

IN THE HIGH COURT OF FIJI
AT LAUTOKA
IN THE WESTERN DIVISION
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO.: HAM 131 OF 2023

BETWEEN

STATE

Applicant

AND

SHELVIN NAIDU

Respondent

Counsel:

Mr S. Seruvatu for Applicant
Ms P. Reddy for Respondent

Date of Hearing:

20 October 2023

Date of Ruling:

03 November 2023

RULING

[Section 104 of the Criminal Procedure Act/ Sections 23 and 27 of the Mental Health Act No. 54 of 2010]

1. The Respondent is charged with one count of Attempted Rape contrary to Section 208 of the Crimes Act 2009. After filing the information in the substantive matter (HAC 27 of 2023), the State on 27 June 2023 filed a Notice of Motion supported by an affidavit seeking an inquiry and order under Section 104 Criminal Procedure Act (CPA) read with Section 23 and 27 Mental Health Act No. 54 of 2010.

2. Part X of the CPA sets out the Procedure where the accused person has a disability. Section 104 specifically deals with persons of unsound mind under the heading “Inquiry by Court as to the unsoundness of mind of Accused”. Section 104 (1) provides that at any time after a formal charge has been presented or drawn up if the court has reason to believe that the accused person may be of unsound mind so as to be incapable of making a proper defence, it shall inquire into the fact of such unsoundness and may adjourn the case under the provisions of section 223 for the purposes of

(a) obtaining a medical report; and

(b) such other enquiries as it deems to be necessary.

3. According to Section 104(2), if the court after such inquiry believes that the accused person is of unsound mind so that he or she is incapable of making a proper defence the Court shall postpone further proceedings in the case and shall –

(a) act in accordance with any law dealing with mental health; or

(b) in the absence of any appropriate provision of such a law, make any order or orders that the court considers appropriate to protect the interests of the accused person and of the public.

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he or she will be properly taken care of and prevented from doing self-injury or injury to any other person, and for his or her appearance before the court or such officer as the court appoints in that behalf.

(4) The court may order that the accused person may be confined in a mental hospital or other suitable place of custody and the court shall issue a warrant in accordance with such order.

4. Any order of the court under sub-section (4) shall be sufficient authority for the detention of such accused person until —

(a) the court shall make a further order in the matter; or

(b) the court finding him incapable of making a proper defence shall order the accused person to be brought before it again in the manner provided by sections 106 and 107. (Subsection 5)

5. Sections 23 and 27 of the Mental Health Act No. 54 of 2010 (Mental Health Act) complements the provisions of the Criminal Procedure Act. Section 23 provides as follows:

A person may be detained for assessment in a mental health facility only -

(a) on a recommendation certificate given by a medical practitioner, as provided by section 24;

(b) on the order of a magistrate or judge, as referred to in section 27;

(c) on transfer from another health facility, as provided by section 28;

(d) on action taken by a medical director in relation to a voluntary patient under section 20; or

(e) action by the police officer under section 25.

6. Section 27 of the Mental Health Act provides: A person may be taken to and detained in a mental health facility in accordance with an order made by a court on the recommendation of a medical practitioner under the Criminal Procedure Decree 2009 and the Crimes Decree 2009.

7. By the conduct of the Respondent in Court and on the submission of the State, the Court had reason to believe that the respondent may be of unsound mind so as to be incapable of making a proper defence. The Court adjourned the proceedings to obtain a medical report and to make further inquiries as to his mental status to determine what course of action is prescribed under Section 104 (2) to be taken.
8. The Court by its Order dated 11 July 2023 ordered the Medical Superintendent at St. Giles Hospital to medically examine the Respondent and prepare a psychiatric evaluation report. The Court received a Psychiatric Evaluation Report dated 07 August 2023 signed by the Medical Superintendent Dr. Balram Pandit and Principle Medical Officer Dr. Kiran Gaikwad. Having perused the said report, the matter was fixed for further inquiry.
9. At the inquiry, Dr. Kiran Gaikwad testified. Dr. Kiran Gaikwad is the Principal Medical Officer of the St. Giles Hospital. He had completed his MBBS Degree at Pune University, India, in 1999. He is also the recipient of a Post Graduate Diploma in Mental Health from Fiji National University (FNU) and an International Diploma in Mental Health, Human Rights and Law from the Indian Law Society (ILS), Pune, India.
10. According to Dr. Gaikwad, the Respondent was admitted to the St. Giles Hospital where he was observed and assessed. The purpose of his evaluation had been to assess the state of mind of the Respondent at the time of the offence and his current fitness to plead and defend the charge against him.
11. As per records, the Respondent was first seen at St. Giles Hospital on 5 February 2007 when he was brought by his family. He was diagnosed with schizophrenia and started on medications. The respondent was referred to the Nadi Hospital for follow-up treatments. He has defaulted clinics several times since then. On an order from the Magistrates Court in Suva, the Respondent was again assessed at the Suva Remand Centre in December 2022 and a report dated 23 January 2023 was prepared. He was further reviewed on 04/01/2023, 09/01/2023, and 17/01/2023. The doctor tendered the report in evidence marked as PE 1.

