

SUPREME COURT OF SEYCHELLES

Reportable
CR53/2018

In the matter between:

THE REPUBLIC
(rep. by Mrs. Langsinglu)

Republic

and

NIZZAM UDDIN AHMED
(rep. by Mr. Elizabeth)

Accused

Neutral Citation: *The Republic v Ahmed* (CR53/2018) 17th April 2025

Before: Govinden CJ

Summary: Trafficking in Persons - Sentence

Delivered: 17th April 2025

ORDER

- [1] The convict shall serve 4 years of imprisonment suspended for 2 years on each of the six counts that he stands convicted, these terms of imprisonment shall be concurrent with one another.

- [2] Additionally, he shall pay a fine of SCR 20,780 on **Count 1**, which shall be paid as compensation to the Complainant Mr. Ajharul under 151(1) (b) of the Criminal Procedure Code.

- [3] On **Count 2**, a fine of SCR 13,853, which shall be paid as compensation to the Complainant Mr. Ahmed Oli under S 151(1) (b) of the Criminal Procedure Code.

- [4] On **Count 3**, a fine of SCR 20,780, which shall be paid as compensation to the Complainant Mr. Alamin under S 151(1) (b) of the Criminal Procedure Code.

- [5] On **Count 4**, a fine of SCR 20,780, which shall be paid as compensation to the Complainant Mr. Mahabub Alam under S 151(1) (b) of the Criminal Procedure Code.

- [6] On **Count 5** a fine of SCR 20,780, which shall be paid as compensation to the Complainant Mr. Romzan Shaik under S 151(1) (b) of the Criminal Procedure Code.
- [7] On **Count 6** a fine of SCR 13,853, which shall be paid as compensation to the Complainant Mr. Roton Mirdha under S 151(1) (b) of the Criminal Procedure Code.
- [8] The total payment of compensations shall be paid by the 19th May 2025, failing which the convict shall serve a term of 6 months' imprisonment under each count.
- [9] The convict has a right to appeal against this sentence to the Court of Appeal.

SENTENCE

GOVINDEN CJ

- [10] Mr Nizzam Uddin Ahmed was charged on seven counts of the offence of Trafficking in Persons contrary to Section 3(1) (d) (e) and (g) as read with section 5 (1) (b) of the PTPA and punishable under Section 5(2) of the same Act. Mr. Ahmed pleaded not guilty to the said charges and the case proceeded to trial. Following the conclusion of the case this Court found him guilty on the 1st to 6th Count levelled against him and he was convicted on the 28th November 2024.

Probation Report and Plea in Mitigation

- [11] A pre-sentencing report was requested in respect of the Accused and this was made available to the Court and both counsels. In the report, the Probation Officer has referred to the Accused' family background. The Accused is 73 years of age. He is a Bangladeshi National and claims he has been in the Seychelles since 2014. He has a wife and two children but they are not residing with him in Seychelles. He spoke about his educational background with his highest attainment being a qualified biochemical engineer as backed up by the Accused' support person Mr. P Bouille. He came to Seychelles as an investor and

invested in businesses. For the past six years he has not been gaining any earnings from the businesses he invested in because of his Court case. He struggles to survive on his own as he does not have sufficient earnings to sustain himself. The Accused averred that he has several health issues and taking prescribed medications. He stated to the Probation Officer that he has issues with digestion and eating properly because of loss of most of his teeth. He has a painful right shoulder, back and muscle pain. He has knee problems and has diabetes and high blood pressure. He produced his medical records and a medical report to sustain his averments. The medical report is dated the 22nd February 2025. The Senior Medical officer confirmed that Mr Ahmed has been on management for hypertension and diabetes, has cerebrovascular disease (variety of medical conditions that affect the blood vessels of the brain and the cerebral circulation), bilateral knee osteoarthritis (a degenerative joint disease that affects both knees, causing pain, stiffness, swelling, and decreased mobility), lumbago osteoarthritis (a degenerative condition causing pain stiffness and inflammation in lower back joints). The medical records are dated since the year 2022 up till 2025.

