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Regina v Vethasalem Muruganathan

No: 200401783/C1

Court of Appeal Criminal Division

8 October 2004

Neutral Citation Number: [2004] EWCA Crim 2634**2004 WL 3054270**

Before: Mr Justice Richards Mr Justice Bean

Friday, 8th October 2004

Representation

- Mr C Sherrard appeared on behalf of the Appellant.

JUDGMENT

MR JUSTICE BEAN:

1. On 27th February in the Crown Court at Southwark before Her Honour Judge Freedman, the appellant was convicted by the jury, after a trial, of six counts of living on the earnings of prostitution. He was sentenced on each count concurrently to 3 years' imprisonment and recommended for deportation.

2. There were two co-accused. The principal defendant was the appellant's wife, Guinara Gadzijeva. She was convicted and sentenced on the same date to concurrent sentences totalling 6 years' imprisonment, and she too was recommended for deportation. A third co-accused, **Olga Chukanova**, was convicted and sentenced to concurrent terms of 42 months' imprisonment. The present appellant, Mr Murganathan, applies against sentence by leave of the Single Judge.

3. The appellant's wife (to whom we have referred) was a prostitute in this country, having sought asylum illegally from her native Lithuania. She was deported but returned in around 1999 or 2000 and began to manage and control a number of brothels in Mayfair and Soho. Girls would be recruited from Moldova who arrived at Victoria Station and were told that they were to be accommodated in a flat in Acton and work as prostitutes whether they wanted to or not. They were in a foreign country with no passports and were fearful of possible reprisals on their family at home should they flee.

4. The appellant's involvement was as a driver. He would accompany his wife when collecting the girls from Victoria Station. He would chauffeur her between the brothels and the flats where the girls lived. It is right to say that two prostitutes and various maids called as Crown witnesses confirmed that they did not have conversations with the appellant and that he did not enter the brothels.

5. The vast majority of the prostitutes' earnings went on rent to the maids and to the appellant's wife to whom they were indebted — to use the word used at the trial — to the tune of £20,000. Much of the money was stored in safe deposit boxes, one of which was found to contain about £250,000 in cash. The case against the appellant was that he was living off this operation but was not directly involved save as a driver.

6. We are indebted for the succinct and focused submissions of Mr Sherrard who has referred us to the case of [R v Farrugia 69 Cr App R 108](#) in this Court. Lawton LJ, giving the judgment of this Court, said, at page 113, that “in the absence of any evidence of coercion, whether physical or mental, or of corruption, the old maximum of 2 years' imprisonment is probably adequate. Anything exceeding 2 years should be reserved for a case where there is an element of coercion or there is some strong evidence of corruption.”

7. In her sentencing remarks the learned judge said, in sentencing the appellant's wife:

“I also accept that there was no element of corruption or bullying girls under the legal

age and introducing them to prostitution. There is no evidence of any violence being used against any of these girls. Nor was there compulsion to indulge in deviant sex. Indeed, you made it clear on one occasion to one of the officers that there were limits beyond which you would not allow your girls to go. It is said on your behalf that none of them needed medical treatment or counselling. Well, although there is no evidence about that I have to assume that that is so.

However, it is quite clear that you were operating a substantial enterprise in controlling prostitution. You were involved in the recruitment of the girls from Eastern Europe. You clearly brought the full force of your personality to bear so that they were mentally coerced and were in total fear of you, and you exploited that fear so that they were left feeling that there was no way that they could avoid your clutches, and remained to be exploited working long hours for a minimal gain."

In sentencing the appellant the learned judge said that until he got involved with his wife he was living a decent and industrious life but, once he did meet her, he got involved in the enterprise, that is the controlling of prostitutes, and enjoyed the spoils. She accepted, as we do, that the appellant was nothing like as deeply involved in the enterprise as his wife had been.

8. We regard this case as not falling within Lawton LJ's observation that, in certain cases, there is no evidence of coercion whether physical or mental. In this case, the learned judge, who had a detailed knowledge of the facts after presiding at the trial, found that there was at least mental coercion of the girls in the way she described in her remarks in sentencing the appellant's wife. Although the appellant's role was limited, we consider that he cannot be disassociated from that characteristic of the enterprise which his wife controlled. We have come to the conclusion that there was nothing wrong in the sentence of imprisonment passed by the judge and that aspect of the appeal therefore fails.

9. However, we turn to the recommendation for deportation. The appellant has been in this country for 14 years. He married the principal defendant in 2001 and has a young daughter. It does not appear, at least from the sentencing remarks, that the learned judge conducted the balancing exercise required by the case of [Nazari \[1980\] 1 WLR 1366](#) decided in this Court. We therefore conduct that exercise ourselves. We take the view that this group of offences, though serious, were not so serious that it is clear that the appellant, at the conclusion of his prison sentence, ought to be deported. We therefore quash the recommendation for deportation. To that extent this appeal succeeds.

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