12. From the history, collateral information and mental state examination, the Respondent is diagnosed to have mental and behavioural changes due to intellectual disability. Intellectual disability is a disability characterized by significant limitations both in intellectual functioning (reasoning, learning, problem-solving) and in adaptive behaviour, which covers a range of everyday social and practical skills.

Ability to Make a Sound Defence

13. A person with an Intellectual disability has trouble remembering, learning new things, concentrating, or making decisions that affect their everyday life. Intellectual disability ranges from mild to severe. With mild impairment, people may begin to notice changes in cognitive functions but still be able to do their everyday activities. Severe levels of impairment can lead to losing the ability to understand the meaning or importance of something and the ability to talk or write, resulting in the inability to live independently.
14. The Respondent's low level of education and intellectual disability are significantly contributing to his level of understanding. His level of understanding of legal procedures is grossly affected as he was unable to explain the role of a lawyer in court, the reason for his being in the remand. He cannot follow the course of proceedings to understand what is happening in court in a general sense. He was unable to explain what instructions he would give to his lawyer. He could not explain the role of defence lawyer and prosecution.

Fitness to Plead and Ability to Understand the Charge

15. The Respondent was not able to narrate the charge against him and was not able to fully provide details about the alleged incident. The Respondent does not have an understanding that a plea of guilty is an acceptance that the essential facts and elements of the offence are established. Based on the history available and his interview; he does not have ability to exercise the right of challenge.

16. Upon the order of this Court dated 11 July 2023, the Respondent was assessed again at the St. Giles Hospital from 26 July 2023. The Report dated 07 August 2023 prepared by Dr. Balram Pandit and Dr. Kiran Gaikwad was tendered in evidence as PE2.
17. According to PE 2, no significant changes to the mental status of the Respondent are noted. The diagnosis remains the same and the conclusions also remain the same. The Respondent has been assessed to have an intellectual disability which is a chronic condition. and such a psychiatric condition is unlikely to be treated with oral medications. But there are some types of Psychotherapy which are called behavioral therapy that can change or modify the behaviour of the Respondent. That's the only treatment for such types of patients. There is no cure for it and the medical condition remains the same for their life.
18. The following conclusions have been made in the Report (PE 2)
 - (a). The Respondent is not fit to plead. He suffers from Mental illness as he has an intellectual disability, mental retardation and lack of proper education which makes it a bit demanding for the accused to understand the court proceedings.
 - (b). The exact level of intellectual disability of the Respondent can only be measured using psychometric tests administered by qualified psychologists. However, clinical psychologist services are not available in St. Giles Hospital or at the Ministry of Health.
 - (c). The Respondent needs support from the family. If he is admitted to the St. Giles Hospital, the staff can always involve the family. Although he has some intellectual disability, his sexual desires remain the way like other normal persons. Because of his inability to understand social norms, his behaviour may be inappropriate in society and can pose a threat to the community. There's no guarantee that the respondent won't re-offend if he is released to the society.

19. Conclusion

Having heard the testimony of Dr. Gaikwad and carefully examined the Medical Reports tendered in evidence (PE1 and PE2), the Court is satisfied that the Respondent is of unsound mind and as such, incapable of making a proper defence as at present. His release to society on bail at this stage is also not appropriate in view of the potential threat to community. Therefore, there is a need for the Respondent to be confined at a mental hospital to be given inpatient treatment over a period.

20. The following Orders are made:

1. The Respondent is to be confined at the St. Giles Hospital in Suva for medical treatment and supervision for 6 months from the date of this order.
2. The Officer-in-Charge of the Remand Centre is to facilitate the transfer of the Respondent to the custody of the St. Giles Hospital for medical treatment and supervision.
3. The Medical Superintendent of the St. Giles Hospital is to forward a report to this Court after the aforesaid period of 6 months.
4. During the treatments, if the Medical Superintendent at the St Giles Hospital takes the view that the Respondent can be released to society before the expiry of six months without endangering public security, he may apply to this Court for a suitable order.
5. Further proceedings of this matter and those of the substantive matter are adjourned to 3 April 2024.



Aruna Aluthge

Judge

03 November 2023

Solicitors:

Office of the Director of Public Prosecutions for Applicant.

Legal Aid Commission for Respondent