

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 43 of 2019

STATE

V

GOVIND REDDY

Counsel : Ms. Prenika Lata for the State
Mr. Moses Naivalu for the Accused

Dates of Trial : 5-6 & 11-13 October 2022

Closing Submissions : 21 October 2022

Judgment : 17 March 2023

JUDGMENT

[1] As per the Amended Information filed the Director of Public Prosecutions (DPP) has charged the accused, Govind Reddy, with the following offences:

COUNT 1

Statement of Offence (a)

TRAFFICKING IN PERSONS: Contrary to Section 112 (3) of the Crimes Act 2009.

Particulars of Offence (b)

GOVIND REDDY, between 2nd of January 2015 and 18th of March 2015, at Nadi, in the Western Division, facilitated the entry of **MD SAIFUL ISLAM** into Fiji and was reckless as to whether the said **MD SAIFUL ISLAM** would be exploited.

COUNT 2

Statement of Offence (a)

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: Contrary to Section 318 of the Crimes Act 2009.

Particulars of Offence (b)

GOVIND REDDY, between 1st of January 2014 and 18th of March 2015, in Bangladesh and at Nadi, in the Western Division, by deception, dishonestly obtained USD \$10,000, FJD \$16,500 and 257,974 BHT (Bangladeshi Taka) from **MD SAIFUL ISLAM**.

COUNT 3

Statement of Offence (a)

TRAFFICKING IN PERSONS: Contrary to Section 112 (3) of the Crimes Act 2009.

Particulars of Offence (b)

GOVIND REDDY, between 2nd of January 2015 and 18th of March 2015, at Nadi, in the Western Division, facilitated the entry of **MOHAMMED JULIASH** into Fiji and was reckless as to whether the said **MOHAMMED JULIASH** would be exploited.

COUNT 4

Statement of Offence (a)

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: Contrary to Section 318 of the Crimes Act 2009.

Particulars of Offence (b)

GOVIND REDDY, between 1st of January 2014 and 18th of March 2015, in Bangladesh and at Nadi, in the Western Division, by deception, dishonestly obtained USD \$10,000 from **MOHAMMED JULIASH**.

COUNT 5

Statement of Offence (a)

TRAFFICKING IN PERSONS: Contrary to Section 112 (3) of the Crimes Act 2009.

Particulars of Offence (b)

GOVIND REDDY, between 2nd of January 2015 and 18th of March 2015, at Nadi, in the Western Division, facilitated the entry of **MD NAZRUL ISLAM** into Fiji and was reckless as to whether the said **MD NAZRUL ISLAM** would be exploited.

COUNT 6

Statement of Offence (a)

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: Contrary to Section 318 of the Crimes Act 2009.

Particulars of Offence (b)

GOVIND REDDY, between 1st of January 2014 and 18th of March 2015, in Bangladesh and at Nadi, in the Western Division, by deception, dishonestly obtained USD \$10,000 from **MD NAZRUL ISLAM**.

COUNT 7

Statement of Offence (a)

TRAFFICKING IN PERSONS: Contrary to Section 112 (3) of the Crimes Act 2009.

Particulars of Offence (b)

GOVIND REDDY, between 2nd of January 2015 and 18th of March 2015, at Nadi, in the Western Division, facilitated the entry of **MOHAMMED NAUSHAD ALI** into Fiji and was reckless as to whether the said **MOHAMMED NAUSHAD ALI** would be exploited.

COUNT 8

Statement of Offence (a)

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: Contrary to Section 318 of the Crimes Act 2009.

Particulars of Offence (b)

GOVIND REDDY, between 1st of January 2014 and 18th of March 2015, in Bangladesh and at Nadi, in the Western Division, by deception, dishonestly obtained USD \$12,500 from **MOHAMMED NAUSHAD ALI**.

- [2] The accused pleaded not guilty to the charges and the ensuing trial was held over 5 days. Thereafter, the Learned Counsel for the State and Defence made their closing submissions.

The Burden of Proof and the Standard of Proof

- [3] Section 57 of the Crimes Act No. 44 of 2009 (Crimes Act) provides that the prosecution bears a legal burden of proving every element of an offence. The Section reads as follows:

(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.

(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.

(3) In this Decree (Act)—

"legal burden", in relation to a matter, means the burden of proving the existence of the matter.

- [4] Section 58 (1) of the Crimes Act stipulates that a legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

Legal Provisions and the Elements of the Offences

- [5] As could be observed the accused is charged with four counts of Trafficking in Persons, contrary to Section 112 (3) of the Crimes Act; and four counts of Obtaining Financial Advantage by Deception, contrary to Section 318 of the Crimes Act.

[6] The first, third, fifth and seventh counts against the accused are charges of Trafficking in Persons, contrary to Section 112 (3) of the Crimes Act. Section 112 (3) of the Crimes Act reads as follows:

112. (3) A person (the first person) commits an indictable offence of trafficking in persons if —

(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Fiji; and

(b) in organising or facilitating that entry or proposed entry, or that receipt, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that entry or receipt.

[7] Therefore, in order to prove the first count of Trafficking in Persons, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 2 January 2015 and the 18 March 2015);
- (iii) At Nadi, in the Western Division;
- (iv) Facilitated the entry of MD Saiful Islam into Fiji; and
- (v) In facilitating that entry was reckless as to whether the said MD Saiful Islam will be exploited, by himself or another.

[8] In order to prove the third count of Trafficking in Persons, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 2 January 2015 and the 18 March 2015);
- (iii) At Nadi, in the Western Division;
- (iv) Facilitated the entry of Mohammed Juliash into Fiji; and
- (v) In facilitating that entry was reckless as to whether the said Mohammed Juliash will be exploited, by himself or another.

[9] Similarly, in order to prove the fifth count of Trafficking in Persons, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 2 January 2015 and the 18 March 2015);
- (iii) At Nadi, in the Western Division;
- (iv) Facilitated the entry of MD Nazrul Islam into Fiji; and
- (v) In facilitating that entry was reckless as to whether the said MD Nazrul Islam will be exploited, by himself or another.

[10] And, in order to prove the seventh count of Trafficking in Persons, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 2 January 2015 and the 18 March 2015);
- (iii) At Nadi, in the Western Division;
- (iv) Facilitated the entry of Mohammed Naushad Ali into Fiji; and
- (v) In facilitating that entry was reckless as to whether the said Mohammed Naushad Ali will be exploited, by himself or another.

