IN THE SUPREME COURT OF NAURU

AT YAREN

[APPELLATE DIVISION] Case No. 102 of 2015

IN THE MATTER OF an appeal against a decision of the Refugee Status Review Tribunal TFN 15009, brought pursuant to s 43 of the *Refugees Convention Act* 1972

BETWEEN

CRI 027 Appellant

AND

THE REPUBLIC Respondent

Before:	Crulci J
Appellant:	Self-represented
Respondent:	R. O'Shannessy
Date of Hearing:	22 June 2017
Date of Judgment:	10 October 2017

CATCHWORDS

APPEAL - *Refugees – Refugee Status Review Tribunal – Point of Law – Relevant considerations – Appeal DISMISSED*

JUDGMENT

1. This matter is before the Court pursuant to section 43 of the *Refugee Convention Act* 2012 ("the Act") which provides:

43 Jurisdiction of the Supreme Court

(1)A person who, by a decision of the Tribunal, is not recognised as a refugee may appeal to the Supreme Court against that decision on a point of law.

(2)The parties to the appeal are the Appellant and the Republic.

...

2. The determinations open to this Court are defined in section 44 of the Act:

44 Decision by Supreme Court on appeal

(1) In deciding an appeal, the Supreme Court may make either of the following orders:
   (a) an order affirming the decision of the Tribunal;
   (b) an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of the Court.

3. The Refugee Status Review Tribunal ("the Tribunal") delivered its decision on 12 August 2015 affirming the decisions of the Secretary of the Department of Justice and Border Control ("the Secretary") of the 23 February 2015, that the Appellant is not recognised as a refugee under the 1951 Refugees Convention[1] relating to the Status of Refugees, as amended by the 1967 Protocol relating to the Status of Refugees ("the Convention"), and is not owed complementary protection under the Act.

4. The Appellant filed a Notice of Appeal on 18 December 2015 date, being beyond the 42-day time limit within which to lodge an appeal of a decision of the Tribunal under s 43 of the Act. On 31 March 2017, a Further Amended Notice of Appeal was filed. The parties have filed consent orders to the effect that the Appellant be granted leave under s 43(5) to pursue the grounds of appeal set out in the Further Amended Notice of Appeal.

BACKGROUND

[1] 1951 Refugee Convention and 1967 Protocol, also referred to as "the Refugees Convention" or "the Convention".

5. The Appellant is a 31 year-old single man who comes from the Gaibandha district of Rangpur in Bangladesh. He completed three years of education from 1990 to 1993. His parents and two siblings live in Bangladesh.

6. He claims a fear of harm arising from his support for the Bangladesh Nationalist Party ("BNP"). He was imputed with a political opinion in opposition to the Awami League because he actively supported his local BNP Member of Parliament. He was subject to attacks and threats and a false criminal case was brought against him.

7. The Appellant left Bangladesh in 2000 using a genuine passport issued in his own name. He lived in Malaysia from December 2000 to July 2013 when he left for Australia via Indonesia by boat. Australian authorities intercepted the boat, and the Appellant arrived in Christmas Island on 14 December 2013. On 19 December 2013, he was transferred to Nauru.

INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

8. The Appellant attended a Refugee Status Determination ("RSD") interview on 19 May 2014. The Secretary summarised the Appellant's material claims as follows:

