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**IN THE COURT OF APPEAL**
**CRIMINAL DIVISION**

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 23 January 2019

**B e f o r e**:
**LORD JUSTICE BEAN**

**MR JUSTICE NICOL**

**MR JUSTICE POPPLEWELL**
**R E G I N A**
v
**VIET HOANG NGUYEN**
**GIANG HUONG TRAN**
**THU HUONG NGUYEN**

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**Mr W Clegg QC** appeared on behalf of the **Applicant Viet Nguyen**
**Mr W Clegg QC and Mr W Davis** appeared on behalf of the **Applicant Giang Tran**
**Mr S Kivdeh** appeared on behalf of the **Applicant Thu Nguyen**

**J U D G M E N T**
(Approved)

1. LORD JUSTICE BEAN: These are three applications for permission to appeal against conviction following refusal by the single judge. All three applicants stood trial in the Crown Court at Stafford in late October and early November 2017 before His Honour Judge Michael Chambers QC and a jury on charges of conspiracy to require others to perform forced or compulsory labour and in the case of the first two applicants conspiracy to arrange or facilitate the travel of persons within the United Kingdom with a view to exploitation.

2. All three defendants at the trial were generally referred to by nicknames. The first applicant Miss Thu Hoang Nguyen was referred to as "Jenny". The second applicant Mr Viet Hoang Nguyen was referred to as "Ken". The third applicant, Miss Giang Huong Tran was referred to as "Susan". A fourth person involved in the conspiracies, a Mr Van Than Nguyen, known as "Jimmy" absconded before he could be charged. We will, without any intended disrespect, adopt the nicknames used at trial.

3. Jenny ran a nail bar in Bath called 'Nail Deluxe'. Ken and Susan ran a nail bar in Burton-on-Trent called 'Gorgeous Nails'.

4. Starting with the nail bar in Bath, police conducted a "day of action" following concerns about the welfare of people employed in nail bars and on 22 February 2016 visited Nail Deluxe where two young women known respectively as 'Sen' and 'Lily' were seen sitting at workstations. They had no identification documents or passports and neither spoke English. It is right to say that there was no issue over the conditions in which they were working and the premises were health and safety compliant.

5. Shortly after the police entered the premises Jenny arrived. She said the girls had arrived at her salon and were looking for work and somewhere to stay. She had been worried about them and had offered them somewhere to stay and somewhere to practice their skills. She believed the girls were 15 or 16 years old. She then spoke Vietnamese to the girls. She did not know that an interpreter was among those attending. She asked: "What have you said to them? Have you told them you are not working?"

6. The two young women were staying at Jenny's address, one sleeping on a mattress on the floor in the loft and in possession of very few belongings; the other sleeping in another room and in possession only of a small bag of clothing. Jenny in interview said that she was trying to help the girls because she felt sorry for them. She denied they were working in the shop; they were in training.

7. In due course Sen and Lily were taken into local authority care but absconded a few days later. When Sen was interviewed at Croydon Immigration Centre, Jenny was present and in the opinion of the interviewer tried to add to the answers being given by Sen.

8. Turning to the Burton-on-Trent case, on 16 March 2016 officers attended Gorgeous Nails and found three young Vietnamese women apparently working there. Susan was present and said she was the manager. She denied the girls were working for her. Shortly afterwards Ken arrived. Phones recovered from Ken showed text messages reflecting a network of nail bars being run by various individuals and associates and

regular enquiries for people to work. One of the young women, 'Banh', told police she had been brought into the United Kingdom and had been moved between addresses before arriving at the Burton address. She alleged she had been beaten and was made to work hard. These young women also were placed in the care of that local authority but absconded.

9. In interview, Ken confirmed he was the manager of the nail bar and that Susan was his partner. He made no further comment to questions asked about the three young women. Susan told police her partner ran the business and her role was just to collect money. The girls, she said, came to the shop through a friend of a friend. She was unable to remember their names. She denied the girls had ever been to her house or that they were staying at her address. She denied any of the girls were members of staff. She said that Banh's account of the matter was a lie.

10. The prosecution case was that the young women were illegal immigrants. The defendants, said the prosecution, had taken advantage of the vulnerability of the young women and had conspired as two groups, together with Jimmy, to both traffic and exploit them.

11. The indictment originally alleged a single conspiracy but the judge ruled at the end of the prosecution case that the evidence was insufficient to support a single conspiracy and in due course the case went to the jury as two separate conspiracies, one in respect of the Bath nail bar and the other in respect of the Burton nail bar - the Bath nail bar involving the first applicant; the Burton nail bar the other two.

12. A submission was made at the end of the prosecution case that there was no case to answer. This succeeded in respect of a count of money laundering, about which we need say no more, but was rejected in respect of the counts the subject of the application for permission to appeal to this court.

13. Although when the case was before the single judge a number of points were taken, we are now concerned with a single ground referable to all three applicants, in short that the judge's ruling and directions on law about what the prosecution had to prove in respect of the offences charged were deficient.

14. The judge in summing-up gave the jury detailed directions of law running to some 15 pages, accompanied by a route to verdict document and in the usual way read the directions to the jury when summing-up.

15. Before turning to the directions, we should refer briefly to the law. The Modern Slavery Act 2015, section 1, headed "Slavery, servitude and forced or compulsory labour" provides, so far as material:

> "(1) A person commits an offence if—
>
> (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.

> (2) In subsection (1) the references to ... requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.
>
> ...
>
> (5) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute ... requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being ... required to perform forced or compulsory labour."

