STATE v PHANAT LAOJINDAMANEE and LUM BING (HAC0323 of 2012S)

HIGH COURT — CRIMINAL JURISDICTION

MADIGAN J

4, 4 December 2012

Criminal Law — prosecution — applications for no case to answer — aggravated trafficking in persons — joint enterprise — elements to be established — some evidence — Crimes Decree ss 112(5), 113(1)(a) — Criminal Procedure Decree s 231(1).

The two accused were charged with two counts of aggravated trafficking in persons, contrary to ss 112(5) and 113(1)(a) of the Crimes Decree 2009. Both accused made applications that there be no case to answer for them in these proceedings.

Held –

The applicants demonstrated a knowing role in the enterprise. The accused stayed with the group and completed tasks which could be seen as evidence of assistance facilitating their entry into Fiji. There is certainly some evidence at the very least which would enable a properly directed panel of assessors to infer guilt on the basis of strong circumstantial evidence.

Cases referred to

Mosese Tuisawau Crim AR 14 of 1990; *Sisa Kalisoqo v State* Crim App No 52 of 1985, cited.

Applications for no case to answer are refused.

S. Puamau for the State

A. Vakaloloma for the First Accused

S. Fa for the Second Accused

[1] Madigan J. Both the first and second accused make an application that there be no case to answer for them in these proceedings.

[2] A case to answer application is governed by section 231(1) of the Criminal Procedure Decree which provides:

> "when the evidence of the witnesses for the prosecution has been concluded and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person (or any one of several accused)."

[3] The test is that there must be some relevant and admissible evidence, direct or circumstantial, touching on all the elements of the offence. Matters of the credibility and weight of the evidence are not within the province of the judge at this stage of the trial (*Sisa Kalisoqo v State* Crim App No. 52 of 1985, ***Mosese Tuisawau*** Crim AR 14 of 1990).

[4] Both the first and the second accused are charged with two counts of aggravated trafficking in persons, contrary to sections 112(5) and 113(1)(a) of the Crimes Decree, 2009. The elements to be established by the State are:

> (i) the accused must facilitate the entry or proposed entry of another person into Fiji, and

(ii) the accused deceives the other person upon the fact that the entry to Fiji will involve the provision by the immigrant of sexual service.

[5] The aggravation element involves an intention by the accused for the immigrant to be exploited.

[6] Mr Vakaloloma simply submits that the State has failed to establish a prima facie case.

[7] Mr Fa in forceful verbal submissions submits that there is no evidence of a joint enterprise and that there is no evidence of his client assisting the victims who came to Fiji. He claims that there can be no guilt by association and that his client had a perfectly legitimate reason for coming to Fiji.

[8] Ms Puamau in a written submission opposes the application.

Analysis

[9] The case as prosecuted by the State is on the basis of direct and circumstantial evidence involving a joint enterprise to traffic. There has been evidence led of the involvement of both the first accused and the second accused in this enterprise.

[10] The first accused was present at the airport in Bangkok to receive the victims on their departure. He comforted them and gave then US$300 each to show the authorities that they were legitimate tourists. He stayed with the party overnight in Hong Kong, even sharing a meal that evening. He was with the party as they checked in at Hong Kong Airport to fly to Fiji. He stayed with them to Suva where he and the second accused shared a room at the Holiday Inn and the girls shared yet another room. At a meal before checking into the hotel, the accused introduced the fourth accused as "the boss in Fiji." A day or two later he was at a meeting when Jason (the fourth accused) told them that if they didn't want to work doing sex they had to repay $1,900. The first accused translated this conversation. The first accused accompanied the party when they moved to the Peninsula Hotel. He was still there when Immigration Officers came to the hotel. More incriminatingly the first accused gave two extremely incriminating responses in his caution interview which is evidence which should go before the assessors.

[11] The second accused was also at the airport in Bangkok and the evidence suggests that he played a far more controlling role. At Hong Kong he took control at the overnight hotel, collecting passports, arranging and allocating rooms to the girls and to him and Phanat. At Nadi Airport he liaised with the third accused to drive the party to Suva. When there were ticketing problems at Hong Kong Airport it was the second accused who discussed and resolved the problem with check-in staff. He was with the party at the Peninsula Hotel until intervention by the Immigration Department.

[12] Mr Fa raised many exculpatory issues on behalf of his client but these are for the assessors, not for the Court on this application.

[13] Both applicants have demonstrated a knowing role in this enterprise. They have stayed with the group throughout and completed tasks which could be seen as evidence of assistance on facilitating the party to enter Fiji. There is certainly ***some*** evidence at the very least which would enable a properly directed panel of assessors to infer guilt on the basis of strong circumstantial evidence and therefore both applications for no case to answer are refused.

[14] There is a case to answer for all four accused and they are put to their defence.

Applications refused.