[11] To further elaborate upon these elements in relation to the above four counts. The first element is concerned with the identity of the person who committed the offences. The prosecution should prove beyond reasonable doubt that the accused and no one else committed the offences.

[12] The second element relates to the specific time period during which the offences were committed. The third element relates to the place at which the offences were committed. The prosecution should prove these elements beyond reasonable doubt.

[13] The fourth element is that the accused facilitated the entry into Fiji of the four complainants, MD Saiful Islam (in respect of Count 1), Mohammed Juliash (in respect of Count 3), MD Nazrul Islam (in respect of Count 5) and Mohammed Naushad Ali (in respect of Count 7) respectively. The prosecution has to prove this element beyond reasonable doubt.

[14] The final element the prosecution has to prove beyond reasonable doubt is that in facilitating their entry into Fiji the accused was reckless as to whether the said complainants will be exploited after their entry into Fiji.

[15] Section 4(1) of the Crimes Act provides a broad definition of the term "exploitation". The said definition is reproduced below:

In this Act, unless the context otherwise requires—

"exploitation", of one person (the victim) by another person (the exploiter), occurs if —

(a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude; or

(b) the exploiter's conduct causes an organ of the victim to be removed and —

(i) the removal is contrary to law; or

(ii) neither the victim nor the victim's legal guardian consented to the removal, and it does not meet a medical or therapeutic need of the victim.

[16] However, in the case of ***State v. Murti*** [2010] FJHC 498; HAC195.2010 (10 November 2010); His Lordship Justice Goundar stated that the word "exploit" simply means to treat a person as an opportunity to gain an advantage for himself or for another. The prosecution is not required to prove that exploitation of the complainants in fact occurred. What the prosecution is required to prove beyond reasonable doubt is that the accused was reckless as to whether the complainants will be exploited either by himself or another after their entry into Fiji.

[17] The Fiji Court of Appeal in ***Murti v. State*** [2015] FJCA 134; AAU03.2011 (2 October 2015); upheld the above decision of the High Court.

[18] Recklessness is proven if it is established beyond reasonable doubt that the accused was aware of a substantial risk that exploitation of the complainants will occur and having regard to the circumstances known to him, it was unjustifiable to take that risk.

[19] The second, fourth, sixth and eighth counts against the accused are charges of Obtaining Financial Advantage by Deception, contrary to Section 318 of the Crimes Act. Section 318 of the Crimes Act provides: *A person commits a summary offence if he or she, by a deception, dishonestly obtains a financial advantage from another person.*

[20] Therefore, in order to prove the second count of Obtaining Financial Advantage by Deception against the accused, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 1 January 2014 and the 18 March 2015);
- (iii) In Bangladesh and at Nadi, in the Western Division;
- (iv) By deception;
- (v) Dishonestly obtained a financial advantage from MD Saiful Islam [In the sum of USD \$10,000, FJD \$16,500 and 257,974 BHT (Bangladeshi Taka)].

[21] In order to prove the fourth count of Obtaining Financial Advantage by Deception against the accused, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 1 January 2014 and the 18 March 2015);
- (iii) In Bangladesh and at Nadi, in the Western Division;
- (iv) By deception;
- (v) Dishonestly obtained a financial advantage from Mohammed Juliash [In the sum of USD \$10,000].

[22] Similarly, in order to prove the sixth count of Obtaining Financial Advantage by Deception against the accused, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 1 January 2014 and the 18 March 2015);
- (iii) In Bangladesh and at Nadi, in the Western Division;
- (iv) By deception;
- (v) Dishonestly obtained a financial advantage from MD Nazrul Islam [In the sum of USD \$10,000].

[23] And, in order to prove the eighth count of Obtaining Financial Advantage by Deception against the accused, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 1 January 2014 and the 18 March 2015);
- (iii) In Bangladesh and at Nadi, in the Western Division;
- (iv) By deception;
- (v) Dishonestly obtained a financial advantage from Mohammed Naushad Ali [In the sum of USD \$12,500].

[24] To further elaborate upon these elements in respect of the above four counts. The first element is concerned with the identity of the person who committed the offences. The prosecution should prove beyond reasonable doubt that the accused and no one else committed the said offences.

[25] The second element relates to the specific time period during which the offences were committed. The third element relates to the place at which the offences were committed. The prosecution should prove these elements beyond reasonable doubt.

[26] The fourth element the prosecution has to prove beyond reasonable doubt is that the accused deceived the four complainants, MD Saiful Islam (in respect of Count 2), Mohammed Juliash (in respect of Count 4), MD Nazrul Islam (in respect of Count 6) and Mohammed Naushad Ali (in respect of Count 8) respectively.

[27] Section 316 of the Crimes Act defines "deception" to mean:

An intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes —

(a) a deception as to the intentions of the person using the deception or any other person; and

(b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorized to cause it to do.

[28] The final element the prosecution has to prove beyond reasonable doubt is that by such deception the accused dishonestly obtained a financial advantage from each of the complainants.

[29] "Dishonesty" is a state of mind of the accused. In order to determine whether the accused had a dishonest mind in obtaining a financial advantage, a two-tiered approach has to be adopted as follows:

First, according to the ordinary standards of reasonable and honest people, Court has to decide whether what was done by the accused was dishonest. If it was not dishonest by those standards, that is the end of the matter and the prosecution fails. [Dishonest according to the standards of ordinary people-which is an objective test].

If it was dishonest by those standards, then Court must consider whether the accused himself has realized that what he was doing was dishonest by those standards. In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the accused himself knew that he was acting dishonestly. It is dishonest for the accused to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting in the manner he did. [Known by the accused to be dishonest according to the standards of ordinary people-which is a subjective test].

Therefore, the prosecution should prove beyond reasonable doubt that the accused acted dishonestly and thereby obtained a financial advantage from the complainants.

[30] It must be mentioned that the above definition of "Dishonesty" is as found in Section 290 of the Crimes Act and which is applicable to Part 16 of the *Crimes Act-Offences against Property*. The offence of Obtaining Financial Advantage by Deception, contrary to Section 318 of the Crimes Act, is an offence coming under Part 17 of the *Crimes Act-Fraudulent Conduct*.

[31] However, in the absence of any further definition of "Dishonesty" in Part 17, I am of the opinion that the definition as found in Section 290 of the Crimes Act (Part 16), can in a like manner be applicable.

[32] The prosecution case is that the alleged deception commenced in Barishal and Dhaka, in Bangladesh, and continued when the complainants came to Fiji. As such, in terms of

Section 7 (Standard geographical jurisdiction for offences) and Section 8 (Extended geographical jurisdiction for offences) of the Crimes Act, this Court has jurisdiction to hear the second, fourth, sixth and eighth counts against the accused [The charges of Obtaining Financial Advantage by Deception, contrary to Section 318 of the Crimes Act].

Admitted Facts

[33] Section 135 of the Criminal Procedure Act deals with "Admission of facts". The Section is reproduced below:

135. — (1) An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.

(2) Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and—

(a) by the prosecutor; and

(b) by the judge or magistrate.

(3) Nothing in sub-section (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial.

[34] Accordingly, the prosecution and the defence have consented to treat the following facts as "Admitted Facts":

1. THAT Govind Reddy (hereinafter referred to as the "accused") was 58 years of age and was residing at Uciwai, Nadi at the material time.
2. THAT MD Saiful Islam (hereinafter referred to as the "1st complainant") was 31 years of age, businessman of Barishal, Bangladesh.
3. THAT Mohammed Juliash (hereinafter referred to as the "2nd complainant") was 31 years of age, Mobile-Phone Technician of Barishal, Bangladesh.
4. THAT MD Nazrul Islam (hereinafter referred to as the "3rd complainant") was 37 years of age, a Fabric Merchandiser of Rekudia, Barishal, Bangladesh.
5. THAT Mohammed Naushad Ali (hereinafter referred to as the "4th complainant") was 21 years of age, Director of Kashira, Joypurhat, Bangladesh.
6. THAT the accused was operating a travel agent namely Blue Pacific Travel in the year 2014.

7. THAT the complainants first met the accused in Bangladesh sometimes at the material time.
8. THAT on the 2nd of January 2015, the 1st complainant and the 2nd complainant arrived into Fiji.
9. THAT the accused met the 1st complainant and 2nd complainant at the Nadi International Airport and took them to the house of Mohammed Yakub situated at Sabeto, Nadi.
10. THAT on the 18th of February 2015, the 3rd complainant and 4th complainant arrived into Fiji.
11. THAT the accused met the 3rd complainant and 4th complainant at the Nadi International Airport and took them to the house of Mohammed Yakub situated at Sabeto, Nadi.

[35] Since the prosecution and the defence have consented to treat the above facts as "*Admitted Facts*" without placing necessary evidence to prove them, the above facts are proved beyond reasonable doubt.

Case for the Prosecution

- [36] The prosecution, in support of their case, called the 1st complainant, MD Saiful Islam; the 3rd complainant, MD Nazrul Islam; the 2nd complainant, Mohammed Juliash; Assistant Immigration Officer, Tomasi Nawaciono; Mohammed Yakub; and the 4th complainant, Mohammed Naushad Ali, in that order.
- [37] The prosecution also tendered certain documents as Prosecution Exhibit **PE1 to PE4**.
- [38] Court permitted for the evidence of the four complainants, who are all Bangladeshi nationals, to be given via skype, from a secure room at the Fiji Consulate Office in Dhaka, Bangladesh. Mr. Zillur Rahman, the Protocol and Administrative Officer, Fiji Consulate Office in Dhaka, was present at the time each of the four complainants were testifying, so as to ensure that no one else, other than for the respective witness, was present in the room at the time.
- [39] The four complainants testified in the Bengali language (also known as Bangla). Dr. Kabir Mamun, who is a Bangladeshi national, and currently working as a Lecturer at the University of South Pacific (USP), Suva, acted as the Interpreter.

[40] Evidence of the 1st complainant MD Saiful Islam

- (i) *The witness testified that he is currently working as a Salesperson at a company in his home town of Barishal. He is 41 years of age. He is currently residing at Barishal. From 2011 to 2014, he was residing in Dhaka.*
- (ii) *Before 2011, he was living with his joint family-his father, mother, brother and sister in Barishal.*
- (iii) *In Dhaka he was residing at Dhanmondi with his cousin Mohammed Rajibul Islam.*
- (iv) *The witness testified that he knows the accused Govind Reddy. When asked how he knows the accused, the witness stated: "It is a long story. I can tell it in short form. My small sister she's leaving in Calgary, Canada. I don't know how the accused went to Canada. He was renting his sister's house in Canada. Accused was on the ground flat and sister was on the first floor".*
- (v) *The witness explained further that the apartment in Calgary, Canada was owned by his sister's husband (his brother in law). This was since the end of 2012 (or early 2013).*
- (vi) *When the accused was renting at his sister's house, he was there with his wife and daughter. The accused wife was a Tongan lady, aged 42 to 43 years. His daughter was 10 to 12 years old. The witness said that the accused wife and daughter used to go to his sister's place upstairs and talk/gossip. Sometimes his sister prepares food and all sit and eat together.*
- (vii) *After 6 months or 1 year, the accused had proposed to his sister that if someone came to Fiji, he would be able to prepare a birth certificate, driving licence and passport and arrange for a work permit to Australia for 3 years. When his sister had inquired how much it would cost, the accused had said it would be USD\$15,000 per person.*
- (viii) *Based on this conversation with the accused, his sister had asked him if he wants to go to Australia as it is a good offer and the witness had agreed to take the offer. The witness said this was in January or February 2014.*
- (ix) *The witness testified that the first time he talked to the accused was via skype from his sister's house in Canada. This was around February or March 2014. Then they decided that the accused will visit Bangladesh. This was informed to him by his sister.*
- (x) *The witness said that to his knowledge the accused had remained in Canada for about 14 months or more.*
- (xi) *When asked as to who made the preparations for the accused's visit to Bangladesh, the witness said: "That time the accused had already overstayed in Canada. Then accused surrendered to the Canadian Government and he was sent back/deported to Fiji".*
- (xii) *About 15 days to 1 month later, the accused had informed that he wants to visit Bangladesh to meet the witness and his brother MD Nazrul Islam.*
- (xiii) *The witness testified that the accused arrived in Dhaka, Bangladesh on 14 April 2014. Prior to arriving in Bangladesh, the accused had informed that he will buy*

his air ticket in Fiji and upon arrival in Bangladesh, the money for the air ticket will have to be reimbursed to him. The witness said he had agreed to pay for the air ticket.

- (xiv) Accordingly, upon the accused arriving in Bangladesh, the witness had paid him approximately FJD\$3,000-3,100 [Bangladeshi Taka (BHT) 122,000].
- (xv) On his arrival in Bangladesh, the witness and his brother Nazrul Islam had gone to the airport to pick him up. After picking him up, he was taken to a luxury hotel in Dhanmondi. The accused had stayed 2 nights at the hotel.
- (xvi) Thereafter, the witness had taken the accused to his home in Barishal by boat. They had rented a duplex house, which included a pool for BHT 35,000 per month. The utility bills cost an additional BHT 10,000.
- (xvii) At the duplex house, the witness and his brother Nazrul Islam took turns in staying in the house with the accused. Sometimes Mohammed Juliash would stay with him.
- (xviii) Mohammed Juliash is a distant relative of his (his so called uncle). Juliash lived near his maternal grandmother's location.
- (xix) The witness said that all expenses of the accused while he stayed in Bangladesh were borne by the witness and not a single penny was spent by the accused. This is because the accused was his guest.
- (xx) While in Bangladesh the accused had visited lots of different places.
- (xxi) While in Bangladesh too the accused had informed him that if they come to Fiji he can prepare a birth certificate, driving licence and passport and arrange for a work permit to Australia for 3 years and that this will cost USD\$15,000 per person. Thus for four people it would cost USD\$60,000. The accused had also informed that whilst in Canada, his sister had already given him USD\$20,000 and that a balance USD\$40,000 is to be paid to him for four people.
- (xxii) Therefore, whilst the accused was in Bangladesh, the witness had given him a further USD\$10,000. This was amount was partly paid in Bangladeshi currency (BHT 300,000) and the balance in US dollars (around USD\$7,000).
- (xxiii) The accused had stayed in Bangladesh for over a month-may be around 2 months. He had left Bangladesh in June 2014. The witness, his brother Nazrul, Juliash and Naushad had gone to drop the accused at the airport.
- (xxiv) Naushad was a friend of Juliash. Naushad had been residing at Bagura in Bangladesh whilst Juliash had been working there. Therefore, Naushad and Juliash had become good friends.
- (xxv) After the accused returned to Fiji, the witness continued to be in contact with him via email and phone contact. The email correspondence was around 15 to 20 days apart, whilst the phone conversations was every 2 to 3 days (for 2 to 3 minutes).
- (xxvi) The accused had sent invitation letters to him and other complainants to come to Fiji. The accused had also requested for some garment items (samples) to be brought to Fiji.

- (xxvii) When asked what was the reason he had spent so much of money on the accused, the witness said: "The purpose was because the accused said when they come to Fiji he can get the documents to be sent to Australia-so for that purpose, they spent this money".
- (xxviii) The witness said that he together with Juliash left Dhaka on 31 December 2014. They had reached Nadi Airpart on 2 January 2015. Around 16 or 17 of February 2015, Nazrul Islam and Mohammed Naushad Ali had arrived in Fiji. [It is an agreed fact that the 1st complainant and the 2nd complainant arrived into Fiji on 2 January 2015. It is a further agreed fact that 3rd complainant and the 4th complainant arrived into Fiji on 18 February 2015].
- (xxix) On his arrival in Fiji, the accused and his friend Yakub (nickname Dalo Babu) came to pick him and Juliash from the airport. All air ticket expenses were paid by the witness and Juliash. In addition, each of them carried USD\$2,500 (USD\$2000 endorsed on the passport while the balance USD\$500 without endorsement).
- (xxx) From the airport they were taken to Yakub's house in Sabeto where they (the witness and Juliash) had stayed for around 2 and a half months. [It is an agreed fact that the accused met the complainants at the Nadi International Airport and took them to the house of Mohammed Yakub situated at Sabeto, Nadi].
- (xxxii) However, their ticket and passports were taken into custody by the accused. The accused had told them that their ticket and passport were not safe in their custody and that he will keep it in a locker in safe custody.
- (xxxiii) The witness described to Court the house in Sabeto. It was a four bedroom house with kitchen and washroom. The front portion of the house was used for a shop (Yakub was selling dalo in this shop), while the back portion was used for accommodation. Of the four rooms, one room was occupied by the accused, one room by Yakub, they had stayed in one room whilst, the other room which was the smaller room was used as a storage room.
- (xxxiv) Initially, the witness and Juliash had stayed in one room. They had to share one bed. When Nazrul and Naushad arrived, all four had to stay in the same room, using mattresses on the floor to sleep. The room they were staying in was about 10 x 10 ft or 10 x 11 ft.
- (xxxv) When asked how they were treated when they were living in Sabeto, the witness said: "Yakub was good but sometimes accused was rude in his behavior forcing for the remaining money".
- (xxxvi) As to their food, they used to give maney to Dolo Babu for purchasing of groceries and shopping. Once Dalo Babu brought the groceries they used to cook for themselves. They used to cook very simple meals.
- (xxxvii) As to their clothes, they had managed with the clothes they had brought with them in their hand luggage. The witness testified that due to the long route they had taken to come to Fiji, they had only brought 8 kg's of hand luggage with them.

(xxxvii) The witness testified that he had paid the accused the following amounts on behalf of all four complainants.

1. For preparation of the birth certificates- FJD\$1,200
2. For preparation of the driving licences- FJD\$3,200
3. For preparation of the passports- FJD\$3,200
4. Visa fees- FJD\$3,200
5. Air tickets from Fiji to Australia- FJD\$4,700
6. Additional amount paid for changes in flight to Australia- FJD\$1,000

(xxxviii) The witness reiterated that he paid the above sum [totaling FJD\$16,500] collectively on behalf of all four complainants. The dealing was between the witness and the accused. These monies were paid by converting the USD\$2,500 each of the complainants had brought with them to Fiji.

(xxxix) In addition to the above, a further FJD\$560 was paid by the witness to the accused for their accommodation in the single bedroom in Sabeto. This included the utility bill payments as well.

(xi) The witness reiterated that the reason the witness and other three complainants came to Fiji and the reason for paying the above sums of money to the accused was because the accused had promised to obtain work permits (for three years) for them to go to Australia.

(xli) When asked whether the accused got the work permits, the witness said: "No. He just cheated us. They didn't get any birth certificates, nor driving licence, no passport, no work permit for Australia. The accused only gave them the return ticket to Bangladesh and their own passport, which was given to him earlier.

(xlii) The witness next testified to the events which transpired on 15 or 16 of March 2015 (which was a Sunday). The four complainants had gone to the Nadi Airport. They were under the impression that they were to travel to Australia, as the accused had said so. They had been waiting in the waiting area of the airport for almost 3 hours. Dalo Bobu was present at the airport with the accused. At some point the accused had given an envelope to Dalo Babu to hold and said that he is going to the washroom. However, the accused never returned. About half an hour after the accused left, Dalo Babu had opened the envelope and found their Bangladesh passports and return tickets to Bangladesh. It was the same return tickets that they had arrived in Fiji, which had expired by then (the witness's and Juliash's tickets had already expired, whilst Nazrul's and Naushad's tickets were expiring on the same day). This is the time the witness and other complainants had realized that they had been cheated by the accused.

(xliii) Thereafter, the witness testified as to how they had lodged a complaint with the Immigration Authorities in Fiji. Since this had happened on a Sunday, the complaint could only be lodged the following day.

(xliv) At the time the witness or the other complainants did not have any money left with them. Therefore, they had to borrow FJD\$100 from a fellow Bangladeshi

- National for their hotel accommodation and meals for that night (Sunday night).
- (xlv) After lodging the complaint with the Immigration Authorities the following day, they had been taken to the Immigration Safe House in Suva. It was located in Nasese, Veiuto Road. All food and accommodation at the Safe House was provided for them by the government. The witness and the other three complainants had remained at the Safe House for over 3 years.
- (xlvi) When asked for the reason to stay there for such a long period, the witness said they stayed with the hope of recovering the money that they had paid the accused. However, it had taken almost 3 months for the Police to find the accused. Thereafter, the accused had obtained bail and gone missing and the case kept pending. Most of the monies paid to the accused were borrowed by the complainants as loans. However, the witness stated that nothing had been recovered.
- (xlvii) The witness testified that he finally returned to Bangladesh in May 2018. Juliash returned in June 2018, while Nazrul and Naushad returned at the end of July or first week of August 2018. The witnesses and Juliash's air fare were paid by them, whilst Naushad and Nazrul's air fare were paid by the Fiji Immigration.
- (xlviii) The witness said that while staying in the Safe House they had got some permission verbally (not officially) to work. So he had worked and saved some money to buy his air ticket back to Bangladesh.
- (xlix) During his stay in Fiji, they used to follow up with the Police (CID) regarding the progress of their complaint. The witness further testified that they gave certain documents they had in their possession for investigation purposes.
- (l) The following documents were tendered to Court as Prosecution Exhibits:
- PE 1 – Receipt dated 18 May 2014, from ABCO OVERSEAS for BHT 33,000. The witness explained that this was the amount paid for purchasing of a return air ticket for the accused to travel to India from Bangladesh.
- PE 2 – Receipt dated 2 June 2014, from Pacific Garden International for the sum of BHT 128,000. The witness explained that this was the amount paid for the accused's air ticket to return from Bangladesh to Fiji.
- PE 3 – e-Ticket Itinerary and Receipt from Korean Air. The witness explained that this was the travel itinerary for the accused's return from Bangladesh to Fiji.
- PE 4 – The air ticket for the accused's travel from Fiji to Bangladesh on 14 April 2014. The total cost of the ticket was FJD\$3,129.40. The witness explained that this was the sum [Bangladeshi Taka (BHT) 122,000] reimbursed to the accused on his arrival in Bangladesh.
- (li) The witness identified the accused in the dock as Govind Reddy.
- (lii) When asked if he has anything else to add the witness stated as follows: "Why has Mr Reddy spoilt four persons life bringing them here to Fiji. Wasn't it enough for Mr Reddy to take money from Canada and Bangladesh. Wasn't that enough for him?.... The amounts given to the accused was borrowed by Saiful

and the other three complainants. So the people from whom they borrowed the money they are now making trouble for them, seeking the money back. He is humbly requesting/seeking recovery of the money and justice from the Honorable Court.”

- (liii) The witness was cross examined at length by the defence and the defence case theory was put across to him.*
- (liv) The witness admitted that he had got to know the accused through his sister (Suborna Parvin), who lives in Calgary, Canada. He also admitted that it was through him that the other three complainants had got to know the accused.*
- (lv) It was suggested to the witness that when the accused arrived in Bangladesh he had paid the witness USD\$2000 for his accommodation and food at the hotel in Dhaka. The witness denied this suggestion.*
- (lvi) It was suggested to the witness that while in Bangladesh the accused did not ask any money from the witness and that he spent his own money. The witness reiterated that the accused did not have any money with him and that all his expenses were met by the complainants.*
- (lvii) The witness testified that although the accused sponsored his (and the other complainants) visit to Fiji, he made no financial contribution.*
- (lviii) It was further suggested to the witness that (upon his arrival in Fiji) the accused did not at any time take possession of his passport and ticket. The witness denied this suggestion and said that the accused took possession of his passport and ticket and that he was hiding it.*
- (lix) It was further suggested to the witness that all four complainants had lived and moved freely around Nadi and Lautoka, even going on around the island trip and even visiting Suva. The witness denied this suggestion. He said during this period they had gone to Lautoka only on one occasion. They had visited Nadi 3-4 times for shopping and to buy groceries. He admitted to going on around the island trip, but said they never stayed anywhere overnight. At that time, he didn't know that it was Suva that they had gone to.*
- (lx) It was further suggested to the witness that after some weeks in Sabeto, they (the four complainants) were not on good terms with the accused, but on good terms with Yakub. Due to the breakdown of their relationship, it was suggested, that the accused had asked for their passport in the presence of Yakub. The witness totally denied these suggestions.*
- (lxi) It was further suggested to the witness that since they were spending more time with Yakub, and since their visas to stay in Fiji was nearing expiry that they hatched a plan to remain in Fiji. It was suggested that since they were getting comfortable in Fiji, they did not want to return to Bangladesh. The witness denied these suggestions.*
- (lxii) It was suggested to the witness that he was lying about all the monies he said was paid (by him and the other complainants) to the accused. The witness denied this and said that it is the accused who is lying. The witness*

said that he and Juliash had each brought with them USD\$2,500 when they arrived in Fiji. Nazrul and Naushad had brought with them USD\$2,000 each when they arrived in Fiji.

