

**IN THE RESIDENT MAGISTRATES COURT**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

Juvenile Case No. 50 of 2014

**The State**

**V**

**S S (the Juvenile)**

**For the State** : Counsel Mr. Samisoni E.  
**For the Juvenile** : Counsel Mr. Verebalavu K (Legal Aid)  
**Date of the Ruling** : 11<sup>th</sup> October 2017

**Ruling on *voir dire* Hearing**

**Introduction**

1. The Juvenile has been charged with 2 counts of **Rape** contrary to section 207(1) and (2) (c) and (3) of the Crimes Decree No. 44 of 2009, alleging that he penetrated the mouth of another juvenile with his penis on two occasions.
2. He pleaded not guilty to the charges and challenged the admission recorded at the caution interview before the commencement of the trial proper.

3. The Defence filed *voir dire* grounds on 25/06/ 2015 and the prosecution filed *voir dire* disclosures on 24/09/ 2015. The commencement of the *voir dire* hearing had been postponed due to various reasons such as, parties were not ready and absence of the juvenile. However, it commenced on 18/08/2017 and concluded on 20/09/2017 and due for the Ruling.
4. The juvenile has admitted committing the alleged offence in the caution interview (Q 87-89) recorded on 27/10/2014 marked as V/D PE 2 (English translation)
5. *Voir dire* grounds of the Defence are as follows;
  - a. The juvenile's admission and confession were obtained by force, intimidation and oppression by Police Officers Paula and Waisale.
  - b. Said officers told him to admit to the offence and they will speak for him in court.
  - c. Particular portion of the interview was conducted without the presence of juvenile's father.
6. The Prosecution called PC Paula Matiavi, SC 2187 Waisale Salu at the hearing and the Defence relied on the juvenile and his father Etueta Nagata. Prosecution witness No. 1 and 2 both adduced evidence to the effect that there were no any force or intimidation used on the juvenile and he admitted committing the offence on his own free will.
7. However, both prosecution witnesses accepted that, when the same questions put to the juvenile in the presence of his father, at the police station, he denied the allegation and admitted the same at crime scene reconstruction in the village where his father was not present.

8. The Prosecution's witnesses deny the allegations of any force or intimidation used on the juvenile in recoding the confession. The Prosecution further justified the absence of the father of the juvenile, during the recoding the confessional part of the caution interview, on the basis that the juvenile is familiar and secure in his own village. Prosecution submissions further state that the father has trusted the police officers with the juvenile.
9. The Juvenile testified that once he was taken to the scene construction, one police officer took his father to the village hall to drink grog and he was interrogated by other two officers at the crime scene at his house. During the interrogation police officers (specifically mentioned the name Waisale) have promised him that they will speak on behalf of him in court, had he said 'yes' to the allegation, which the juvenile has obliged.
10. The following factors have been established uncontested from the evidence revealed at the hearing.
  - a. The father of the juvenile was not present at the time of recording the confessional part of the caution interview of the juvenile.
  - b. The juvenile has denied the same allegation when it was put to him at the police station where his father was present.

### 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 at the trial. 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 @ c - E." (State v Rokotuiwai - [1996] FJHC 159; Hac0009r.95s (21 November 1996).*

12. The position of the juvenile is that he confessed of committing the offence because of the promise given by investigating officers that they will speak on behalf of him in court. In other words 'a flattery of hope' has been given to him by investigating officers. Even though both prosecution witnesses denied the allegation, it is clear that they have failed to impeach the credibility of the evidence adduced by the defence.
13. Prosecution has submitted in its written submissions that the father of the juvenile who gave evidence on behalf of the defence is unreliable because there are some discrepancies regarding times of which the caution interview commenced and concluded. The witness has given evidence in court after 3 years of the incident and it is human nature to forget exact times which the caution interview took place and in my opinion it is not a material contradiction.

#### **Convention on the Rights of the Child**

14. The article 14(3) (g) of the International Convention on Civil and Political Rights (ICCPR) and article 37(a) of the Convention on the Rights of the Child (CRC) specifically prohibit the torture, cruel, inhuman or degrading treatment in order to extract an admission or confession. Article 40(2)(iv) of CRC says that the state parties should ensure not be compelled children in conflict with law, to give testimony or to confess guilt. The General Comment No. 10 (2007) (comment no. 57 in page 17) on CRC guide state parties on the issue as follows;

*“There are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term ‘compelled’ should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child’s development, the length of the interrogation, the child’s lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as ‘you can go home as soon as you give us the true story’, or lighter sanctions or release are promised”*

15. Further, 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) 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).
16. The rationale behind these requirements 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.
17. Both the prosecution witnesses themselves have said in court that the caution interview cannot proceed without the presence of parent(s), guardian or other representative of the juvenile, yet they didn’t offer a credible explanation why such important requirement was dispensed at the crime scene. Though the scene construction took place in the village of the juvenile, in his house, he was still in the police custody. Merely mentioning that the family members of the juvenile were present in the house while interrogating the juvenile, obviously doesn’t fulfil

the legal requirement of the presence of parent(s), guardian or other representatives.

18. In the above context it is my opinion that the prosecution not only has failed to prove the voluntariness of the caution interview of the juvenile beyond reasonable doubt but also failed to establish that the general fairness existed during the caution interview.

19. Accordingly, the caution interview of the juvenile has failed both 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

11<sup>th</sup> September 2017