

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 80 of 2013

STATE

v

- 1. INOKE RAIKADROKA**
- 2. MOHAMMED SAGAITU**

Counsel: Mr. L. Fotofili with Ms. R. Uce for the State
Mr. J. Savou (L.A.C.) for the First Accused
Mr R. Vananalagi for the Second Accused

Dates of trial: 26 - 29 May 2014 and 2-3 June 2014

Date of Judgment : 6 June 2014.

JUDGMENT

1. **INOKE RAIKADROKA** and **MOHAMMED SAGAITU** you were charged with the offences set out in the schedule annexed hereto.
2. After trial, three assessors have returned with unanimous opinions of guilty on each and every count with which you have been individually charged. In reviewing the evidence and after directing myself on my own summing up I come to the following judgment of the Court.

Slavery

3. Count One and Two charges the first accused (known throughout the trial as Kiki) with slavery over Girl 'X' and Girl 'Y' respectively. Slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised and the elements of the offence charged are that the accused (identity not in dispute) intentionally exercised over a slave any of the powers attaching to the right of ownership. It was the State's case that the first accused in "taking in" both Girl 'X' and Girl 'Y', he arranged all of their clients for whom they provided sexual services and he kept all the money earned by them providing those services. In return he provided accommodation, food, clothes, alcohol and beauty treatments. When the clients were few and the expenses too much, he moved operations from a downtown motel room to a flat in Raiwai where they all lived and where the two girls (X & Y) were sent out to clients to provide sexual services. Consent to this condition or state of affairs is not relevant to the offence. Many sex workers are happy to be sex workers. The offence is proved by the manipulation and subjugation of girls, and especially young girls as these were (17 and 15 years at the time) and these girls became the property or products of the first accused for him to exploit by using them to provide sexual services for money that was given to him directly. Admittedly he used the money to provide for himself and the girls but in having them work for him he would have to do that anyway but not to the lavish extent he appears to have done while they were staying at the Elixir. In addition to the circumstances in which the girls were kept, there is additional evidence of ownership from two independent sources. First in an answer to a question (Q.96) in his cautioned interview, the first accused said that he beautified the girls because they were his "products". At trial he disputed this by saying that "products" is street slang for a pimp's girls and he certainly didn't mean to imply ownership of them. However there was no evidence before the Court of the slang meaning apart from his claim and even if he were correct it still implies a degree of ownership. Secondly and crucially there is evidence that Girls

X' and 'Y' were previously under the control of "Darren" and the circumstances of their going to stay with the first accused suggest that he took over control or ownership of them from Darren in the full knowledge that they were Darren's "girls". He gave evidence himself of Darren calling and making threats because he had stolen the girls and for all the time they lived at Elixir they kept a low profile to avoid Darren. This scenario strongly suggests that the first accused was exercising a right of ownership over them, and intentionally so to the extent that he deprived Darren of their services as workers and assumed them himself. As any owner would be he was protective of them to the extent that he was doing all he could to keep them away from their previous "owner".

4. Counsel for the first accused stressed throughout the trial that the two girls were free to leave at anytime and that there was no force applied to make them stay. This defence could not possibly succeed because consent is not a defence to the charge. In addition, force and threat have been defined by the authorities to also mean a lack of option on the part of the workers to go anywhere else. Sociologists refer to the phenomenon as "situational coercion". The first accused had "stolen" the girls from Darren, he had manipulated them into staying by spending extravagantly on them and their only alternative was to return to live with an alcoholic father and an erratic grandmother and where there was no food in the house. It was not really an option for them, hence the manipulative force or pressure to remain in servitude with Kiki.
5. Very unfortunately counsel for the first accused seemed to be unaware of the authorities on human trafficking or indeed of the legislative provisions to the extent that when I reminded counsel of the previously decided law on lack of option manipulation he asked me to recuse myself and declare a mistrial. His submission was that my statement of the law as I saw it was an adverse view I had formed of his client's case and that he was not going to receive a fair trial. The misconceived application was

dismissed immediately but it served to demonstrate the serious lack of preparedness in defence of his client's case.