[12] The Accused maintains that he did not commit the offences against him, however he will fully respect the judgments and sentencing of this Court. Counsel on behalf of the Accused pleaded leniency for his client and asked the Court to consider the exceptional personal consequences of the Accused and pleads for non-custodial sentence. He mitigates that his client is of advanced age, suffering from multiple chronic medical conditions which, if left unmanaged could lead to life threatening complications. He pleads that prison system would not befit his client because of no specialized medical care that the Accused requires, that the Accused will have no support if sent to prison as his family are overseas. The Accused is a first time offender and his age makes him unlikely to reoffend.

[13] As for the victims in this case, the Probation Officer had an interview with them on the 29th January 2025. Six of them were present and one had already left the country, but the others spoke on his behalf. The victims expressed that the Accused reacted negatively towards them especially during the discussion on being refunded their GOP money. They had taken loans to pay their GOP to come to Seychelles and were promised a refund by the Accused. The Accused threatened them when they asked the him for their money. They

view the Accused as a bad person. In their accommodation some of them slept on the floor due to lack of bedding and had little food to go by. They wish to be compensated for their losses. The Probation Services is of the view that the Accused be faced with some form of punishment that will serve as a future deterrent and in addition, to take in consideration that the Accused is a first time offender with several medical issues. They recommend the Court impose a punishment on the accused as per the merit of the case.

Analysis and determination

- [14] I have given careful consideration to the mitigation submissions in support of a lesser sentence and have also considered carefully the contents of the probation report and its recommendations. Having done so, I am satisfied that there are a number of mitigating circumstances in this case. The convict is well advanced in age, has various health conditions and is a first time offender.
- [15] However, there are also aggravating circumstances. The Statement of Offences in the six counts for which he stands convicted has been made to read with Section 5 (1) (b) of the Prohibition of Trafficking in Persons Act. This section refers to factors that are categorised as "*aggravated circumstances*" namely that he committed the offence against more than one victims. As outlined in this Act, individuals found guilty of trafficking in persons under aggravated circumstances are subject to increased penalties. According to Section 5 (2), if a person is found guilty of an aggravated offence upon conviction, they are liable to a term of imprisonment of a maximum of 25 years and a fine not exceeding SCR 800,000.
- [16] In R v Labrosse (CR 03/2019) [2021] SCSC 852 (4 March 2021)¹ the Court sentenced the accused 3 years of imprisonment on each of the three counts of trafficking in persons that he stand convicted for, these terms of imprisonment was to be served concurrent with one another. Additionally, he was to pay a fine of SCR 25,000 on each count of which SCR 10,000 to go as compensation to the Virtual Complainants. All of these fines was to be paid by a fixed date, failing which the convict was to serve a term of 1 year of imprisonment, which was to run consecutive to the 3 years' imprisonment.

¹ <https://seylil.org/akn/sc/judgment/scsc/2021/852/eng@2021-03-04>

- [17] In R v Leon (CR 62/2018) [2021] SCSC 945 (12 July 2021)² The accused employed a Bangladeshi national to work in his construction company, who was abused and coerced by the accused, was not paid the agreed allowances and food wages, did not have proper accommodation and was ill-treated. He pleaded for leniency and also pleaded that his partner was a cancer patient. Given that he was 55 years old and had never been in trouble with the law, and that his partner was in remission and might need support in the event of a relapse, court found that a prison sentence would not be appropriate and sentenced him to two years' imprisonment suspended for three years and a fine of SR170,000.00, half of which was to be paid to the virtual complainant as compensation. Should the accused fail to pay the fine, he was to be imprisoned for 6 months.
- [18] In meting out sentences, courts have to bear in mind the classic principles of sentencing as laid out in Lawrence v Republic [1990] SLR 47 which is deterrence, prevention, rehabilitation, reformation and retribution and also take into consideration the principle of proportionality of sentence, see Uwaoma v The Republic SCA CR05/2023³. Sentencing decisions are a reflection of societal values and expectations, which in turn reinforce community standards of complying with the law. This approach strengthens public confidence in legal institutions and promotes community safety by deterring further offences. I further note the ill-treatment the workers were faced with which the Court takes very seriously.
- [19] In this present case, the accused Mr Ahmed has been convicted of 6 count of trafficking in persons, meaning the same offence on different victims. In R v Labrosse(supra) the accused was given a concurrent sentence for the three counts he was convicted of and in R v Leon(supra) was given a suspended sentence and a fine. It is generally accepted that the application of concurrent sentences is applicable to offences of a similar nature or arising from the same transaction. Consecutive sentences are usually imposed when offences are distinct or when they involve different victims; in such cases, the sentences reflect the separate harm caused by each individual offence. A detailed reasoning with regards to the