- (Ixiii) The accused completely denies all the allegations made against him. The defence position is that the accused only sponsored the four complainants' visit to Fiji but made no promise to find employment for them in Australia.
- (Ixiv) The four complainants did not wish to return to Bangladesh on the scheduled return dates on their air tickets and wanted to continue living in Fiji. They had colluded with Mohammed Yakub to put the accused in trouble.
- (Ixv) Furthermore, the defence position is that there is no proof of payment for the funds or the source of the funds that were allegedly said to have been paid to the accused by the complainants.
- (Ixvi) For these reasons the defence position is that the complainants were not exploited or deceived in any manner whatsoever.

[41] Evidence of the 3rd complainant MD Nazrul Islam

- (i) The witness testified that he is currently unemployed. He is 45 years of age. He is currently residing at Barishal in Bangladesh.
- (ii) The witness corroborated in material particulars all the evidence given in Court by Saiful Islam who is his brother.
- (iii) He testified as to the manner in which he got to know the accused Govind Reddy. He further testified as to how he, together with the other complainants, had met the accused when he had come to Bangladesh in April 2014.
- (iv) He further testified that on 18 February 2015 he had arrived into Fiji along with Mohammed Naushad Ali. On his arrival in Fiji the accused had met the two of them at the Nadi Airport and brought them to the house of Mohammed Yakub situated in Sabeto, Nadi. His brother Saiful Islam and Mohammed Juliash were already in the house in Sabeto, as they had arrived in Fiji earlier.
- (v) The witness testified as to the events which transpired after his arrival in Fiji up to the time he went to the Nadi Airport along with the other three complainants on 15 March 2015, with the belief that he will be travelling to Australia. This was the moment the witness realized that he, together with the other complainants, had been cheated by the accused.
- (vi) The witness had paid USD\$10,000 to the accused in Bangladesh. Furthermore, he had carried with him USD\$2,000 when he travelled from Bangladesh to Fiji.
- (vii) The witness further testified to the events which took place thereafter, until the time he returned to Bangladesh in 2018.
- (viii) The witness was cross examined by the defence and the defence case theory was put across to him, which was very similar to the questions posed to the 1st complainant Saiful Islam during his cross examination.

[42] Evidence of the 2nd complainant Mohammed Juliash

- (i) The witness testified that he is currently unemployed. He is 38 years of age. He is currently residing at Barishal in Bangladesh.*
- (ii) The witness corroborated in material particulars all the evidence given in Court by Saiful Islam who is his nephew.*
- (iii) He testified as to the manner in which he got to know the accused Govind Reddy. He further testified as to how he, together with the other complainants, had met the accused when he had come to Bangladesh in April 2014.*
- (iv) He further testified that on 2 January 2015 he had arrived into Fiji along with Saiful Islam. On his arrival in Fiji the accused had met the two of them at the Nadi Airport and brought them to the house of Mohammed Yakub situated in Sabeto, Nadi.*
- (v) The witness testified as to the events which transpired after his arrival in Fiji up to the time he went to the Nadi Airport along with the other three complainants on 15 March 2015, with the belief that he will be travelling to Australia. This was the moment the witness realized that he, together with the other complainants, had been cheated by the accused.*
- (vi) The witness had paid USD\$10,000 to the accused in Bangladesh. Furthermore, he had carried with him USD\$2,500 when he travelled from Bangladesh to Fiji.*
- (vii) The witness further testified to the events which took place thereafter, until the time he returned to Bangladesh in 2018.*
- (viii) The witness was cross examined by the defence and the defence case theory was put across to him, which was very similar to the questions posed to the 1st complainant Saiful Islam during his cross examination.*

[43] Evidence of Tomasi Nawaciono

- (i) The witness testified that he is currently unemployed. He is 37 years of age and residing in Nasinu.*
- (ii) He had worked with the Department of Immigration from 2012 to 2018. In April 2015 he was employed with the Department of Immigration based at the Nadi International Airport. At the time, he was an Assistant Immigration Officer and Acting in the position of Immigration Officer.*
- (iii) The witness testified to the accused Govind Reddy approaching him regarding certain Bangladeshi nationals, on 6 March 2015 (he said it was a Friday). The witness stated that on the said day he got a call from the Counter Service Officers that one Govind Reddy wanted to see a Supervisor. So he went to see the accused at the counter. The accused wanted to lodge a complaint with the Department of Immigration regarding four Bangladeshi nationals. The complaint was that they were currently working in the country without necessary permits.*

- (iv) *The accused had informed him that the Bangladeshi nationals were living in Sabeto. The witness had told the accused that there was no vehicle at the time to travel to Sabeto and to attend to the complaint.*
- (v) *Then the accused had surrendered to him the passports and tickets of the Bangladeshi nationals which were in his possession. The witness had taken custody of the said passports and tickets.*
- (vi) *The witness had waited until the next Monday, which was 9 March 2015, to attend to the complaint. However, before doing so the accused had visited the Immigration Office once again. The accused had informed that the four Bangladeshi nationals were supposed to board the plane that morning to return home. The witness had advised the accused that he needed to rescheduled their tickets because it was his responsibility.*
- (vii) *When asked why it was the accused's responsibility to do so, the witness said because the accused was the sponsor of the said foreign nationals. The issuance of their visa to enter Fiji had been facilitated by the accused.*
- (viii) *The accused had undertaken to reschedule the four Bangladeshi nationals' tickets for the 15 March 2015. The witness had held on to the passports of the four Bangladeshi nationals. As to the air tickets, the witness said that the tickets for 9 March 2015 was null and void, because they had missed their flight. He explained that what the accused had handed over to him was only a booking and not confirmed tickets. It was an online booking which could be printed any number of times.*
- (ix) *The witness testified that he held on to their passports due to the complaint received from the accused. The passport acts as a security for the Immigration-so they could control their departure back to Bangladesh.*
- (x) *The witness testified to the events which took place on 15 March 2015. He was not at work that day, but had read the report from the Immigration Officer as to what had transpired. The name of the Immigration Officer was Mr Eseroma Baleisuva.*
- (xi) *The witness said that the Immigration authorities had to release the passports of the four Bangladeshi nationals to facilitate their departure with the presence of the said Immigration Officer. Further, upon checking at the airline counter, it was found to be only bookings but not confirmed tickets.*
- (xii) *The witness testified that he had met the four Bangladeshi nationals on the following day (16 March 2015). They had to interview the said four persons due to the complaint lodged by the accused (which was a verbal complaint). However, when they were calling the accused to come to the office, they could not get hold of him. The interviews were conducted by himself and Mr Baleisuva.*
- (xiii) *During the interview it was found that the four Bangladeshi nationals were promised visas to Australia by the accused.*
- (xiv) *Thereafter, the matter was handed over to the Police.*

