

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CRI 2015-092-6886
[2016] NZHC 3077**

THE QUEEN

v

**FAROZ ALI
JAFAR KURISI**

Hearing: 15 December 2016

Counsel: L Clancy and J M Pridgeon for Crown
P Broad and S Leith for Mr Ali
M S Sabu Khan for Mr Kurisi

Judgment: 15 December 2016

SENTENCING NOTES OF HEATH J

Solicitors:
Crown Solicitor, Manukau
Counsel:
P Broad, Manukau
S Leith, Auckland
M S Sabu Khan, Auckland

Introduction

[1] Mr Ali, please stand.

[2] Faroz Ali, you appear for sentence today on a total of 57 charges, the most serious of which involve people trafficking. You entered pleas of guilty to some of the charges. On others, you were found guilty by a jury after a trial. I sentence you on the basis of my own assessment of the evidence given at trial.

[3] You were due to be sentenced today in conjunction with a co-offender, Mr Jafar Kurisi. He has pleaded guilty to lesser charges involving exploitation of employees. He was taken to Tauranga Hospital this morning in an emergency situation. In that case, I cannot sentence today. Mr Kurisi's sentencing is adjourned to 9am on 2 February 2017. That will take place in the High Court at Tauranga. Mr Kurisi is remanded on existing terms for sentence on that date.

[4] Mr Ali, my sentencing remarks may take a little time to deliver. You may be seated at this stage. I will ask each of you to stand when I pass sentence.

Background

[5] You were tried over 18 sitting days before a jury. On 22 August 2016, the first day of your trial, you entered pleas of guilty to eight charges of aiding and abetting a person to breach a condition of his or her visa,¹ nine charges of exploiting employees unlawfully in New Zealand by failing to pay moneys due under the Holidays Act 2003² and nine charges of exploiting employees unlawfully in New Zealand by failing to pay moneys due under the Minimum Wage Act 1983.³ Those pleas were entered in the presence of the jury. I convicted you on each of those charges at that time.

[6] The jury was left to determine the remaining charges: 15 of trafficking in human beings by deception,⁴ 15 of aiding and abetting a person to enter New

¹ Immigration Act 2009, s 343(1)(a).

² Ibid, s 351(1)(a)(i).

³ Ibid, s 351(1)(a)(ii).

⁴ Crimes Act 1961, s 98D(1)(a).

Zealand unlawfully⁵ and one of aiding and abetting a person to remain in New Zealand unlawfully.⁶ You were found guilty on all of those charges. On 15 September 2016, convictions were entered on each.

[7] The maximum penalty to which you are liable arises on the people trafficking charges. Each carries a maximum term of imprisonment of 20 years, a fine not exceeding \$500,000, or both.⁷ I take the trafficking charges as the lead offence for sentencing purposes.

The nature of the trafficking charges

[8] I deal first with some background in relation to the trafficking charges.

[9] New Zealand is a signatory to the *United Nations Convention Against Transnational Organised Crime*.⁸ There are three Protocols to that Convention. One is *The Protocol to Prevent, Suppress and Punish Trafficking in Persons; Especially Women and Children*. Another is *The Protocol Against the Smuggling of Migrants by Land, Sea and Air*. New Zealand's obligations under those Protocols were given effect when ss 98D and 98C of the Crimes Act 1961 respectively were enacted by the Crimes Amendment Act 2002.

[10] The offence of smuggling was not charged in this case. Trafficking, which was, involves a situation in which a migrant's entry into New Zealand has been procured by acts of coercion or deception.⁹ The validity of travel documentation is not a pivotal consideration in a trafficking case.

Facts

[11] Evidence was given at trial by each of the 16 complainants, of whom 15 were involved in trafficking. The people whom you trafficked were all Fijian residents. They each responded to advertisements in the *Fiji Sun* newspaper. Those

⁵ Immigration Act 2009, s 343(1)(b).

⁶ Ibid, s 343(1)(a).

⁷ Crimes Act 1961, s 98D(2).

⁸ *United Nations Convention Against Transnational Organised Crime* GA Res 55/25, A/RES/55/25 (2001).

⁹ *R v Chechelnitski* CA160/04, 1 September 2004, at para [3].

advertisements were placed by one of two travel agencies; Deo's Travel Agency and Ram's Travel and Immigration Services. Deo's was operated by your *de facto* wife, Ms Geeta Chandar (whom I will call Geeta), while Ram's was run by her twin sister, Ms Sanjana Ram (whom I will call Sanjana). The two businesses operated out of premises in the same suite of an office building in Suva.