² <https://seylil.org/akn/sc/judgment/scsc/2021/945/eng@2021-07-12>

³ Uwaoma v R (SCA CR 05/2023) [2023] (Arising in CR 56/2023) ((SCA CR 05/2023) [2023] (Arising in CR 56/2023))

approach adopted in the sentencing was discussed in R v ML & Ors (CR 38/2019) [2020] SCSC 491 (16 April 2020)⁴ as follows:

58. Approaching sentencing in cases where the offender is convicted on several charges requires a consideration of what has come to be known as the ‘totality principle’ in sentencing.

59. The core value of the principle of totality is to ensure that courts impose a ‘just and appropriate’ sentence. More developed and widely applied in Australia, United Kingdom and Canada, the totality principle is a common law principle that requires a judge sentencing an offender convicted on several offences to ensure that the ‘aggregation of the sentences appropriate for each offence is a just and appropriate measure of the total criminality involved’ (National Judicial College of Australia ‘Totality Principle’ https://csd.njca.com.au/principles-practice/general_sentencing_principles/totality_principle3/).

60. In the UK, the totality principle is expressed as follows:

“A court which passes a number of consecutive sentences should review the aggregate for the sentences and consider whether the aggregate sentence is just and appropriate taking the offences as a whole...

Where a court decides to adjust a series of sentences because the aggregate is too high, it is generally preferable to do so by ordering sentences to run concurrently rather than by passing a series of short consecutive sentences (see R v. Simpson, unreported, February 1, 1972), but where concurrent sentences are imposed for a series of offences of varying gravity, the individual sentences should not be out of proportion to the individual offences for which they are imposed (see R v. Smith, unreported, February 13, 1975)...”(Archbold- Criminal Pleading, Evidence and Practice 2013 5-592

61. The principle encompasses two concepts namely that:

“[A]ll courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it, is just and proportionate. This is so, whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence. It is usually impossible to arrive at a just and proportionate sentence for multiple offences simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole.” (UK Sentencing Council ‘Offences taken into Consideration and Totality: Definitive Guideline’ (2012))

⁴ <https://seylil.org/akn/sc/judgment/scsc/2020/491/eng@2020-04-16>

62. The significance of the principle is to balance the existing rules on sentencing, with the discretionary powers of the judge in arriving at a just and equitable sentence outcome. This balancing exercise ensures that the final sentence imposed remains proportionate to the gravity of the offence committed (*R. c. Neeposh*, 2020 QCCQ 1235 (CanLII), para 50). Both the proportionality and the totality principle in sentencing are interlinked and aim to ensure that a just and equitable sentence is imposed on the offender. Some cases have, in addition to imposing fair or just sentences, placed emphasis on the role of sentencing as a means to protect the general public from the activities of the offender and to contribute towards respect for the law and the maintenance of a just, peaceful and safe society. It is through a consideration of the total criminality involved in a crime that a decision on whether sentences must run concurrently or consecutively must be made. This applies more accurately in cases where the crimes committed are so shocking that a longer custodial sentence will be warranted to protect the general public.
63. In terms of our own legal provisions, sections 8 and 9 of the Criminal Procedure Code deals with sentencing in cases of several offences at one trial. The provisions provide as follows:

Combination of sentences

“8. (1) Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

(2) In determining the extent of the court’s jurisdiction under section 6 to pass a sentence of imprisonment the court shall be deemed to have jurisdiction to pass the full sentence of imprisonment provided in that section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

Sentences in case of conviction of several offences at one trial

9. (1) When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefore which such court is competent to impose, such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently...

