

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 0080 of 2014
(High Court HAC 0080 of 2013)

BETWEEN : **INOKE RAIKADROKA**
MOHAMMED SHEEFAZ SAGAITU

Appellants

AND : **THE STATE**

Respondent

Coram : **Chandra RJA**

Counsel : **Mr M Fesaitu for the 1st Appellant**
Ms S Nasedra for the 2nd Appellant
Mr S Vodokisolomone for the Respondent

Date of Hearing : **14 February 2018**

Date of Ruling : **18 May 2018**

RULING

- [1] The 1st Appellant was charged with two counts of Slavery contrary to section 103(1)(a) of the Crimes Act No.44 of 2009 and in the alternative two counts of Aggravated Sexual Servitude contrary to section 106(1) and section 108 and 109 of the Crimes Act No.44 of 2009 and five counts of Domestic Trafficking in Children contrary to section 117(1)(b)(c)(i) of the Crimes Act No.44 of 2009.

[2] The 2nd Appellant was charged with two counts of Domestic Trafficking in Children contrary to section 117(1)(a)(b)(c)(i) of the Crimes Act No.44 of 2009.

[3] The trial against both Appellants were conducted together in the High Court at Suva and after conviction the 1st Appellant was sentenced to 16 years imprisonment with a non-parole period of 14 years, and the 2nd Appellant was sentenced to 12 years imprisonment with a non-parole period of 10 years.

[4] Both Appellants filed timely appeals separately and submissions were filed in respect of the two appeals separately.

[5] The 1st Appellant set out the following grounds of appeal against his conviction and sentence:

- “1. The learned Trial Judge erred in law and in fact when he failed to take into account the fact that the complainants had consented to stay with the Appellant which was contrary to the notions of slavery.*
- 2. The learned Trial Judge erred in law and in fact when he failed to take into account the fact that the complainants had intended to pursue sexual services to earn.*
- 3. That the learned Trial Judge had uttered prejudicial comments against the appellant prior to his summing up which resulted in the trial being miscarried.*
- 4. The learned Judge erred in law when he sentenced the Petitioner to a term of imprisonment which is harsh and excessive considering the facts of the offending, his prejudgment comments and the fact that there was no established tariff.”*

[6] The 2nd Appellant set out the following grounds of appeal against his conviction and sentence:

- “1. The Learned Trial Judge erred in law and in fact when he failed to take into account the fact that girl ‘X’ and girl ‘Y’ (collectively referred to as “the two girls”) had always intended to use the Appellant in order to get the clients for their own benefit by providing sexual services and that the intention was always moving from the two girls to provide sexual services.*
- 2. The learned Trial Judge erred in law and in fact when he failed to consider the capacity of the two girls and their background*

before affirming a verdict which was unsafe and unfair giving rise to a grave miscarriage of justice.

3. *The Learned Trial Judge erred in law and in fact when he prejudged this case before the verdict was given by the Assessors by stating that the Appellant hung himself when he gave evidence despite the fact that his Lordship had given the Appellant his rights whether to remain silent and/or to give evidence which ultimately led to a conviction and a harsh sentence. The learned Trial Judge readily admitted the above and apologized thereafter however this gave rise to a grave miscarriage of justice.*
4. *The learned Judge erred in law when he sentenced the Appellant to a term of imprisonment which is harsh and excessive considering the facts of the offending, his prejudgment comments and he failed to take into consideration the case authorities provided on behalf of the Appellant."*

- [7] The offences relating to the charges of slavery and domestic trafficking were in respect of two girls who were aged 17 and 15 respectively and who gave evidence at the trial.

Appeal against the 1st Appellant – Inoke Raikadroka

- [8] The 1st ground of appeal advanced on behalf of the 1st Appellant is on the basis that the learned trial Judge had failed to take into account the fact that the complainants had consented to stay with the Appellant which was argued as being contrary to the notion of slavery.
- [9] The learned trial Judge in his summing up dealt with the definition of slavery at length from paragraphs 12 to 24 and dealt with the elements necessary for establishing the offence.
- [10] The contention of the Appellant is that the summing up of the learned Trial Judge left the Assessors with no choice but to find the Appellant guilty of the charge.
- [11] The definition of slavery as set out in the Crimes Act is quite complex and the learned Trial Judge has in his summing up explained the necessary elements.

- [12] The submission on behalf of the Appellant is that the learned Trial Judge failed to consider the fact that the complainants had consented to stay with the Appellant.
- [13] As to whether the complainant's consent to stay was a matter that should have been addressed by the learned Trial Judge when dealing with the elements of the charge of slavery is arguable.
- [14] The 2nd ground advanced on behalf of the 1st Appellant relates to the charge of Domestic Trafficking in Children.
- [15] The learned Trial Judge directed the Assessors on the charge of Domestic Trafficking in his summing up in paragraphs 27 to 30.
- [16] One of the elements necessary to prove this charge was the age of the girls, which had to be under 18. That element was satisfied. The other elements related to the charge were the transport of the girls and the intention for such transport.
- [17] The defence case had been run on the basis of the consent of the girls in their dealing with the Appellants. As to whether such consent should be considered in determining whether the Appellants were guilty of the charge is a matter that is arguable and I would grant leave.
- [18] The third ground is that the learned Trial Judge had uttered prejudicial comments against the Appellant prior to his summing up and as a result the trial was miscarried.
- [19] It is also contended that an application for recusal had been made which the learned Trial Judge had ruled out.
- [20] The ruling against recusal and the words uttered by the learned Trial Judge are not available at this stage and it would be in the interests of justice to have same considered by the full court.

[21] The appeal against sentence is that it is harsh and excessive.

[22] The learned trial Judge, in the absence of a set tariff for these offences, drew a comparison with the tariff for rape of children and stated that sentences should be in the range of 12 to 18 years.

[23] In view of the fact that there are no previous cases dealing with these offences, it would be in the interests of justice for the full court to consider the necessary tariff.

Appeal of the 2nd Appellant – Mohammed Sagaitu

[24] The first ground of appeal is regarding the utterances of the learned trial Judge which resulted in an application being made for recusal, which was ruled out.

[25] As set out in the consideration of the 3rd ground of appeal of the 1st Appellant (Paragraphs [17] to [19]) above, it would be in the interest of justice to have this ground considered by the Full Court.

[26] The second ground of appeal relates to the interpretation of the relevant sections of the Crimes Act with which the Appellant was charged with and would amount to a question of law for which no leave is required. The Respondent has conceded this position as well.

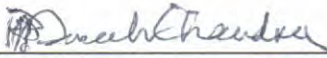
[27] The 3rd ground is on sentence as being harsh and excessive.

[28] For the same reasons as set out in the appeal of the 1st Appellant, it would be a matter for consideration by the Full Court.

Orders of Court

- (1) *Application for leave to appeal against conviction and sentence is granted to the 1st Appellant;*
- (2) *Application for leave to appeal against conviction and sentence is granted to the 2nd Appellant;*
- (3) *Both appeals to be listed together for argument before the Full Court.*





Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL