

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

**CR NO's 431/2021
503-513/2021
596-600/2021**

R

v

MOE PIRANGI

Date of pre-trial Hearing: 2 February 2022

Counsel: Messrs J Crawford and J Epati for the Crown
Mr N George, for defendant

Minute: 3 February 2022

Judgment: 17 February 2022

JUDGMENT OF HUGH WILLIAMS, CJ

[0243.dss]

Charges

[1] The accused, Mr Moe Pirangi, is currently charged with the following offences:

- (a) CRN 431/21: that on 14 August 2021 he raped RT¹. During submissions at the hearing of the defence's pre-trial application, this charge was described as a "holding charge" and leave was sought to withdraw the same, though submissions were made on it. The Crown is to clarify its position in relation to this information.

¹ Born on 29 November 2010 and thus nearing 11 at the date of the evidential interview and 11 at trial.

- (b) CR 503/21, 504/21, 505/21, 506/21, 509/21 and 512/21: these are informations alleging that the accused had unlawful sexual intercourse with RT, a girl under the age of 12:
- i. Between 1 January 2019 – 31 December 2019 (CR 503/21, 504/21, 506/21 and 509/21) or between 1 January 2019 – 13 August 2021 (CR 505/21) or on 14 August 2021 (CR 512/21).
 - ii. CR 505/21 was intended to be a representative charge. The Crown seeks leave to amend the information in that regard. Leave is granted.
- (c) CR 507/21, 508/21, 510/21 and 511/21 are all charges of indecent assault by the accused on RT, with varying particulars provided. CR 507/21 and CR 508/21 are alleged to have occurred between 1 January 2019 – 31 December 2019, CR 510/21 is alleged to have occurred between 1 January 2019 – 13 August 2019 and CR 511/21 is alleged to have occurred between 1 January [year omitted] – 31 December 2019. In the Crown's most recent submissions, apparently referencing CR 510/21 and 511/21, it sought leave to withdraw CR 510/21 on the basis that there was insufficient evidence to prove the accused's alleged actions on more than one occasion, the particulars in both informations being nearly identical. Leave is granted.
- (d) CR 513/21: a charge that the accused indecently assaulted AT, a girl under 12, between 1 January [year omitted] – 31 December 2020 in a particularised way.
- (e) CR 596/21: a charge that the accused indecently assaulted LLSH, a girl under 12, between 1 January [year omitted] – 2 August 2020 in a particularised way.
- (f) CR 597/21: a charge that the accused indecently assaulted AGEK, a girl under 12, in a particularised way between [dates omitted] March 2018 – March 2020.
- (g) CRN 598/21, 599/21 and 600/21: are charges that the accused entered a named building three times with intent to commit a crime between 1 January [year omitted] – 2 August 2020 (CR 598/21 & 599/21) or between 1 August [year omitted] – 2 August 2020 (CR 600/21).

omitted] – 2 August 2021 (CR 600/21). In submissions the Crown said these counts relate to the indecent assault offending. No challenge has been made to these informations and nothing further that the informations is currently available to the Chief Justice, but whether these charges can properly lie may be a matter for further consideration once the evidential statements are available.

Pre-trial application

[2] By memorandum dated 16 December 2021, partly repeated in his submissions dated 21 January 2022, Mr George, counsel for Mr Pirangi, applied for dismissal of all charges relating to RT against the accused or “a substantial reduction of all charges made due to unfair repeats of the same charges over and over again”. No challenge is brought in relation to the charges relating to any other complainant or to the general charges.

Submissions

[3] The application was advanced on a number of grounds including what was claimed to be unfair conduct of the evidential interview on 20 August 2021 with RT by the interviewer, repeat charges and long gaps between the same, absence of primary evidence such as injuries, coaxing of the complainant by the evidential interviewer and the complainant’s grandmother who was present for much of the time and, as far as the indecent assault charges were concerned, their division to kissing, touching and licking “has the effect of a multiplier result, increasing the number of charges when it could have been reduced to one representative charge, mentioning all the various assaults on one information”.

[4] Elaborating on those general submissions, Mr George pointed to the wide time range within which the sexual intercourse offending is alleged to have occurred which, coupled with what he characterised as the spare pleading of particulars – “the first time”, “the time in the bushes”, “the time at Apii Arorangi”, “in house near the cows” and “last occasion” – with the representative charge, CR 505/21, containing no particulars, he submitted amounted to a failure on the Crown’s part to comply with s 16 of the Criminal Procedure Act 1980-81 which reads:

16. Information to contain sufficient particulars – (1) Every information shall contain such particulars as will fairly inform the defendant of the substance of the offence with which he is charged.

(2) The particulars of the nature of the alleged offence shall, so far as is possible, use the words of the enactment creating the offence, and may refer to any portion of that enactment, and, in estimating the sufficiency of any such information, the Court shall have regard to such words or reference.

(3) The particulars shall include the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed.

(4) Except as hereinbefore provided, no information shall be held to be defective for want of form or substance.

[5] Though seemingly more specifically directed to the rape count (CR 431/21), Mr George submitted that there was no evidence of any injury to RT nor was there any evidence of semen or DNA evidence obtained from the different crime scenes.

[6] Of the evidential interview, Mr George submitted that the complaint did not come naturally from RT but was extracted by her grandmother when she was present in the interview room.

[7] Mr George submitted that the interviewing officer had coaxed and aggressively coerced the complainant into giving her statement. He submitted that occurred by the interviewer “banging” the table in the interview room.

[8] In relation to the rape count (CR 431/21) and the unlawful sexual intercourse (CR 512/21), both alleged to have occurred on 14 August 2021, Mr George submitted that the accused had what he termed an alibi defence, namely that the accused, a taxi driver, was, on that day when he had RT in his taxi, disrupted by a call to a local hotel and was thereby obliged to return the complainant to her home.

[9] For the Crown, leading counsel, Ms Crawford, submitted that the various sexual intercourse charges were not repeats, but related to separate incidents described by the complainant during her evidential interview, with the Crown having particularised them to the extent derivable from the interview.

[10] Similarly, Ms Crawford submitted that the four indecent assault charges were drawn from the evidential interview and particularised to the maximum extent possible and, as to Mr George's submission that they might have been all rolled into one representative count, she pointed to s 15 of the Criminal Procedure Act 1980-81 requiring each information to be for one offence and relied on *Mason v. R*² to the effect that "if particular acts of alleged offending can be sensibly be charged separately without undesirably lengthening the indictment (over charging), then that should be done" because "distinctly identifiable acts of alleged offending should be the subject of separate charges where the accused may be prejudiced either at trial or on sentencing if they are combined in a single count". This particularly applied when what was alleged was "repetitive acts which can be distinguished from each other in a meaningful way, even if they relate to more than one act of a certain class or character".

[11] As to the broad time range in the various informations, Ms Crawford noted that the complainant was 8 years old when most of the offending was alleged to have occurred, an age when it is not uncommon for children to find it difficult to provide specific dates and locations. She advised that the Crown would be calling a New Zealand expert to give evidence relating to the reporting of sexual offences by children.

[12] Concerning the submissions about the lack of primary evidence, Ms Crawford noted that corroboration is not required, the lack of injury to girls subject to sexual offending was a well-established "rape myth" and advised the Crown would be calling a DSAC doctor to give evidence about such matters.

[13] She submitted that, once the evidential interview itself was viewed, Mr George's submissions about coaxing by the complainant's grandmother would be seen as untenable. She was a support person. Ms Crawford noted that, in the interview, which lasted from 3.04 pm to 5.08 pm, the complainant's grandmother left the interview at 4.19 pm and was absent for the rest of the time. Many of the grandmother's interventions, she submitted, were of matters which needed clarification.

² *Mason v. R* [2011] 1 NZLR 296, at [9]-[10].

[14] As to assertions by Mr George that some of the offending was impossible as the parties were said to be standing up, Ms Crawford submitted that issues of that type were matters for cross-examination and for jury assessment and did not warrant dismissal of the charges.

[15] Similarly, the suggested alibi defence did not preclude the accused from committing the offence but was, again, a matter for the jury.

Evidential Interview

[16] The interview, as noted, occurred on the afternoon of 20 August 2021. It was a long interview lasting over two hours (3.04 pm – 5.08 pm) with the transcript³ running to 36 pages. The interviewer was Detective Constable Tonitara. One of her routine tasks is interviewing young people and children. As noted, the complainant's grandmother was present until she voluntarily left the room at 4.19 pm⁴ and was absent for the rest of the time. It is a reasonable observation to say that the complainant appeared to be a little more specific about the matters being discussed after her grandmother left the room.

[17] That said, the complainant gave a rather rambling account of her relationship with the accused and the actions she claimed he was involved with as far as she was concerned, with her account including little in the way of detail as to the times, places and other circumstances of the alleged offending.

[18] The evidential interviewer, after the usual preliminaries, asked RT to “take your time and tell me from the beginning everything”⁵. That led to the complainant giving a generalised, though lengthy, description of offending against her by the accused which, at that point, was largely unparticularised⁶ despite the interviewer endeavouring to have the complainant give more detail as to time and frequency⁷.

[19] It was during this period that the interviewer is recorded in the transcript as “Bangs table, moves microphone”⁸, the incident in which Mr George relied. However, viewing the

³ Unfortunately with the lines not numbered.

⁴ P23 of transcript.

⁵ P4, L25.

⁶ P5, L20-28.

⁷ P5, L29-39; P6, L22.

⁸ P6, L15.

interview, it is clear that the interviewer merely accidentally knocked her file which was on the table and disturbed the microphone placement. It produced no reaction on the part of the complainant. There is nothing in this aspect of the interview which might assist the accused, certainly no indication of coercion.

[20] The interviewer then tried to get the complainant to differentiate between “each time he has taken you, and has taken your pants off and has done things to you” because “I need you to tell me from the first time, second time, the third time”⁹ but had limited success in the complainant’s subsequent narrative, though there are passages which contain additional detail¹⁰.

[21] There are points where the grandmother intervened briefly, but not in a way which would appear to have led to any untrue allegation. Generally speaking, the interview proceeded in an unexceptionable way until the grandmother’s intervention¹¹ which led to her absenting herself from the room for the balance of the interview¹². The interview then seemed to assume a little more definition though, as follows later, with certain passages which require to be excised.

[22] The Crown was required by Minute¹³ to identify the passages in the transcript which, in their submission, disclosed a prima facie case in relation to each of the informations relating to RT and, helpfully, did so.

[23] Before considering their submissions, it is pertinent to match the wording of the requirements to s 16, especially s 16(3).

[24] There is no challenge that the actions about which the complainant spoke were those of the accused and accordingly it is the sufficiency of the detail of the times, places and circumstances listed in the informations which is the nub of this application.

⁹ P6, L24.

¹⁰ Eg. P9, L6-11.

¹¹ P21, L40.

¹² P23, L19 ff.

¹³ Issued 3 February 2022.

[25] Viewed in that light, the passages on which the Crown relies contain as much particularisation as is possible, especially when, to satisfy s 16, the Crown only needs to allege the evidence it has. The s 16 particularisation obligations are only, as s 16(2) says, “as far as is possible”. The Crown has no power or duty to elaborate on the evidence in its possession.

[26] CR 503/21 was said to be based on page 7, lines 10-14, page 8-11, and page 12, lines 1-14 of the transcript with the particulars being the general description, “the first time”. Viewed against the video and those passages in the transcript, there is sufficient detail to comply with s 16. Nothing further can be drawn from what the complainant said.

[27] CR 504/21 is particularised as “the time in the bushes” and is said to be based on pages 13-14 of the transcript and page 15, lines 1-19.

[28] Again, perusal of the transcript and viewing of the interview shows that the particularisation given can go no further than currently appears. It satisfies s 16.

[29] CR 506/21 is particularised as “the time at Apii Arorangi” and to be based on page 15, lines 38-47 and pages 16 and 17 of the transcript.

[30] The passage on page 15, lines 36-41 of the transcript requires to be deleted as being a leading question intervention by the grandmother but, even so, the balance of the passages relied on again justify the information in its present form.

[31] CR 509/21 is particularised in that the sexual intercourse is alleged to have taken place “in house near the cows” and to be justified by page 22, line 18-47 of the transcript, page 23, lines 1-10, which follow on, page 25, lines 23-47; and page 26, lines 1-30, again which follow on.

[32] There is sufficient in the transcript and the interview to justify the information in its present form. Nothing further could be provided from those sources.

