

IN THE RESIDENT MAGISTRATES COURT
AT SUVA
CRIMINAL JURISDICTION

Nausori Juvenile Case No. 04 of 2018

Extended Jurisdiction Ref No. 37 of 2018

The State

v

K R (Juvenile)

For the State : Counsel Mr. Komaibaba S. (DPP)
For the Juvenile : Counsel Ms. Naikawakawavesi L. (Legal Aid)
Date of the Ruling : 18th September 2019

Ruling on *voir dire* Hearing

Background

1. The Juvenile has been charged with 2 counts of **Rape** contrary to section 207(1) and (2) (a) & (b) and (3) of the Crimes Act No. 44 of 2009, alleging that he had carnal knowledge with PW1 and penetrated the vagina of PW2 with his fingers, on two occasions.
2. He pleaded not guilty to both counts and challenged the admissions recorded at the caution interview, prior to the commencement of the trial proper.

3. The Defence filed *voir dire* grounds on 25/03/ 2019 and the Prosecution filed *voir dire* disclosures on 16/04/ 2019. The *voir dire* hearing was held on 27/07/2019.
4. The juvenile has admitted committing alleged offences at the caution interview (Q 58-64 & 69) recorded on 29th & 30th August 2018, marked as V/D PE 1.
5. *Voir dire* grounds filed by the Defence are as follows;
 - a. The juvenile was forced and induced by the following officers to admit allegations during the caution interview, stating that it will make the case easier for him as well as to the court.
 - WDC 3585 Sisilia Katonibau
 - DC 4509 Mesulame N.
 - b. The juvenile has not been given an opportunity to read back the contents of the caution interview before signing it.
 - c. The juvenile's parents, any guardian or a social welfare officer was not contacted to be present at the caution interview.
 - d. The juvenile's rights guaranteed under Judges Rules and Article 9(2), 10(1) and 14(3) (g) of the International Convention on Civil and Political Rights have been breached.

Evidence

6. The Prosecution submitted evidence of the following witness at the *Voir dire* hearing.
 - WDC 3585 Sisilia Kotonibau (PW1)
 - WDC 4495 Seinimili Vuibeqa (PW2)

7. The juvenile opted to remain silent at the hearing and no witnesses were called on behalf of him. Both parties filed written submissions.
8. It was revealed that the prosecution witness No. 1 is the Interviewing Officer of the juvenile while the witness No. 2 is the Witnessing Officer and the witness No. 3 is the Charging Officer.
9. All three prosecution witnesses adduced evidence to the effect that no any inducement or promise made to the juvenile to admit the allegations and he voluntary did the same. Though the Defence suggested that the Charging Officer (PW3) was present during the caution interview and induced the juvenile to confess, the PW3 and other two witnesses refused the said suggestion.
10. All three prosecution witnesses agreed that no parent, guardian or Social Welfare Officer was present at the caution interview of the juvenile. They submitted that though the juvenile's grandfather was present at the police station, the juvenile refused his presence at the caution interview. PW3 said that he personally went and inform the grandfather to be present as they are related to each other.

Law

11. In the case of *Ganga Ram and Shiu Charan v R* (F.C.A. Crim. App. 46 of 1983), the Fiji Court of Appeal has adopted a test to be applied in admitting the caution interview of an accused person as evidence. The test has two limbs as follows;
 - a. *"First, it must be established affirmatively by the Crown beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats or prejudice or inducement by offer of some advantage - what has been picturesquely described as "the flattery*

of hope or the tyranny of fear." **Ibrahim v R (1914) AC 599. DPP v Pin Lin (1976) AC 574.**

- b. Secondly, even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 (State v Rokotuiwai - [1996] FJHC 159; Hac0009r.95s (21 November 1996).*

Analysis

12. The Defence is challenging the voluntariness and the fairness of the juvenile's caution interview on three grounds as follows;
 - a. The juvenile was induced and promised by prosecution witnesses that it will be easy for him as well as to court if he admitted allegations.
 - b. No support person was present during the recording of the caution interview of the juvenile.
 - c. Violating juvenile's rights guaranteed under the Constitution and International Conventions by not explaining the right to remain silent to the juvenile in a proper manner, as required by law.

Voluntariness

13. Though it is the contention of the Defence that the interviewing officer (PW1) and the charging officer (PW3) induced the juvenile to admit the allegation, the prosecution witnesses testified that no such inducement or promise was made before, during or after the caution interview. The Defence has failed to discredit such evidence and did not submit any other evidence to create a reasonable doubt with regards to any such inducement or promise on the juvenile.

14. The Defence further submitted that the juvenile was not given an opportunity to read the caution interview before signing it. However the interviewing officer or the witnessing officer was not cross examined by the Defence on that point. The charging officer admitted in his cross examination that the juvenile was not given a specific opportunity to read the charge statement as he was glancing it through the computer while it was being typed. The requirement is that the person who is making the statement should be given the opportunity to read it before signing. Reading while it is being typed will not fulfil the said requirement.

Support Person

15. All prosecution witnesses agreed that no parent, guardian or a social welfare officer was present during the caution interview of the juvenile. The witnesses submitted that the juvenile's grandfather was present at the police station but the juvenile didn't want him to be present at the interview.

16. It is an accepted principle that the children in conflict with law should have access to their parents or guardians in all stages of administration of justice. The General Comment No. 10(2007) (comment no. 58 in page 17) to the United Nations Convention on the Rights of the Child, states that *'The court or other judicial body, when considering the voluntary nature and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives of the child'* (emphasis added).

17. It is an important requirement that a support person to be present during the recording of the caution interview of a juvenile. The rationale behind such requirement is that it provides the necessary psychological support to the child, who is considered as a vulnerable person due to his physical, emotional and intellectual immaturity.

18. In this case, even though the juvenile expressed that he doesn't want anybody to be present at the caution interview, the interviewing officer/ investigating officers should have made the grandfather to be present at the recording of juvenile's causation interview.

Right to Remain Silent

19. The Defence has submitted that the question No. 15, which was put to the juvenile at the caution interview, is an unfair question. I will re-produce the question below.

Q - *I also wish to inform you that under the provisions of the constitution you have a right to remain silent but in that case we would not be able to get your side of the story and as such we may have to proceed further and prosecute you for the allegation with the evidence. Do you understand your right?*

It is the contention of the Defence that the juvenile had been given an impression by the above question that if he answered questions, he will not be charged. It is further submitted that the right to remain silent has not been properly explained to the juvenile.

20. The interviewing officer informed the court that the right to remain silent was explained to the juvenile under question No. 3 of the caution interview which reads as follows;

(after explaining the allegation) ...You are not obliged to say anything unless you wish to do so but what you say may be put into writing and give in evidence.

21. The right to remain silent and the consequences of not remaining silent should be explained to every person who is arrested, in terms of the Section 13 (1) (a) (ii) &

(iii) of the Constitution. It is clear that the interviewing officer has explained it to the juvenile by question No. 3 at the caution interview. However, at question number 15, just before starting to question the juvenile on material facts, again he has been told that if he remained silent, the police will proceed with available evidence as they cannot hear the his side of the story.

22. It is the opinion of the court that the said statement contained in question No. 15 gives an impression to the juvenile that he should speak. Instead of explaining the consequences of "not remaining silent" as per required by the Constitution, the investigating officer has explained the consequences of "remaining silent".
23. In *State v Sione Fusi* [2018] FJHC 1038; HAC223.2017 (15 November 2018) *Justice Rajasinghe* has decided that the caution interview recorded with a similar question (same as in Q No. 15 of V/D PE1) has created a reasonable doubt whether the accused made his statement voluntarily. The court further held that *"Moreover the failure of the interviewing officer to properly explain the accused his right to remain silent and the consequences of remaining silent as required under section 13 (1) (a) (ii) and (b) of the Constitution has created a reasonable doubt whether the caution interview was conducted under a fair and just circumstances"*
24. The caution interview of the juvenile has been suspended twice to check on an alibi and for scene construction. It is to be noted that in both occasions when the interview recommenced, the juvenile has been explained the right to remain silent and consequences of not remaining silent in a proper manner. However, it will not negate the effect of the statement made by the interviewing officer at question No. 15. Such consequences are more severe with regards to a juvenile who did not have any support person at the recording of the caution interview.

Conclusion

25. Though the prosecution has proved by evidence that no influence or promise or inducement was made to the juvenile at the caution interview to admit the allegation, the following proved facts show the lack of general fairness at the caution interview;

- a. not providing a support person
- b. not giving an opportunity to read the charge statement before signing it
- c. not explaining the right to remain silent in a clear manner

26. In the above context, it is my opinion that the Prosecution has failed to establish that the general fairness existed during the recording of the caution interview of the juvenile.

27. Accordingly, the caution interview of the juvenile has failed one tests set out in the case of *Ganga Ram and Shiu Charan v R (supra)* and I refuse to accept the same as an admission recorded voluntary.



Geethani Wijesinghe
Resident Magistrate

At Suva

18th September 2019