- *In 1998, he joined the Bangladesh Nationalist Party (BNP).*
- *He supported his local BNP Member of Parliament (MP), Motaleb Hussein Chowdury, by participating in rallies and demonstrations, putting up posters, recruiting new members and attending party functions. He was close to Motaleb and would follow him around like a body guard.*
- *He had a profile due to his proximity with Motaleb. During this period, he was harassed and intimidated by the Bangladesh Awami League (AL) because his association with the BNP.*
- *Between 1998 and January 2000, AL members approached his house 30 times. The AL members would warn his mother that if the Applicant did not stop his work with the BNP, he would be seriously harmed and that he would be killed. The intimidation intensified closer to January 2000 as the election year in 2001 was approaching and both parties were canvassing for votes.*
- *In January 2000, he felt unsafe as the visits by the AL members were becoming more and more frequent. He went into hiding at his uncle's house and remained there until September 2000.*
- *On about 2 June 2000, he was in front of Jahanara Market in Govinogor city, when he was blindfolded and abducted by a group of men. He recognised them as AL members as they lived in the same locality. He was driven for approximately 20 minutes and taken to an unknown location. He was taken to a house and tortured. Cigarettes were burnt on his body, he was beaten and insulted. He became unconscious. The AL members questioned him about his support for the BNP, reprimanded him for being close to Motaleb and demanding that he join the AL.*
- *He woke up in hospital after this incident. He was found on the side of the street unconscious and taken to hospital. He was hospitalised for seven days.*
- *After this incident, the AL members believed the Applicant to be dead. When they heard he was alive, they attended his family home and warned them that if he participated in BNP activities, he would be killed.*
- *In September 2000, a criminal case was lodged against the Applicant by the AL. He was accused of being an accomplice to rape and trafficking women. He was held in custody for two months and four days. During this period the BNP paid for his expenses and secured his bail.*
- *In November 2000, he was released and, less than one month after his release, he departed Bangladesh before his court case was finalised.*

- *He was able to obtain a passport with the assistance of a smuggler.*
- *When he was in Malaysia, he was informed that he was acquitted of the rape and trafficking charges as the alleged victim of the crime attended court and stated that the Applicant did not rape her nor was he an accomplice in rape. It was proven that it was a false charge. He was afraid that if he was to return to Bangladesh that the AL will continue their harassment and lay more charges against him.*[2]

9. The Secretary did not accept the following material elements of the Appellant's claim to be credible:

    - He was harmed in 2000 as claimed;
    - He was threatened by AL supporters and members;
    - He was charged with rape and trafficking women.

10. The Secretary acknowledged that country information indicates there is violence between the student wings of the AL and BNP parties. However, the Secretary had doubts about the credibility of the Appellant's claims to have been threatened and harmed by AL supporters for the following reasons:

    - At the RSD interview, the Appellant said the beating occurred in January 2000, but in his RSD application the Appellant said it occurred in June 2000;
    - At the RSD interview, the Appellant said the threats and visits to his home occurred after the beating in June 2000. In the RSD application the Appellant said he was threatened 30 times between 1998 and 2000;
    - It was difficult to accept the AL members would have been able to abduct the Appellant from a market but unable to find him at his uncle's house, about 200 metres from the family home;
    - It was difficult to believe that AL members would seek out the Appellant given he was under the voting age in Bangladesh at the time;[3]
    - The Appellant did not attend the UNHCR office in Malaysia for three years despite living there unlawfully;[4]
    - At the RSD interview, the Appellant said Shumun, who accused the Appellant of being an accomplice to rape and trafficking of women, "used to look at me" during protests, and it was difficult to believe the Appellant would be charged with serious crimes for looking at an AL youth member;[5]
    - The Appellant's responses to questioning regarding his acquittal of the case were confused and inconsistent;
    - In light of country information on the gravity of the crimes the Appellant was charged with in Bangladesh, it was not credible that the Appellant would have been released on bail.[6]

11. The Secretary further noted country information indicating that "political violence is an accepted form of expression in Bangladesh", and activists and influential leaders of opposition parties are regularly targeted, rather than rank and file

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[2] Book of Documents ("BD") 48 – 49.
[3] BD 50.
[4] BD 51.
[5] BD 51.
[6] BD 51.

members.[7] While the Secretary accepted the Appellant was a member of the BNP/JCD, he was not an activist or influential member, and did not have a political profile that would cause him to be targeted by the Bangladeshi Government, AL or its supporters.[8]

12. The Secretary therefore did not accept that there was a reasonable possibility the Appellant would be harmed in reasonably foreseeable future if he were to return to his home region.[9] Returning the Appellant to his home region would also not be in breach of Nauru's international obligations such that complementary protection was owed to the Appellant.[10]

REFUGEE STATUS REVIEW TRIBUNAL

13. Before the Tribunal, the Appellant maintained his claims with respect to his support for the BNP, the alleged threats, abduction, and torture, and the fabricated criminal case brought against him.