16. The term "forced or compulsory labour" was considered by the Strasbourg Court in Van der Mussele v Belgium [1983] ECHR 23 and in Siliadin v France [2006] 43 EHRR 16. In Siliadin the ECHR held that Article 4 imposes positive obligations on the State to protect individuals, particularly children and other vulnerable people, including by means of penalisation and effective prosecution of acts contrary to Article 4. Forced or compulsory labour is work performed involuntarily and under the threat of a penalty. In Siliadin itself a minor who had been trafficked to France and made to perform unpaid domestic work for a family for 15 hours a day, seven days a week, was held to have been in servitude contrary to Article 4. Among the means which had been relied on to compel her to work was the manipulation of her vulnerability, her isolation, her inability to sustain herself independently of those employing her and her fear of the police because of her unlawful immigration status.

17. Siliadin was considered and followed in this court in R v K(S) [2011] 2 Cr.App.R 34, in a judgment given by Lindblom J (as he then was). The court said, beginning at paragraph 39:

> "The essence of the concept of 'forced or compulsory labour' is work exacted under the menace of a penalty and performed against the will of the person concerned, a concept which brought to mind the idea of either physical or mental constraint, the essential character of the work or service involved being work or service for which the person had not offered himself voluntarily."

The court continued at paragraph 42:

> "Where 'forced or compulsory labour' is concerned, the menace of a penalty can be exerted in various ways. It can be direct; it can also be indirect. Constraint can be mental or physical. It can be imposed by force of circumstances. Where it is alleged that one person has been compulsorily employed by another, the level of pay he or she has received, if any, may have evidential importance. It may point to coercion; it may bear on an employee's ability to escape from his or her employer's control. On its own, however, a derisory level of wages is not tantamount to coercion."

18. Mr William Clegg QC, appearing for the second and third applicants in this court, submits that section 15 of the 2015 Act is difficult to construe. Read literally, he says, it makes no sense. If the alleged victim consents, labour cannot be forced or compulsory. So what Parliament must have meant by section 1(5) is that the fact that the complainant physically does the work does not preclude a finding that the work was done involuntarily and was therefore forced or compulsory labour. The judge should have directed the jury accordingly.

19. We do not, with respect, think that it is arguable that the statute should be rewritten in this way. It is right that, as Mr Clegg said, when this court considered this area of the law in KS the 2015 Act had not been enacted and thus there is no authority in this court on the meaning of section 1(5) of the 2015 Act. But we observe that section 1(2) of the 2015 Act states that references in section 1(1)(b) to forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention. As to that, KS remains good law even after the 2015 Act. Section 1(5) is, as we see it, a subsection inserted for the avoidance of doubt and is not in any sense inconsistent with Article 4 of the Human Rights Convention as interpreted by the Strasbourg Court in its case law such as Siliadin v France or by this court in KS.

20. In the crucial section of his directions of law, the judge said this at page 3:

> "A person is required to do 'forced or compulsory labour' if they are required to perform work involuntarily, (ie not out of free choice) and under threat of penalty.
>
> The 'threat of a penalty' can be exacted in various ways; it can be direct or indirect; constraint can be mental or physical; it can be imposed by force of circumstances. When it is alleged that one person has been compulsorily employed by another, the level of pay she has received, if any, may have evidential importance, it may point to coercion, and it may bear on an employee's ability to escape from her employer's control; on its own, however, a derisory level of wages is not tantamount to coercion. Simply employing an illegal immigrant by itself is also insufficient.
>
> The consent of a person to the acts alleged to constitute requiring a person to perform forced or compulsory labour does not preclude a determination that the person was being required to perform forced or compulsory labour. A person may consent to perform work (ie in the sense of simply agreeing to do it) without necessarily doing it voluntarily (ie out of free choice)."

21. The penultimate sentence in the passage we have quoted simply reproduces verbatim section 1(5) of the 2015 Act. The final sentence uses the phrase "out of free choice" as an indication of what "voluntarily" means, similarly an earlier sentence we have quoted defines 'involuntarily' as being not out of free choice.

22. We do not see that there is anything wrong with those informal definitions given by the judge. They seem to us correctly to summarise the difference between true consent and coerced consent.

23. Mr Kivdeh for the first applicant submits that the judge should have told the jury that "consent" in section 1(5), or in any direction based on section 1(5), means "ostensible" or "apparent consent" or at any rate that either the adjective "ostensible" or the adjective "apparent" should be used in the direction.

24. The judge could have put it to the jury in that way rather than using the phrases "out of free choice" or "not out of free choice", but the phraseology he used seems to us to have been entirely satisfactory and if it was thought by trial counsel that the addition of the word "ostensible" or the word "apparent" or both of those words was essential then the time to say so should have been when the judge, in accordance with the usual and proper practice, circulated his directions of law to the jury in draft to counsel. But in any event, with respect to Mr Kivdeh, this is not a point of substance which was missed at the time.

25. Similarly, Mr Clegg complains of a passage in the summing-up where the jury were directed that the essence of the prosecution case was that the complainants had "little choice" but to agree to do the work. Mr Clegg submits that the jury should have been told that they could only find the case proved if the defendants had "no choice" but to do the work, rather than "little choice" but to do the work. We do not think, again, that this is a point of substance. The jury were given full and careful written directions and we think it is hair-splitting to focus on a single phrase of this kind in the summing-up.

26. Viewing the written directions and the summing-up as a whole, the judge put the defence case before the jury entirely fairly. Like the single judge, we think that the prosecution case was a strong one and it is unsurprising that the defendants were convicted.

27. We do not therefore think that it is arguable that any of the defendants' convictions is unsafe and accordingly we refuse permission to appeal against conviction in all three cases.

28. Finally, we record our gratitude to counsel, particularly those counsel who are appearing in this court pro bono, for their helpful oral and written submissions.

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