[12] The advertisements were aimed at the vulnerable. They were designed to excite the interest of people living in Fiji who wanted to travel to Australia or New Zealand to earn a significantly better income than they could earn in Fiji.

[13] The victims who responded to the advertisements each consulted Geeta or Sanjana, or one of their respective employees, about travelling to New Zealand to undertake the advertised work. A common theme of their evidence was their desire to travel to New Zealand and to work to make money that could be put to good use in providing for a better lifestyle for themselves, their families and wider village communities. On the basis of representations made to them, most expected to earn up to seven to eight times more money per week than what they were able to earn in Fiji.

[14] In most cases, a victim would be required to pay a consultation fee before being given any further information. Further costs were incurred when someone at the travel agency filled out visa application forms to enable the victims to travel to New Zealand, and when their passports and visas were available for uplift. Generally, that work was undertaken by Sanjana, Geeta, or some authorised employee of either of them. The amount of the fees varied.

[15] All of the victims were vulnerable individuals. Most had little in the way of income or assets. Most had borrowed significant sums from relatives or communal funds operated in their respective villages to meet the fees. The amounts paid to the travel agencies were grossly disproportionate to the amount of money that each of the victims could earn in Fiji. The fees charged in Fiji were, on the evidence I heard, extortionate in nature.

[16] The jury must have found, and I reach the same conclusion, that you, Geeta and Sanjana were each involved as participants in a joint criminal enterprise designed to extract money from each of the complainants in Fiji, to induce them to travel to New Zealand on the basis of false representations as to their working conditions, pay and ability to work lawfully in New Zealand. You were to receive them in New Zealand so that they could be put to work in exploitative circumstances.

[17] I am satisfied beyond reasonable doubt that you were a joint principal in that enterprise. You are just as culpable as your wife and sister-in-law for what happened in Fiji. You are the most culpable for how each was treated once they arrived in New Zealand.

[18] Each of the complainants, while signing visa application forms in Fiji, left it to Geeta, Sanjana or one of their trusted employees to fill out the balance of the visa application. The type of visa sought was a visitor's visa; one on which the victims were not entitled to work lawfully in New Zealand. While some of them noticed the problem flowing from the grant of only a visitor's visa, they relied on representations to the effect that work permits or visas would be arranged when they arrived in New Zealand. I am satisfied that you knew representations of that type were being made to them in Fiji, and that they were false.

[19] Almost all of the victims were required to pay their own airfares to New Zealand. Many were told that food and accommodation costs were included within the moneys they had paid to the travel agencies in Fiji.

[20] Mr Kurisi played a role in the work provided to people who were to work in the horticultural industry, in the Bay of Plenty. The accommodation arrangements in Tauranga for four of the victims were shamefully poor. Three married women and one married man were taken to a house near Pye's Pa and told they would be staying in the basement with other people. There was no bedding to speak of and only one mattress was available. This, in July 2014, in the midst of a New Zealand winter. That must have been extremely cold for people travelling from the tropical warmth of Fiji.

[21] I will say no more at this stage about the conditions that the victims who went to work with Mr Kurisi suffered. They will be dealt with on his sentencing. However, I am satisfied that you, at least in general terms, knew of the conditions in which they were living and working.

[22] Other victims came to Auckland to work in your construction business, Gib-Set. They were put to work on various jobs but did not receive the moneys promised to them in Fiji. They lived in your home in Papatoetoe in cramped surroundings. A number slept in the main room of a small unit. They were told that moneys were being deducted from their wages to meet food and accommodation expenses.

[23] On more than one occasion, you took a victim to a solicitor in Auckland to ensure documentation was prepared to extend the visitor's visa. No attempt was made, at any time, to have their working status legitimised. It was not in your interests to do that. Without any official record of the victims working in New Zealand, there was no impediment to your exploitation of them. In particular, you failed to pay them moneys owing under both the Holidays Act and the Minimum Wage Act. The calculations produced in evidence demonstrate that you saved over \$100,000 by doing so.

[24] When it became clear that Immigration and Police were about to search your residence, you endeavoured to persuade at least some of the victims not to tell investigators the truth, so that your "business" operation could continue. When interviewed by the Police, you denied any involvement in the offending with which you were subsequently charged.