14. As with the Secretary, the Tribunal expressed concerns in relation to the inconsistencies in the dates provided for the alleged abduction;[11] inconsistencies in the date provided for the threats made and approaches made by the AL to the Appellant at his home;[12] how the Appellant could have been released on bail if charged with rape and people trafficking;[13]

15. The Tribunal also expressed concerns in relation to the medical certificate for the treatment provided at the hospital for injuries sustained as a result of the alleged torture, including that the date appeared incorrect, the description of the injury as "The upper part of the body by cutting, Fire heat fall and gives Smoking fire", that it was "remarkably clean and clear" for being 15 years old, and that it refers to him under a different name.[14] The Tribunal further said that it was implausible that Appellant would have returned home after being discharged from hospital if he still feared the AL supporters,[15] it was unlikely the alleged victim would have accused the Appellant of such a crime given stigma indicated by country information;[16] and it was implausible that the AL would invest considerable resources in recruiting a boy aged 13 – 15 years with 3 years of education.[17]

16. In his statement of 9 May 2015, the Appellant claimed for the first time that a friend was having an affair with the woman who came forward with the fabricated case. Her father was an AL supporter and the woman supported the BNP. The woman's father could not accept that his daughter was a BNP supporter, so to punish her, he decided to bring a case against his friend and the Appellant to ruin

[7] BD 54.
[8] BD 55.
[9] BD 55.
[10] BD 56.
[11] BD 139 at [20].
[12] BD 139 at [21].
[13] BD 140 at [27].
[14] BD 139 at [22].
[15] BD 140 at [23].
[16] BD 141 at [28].
[17] BD 142 at [33].

her reputation. However, at the Tribunal hearing, the Appellant said the fabricated charges were made because the AL thought he would be imprisoned for a long time or executed, and the AL wanted him to leave the BNP and Motelab. The Tribunal expressed concern that he had given inconsistent accounts for the accusations.[18]

17. The Tribunal accepted that the Appellant supported the BNP as a teenager; however, it did not accept that the Appellant was exhorted to join the AL, that the threats forced the Appellant to go into "hiding",[19] that the Appellant was abducted by the AL in 2000,[20] that fabricated charges were laid against him;[21] or that, if returned to Bangladesh, the fabricated charges could be resurrected.[22] The Tribunal therefore said:

> *"The Tribunal is not satisfied that any harm – let alone harm amounting to persecution – has befallen the applicant in the past for reason of his political opinion and that the chance that such harm will befall him in the reasonably foreseeable future is remote. Consequently, the Tribunal is not satisfied that the applicant will be persecuted for this reason if he returns to Bangladesh in the reasonably foreseeable future."*[23]

18. The Tribunal affirmed the finding of the Secretary that the Appellant is not a refugee. In addition, the Tribunal found that the Appellant does not have a reasonable possibility of being subjected to torture, cruel, inhuman or degrading treatment or punishment if returned to Bangladesh, and the Appellant is not owed complementary protection.[24]

THIS APPEAL

19. The Appellant's Amended Notice of Appeal filed on 21 February 2017 reads as follows:

> 1. *The Tribunal said in their decision that they put the following adverse information to me for comment during the Tribunal hearing but they did not:*
>   *i) According to country information the death penalty applies for cases of rape and that someone accused of rape would not be released from bail.*
>   *ii) Hiding at my uncle's house would have been an obvious place to hide.*
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> 2. *The Tribunal misunderstood my evidence and made incorrect factual findings based on that misunderstanding:*
>   *i) The Tribunal said that I went into hiding at my uncle's house in January 2000 and I remained there until September 2000, however I never made this statement. I said that I went into hiding at my uncle's house after I was discharged from hospital and I remained there until September 2000.*
>   *ii) The Tribunal stated that I was abducted from the marketplace while I was in hiding and therefore did not accept that I would be shopping in the market if I*

[18] BD 140 at [26].
[19] BD 142 at [34].
[20] BD 142 at [35].
[21] BD 143 at [37].
[22] BD 143 at [38].
[23] BD 143 at [38].
[24] BD 144 at [42].

feared for my safety. However, this abduction in the marketplace happened before I went into hiding in June 2000 as I stated at the Tribunal hearing. The Tribunal did not give me an opportunity to respond to this alleged inconsistency and unfairly relied on this evidence to conclude that I was not in hiding.

iii) The Tribunal said that I was taken by the police at my uncle's house but I never said this. I stated I was arrested when I went to the Court. The Tribunal did not accept I was in hiding based on this incorrect assumption.