6. There really was no defence to the slavery charges given the authorities on manipulative coercion but the Court is ever mindful of the need for the Prosecution to prove the case to the requisite standard.
7. In the light of clear evidence of intentional acquisition of the girls and at the time of such acquisition discussing the sex industry with them and how much they could earn, and given that they were treated like they had never been treated at home, being given everything they wanted, they had no option but to remain in sexual servitude.
8. I find that all of the elements of the offence of slavery have been proved beyond reasonable doubt and I find the first accused guilty of Count 1 and Count 2 and convict him of the two counts of slavery.
9. The crime of domestic trafficking in children is predicated on three clearly defined elements:
 - 1) Organising or facilitating movement of a person from one place in Fiji to another, and
 - 2) The person being moved is under 18, and
 - 3) The facilitator/organiser intends that the person being moved will perform sexual services or will otherwise be exploited on arrival.

The first accused faces 5 charges of domestic trafficking in children, 3 in respect of Girl 'X' and 2 in respect of Girl 'Y'. The second accused faces 2 charges, one each for each girl respectively.

10. The evidence to support most of the counts came from the two girls, as well as from the cautioned interviews that were produced in evidence by consent.

11. Although each accused freely admitted transporting the two girls for sexual services, the charges as framed by the prosecution creates a lot of difficulty for the trial and for the Judge in particularising and identifying specific instances of transport. It would have been far better and much easier for the Court if the State had laid one representative charge against each accused for transportation. There is no doubt whatsoever that Inoke (the first accused) transported both Girl 'X' and Girl 'Y' for sexual services (see Q.588, & Q.394 - 403 in his cautioned interview), with Girl 'X' saying that Kiki would arrange it, and Girl 'Y' saying also that Kiki and another would arrange it. There is an abundance of evidence before the Court that Girl 'X' was moved from Elixir in Suva to the Raiwai flat where she would carry on the business of sex service (Count 3). That she was transported from that flat to various motels in Suva (Count 4). An abundance of evidence that he had moved Girl 'X' from Suva to Nadi for sex (see 394 - 403 cautioned interview) Count 6. There is also evidence beyond doubt that he moved Girl 'Y' from Elixir in Suva to the flat in Raiwai to continue the sex trade (Count 7) and that he went with her from Suva to Nadi for the same purpose. (Q.394 - 493 of caution interview)
12. At all times 'X' and 'Y' were 17 and 15 respectively, their birth certificates having been produced.
13. I find beyond reasonable doubt that all of the elements required to prove domestic trafficking in children have been made out in respect of the charges 3, 4, 6, 7 and 9 against the first accused. These have been proved to me beyond reasonable doubt. Accordingly I agree with the unanimous opinions of the assessors and find the first accused Raikadroka guilty of those 5 counts and I convict him accordingly.
14. The evidence led against the second accused was in respect of his participation in arranging or "facilitating" transport for their attendance on clients for sexual service. The girls 'X' and 'Y' gave clear evidence of

his complicity in that for most times he would take them in a taxi driven by his personal friend (an Indo-Fijian) or by "random" taxi from the street.

15. In his evidence in chief the second accused readily admitted transporting the girls to appointments knowing they were going to provide sexual services.

16. All of the elements of the offence having been adduced in evidence, I concur with the unanimous opinions of the assessors and find beyond reasonable doubt that the second accused is guilty of Counts 5 and 8 on the Information. I convict him of both counts accordingly.

17. That is the judgment of the Court after trial.



6 June 2014

A handwritten signature in black ink, appearing to read "P. Madigan".

P. Madigan
Judge

SCHEDULE:**COUNT 1*****Statement of Offence***

SLAVERY: Contrary to section 103(1)(a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

INOKE RAIKADROKA, between the 1st day of June 2012 and the 31st day of December 2012, at Suva in the Central Division, exercised over Girl 'X', the power to sell Girl 'X' for sex in an unrestricted way and to use the proceeds of Girl 'X's work as his own.