[25] Indeed, in the interview you even went to the extent of suggesting, incredulously, that photographs of the men in Gib-Set working clothes on various sites were "posed", so that they could send them back to family in Fiji. You said that they were "passing their time" on those sites and not working. Your pleas of guilty to the exploitation charges at the commencement of the trial made it clear that those denials were lies.

[26] It would be difficult to explain the circumstances of each of the victims in summary form. Indeed, it would not do justice to their individual plight. What I propose to do is summarise briefly the experiences of a few of your victims. While my summary will not capture the entire horror of the crimes you committed, they provide illustrations of the way in which you exploited them.

[27] I want to add that, by not going through individual victim impact statements and not summarising all of the offending, I do not minimise what happened to others. I have the utmost sympathy for all. They have nothing to be ashamed of. They were subjected to a criminal scam. I hope their reputations may gain something in Fiji as a result of the sentencing that is taking place today.

[28] The individuals fall into three categories. The first group consists of the three women and one man who went to prune kiwifruit vines in the Bay of Plenty and stayed at the Pye's Pa property. The second involve two men who were brought to New Zealand for the purpose of undertaking construction work for your company. The third is someone who was not the subject of trafficking. Rather, he was an over-stayer whom you knew could not work in New Zealand.

[29] Suliana Vetanivula is one of the victims who worked in Tauranga undertaking fruit vine pruning. She saw an advertisement in the *Fijian Sun* newspaper for a fruit picking job. She met Sanjana at the travel agency and over the course of their interaction paid up to \$FJD3,000 in order to travel to New Zealand. Sanjana promised that she would be paid \$NZD17 per hour in wages; that when she arrived in New Zealand there would be accommodation at a hotel on the first night, with dinner provided. The first week of food and rent would be paid for; and the work would involve picking kiwifruit. She was also told that she would get a work permit when she arrived in New Zealand. To provide some context to the amounts offered to Ms Vetanivula, her husband earned about \$FJD200 per week in what he was doing in Fiji.

[30] On arrival, Ms Vetanivula and three fellow travellers were met by you and an associate at the airport. They stayed at the Budget Travellers' Inn, near Auckland. They were there for one night before being transferred to Tauranga.

[31] In contrast to the promises that Sanjana made to her, Ms Vetanivula had to pay for her own meals. While in Tauranga, she slept on mattresses on the floor of the basement of an associate's house at Pye's Pa. The bedding, they had to purchase themselves.

[32] There was a lack of privacy. The man slept in the same room as the three women. He turned to the wall to avoid seeing them when they changed into other clothing. For the women to have to sleep in the same room as the man was embarrassing and stressful to them, as well as culturally inappropriate.

[33] Ms Vetanivula was also required to pay for accommodation, food and transport, to and from the orchard. Those costs were deducted from her wages. Instead of picking fruit, the four workers pruned kiwifruit vines, a much more physically demanding task. Further, the wages were not calculated on a per hour basis, but according to the number of 'bays' that had been pruned at the orchard. On Mr Kurisi's calculations, Ms Vetanivula ended up owing him money. During the entire period she worked, she was paid about \$75 in cash in total. That was for about three weeks' work.

[34] Ms Vetanivula, as Mr Clancy, for the Crown, has indicated today, stated in her victim impact statement that the whole situation has put a lot of pressure on her and her family, and has been, what she has called a "nightmare". She is extremely embarrassed as her whole village believes she has been very foolhardy with the money she borrowed.

[35] A number of the men worked in Auckland for you, doing construction work. Mr Kumar was one such victim. He saw an advertisement in a newspaper for fruit picking while in Fiji. He paid \$FJD3,500 in fees as well as \$FJD1,200 for his airfare. He estimated that in total he paid close to \$FJD8,000 to Sanjana for the working opportunity. That was at the higher end of the scale of fees charged.

[36] It was represented to Mr Kumar that he would be picking fruit and that he could earn between \$NZD800 and \$NZD900 per week; and that he could work on a tourist visa in New Zealand. While he travelled to Tauranga initially he did not work

there. One day later he caught the bus back to Manukau, and commenced working for you while living at your house in Papatoetoe.

[37] Mr Kumar had to buy a safety vest, boots and tools for the construction work. He worked bolting on GIB set panels. The hours were long, from around 6am to 5pm with a half an hour lunch. They worked up to seven days a week. He was paid in New Zealand dollars, about \$350 per week, or less than half what he had been promised. He worked for about three months before returning to Fiji.