20. The Appellant was self-represented at the hearing before this Court and did not submit written submissions. At the hearing, the Appellant said he did not attend the first court date in Bangladesh relating to the charges against him of rape and people trafficking. However, he did attend the second court date. Due to his non-appearance at the first date, and according to the prevailing rules in Bangladesh at the time, the police arrested him. The Appellant added that he may have made mistakes in answering questions previously because of his lack of education, or the interpreter might not have interpreted properly.

21. The Respondent submits that the Appellant has failed to identify any deficiency in the Tribunal's treatment of the evidence he gave. In any event, the assessment of the Appellant's evidence, and the weight to be given to it, was entirely a matter for the Tribunal to decide pursuant to the exercise of the statutory power reposed in it under the Act. In reliance on *Attorney-General (NSW) v Quinn*,[25] the Respondent asserts that this Court must not interfere with the merits of the Tribunal's exercise of that power in an appeal on a point of law.

CONSIDERATIONS

22. In *Attorney-General (NSW) v Quinn*, Brennan J said:

> *"In the cases in this Court in which a legitimate expectation has been held to protection, protection has taken the form of procedural protection, by insisting that the decision-maker apply the rules of natural justice. In none of the cases was the individual held to be entitled to substantive protection in the form of an order requiring the decision-maker to exercise his or her discretion in a particular way."*[26]
> (emphasis added)

23. In *Minister for Immigration and Ethnic Affairs v Wu Shan Liang*, Kirby J outlined the principles that should guide a judge conducting judicial review, and appellate courts in supervising such a decision, and noted:

> *"Specifically, the reviewing judge must be careful to avoid turning an examination of the reasons of the decision-maker into a reconsideration of the merits of the decision where the judge is limited to the usual grounds of judicial review, including for error of law."*[27]

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[25] *Attorney-General (NSW) v Quin* (1990) 170 CLR 1.
[26] *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at [34].
[27] *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 291.

24. In relation to the Tribunal's obligation to put adverse information to an Applicant, this Court has approved of the Australian High Court authority of *Kioa v West*. In that case,[28] Brennan J held:

> *"A person whose interests are likely to be affected by an exercise of power must be given an opportunity to deal with relevant matters adverse to his interests which the repository of the power proposes to take into account in deciding upon its exercise...*[29] *The person whose interests are likely to be affected does not have to be given an opportunity to comment on every adverse piece of information, irrespective of its credibility, relevance or significance. Administrative decision-making is not to be clogged by enquiries into allegations to which the repository of the power would not give credence, or which are not relevant to his decision or which are of little significance to the decision which is to be made.*
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> ....
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> *Nevertheless in the ordinary case where no problem of confidentiality arises an opportunity should be given to deal with adverse information that is credible, relevant and significant to the decision to be made. ... There was nothing in the circumstances of the case - neither in the administrative framework created by the Act nor in any need for secrecy or speed in making the decision - which would have made it unreasonable to have given Mr and Mrs Kioa that opportunity. The failure to give Mr Kioa that opportunity amounts to a non-observance of the principles of natural justice."*[30]
> (emphasis added)

25. In *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah*, McHugh J elaborated upon the circumstances in which the decision-maker will be required to put material to the Applicant for comment:

> *"Examples of material that would not require comment by the applicant would include non-adverse country information, favourable or corroborative information in the public domain and information based on the circumstances already described in the application. But there are cases where the exercise of this power does require that the applicant be given an opportunity to comment on the material. An example is where the delegate proposes to use new material of which the applicant may be unaware and which is or could be decisive against the applicant's claim for refugee status. The need for disclosure by the delegate is even stronger where the material concerns considerations that have changed since the date of application and is being used after considerable delay. It is stronger still when the material is equivocal or contains information that the applicant could not reasonably have expected to be used in the way the delegate uses it."*[31]

26. In relation to ground 1, that the Tribunal failed to put to the Appellant that a person accused of rape would not be released from bail, and that the uncle's house would have been an "obvious place" to hide, the Court notes the following exchange at the Tribunal hearing:

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[28] *QLN 116 v The Republic* [2017] NRSC 63 at [38]; *DWN 066 v The Republic* [2017] NRSC 23; *ROD 122 v The Republic* [2017] NRSC 39.

