



IN THE SUPREME COURT OF NAURU

[CRIMINAL JURISDICTION]

Case No. 06 of 2017

THE REPUBLIC OF NAURU

V

SANKEY AMRAM

Before: Va'ai J

For the Prosecution: F Lacanivalu

For the Defense: V Clodumar

Dates of the Hearing: 16 October 2017

Date of Judgment: 16 October 2017

Ruling

1. The accused is charged with one count of Rape of a child contrary to section 116 (1) (a) and (b) Crimes Act 2016 and an alternative charge of Indecent acts to a child under 16 years contrary to section 117 (1) (a)(b)and (c).
2. He has denied both charges

3. In preparation for his trial his counsel has filed an application pursuant to section 131 Crimes Act 2016 for leave to cross examine the complainant about her sexual history and activities other than those to which the charges relate.
4. The application is opposed by the Director of Public Prosecution.

The Application

5. According to the wording of the application the purpose behind the initial question and the flow on questions of the cross examination are to bring contradictory evidence that the complainant did not mention in her statement to the police.
6. The flow on questions the defense intends to lead are listed in the application. The tenor and purpose of the intended questions is to attempt to establish that despite her age of 11 years at the time of the alleged offending the complainant was not a virgin, was sexually active, promiscuous and possessive of the accused.

Objection by the DPP

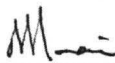
7. The prosecution submitted that the application has no merit and has no relevance. The intended cross examination is relevant only to the defense of consent which is not available to the accused. Given the age of the complainant the application is prohibited by section 55 Child Protection and Welfare Act 2016.

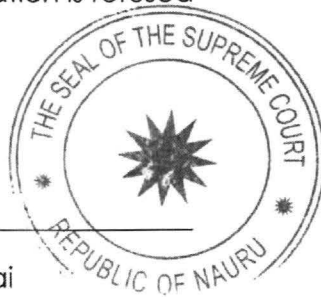
Discussion

8. Section 135 Crimes Act provides guidance to the court as to the matters it needs to consider when entertaining an application of this nature.
9. The purpose of the questions which the defense is seeking permission to pursue is simply to expose the sexual history of the complainant, which has no relevance to any defense it may have. The defense of consent is not available.
10. Given the nature of the offence which pursuant to section 116(3) is absolute liability, I do not accept submission by counsel that the accused, a 44 year old could be the victim of the past sexual conduct of the 11 year old complainant .Even if that be the case I fail to appreciate the relevance to any defense and to the granting of leave to cross examine the complainant as to her sexual conduct

Conclusion

11. The application is refused





Judge Rapi L Va'ai

Dated 16 October 2017