[38] Another victim who worked for you was Mr Ronal Prasad. Mr Prasad was a young man who worked as an electrician in Suva. He would earn about \$FJD150 to \$FJD200 per week doing that work. Mr Prasad was told by Sanjana that he would get a working visa and food, water and accommodation would be provided for free while in New Zealand. He was told that the work he could do was electrical work, and he would be paid \$NZD16 to \$NZD17 per hour, with opportunities to work very long hours, seven days a week. He paid between \$FJD2000 and \$FJD3000 for the visa and also paid for an airfare himself.

[39] On arrival, Mr Prasad was met by you and an associate, and taken to your home. He slept in the lounge. The next day he started work as a gib fixer. The hours were long, approximately eight hours work per day and only a short break for lunch. From his pay, you deduced unspecified amounts for accommodation and food. In total, Mr Prasad was paid between \$NZD600 and \$NZD800 for the entire three week period that he worked.

[40] A victim whose circumstances differed from others, was Mr Siasia Mataia. Mr Mataia was already in New Zealand, and met you when you were neighbours. He did not have a work visa, which he told you. You told him that was not a problem and you would pay him cash.

[41] Mr Mataia was paid about \$500 every two weeks for his work. He worked up to seven days a week from 6am to 5pm. A few months later he negotiated \$100 per day which was paid weekly. Mr Mataia worked for you for about a year, and during that time trained some of the other victims who came to work for you.

[42] In the reparation sheet that the Crown has made available to me it appears that Mr Mataia was owed considerably more money than what has been paid to him. The amount is about \$50,000.

Analysis

(a) Sentencing goals and methodology

[43] This is the first occasion on which this Court has been required to sentence someone on a trafficking charge. People trafficking is an abhorrent crime. It is a crime against human dignity. It undermines the respect that all of us should have for the human rights and the autonomy of individual people. Such conduct degrades human life. It is a crime that should be condemned in the strongest possible terms.

[44] Those who are exploited also lose dignity. By exploiting people brought to New Zealand under false pretences you have demonstrated that you are prepared to ignore standards of pay and conditions generally expected of New Zealand society. The extent to which treatment of each of the victims fell below minimum standards affects the extent to which your conduct aggravates the overall offending.

[45] In sentencing you I have regard to the sentencing goals identified in the Sentencing Act 2002. Undoubtedly, in the context of this case, the most significant objectives are denunciation of your conduct, holding you accountable for your actions and deterring others from offending in this way. Deterrence is particularly important for crimes of this type.

[46] My approach will be to take a starting point that reflects the culpability of your offending in light of the maximum penalties available for the lead offence of trafficking. I will then consider whether there are any personal aggravating factors, and deduct credits for mitigating factors.

(b) Aggravating factors

[47] The maximum penalty of 20 years imprisonment, which is the maximum for people trafficking, is the highest finite penalty that can be imposed in New Zealand.

By way of example, and without intending to suggest any analogy with either of the crimes to which I refer, it is the same maximum penalty as applies to sexual violation. It is higher than the period of 14 years imprisonment used for attempted murder in which an actual intent to kill is required.

[48] In your case Mr Ali, in addition to the aggravating factors listed in the Sentencing Act 2002,¹⁰ the Crimes Act requires me to take account of a number of specific factors that aggravate trafficking offending.¹¹ For the purpose of today's sentencing, they are:

- (a) The organised nature of the offending,¹²
- (b) The extent to which a victim is subjected to inhumane or degrading treatment,¹³
- (c) The number of people in respect of whom the offence was committed,¹⁴ and
- (d) The extent to which a material benefit was derived from the offending.¹⁵

[49] In making submissions this morning, Mr Clancy referred to the scale of the offending, the commercial motivation, the premeditation, the actual exploitation and the harm caused both financially and emotionally by what you did as aggravating factors.

[50] I propose to break down those considerations a little more. In doing so, these are the aggravating factors I consider relevant to your sentencing:¹⁶

¹⁰ Sentencing Act 2002, s 9(1).

¹¹ Crimes Act 1961, s 98E.

¹² Ibid, s 98E(1)(b).

¹³ Ibid, s 98E(1)(c).

¹⁴ Ibid, s 98E(1)(d).

¹⁵ Ibid, s 98E(2)(c).

¹⁶ Many of these factors were helpfully identified in *Re Attorney-General's References Nos 37, 38 and 65 of 2010* [2011] 2 Cr App R (S) 186 (Court of Criminal Appeal).