[29] Citing *Kanda v. Government of Malaya* (1962) AC 322 at p 337; *Ridge v. Baldwin* (citation) per Lord Morris at pp 113-114; *De Verteuil v. Knaggs* (citation) at pp 560, 561.

[30] *Kioa v West* (1985) 159 CLR 550 at 38.

[31] *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 206 CLR 57 at [141].

TRIBUNAL MEMBER: You said that you were hiding after you were discharged from hospital, and that you went into hiding at your uncle's house, and remained there until September 2000. You were hardly in hiding if you were living with a close relative 200 metres from your family house. What do you say to that?

THE INTERPRETER: Sorry, what do you mean?

TRIBUNAL MEMBER: You said you were in hiding after you were discharged from hospital, that you were hiding at your uncle's house, and remained there until September 2000.

THE INTERPRETER: Yes.

TRIBUNAL MEMBER: Given you were living so close to your family home, and with a relative, you were hardly in hiding.

THE INTERPRETER: I was there for my safety, because they would come and inquire of me in my house.

TRIBUNAL MEMBER: But they could have found you easily at your uncle's, couldn't they?

THE INTERPRETER: I was completely hiding. They couldn't find any trace that I was there.[32]

27. It is therefore apparent that the Tribunal did, in fact, put it to the Appellant that he could have been found easily at his uncle's place. The Appellant responded to the effect that the police would not have been able to find any evidence that he was hiding at the uncle's place. This information was not "new material of which the applicant may be unaware".[33]

28. Regarding the country information that the Appellant would not have been released on bail if he had been charged with rape and people trafficking, the Tribunal said in the decision record that:

> "*The Tribunal queried how he would have been released on bail if he had been charged with crimes such as rape and people trafficking. It was put to the applicant that according to the Bangladeshi criminal code the death penalty applies for cases such as rape. In March 1998 the Bangladesh Cabinet approved the death penalty for crimes against women and children children trafficking, rape and murder*".[34]

29. In relation to the reason for the false charges being laid, the Tribunal questioned the Appellant as follows:

TRIBUNAL MEMBER: Why would the authorities go to the trouble of laying false charges against you given your young age and your very low political profile?

THE INTERPRETER: They thought that if I am sent to jail it will be a 14 years sentence. And many people are given death penalty.

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[32] BD 111 ln 30 – BD 112 ln 5.
[33] *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 206 CLR 57 at [141].
[34] BD 140 at [27].

TRIBUNAL MEMBER: But why would they be so concerned about you to want you locked up for 14 years or executed? Why would they be so concerned about you and your political activities that they would want you locked up for 14 years or executed?

THE INTERPRETER: Only occasionally the high profile leaders are – we charged against them. Only the people like us who are young are the victim of politics.[35]

30. The Tribunal also questioned the Appellant on why he presented to the court when he was already in hiding, and the Appellant responded that his lawyer advised that he was eligible for bail. The Tribunal did not put to the Appellant that he would not have been released on bail when charged with crimes as grave as rape and people trafficking.

31. The Court considers that the authorities cited at [24]-[25] above in relation to information being put to an Appellant, or an Appellant being on notice as to 'credible, relevant and significant' information that the Tribunal regarded as decisive when finding that the Appellant was not to be recognised as a refugee (nor entitled to complementary protection were put to him in the hearing). The Court is of the view that the Appellant was given sufficient opportunity to respond to relevant and significant information and accepts the Respondent's submission that there was no deficiency in the treatment of the Appellant by the Tribunal such as to amount to an error of law. The assessment of the Appellant's evidence, and the weight to be given to it, is entirely a matter for the Tribunal. This ground fails.

