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R. v Joseph (Verna Sermanfure)
R. v Craciunescu (Alexandra Dorina)
R. v VCL
R. v NTN
R. v Nguyen (Dong)
R. v AA

Significant



Positive/Neutral Judicial Consideration

Court

Court of Appeal (Criminal Division)

Judgment Date

9 February 2017

Where Reported

[2017] EWCA Crim 36

[2017] 1 W.L.R. 3153

[2017] 2 WLUK 251

[2017] 1 Cr. App. R. 33

[2017] Crim. L.R. 817

[2017] C.L.Y. 548

[Judgment](#)

Subject

Criminal law

Other related subjects

Criminal procedure

Keywords

Appeals against conviction; Children; Decisions to prosecute; Duress; Fresh evidence; Human trafficking; Retrospective legislation; Trafficked victims

Judge

[Lord Thomas LCJ](#);

[Hallett LJ](#);

[Goss J](#)

Counsel

For the first applicant: Henry Blaxland QC, Tom Wainwright.

For the second applicant: Jessica Russell-Mitra.

For the third applicant: Tom Wainwright.

For the first appellant: Henry Blaxland QC, M Brewer.

For the second appellant: Tom Wainwright.

For the third appellant: Shahida Begum.

For the Crown: John McGuinness QC, Ben Douglas-Jones.

For the interveners: Shu Shin Luh, Maria Moodie, Felicity Williams.

Solicitor

For the third appellant: Birds.

For the interveners: Deighton Pierce Glyn.

Case Digest

Summary

The court considered the approach to the defence of duress in respect of victims of human trafficking for the purposes of exploitation who had committed crimes prior to enactment of the [Modern Slavery Act 2015](#).

Abstract

In conjoined appeals and applications, the court considered the approach to prosecution of victims of human trafficking for the purposes of exploitation who had committed crimes.

Prior to the enactment of the [Modern Slavery Act 2015](#), there was no statutory provision which transposed into the law of England and Wales the UK's obligations under the international conventions towards such trafficking victims where there was a nexus between the crime and the trafficking. Where the defence of duress was not likely to be applicable, it was left to the judiciary, utilising the common law, and the CPS, exercising its independent discretion, to develop a legal regime to give effect in domestic law to the international conventions. A National Referral Mechanism was established in 2009, with competent authorities determining whether claimants had been trafficked. For those victims within the scope of the Act, the law was clearly set out in [s.45](#) and [Sch.4](#). However, the Act did not provide retrospective protection, and the developed regime continued to apply to those who did not come within the scope of the Act but claimed that there was a nexus between the offence and their status as trafficking victims. The instant appeals and applications involved individuals designated as trafficking victims by the competent authority some time after their convictions.

Held

Judgment accordingly.

(1) The law of duress was clear. Its scope and limits were set out in cases of the highest authority. Parliament had enacted [s.45](#) without providing for retrospective protection, and clear injustice was required to justify a court amending the law of duress as applicable to trafficking victims unable to take advantage of the Act. There was no evidence of such instances. Individual cases, including the instant cases, showed that the law operated consistently with the UK's international obligations. Issues as to trafficking often arose post-conviction. Changing the law of duress would not alter that type of case; a court could not grapple with the issue until it was raised. What had changed was a greater understanding of the position of victims and the need in such cases to investigate. There was no reason to develop the law of duress in the way suggested, [R. v van Dao \(Vinh\) \[2012\] EWCA Crim 1717](#), [\[2013\] Crim. L.R. 234](#), [\[2012\] 7 WLUK 1000](#) and [R. v LM \[2010\] EWCA Crim 2327](#), [\[2011\] 1 Cr. App. R. 12](#), [\[2010\] 10 WLUK 506](#) considered (see paras 28-29 of judgment).

(2) Three general issues had arisen in the instant cases:

Relevance of gravity of offence committed - there would be grave crimes where, taking into account all the circumstances, it was in the public interest to prosecute. The decision was always fact-sensitive (para.31).

Child victims - in [R. v L \[2013\] EWCA Crim 991](#), [\[2014\] 1 All E.R. 113](#), [\[2013\] 6 WLUK 626](#) there was extensive discussion of the position of children and the evidential requirements in relation to trafficking and the nexus between trafficking and the crime committed, [R. v L](#) considered. The court had to consider if the crime alleged was consequent upon, and integral to, the trafficking. The law was clear. Once established that a child was a victim of trafficking for the purposes of exploitation, the relevant consideration was whether there was a sufficient nexus between the trafficking and the offence; it was not necessary to show there was compulsion to commit the offence, as required for an adult. Updated CPS guidance in 2015 on implementing its policy to give effect to international obligations, for those within and outside the scope of the 2015 Act, set out clearly that it had to be established that the commission of the offence was a direct consequence of the trafficking, and that it was not necessary to establish compulsion (para 32-37).

Relationship between competent authority and CPS - the competent authority decision did not bind the court. Where an issue arose while a prosecution was being considered or was in progress as to whether a person was a victim of trafficking for the purposes of exploitation, the CPS and police could refer the case to the authority. Provision was made in guidance to the authority for co-operation with the police and CPS in all such cases. The co-operation had been developed so that every effort was made to reach a common view on whether the evidence pointed to the person being a trafficking victim. That was important, as the cogency of the evidence relied on by the authority had to be subject to thorough forensic examination when the CPS was considering nexus and whether it was in the public interest to prosecute. However, in respect of a person claiming post-conviction to be a trafficking victim, there was no clear guidance on, or process in respect of, co-operation with the CPS. Much clearer guidance and processes should be developed in such cases. A court would bear the authority's conclusion very much in mind, but would examine the question of the cogency of the evidence on which the authority relied and subject the evidence to thorough forensic examination. A careful analysis of the facts was required, including close examination of the individual's account and proper focus on the evidence on the nexus between the trafficking and the offence (paras 38-40).

(3) The court considered the specific appeals and applications (paras 42-160).