- (a) The vulnerability of the victims
- (b) The number of victims
- (c) The duration of the offending
- (d) The circumstances in which the offending came to cease; namely only when law enforcement officers became involved
- (e) The nature and degree of deception practised upon the victims in Fiji
- (f) The nature and degree of exploitative conduct; including the extent to which each victim was treated in a manner that fell below acceptable working conditions in New Zealand
- (g) The extent and method of control exercised over the victims
- (h) Any psychological and financial harm caused to the victims
- (i) The premeditated nature of the criminal activity and the way in which it was co-ordinated between Fiji and New Zealand
- (j) Attempts to have the period during which each victim was in New Zealand extended, or arrangements made for them to return to New Zealand to continue exploitative work
- (k) The extent to which the victims were asked to lie to authorities to avoid detection of your offending
- (l) The degree of manipulation that occurred
- (m) The motive of a financial nature that lay behind the offending and the lack of remorse you have shown for what you did. In referring to remorse, I wish to refer to the letter which was handed to me by Mr Broad on your behalf this morning. Mr Ali, it is too little, too late. It

does not strike me as a heartfelt apology for what happened and your continued minimisation of what you did in discussions with the probation officer tend to support that view.

(c) *Sentence*

[51] Mr Ali, please stand.

[52] There were 15 victims who were the subject of trafficking. They were exploited for financial gain. Part of the gain involved fees charged in Fiji which, it appears, neither Geeta nor Sanjana are willing to part with extensively.

[53] Because this is the first sentencing of its type, I need to say something about the relative seriousness of your offending in relation to other cases that might come before the Courts in the future.

[54] This is a serious case of its type but it is possible to envisage much worse. For example, those who traffic innocent children from poor countries to work in the sex industry would be regarded as having a much higher culpability, with a starting point near to the maximum. In my view, your offending sits around the middle of the range for offending of this type.

[55] Taking account of the aggravating factors to which I have referred and the maximum available sentence of 20 years imprisonment, I take a starting point of 10 years imprisonment.

[56] In my view, not only does that starting point reflect the nature of the offending, it is sufficient to act as a general deterrent. It should attract attention from others who are contemplating similar activities.

[57] There was little that could be said on your behalf in mitigation. While you pleaded guilty to some charges, the pleas came at the start of the trial and little or no benefit emerged for the victims or those involved in the prosecution process. I am not prepared to give any credit for those pleas.

[58] You have no previous convictions. You are entitled to a modest credit for that.

[59] This morning I learnt that arrangements had been made for a sum of \$FJD14,000 (about \$NZD9,000) to be deposited with the Ministry of Immigration in Fiji for use as reparation. I raised with counsel whether that should be the reparation order or whether it should be higher. I raised that point because I am satisfied that most of the money that you made from this venture is in Fiji and I am sure that more money could be made available if necessary.

[60] I propose to make an order of \$NZD28,167 which would represent out of pocket expenses incurred by each of your victims who were brought from Fiji. The \$FJD14,000 can be used on a pro rata basis to make payments in those sums in the first instance. In the event of more money actually being paid, they would be paid also in the same proportions.

[61] The sum of \$NZD28,167 excludes victims who were victims of both yourself and Mr Kurisi. That has been done because Mr Kurisi has made an offer for reparation which should cover those victims to the same, if not more, extent.

[62] I add that I have been told by Mr Broad that you are likely to be adjudged bankrupt today, owing about \$126,000 to the Inland Revenue Department. There may be steps that the Official Assignee can take to recover funds in Fiji, but those are matters for that official to consider.

[63] For the prior good character and reparation, I give a total credit of six months. That leaves a total end sentence of nine years' and six months' imprisonment.

[64] Mr Ali:

- (a) On each of the trafficking charges you are sentenced to nine years' and six months' imprisonment.

- (b) On each of the exploitation charges you are sentenced to five years' imprisonment.
- (c) On each of the Immigration Act charges you are sentenced to three years' imprisonment.
- (d) You are ordered to pay reparation in the sum of \$NZD28,167, on the basis that I have already described.¹⁷

[65] All sentences of imprisonment are to be served concurrently.

[66] Before I conclude the sentencing, I express the community's gratitude to the immigration officials involved in the difficult and time consuming investigation that led to the detection and prosecution of the offending involving Mr Ali and Mr Kurisi. It is vital that the Ministry should be taking steps to stamp out conduct of this type. The means by which the investigation took place should be commended.

[67] Stand down please.

P R Heath J

¹⁷ See para [60] above.