32. In relation to ground 2, regarding the claim that the Tribunal misunderstood that the Appellant went "in hiding" in January 2000, when he really went into hiding after he was discharged from hospital, the Tribunal said that, at the Tribunal hearing, the Appellant indicated that:

> *"In January 2000 the visits to his home were becoming more frequent and he felt unsafe. He went into hiding at his uncle's house and remained there until September 2000."*[36]

33. This is a summary of the evidence given by the Appellant to the Tribunal; it does not reflect any finding by the Tribunal as to when, if at all, the Appellant went into hiding at his uncle's house. Indeed, as noted at [17] above, the Tribunal did not accept that the Appellant was exhorted to join the AL and forced to hide.[37]

34. The Court notes the exchange that occurred at the Tribunal hearing set out at [20] above.[38] It is unclear from this exchange whether the Tribunal was alert to the Appellant's claim that he went into hiding after he was discharged from hospital, following treatment for injuries sustained from being abducted and tortured. There is nothing prior to this exchange at the Tribunal hearing indicating the Appellant advanced this claim at the hearing. Furthermore, in the statement provided by the Appellant to the Tribunal, the Appellant affirms that he was in

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[35] BD 113 ln 1 – 13.
[36] BD 138 at [16].
[37] BD 142 at [34].
[38] BD 111 at ln 30 – 32.

hiding at his uncle's place at the time of the abduction from the marketplace. The relevant paragraphs of the statement are also pertinent to the following aspect of this ground of appeal and it is convenient to set those out in full:

> **"Abduction by AL members in the market place**
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> 12. The Secretary did not accept that I could be located and abducted in a market place, when I was residing at my uncle's house only 200 metres from where I was abducted.
>
> 13. I agree with the Secretary in the sense that I thought that I would be safe in the market place, as it was very crowded in the daytime. I was in hiding and I stayed inside my uncle's house as a fugitive, nobody knew I was there. I ventured out because I thought I would be anonymous in a large crowd. I did not expect to be captured.
> 14. The AL was a network of people who operate in the public sphere. I believe the conduct very effective surveillance and that is how they found me."[39]

35. This suggests that, in the above exchange, the Tribunal member may have simply been putting to the Appellant that he had said he remained in hiding after he was discharged from hospital, as opposed to saying he "went into hiding" after discharge.

36. Therefore, given the claim that the Appellant did not go into hiding until after his abduction does not appear to have been put before the Tribunal, and indeed does not appear to have been made at the RSD interview, or in the statement put before the Secretary,[40] there is no basis for the claim that the Tribunal misunderstood his evidence in this regard.

37. In any case, in making the factual finding that the Appellant was not exhorted by the AL, or forced to go into hiding, the Tribunal did not merely rely on the Appellant's evidence as to when the period of hiding began, and properly considered a number of cogent factors set out at [14] – [16] above. Furthermore, as illustrated by the authorities considered above, it is not the role of this Court to review the Tribunal's factual findings, or require that it exercise its discretion in a particular way.

38. Regarding the claim that the Tribunal misunderstood that the Appellant was "in hiding" at the time of the purported abduction at the marketplace, in the decision record, the Tribunal said:

> *"It was put to the applicant that if he was shopping in the market that would also suggest he was not in hiding. He responded that he thought he would be anonymous in a large crowd".*[41]

39. However, the transcript of the hearing before the Tribunal suggests that it was not explicitly put to the Appellant that, if he was shopping in the market, he was not realistically "in hiding". Rather, the exchange between the Tribunal and Appellant focused on why other people in the market did not notice the abduction:

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[39] BD 86 at [12]-[14].
[40] BD 33 at [14].
[41] BD 138 at [17].

TRIBUNAL MEMBER: How could they have just drive (sic) a car into the market and blindfold you and take you away? Didn't other people witness this?

THE INTERPRETER: So there are lots of people and nobody is paying attention to the other people, what's happening, sometimes.
TRIBUNAL MEMBER: I put it to you that if there's a young boy in the marketplace and some men in a car drive up, blindfold this boy and forcibly abduct him, that people would take notice.