- (xv) *The witness said that the four Bangladeshi nationals were transported by vehicle to the Immigration Safe House in Nadi. Later he confirmed that there was an Immigration Safe House in Nasese, Suva in 2015.*
- (xvi) *The witness was unaware as to when the four Bangladeshi nationals had left Fiji.*
- (xvii) *At the time the accused made the verbal complaint to him, on 6 March 2015, against the four Bangladeshi nationals, he didn't divulge the fact that he was their sponsor. They had got to know this on the 9 March 2015 when checking the system.*

[44] Evidence of Mohammed Yakub

- (i) *The witness testified that he is currently residing at Nawaka, Nadi. He is 57 years of age. He used to work as a Market Vendor at the Nadi Market, since 1992. But due to sickness he is no longer working. He is also known as Dalo Babu.*
- (ii) *In 2015 he was staying in Sabeto. He had lived in Sabeto for about 12 years. He had moved from Sabeto to Nawaka, Nadi in the year 2016.*
- (iii) *The witness said that he knows the accused Govind Reddy since the time he was selling in the market. "I know him from that time. Just like a friend". He said he had known the accused for 10 to 12 years.*
- (iv) *The accused had told him that he was working as a Travel Agent. The accused had been residing at Uciwai, Nadi.*
- (v) *The witness testified that the accused had come and stayed with him at his house in Sabeto. In the year 2015, the accused had stayed in his house in Sabeto for 8 to 9 months.*
- (vi) *He recalls the accused telling him that four friends from Bangladesh will be residing with him in Sabeto. The reason he provided was that he was arranging for their visas (PR) to Australia. The accused had also said that he had taken money from the Bangladeshi nationals for processing their visas.*
- (vii) *The witness testified that the four Bangladeshi nationals had told him that they had paid USD\$38,000 to the accused for processing their visas to Australia.*
- (viii) *The four Bangladeshi nationals had stayed at his house in Sabeto. All four of them used to sleep in one bedroom. Since the witness was working from 6.00 in the morning to 6.00 in the evening, he used to meet the Bangladeshi nationals only in the evenings (sometimes). The witness doesn't recall their names.*
- (ix) *The witness said that the accused had come to know the four Bangladeshi nationals through the sister of one of them, whom he had met while visiting Canada.*
- (x) *The witness testified that Rukshana is his niece-his sister's daughter. When Rukshana came to visit his place in Sabeto, the four Bangladeshi nationals came to know her.*

- (xi) *The witness testified to the events which transpired on 15 March 2015. On that day he had accompanied the accused and the four Bangladeshi nationals to the airport. His vehicle had been used to transport them to the airport.*
- (xii) *At the airport the accused had an envelope with him. On arriving at the airport, the accused had called an Immigration Officer and after speaking to the said Immigration Officer, he had handed over the envelope to the witness to be given to the four Bangladeshi nationals. After handing over the envelope to him, the accused had run away from there. The witness had been looking for the accused but could not find him.*
- (xiii) *Later an Immigration Officer had come up to them and the witness had handed over the envelope to him.*
- (xiv) *The witness confirmed that while the four Bangladeshi nationals were residing at his house in Sabeto that they were not working anywhere.*
- (xv) *The witness further testified that the accused had not arranged for any visas for the four Bangladeshi nationals to work in Australia.*
- (xvi) *The witness said that the accused had met him about two days later. Then he had asked the accused as to why he had done this to the Bangladeshi nationals. The accused had told him in Hindi: "That is my game". The witness had told the accused that he will face a big problem one day.*
- (xvii) *The witness said that Officers from the CID had come from Suva to record his statement.*
- (xviii) *The witness had identified the accused in the dock as Govind Reddy. Since the accused said that his eyesight was weak, he was permitted to walk up to the dock from the witness box so as to identify the accused.*
- (lxvii) *The witness was cross-examined by the defence and the defence case theory was put across to him.*

[45] Evidence of the 4th complainant Mohammed Naushad Ali

- (i) *The witness testified that he is currently employed in his family business along with his father. He is 27 years of age. He is currently residing at Akkelpur Joypurhat in Bangladesh.*
- (ii) *The witness corroborated in material particulars all the evidence given in Court by Saiful Islam, who he got to know through Mohammed Juliash.*
- (iii) *He testified as to the manner in which he got to know the accused Govind Reddy. He further testified as to how he, together with the other complainants, had met the accused when he had come to Bangladesh in April 2014.*
- (iv) *He further testified that on 18 February 2015 he had arrived into Fiji along with MD Nazrul Islam. On his arrival in Fiji the accused had met the two of them at the Nadi Airport and brought them to the house of Mohammed Yakub situated in Sabeto, Nadi. Saiful Islam and Mohammed Juliash were already in the house in Sabeto, as they had arrived in Fiji earlier.*
- (v) *The witness testified as to the events which transpired after his arrival in Fiji up to the time he went to the Nadi Airport along with the other three*

complainants on 15 March 2015, with the belief that he will be travelling to Australia. This was the moment the witness realized that he, together with the other complainants, had been cheated by the accused.

- (vi) The witness had paid USD\$10,800 to Saiful Islam to be given to the accused in Bangladesh. Furthermore, he had carried with him USD\$2,000 when he travelled from Bangladesh to Fiji.*
- (vii) The witness further testified to the events which took place thereafter, until the time he returned to Bangladesh in 2018.*
- (viii) The witness was cross examined by the defence and the defence case theory was put across to him, which was very similar to the questions posed to the 1st complainant Saiful Islam during his cross examination.*

[46] At the end of the prosecution case Court decided to call for the defence of the accused in respect of all 8 counts. The accused was then explained his legal rights. I explained to him that he could address Court by himself or his Counsel. He could also give sworn evidence from the witness box and/or call witnesses on his behalf. He could even remain silent. He was given these options as those were his legal rights. I explained to the accused that he need not prove anything. The burden of proving his guilt rests entirely on the prosecution at all times.

[47] The accused exercised his right to remain silent.

