stated that his last surgery were last year in February.

[29] The accused further testified that he made the arrangements for the three Bangladeshi to come and work for him through the Immigration and Employment Departments. According to him, he received all the necessary documents for the three to come and work in Seychelles and that this arrangement was facilitated by one Hussain who was the Executive Director for M&M Farm. According to the accused, it was him who made all the arrangements and knew the three prior to them coming to Seychelles.

[30] The Accused stated that after sometime with the three employees, he received a letter from Ministry of Health informing him that he was to relocate the workers. He testified that all the necessary arrangements to relocate the three were made to a new house. He testified that at the time, he was fighting for his health and the three Bangladeshi were trying to generate some revenues. At the time, there were various factors that affected the completion of the projects including the fact that he could not go on site and had to rely on others to give him the information. He submitted that most of the information was incorrect and when he started working, he found himself in a huge debt. According to him, the workers were being treated well, but the company was experiencing a huge financial problem. In addition to the above, he testified that as a result of him being on crutches, one of the project was under quoted, resulting in him losing money. In the same

year, his son was born and everything happened at once. He stated that he had to seek psychological help because he could not get back on his feet

[31] The Accused denied the statements by the three Virtual Complainants that he did not provide them with food. To support his claim, he submitted that the three witnesses testified that they had food under the bed. He further testified that he started working for Airtel in two years in a bid to solve his financial issues. Through that salary, he testified that he managed to solve the payments, despite having very little left for himself. According to him, while at Airtel, he learnt that a human trafficking case had been opened against him. He however stated that none of three witnesses stated how he trafficked them, because they had their passports. To support his statement further, he stated that the three witnesses were free to go wherever they wanted without any restrictions. He stated further that the three never laid a complaint of human trafficking with the Police at Anse Aux Pins.

[32] Lastly, he stated that he would never ill-treat people and he gave them options but they wanted to leave. Despite everything that went between him and the three workers, he submitted he is still in contact with three Virtual Complainants who are still asking him if he is aware of any jobs. He concluded by stating that he was glad when he managed to pay off the three workers. He was disappointed that his construction company did not take off as he anticipated and had only brought him disappointment and pain.

Analysis and determination

[33] The Accused does not deny the fact that MD Selman Reja; Ali Hussein and Alauddin Mondal were recruited by him from Bangladesh with the intent of them being employed in this country. He further admitted that from April 2017, they were all in the employment of the Isra Construction –a business that he owns. He however denies the rest of the facts led against him.

[34] The prosecution has, accordingly, to prove beyond a reasonable doubt that the Accused recruited the Virtual Complainants through deception and misrepresentation of financial incentives and working conditions and thereafter harboured and exploited them through

forced labour, by the use of force and threats. The actus reus of the offence consist of any of these acts, carried out with the intent to deceive and misrepresents.

[35] The first component of the definition, the “**action**” element, is one part of the definition that will constitute the actus reus of trafficking. This element can be fulfilled by a variety of activities including but not limited to the undefined practices of recruitment, transportation, transfer, harbouring or receipt of persons. The second part of the actus reus of trafficking, is the “**means**” element (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person). The final element of the definition, the “**purpose**” element, “for the purpose of exploitation” introduces a **mens rea** requirement into the definition. Trafficking will occur if the implicated individual or entity intended that the action would lead to exploitation. Trafficking is thereby a crime of specific or special intent (*dolus specialis*).

[36] This offence has been charged under the provisions of the Prohibition of Trafficking in Persons Act 2014. Section 3 of the Prohibition of Trafficking in Persons Act 2014 states as follows:

3 (1) A person who recruits, transports, transfer, harbours another person by any of the following means-

a) Threats

b) Use of other forms of coercions

c) Abduction

d) Fraud

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

f) Abuse of power or of another person's position of vulnerabilities o

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 purposes 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.

(2) Where it is proved to the satisfaction of the court that any of the means referred to in subsection (1) (a) to (g) has been used in committing the offence of trafficking, or shall not be a defence that the trafficked persons consented to such act.