- [20] I have to consider all of the above with the mitigatory circumstances. Mr. Ahmed suffers from multiple serious medical conditions: Hypertension; the court takes judicial notice that this condition requires ongoing management and can lead to severe complications if not properly controlled. Stressful environments, such as prisons, can exacerbate hypertension and increase the risk of heart attacks or strokes. Secondly, diabetes management is critical and involves regular monitoring of blood sugar levels, dietary restrictions, and possibly

insulin administration. Incarceration may hinder access to necessary medications and dietary accommodations. Thirdly, cerebrovascular disease, this condition affects blood flow to the brain and can lead to strokes or transient ischemic attacks (TIAs). The stress of imprisonment could significantly increase these risks. Fourthly, bilateral knee osteoarthritis; this degenerative joint disease causes pain and limits mobility. In a prison setting, where physical activity is often restricted and healthcare access may be limited, Mr. Ahmed's quality of life could deteriorate significantly. Lumbago osteoarthritis; similar to knee osteoarthritis, this condition affects mobility and causes chronic pain. The inability to move freely in prison could exacerbate his symptoms and lead to further health complications.

- [21] Given Mr. Ahmed's age (73 years) combined with his multiple chronic health issues related to above, imprisonment poses significant increased health risks. Firstly, the prison environment can be detrimental to individuals with pre-existing health conditions due to limited medical care, stressors associated with confinement, and limited access to necessary treatments. Secondly, with bilateral knee osteoarthritis and lumbago osteoarthritis, Mr. Ahmed may struggle with daily activities in a prison setting that requires physical exertion or movement through confined spaces. Thirdly, mental health considerations, as the psychological impact of imprisonment on an elderly individual with serious health concerns can lead to depression or anxiety, further complicating their overall health status.
- [22] For these reasons as grievous as the crimes are, when one individualized the punishments in order to meet the justice of the case it is clear that any other penalties other than imprisonment is justified in this case.
- [23] Having taken into account the mitigating and aggravating factors in this case and having considered all the aforementioned principles, I proceed to sentence the accused as follow:
- [24] He shall serve 4 years of imprisonment suspended for 2 years on each of the six counts that he stands convicted, these terms of imprisonment shall be concurrent with one another.

- [25] Additionally, he shall pay a fine of SCR 20,780 on **Count 1**, which shall be paid as compensation to the Complainant Mr. Ajharul under S 151(1) (b) of the Criminal Procedure Code.
- [26] On **Count 2**, a fine of SCR 13,853, which shall be paid as compensation to the Complainant Mr. Ahmed Oli under S 151(1) (b) of the Criminal Procedure Code.
- [27] On **Count 3**, a fine of SCR 20,780, which shall be paid as compensation to the Complainant Mr. Alamin under S 151(1) (b) of the Criminal Procedure Code.
- [28] On **Count 4**, a fine of SCR 20,780, which shall be paid as compensation to the Complainant Mr. Mahabub Alam under S 151(1) (b) of the Criminal Procedure Code.
- [29] On **Count 5**, a fine of SCR 20,780, which shall be paid as compensation to the Complainant Mr. Romzan Shaik under S 151(1) (b) of the Criminal Procedure Code.
- [30] On **Count 6**, a fine of SCR 13,853, which shall be paid as compensation to the Complainant Mr. Roton Mirdha under S 151(1) (b) of the Criminal Procedure Code.
- [31] The total payment of compensations shall be paid by the 19th May 2025, failing which the convict shall serve a term of 6 months' imprisonment under each count.
- [32] The convict has a right to appeal against this sentence to the Court of Appeal.

Signed, dated and delivered at Ile du Port on the 17th April 2025.



Govinden CJ