Analysis

[48] As stated before, the prosecution, in support of their case, called the 1st complainant, MD Saiful Islam; the 3rd complainant, MD Nazrul Islam; the 2nd complainant, Mohammed Juliash; Assistant Immigration Officer, Tomasi Nawaciono; Mohammed Yakub (Also known as Dalo Babu); and the 4th complainant, Mohammed Naushad Ali, in that order. The prosecution also tendered certain documents as Prosecution Exhibit PE1 to PE4.

[49] The accused exercised his right to remain silent.

[50] As I have stated earlier, the burden of proving each ingredient of every charge rests entirely and exclusively on the prosecution and the burden of proof is beyond a reasonable doubt. Therefore, it is incumbent on the prosecution to prove the elements of all the charges beyond reasonable doubt. I have made reference to the elements that the prosecution has to prove in paragraphs 7 to 10 of this judgment [In respect of the

first, third, fifth and seventh counts of Trafficking in Persons]; and paragraphs 20 to 23 of this judgment [In respect of the second, fourth, sixth and eighth counts of Obtaining Financial Advantage by Deception].

[51] I have summarized the evidence of the six prosecution witnesses led during the trial.

[52] As I have stated before, in this case it has been agreed by the prosecution and the defence to treat certain facts as admitted facts without placing necessary evidence to prove them. Therefore, those facts are considered as proved beyond reasonable doubt.

[53] Based on he said admitted facts it is admitted that the accused was operating a travel agency namely Blue Pacific Travel in the year 2014. It is admitted that the four complainants first met the accused in Bangladesh sometimes during the material time. It is also admitted that on the 2 January 2015, the 1st complainant and the 2nd complainant arrived into Fiji and that the accused met the two of them at the Nadi International Airport and took them to the house of Mohammed Yakub situated at Sabeto, Nadi. It is further admitted that on the 18 February 2015, the 3rd complainant and the 4th complainant arrived into Fiji and that the accused met the two of them at the Nadi International Airport and took them to the house of Mohammed Yakub situated at Sabeto, Nadi.

[54] The accused totally denies all the allegations made against him. The defence position is that the accused only sponsored the four complainants' visit to Fiji but made no promise to find employment for them in Australia. All four complainants had lived and moved freely around Nadi and Lautoka, even going on around the island trip and even visiting Suva. The four complainants did not wish to return to Bangladesh on the scheduled return dates on their air tickets and wanted to continue living in Fiji. They had colluded with Mohammed Yakub to put the accused in trouble.

[55] Furthermore, the accused denies taking any monies from the complainants. The defence position is that there is no proof of payment for the funds or the source of the funds that were allegedly said to have been paid to the accused by the complainants.

[56] For these reasons the defence position is that the complainants were not exploited or deceived in any manner whatsoever.

- [57] I have carefully analysed the evidence of all the prosecution witnesses in this case. Considering the totality of the evidence, it is my opinion, that the defence version cannot be accepted as truthful and reliable and I reject the defence version.
- [58] Having analysed all the evidence in its totality, it is my considered opinion that the evidence of the four complainants can be accepted as truthful, credible and reliable. I also accept as truthful, credible and reliable the evidence of Assistant Immigration Officer, Tomasi Nawaciono, and witness Mohammed Yakub (also known as Dalo Babu).
- [59] In respect of Counts 1, 3, 5 and 7 which are the charges of Trafficking in Persons, the prosecution has to establish beyond reasonable doubt that the accused facilitated the entry of the four complainants to Fiji and in doing so that he was aware of a substantial risk that exploitation of the complainants will occur and he was not justified to take the risk having regard to the circumstances known to him.
- [60] The four complainants have testified at length to the manner in which the accused facilitated their entry into Fiji on the promise of finding employment for them in Australia. Furthermore, they have testified to the manner in which they were exploited by the accused upon their arrival in Fiji. It has been held that the word "exploit" simply means to treat a person as an opportunity to gain an advantage for the accused or for another person. There is clear evidence elicited by the prosecution to establish that the accused was aware of a substantial risk that exploitation of the complainants will occur and he was not justified to take the risk having regard to all the circumstances known to him.
- [61] In respect of Counts 2, 4, 6 and 8 which are the charges of Obtaining Financial Advantage by Deception, the prosecution has to establish beyond reasonable doubt that the accused by deception dishonestly obtained a financial advantage from each of the complainants.
- [62] The four complainants have testified at length to the manner in which they had been deceived by the accused. I concede that there may be some discrepancies in the prosecution evidence as to the specific amounts that the four complainants had paid to the accused. It is unclear as to whether the USD\$10,000 (as stated in counts 2, 4 and 6) and the USD\$12,500 (as stated in count 8), were paid to the accused individually by the

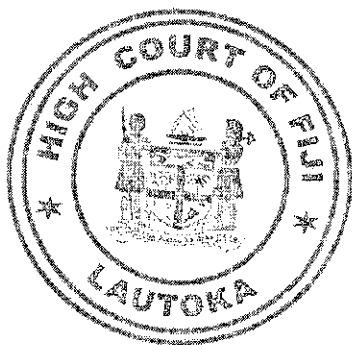
respective complainants or collectively. As to the FJD \$16,500 and 257,974 BHT (Bangladeshi Taka), referred to in count 2, there is sufficient evidence to establish that the said amounts were paid to the accused by the complainants.

[63] Therefore, there is no doubt in my mind that accused by deception dishonestly obtained a financial advantage from each of the complainants.

[64] For the aforesaid reasons, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the charges of Trafficking in Persons with which the accused is charged in Counts 1, 3, 5 and 7; and the charges of Obtaining Financial Advantage by Deception with which the accused is charged in Counts 2, 4, 6 and 8.

[65] In the circumstances, I find the accused guilty of the charges of Trafficking in Persons with which he is charged in Counts 1, 3, 5 and 7; and the charges of Obtaining Financial Advantage by Deception with which he is charged in Counts 2, 4, 6 and 8.

[66] Accordingly, I convict the accused of the charges of Trafficking in Persons with which he is charged in Counts 1, 3, 5 and 7; and the charges of Obtaining Financial Advantage by Deception with which he is charged in Counts 2, 4, 6 and 8.




Riyaz Hamza

JUDGE
HIGH COURT OF FIJI

AT LAUTOKA

Dated this 17th Day of March 2023

Solicitors for the State : **Office of the Director of Public Prosecutions, Lautoka.**

Solicitors for the Accused : **Law Naivalu, Barristers & Solicitors, Lautoka.**