[37] The different consecutive acts of the commission of the offence as averred in the particulars of offence are found in section 3(1). Though any of the different acts from (a) to (g) may consist of acts of trafficking in themselves it appears that the prosecution has in this case used more than one acts together consecutively in their particularization of the charges. This as it may, no objections were raised by the Defence in that regards.

[38] On the other hand, subsection 2 of Section 3 removes the defence of *volonti non fit injuria* in this case. Therefore, it cannot be a defence to the three charges levelled against the Accused that the Virtual Complainants consented to the threats; deception; force; misrepresentation by words or conduct as to financial incentive or promises of reward or gains and other conditions of work. This would be the case even if the defence or the prosecution has adduced enough proof to show that factually they had consented to those acts or omissions. The court notes however that though the defence of consent is not preferred by the defence in this case this provision is of crucial importance as the facts of the case relates to a contract of employment and therefore there arises a prima facie issue of consent.

[39] As to the means element, the question is whether the Accused recruited the Virtual Complainants through deception and misrepresentation of financial incentives and working conditions? It is clear that things in Seychelles did not transpire into what they had been led to believe. I accept the evidence of all three Virtual Complainants and that

of the accused, though the Accused's testimony is accepted under caution. There were some inconsistencies in the testimony of the Complainants relating to how much they were to be paid; how much they are still owed and the arrangements relating to food allowance. However, none of those minor inconsistencies affected the credibility of their testimony. The Accused recruited the three Virtual Complainants using an intermediary or agent by the name Hussein to recruit them to Seychelles. I accept and find that whatever Hussein did in their recruitment was done at the behest and with the knowledge of the Accused person. He greeted them upon their arrival in Seychelles and brought them to the Accused and was constantly present during the course of their employment with the Accused. He was on more than one occasion seen receiving complaints from the Virtual Complainants and conveying to them the position of the Accused on those complaints. However, Hussein's main role ended with their placement with the employer. He charged all of them fees for his role in recruiting and placing them with an employer. I therefore find the evidence of the Accused to be untrue when he stated that it was Hussein who had to pay the three Virtual Complainants their salaries from April 2017 to September 2017. He further failed to show any evidence to justify the basis why Hussein would pay these salaries.

[40] In summary of the main evidence, Selim Reja was recruited by the Accused through Hussein's representative who offered him a job of carpenter for the salary of US\$ 400 dollars and US\$ 100 dollars as food allowance. He paid the representative Taka 350,000 for the job opportunity. He was given his passport; ticket and GOP certificate to come to Seychelles. Alauddin paid Taka 350,000 through his brother to come and work in Seychelles. According to the contract of employment that he signed with the accused, he was to be paid a monthly salary of US\$ 400 dollars and be provided with a food allowance of SCR 1200. Ali Hussein paid 300,000 Bangladeshi Takain consideration for the arrangement to come and work in Seychelles. The accused had through Hussein informed him that he would get a salary of US\$ 450 dollars and SCR 1,500 as food allowance. All the Virtual Complainants arrived in Seychelles on the 13th of April 2017.

[41] All these details are confirmed by George Felix Fideria, an officer at the Ministry of employment. George Felix Fideria further confirmed that in terms of the contracts of

employment, the three Virtual Complainants were to be paid US\$ 400 dollars per month together with a food allowance of SCR 2,000. However, the Accused failed to carry out his bargain by paying these employees their salaries and allowance once they started working. The reason that he gave in his statement as to why he did not pay their entitlements from April to September was that it was the responsibility of Hussein and not him to pay for this part of their salaries. In his dock statement, he further explained that his medical conditions and lack of business opportunities affected his financial situation.

[42] I do not believe the reasons put forward by the accused. Having assessed the totality of the evidence, especially the credibility of witnesses as tested by cross examination, I am of the view that the accused recruited the Virtual Complainants through deceit, with no intention to pay their fare dues. From the beginning, he had no capacity to pay them the salaries and allowances in terms of their contracts. The accused had no other skilled employees in his employment prior to the recruitment of the three employees. His objective was to use their labour; make a profit, and depending on the profit of his business, pay them a salary. He was totally reckless as to the viability of this business venture and his offer to the employees was therefore deceitful to say the least. He placed the Complainants in a house that was not approved by the Ministry. It was only when the Ministry of employment intervened that he started paying the salaries and part of the salaries were still pending at the time of the hearing. The court will not go into any arrangement that he might have had with Hussein in that regards as the legal duty was on the Accused as the employer to pay the Complainants and not a third party.