THE INTERPRETER: As they been – as they have targeted me for long time, they open the – the door of the van and as I was passing by, they grabbed me and put in.[42]

40. The Tribunal's questions to the Appellant about the abduction in the market would have put the Appellant on notice this was an area in which his credibility was being determined. Whilst it was not expressly put to the Appellant that if he was in hiding, he would not have been shopping in a market, the statement by the Appellant shows that he was aware that this was a live issue and he had the opportunity to address it and answer in detail if he wished.

41. As discussed in relation to the previous aspect of the Appellant's claim, the Appellant appears to have affirmed in his statement to the Tribunal that he was, in fact, in hiding at the time of the abduction at the marketplace. This being the case, there is no foundation for the claim that the Tribunal misunderstood the Appellant's evidence as to this claim. The Court further refers to the matters outlined at [36] above.

42. Regarding the claim that the Tribunal misunderstood that the Appellant was taken from his uncle's place and arrested on account of the fabricated charges, the Tribunal record does not reflect any misunderstanding as to this issue. As to the response to the fabricated charges, the Tribunal simply says:

> *"In September 2000 a criminal case was lodged against the applicant. He was accused of rape and trafficking women. He was held in custody for two months and four days."*[43]

43. The Tribunal does not say that police arrested the Appellant at his uncle's place. Rather, the Tribunal transcript suggests the Tribunal correctly understood the Appellant's evidence to be that he was arrested after he presented to the court, as indicated by the following exchanges:

TRIBUNAL MEMBER: But the police managed to find you at your uncles, so why couldn't the Awami League?

THE INTERPRETER: Police didn't find me. I, myself, went to the police.

TRIBUNAL MEMBER: How did you know to go to the police?

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[42] BD 103 ln 5 – 16.
[43] BD 140 at [24].

THE INTERPRETER: Sorry?

TRIBUNAL MEMBER: Why did you go to the police? How did they know they were looking for you?

THE INTERPRETER: Because I would get information on a regular basis that police was looking for me, and I didn't go to the police. I went to the court instead, because if I went to the police they would beat me more.[44]

...

TRIBUNAL MEMBER: I just want to ask you something about your decision to go to the court because you said you became aware there were these charges against you. And it seems apparent that you believed they were false – you know, they were false charges. And you say instead of going to the police you went to the court because the Awami League controls the police. But the court is also part of the government as is the prison system where you were held in for a few months. I would have thought they would also be controlled by the Awami League. So I don't quite understand why you draw the distinction that it will be unsafe to go to the police but safe to go to the courts.

THE INTERPRETER: So the court is still much fairer than the police. Not in every – every court is – not every court is same. Some are much fairer than others. And the case they usually lodge against somebody to punish is rape case and the other cases that will put the – the victims long periods in jail.

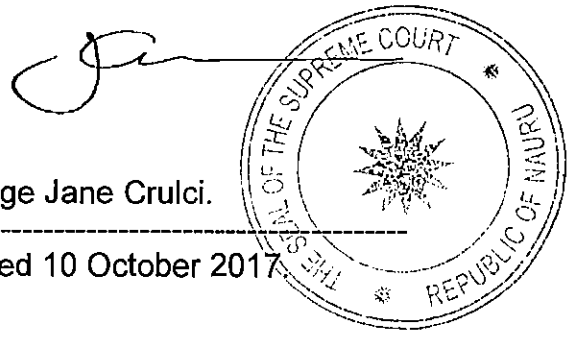
TRIBUNAL MEMBER: Well, yes. And that's potentially a very big risk for you to go to the court in that situation. You were already in hiding. Why did you not run away, then?[45]

44. The claim that the Tribunal misunderstood the Appellant's evidence in this regard is not supported by the documents before the Court. Ground 2 is dismissed.

ORDER

45. (1) The Appeal is dismissed.

(2) The decision of the Tribunal TFN 15009, dated 12 August 2015 is affirmed pursuant to the provisions of s.44(1)(a) of the Act.



Judge Jane Crulci.

Dated 10 October 2017.

[44] BD 112 ln 17 – 31.
[45] BD 114 ln 19 – 36.