ALTERNATIVE TO COUNT 1***Statement of Offence***

AGGRAVATED SEXUAL SERVITUDE : Contrary to section 106(1) and section 108 and 109 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

INOKE RAIKADROKA, between the 1st day of June 2012 and the 31st day of December 2012, at Suva in the Central Division by the use of threats, caused Girl 'X', a 17 year old to enter into sexual servitude, with intent to cause that sexual servitude.

COUNT 2***Statement of Offence***

SLAVERY: Contrary to 103(1)(a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

INOKE RAIKADROKA, between the 1st day of June 2012 and the 31st day of December 2012 at Suva in the Central Division exercised over Girl 'Y', the power to sell Girl 'Y' for

sex in an unrestricted way and to use the proceeds of Girl 'Y's' work as his own.

ALTERNATIVE TO COUNT 2

Statement of Offence

AGGRAVATED SEXUAL SERVITUDE: Contrary to section 106(1) and section 108 and 109 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

INOKE RAIKADROKA, between the 1st day of June 2012 and the 31st day of December 2012 at Suva in the Central Division by the use of threats caused Girl 'Y', a 15 year old to enter into sexual servitude, with intent to cause that sexual servitude.

COUNT 3

Statement of Offence

DOMESTIC TRAFFICKING IN CHILDREN: Contrary to section 117(1)(a)(b)(c)(i) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

INOKE RAIKADROKA, between the 1st day of June 2012 and the 31st day of October 2012 at Suva in the Central Division facilitated the transportation of Girl 'X', a 17 year old from Suva City to Raiwai with intent that Girl 'X' be used to provide sexual services.

COUNT 4

Statement of Offence

DOMESTIC TRAFFICKING IN CHILDREN: Contrary to section 117(1)(a)(b)(c)(i) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

INOKE RAIKADROKA, between the 1st day of July 2012 and the 31st day of October 2012 at Suva in the Central Division facilitated the transportation of Girl 'X', a 17 year

old from Raiwai to Suva City with intent that Girl 'X' be used to provide sexual services.

COUNT 5

Statement of Offence

DOMESTIC TRAFFICKING IN CHILDREN: Contrary to section 117(1)(a)(b)(c)(i) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MOHAMMED SAGAITU, between the 1st day of June 2012 and the 31st day of December 2012 at Suva in the Central Division facilitated the transportation of Girl 'X', a 17 year old from Raiwai to Suva City with intent that Girl 'X' be used to provide sexual services.

COUNT 6

Statement of Offence

DOMESTIC TRAFFICKING IN CHILDREN: Contrary to section 117(1)(a)(b)(c)(i) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

INOKE RAIKADROKA, between the 1st day of October 2012 and the 31st day of December 2012 at Nadi in the Western Division facilitated the transportation of Girl 'X' a 17 year old from Suva to Nadi with intent that Girl 'X' be used to provide sexual services.

COUNT 7

Statement of Offence

DOMESTIC TRAFFICKING IN CHILDREN: Contrary to section 117(1)(a)(b)(c)(i) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

INOKE RAIKADROKA, between the 1st day of June 2012 and the 31st day of October 2012 at Suva in the Central Division facilitated the transportation of Girl 'Y', a 15 year

old from Suva City to Raiwai with intent that Girl 'Y' be used to provide sexual services.

COUNT 8

Statement of Offence

DOMESTIC TRAFFICKING IN CHILDREN: Contrary to section 117(1)(b)(c)(i) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MOHAMMED SAGAITU, between the 1st day of June 2012 and the 31st day of October 2012 at Suva in the Central Division facilitated the transportation of Girl 'Y', a 15 year old from Raiwai to Suva City with intent that Girl 'Y' be used to provide sexual services.

COUNT 9

Statement of Offence

DOMESTIC TRAFFICKING IN CHILDREN: Contrary to section 117(1)(a)(b)(c)(i) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

INOKE RAIKADROKA, between the 1st day of October 2012 and the 31st day of December 2012 at Suva in the Central Division facilitated the transportation of Girl 'Y', a 15 year old from Suva City to Nadi with intent that Girl 'Y' be used to provide sexual services.

R. M. M. M.