[43] The deceitfulness of the Accused was extended to the conditions of work. All three Virtual Complainants were critical of their living conditions provided to them as part of their working conditions by the Accused. They said that they were put to stay in a one room apartment and also living and sharing the amenities with a relative of the accused. According to the evidence of Shami Jumay and George Fideria, the living conditions were substandard and they had to be removed and placed in a shelter provided by the State. All the promises to change their accommodation made by the Accused were made in vain. This was totally contrary to their expectation, where they were recruited on the

basis that they would be working for a company of more than 200 persons. In addition, according to witness Shami Jumaye, this was not the premises that the Ministry of Employment had approved prior to issuing the GOPs to the Accused person.

[44] As to the action element, the question is whether the Accused person recruited and thereafter harboured the Complainants? I am of the view that this element is proven. The undisputed evidence shows that he recruited all the three complainants and thereafter harboured them in a small one bedroom house at Anse Aux Pins. There are two “action” elements that must be proven beyond a reasonable doubt.

[45] The disputed element of the offences in this case is that of intent to exploit, the *dolus specialis* of the offence. The Accused denied that he exploited the three Complainants. Exploitation for the purpose of human trafficking is the act of using power to systematically extract more value from workers than is given to them. It is a social relationship based on an asymmetry of power between workers and their employers. When speaking about exploitation, there is the unfairly taking advantage of another person because of their inferior position, giving the exploiter the power.

[46] I have scrutinized the evidence with a view to see whether there exist evidence to show that the accused person had the intention to exploit the virtual complainants. In doing so, I have considered and evaluated the testimonies of all witnesses and the unsworn statement of the accused. Intention to exploit may be inferred or deduced from the circumstances in which the Virtual Complainants were treated and from the conduct of the accused before, at the time of, or after he did the act of causing them to be recruited as his employees. Whatever he had said about his intention may be looked at for the purpose of finding out what that intention was in fact at the relevant time.

[47] I find that the accused intended to exploit and did exploit the three Virtual Complainants in this case. He intentionally failed to pay them their salaries and allowances as he had contracted to pay them. All attempts on the part of them to get back their full salaries failed and as of to date, according to the employees testimonies, the payments are still outstanding. Whilst he failed to pay the entitlements the accused was using the labour of his employees by bringing them to work sites to carry out work for his business. He was

no doubt being paid for these works and yet he failed to use part of those payments to meet all his contracted obligation towards the Virtual Complainants. In other words, he exploited their labour.

[48] The fact is that Selim Reja; Alauddin Modal and Ali Hossain were foreigners in Seychelles and hence were in a position of vulnerability. Evidence shows that the individual's personal, situational or circumstantial vulnerability was intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive those persons for the purpose of exploiting them. These individuals found themselves in a foreign country with no or little means of support. These vulnerabilities were exploited to the advantage of the accused person. Like in *R v Alam (CO 67/2016) [2018] SCSC 946 (19 October 2018)*, this case demonstrated how deception, misrepresentation of financial gains and conditions of work are used to lure vulnerable foreigners.

[49] The accused failed to provide them their dues and gave them an inhumane means of accommodation thinking that they would not have the strength; audacity and strength to seek for help. However, contrary to his view they did so and hence found a way to escape their ordeals. I accordingly find that the prosecution have proved beyond a reasonable doubt that the accused person trafficked the three Virtual Complainants and used them for financial gain beyond a reasonable doubt.

Final determination

[50] Accordingly, in my final determination I find that the accused person guilty of the offence of Trafficking in person as charged in this case and I convict him accordingly.

Signed, dated and delivered at Ile du Port / Victoria on the 4th day of February 2021.

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GOVINDEN CJ