[33] CR 512/21 contains the general particularisation, “the last occasion” and to be based on the transcript at page 5, lines 18-30, page 29, lines 36-47 and the whole of page 30. As with CR 503/21 that wording, in association with the video and the transcript, is as detailed as those sources allow and contains enough to comply with s 16.

[34] Those passages are perhaps the most explicit in the interview and the information should have the words “at the accused’s [or whomever’s it is alleged to be] home” added to the particulars but, apart from that, the identical conclusions apply.

[35] There is, as yet, no evidence as to the facts underlying CR 512/21 as advanced by Mr George and, even if his intimation is regarded as fulfilling the requirements of an alibi notice, it remains the case that there is room for both versions of the events relating to that information to have occurred. The version of those events as advanced by Mr George is insufficient to amend the finding that the current wording of the information complies with s 16.

[36] Turning to the indecent assault counts relating to RT, CR 507/21 is a charge of indecent assault by, as amplified during the hearing “kissing her (the occasion where [sic: “when”?] they went on the bike)” and to be justified by page 19, lines 7-13 and 30-35 of the transcript.

[37] There is sufficient material in the transcript and the interview to justify the information in the form which in which it now appears, especially as, again, no further particularisation is available.

[38] CR 508/21 is a charge of indecent assault by “touching her genitalia while driving” and to be justified by page 19, lines 25-29; page 20, lines 17-25, and page 21, lines 25-47 and page 22, lines 1-13 of the transcript which follows on.

[39] The same conclusion is reached as with the previous informations.

[40] CR 511/21 is an allegation of indecent assault on RT by “licking her vagina on the outside couch” said to be supported by the transcript at page 5, lines 43-47; page 6, lines 1-2; page 24, lines 20-34; page 34, lines 28-47 and the whole of page 35.

[41] The same conclusions are reached as previously.

[42] CR 505/21 is now a representative charge of unlawful sexual intercourse based on what the Crown describes as “the additional incidents the complainant refers to, but she was unable to give further detail as to the time and/or place”. The Crown relies on page 6, lines 10-20 and page 15, lines 25-34 of the transcript.

[43] Those passages certainly say that he's "done it again" but the complainant says "I don't know how many times". Apart from generalised allegations in that vein, there is no allegation as to the specific actions she alleges were committed by the accused or where, when or any other circumstances to distinguish them from the other occasions when some kind of sexual offending is said to have occurred and on which the other informations are based.

[44] In that situation, it would be unfair to the accused to allow generalised assertions of that nature to constitute a charge of unlawful sexual intercourse against him in addition to those he already faces. He cannot know what additional separate matters are said to have occurred, he does not or cannot know the nature of the offence he has to meet, or when or where he is alleged to have committed it or in what circumstances. Against the requirements of s 16, and the fact that, here, there are a number of other more specific counts, there is no room for a general "catchall" information.

[45] Information CR 505/21 is accordingly quashed.

[46] In addition to the findings already reached, there are some passages in the interview and, consequently, in the transcript which require deletion.

[47] On page 4, lines 27-39, the grandmother is recorded as giving some background information which does not form part of the complainant's narrative and should be deleted.

[48] For completeness, it is noted that Ms Crawford said the grandmother would be called to give recent complaint evidence. The excised passage may reflect on that evidence. If it does, she can give it in her evidence-in-chief, but it ought not to be in the evidential interview of the complainant.

[49] Page 15, lines 36-41, is a brief passage where the grandmother is recorded as clearly trying to be helpful, but asks questions on matters that do not otherwise feature in the interview. Those passages should be deleted.

[50] On page 21 of the transcript the grandmother is recorded as intervening on a number of occasions, but, from a viewing of the interview itself, they appear to be innocuous except for line 40 which should, if technically possible, be deleted.

[51] For completeness, the passage on page 23, lines 20-41 covering the grandmother's exit from the interview should remain as explaining to the jury what would otherwise be the unexplained and abrupt disappearance of the grandmother from the interview.

[52] The passage on page 31, line 47 – page 32, line 8 should be deleted as raising matters which have nothing to do with this case and may be unhelpful to the accused.

Result

[53] Apart from the matters, findings and directions throughout this judgment the pre-trial application brought by Mr Pirangi is dismissed.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