



**IN THE SUPREME COURT OF NAURU  
AT YAREN  
[CRIMINAL JURISDICTION]**

**Criminal Case No. 1 of 2023**

**BETWEEN:** THE REPUBLIC

**PROSECUTION**

**AND:** TOM TOM BILL

**ACCUSED**

**BEFORE:** Keteca J

**Date of Hearing:** 13<sup>th</sup> August 2024

**Date of Submissions:** 12<sup>th</sup> & 14<sup>th</sup> August 2024

**Date of Ruling:** 14<sup>th</sup> August 2024

**Case may be cited as:** Republic v Tom Tom Bill

**Catchwords:** Voir Dire, Record of interview in English when interview conducted in Nauruan; Rule IV(d) of Judges' Rules

**Appearances:**

Counsel for the Prosecution: **M. Suifa'asia**

Counsel for the Accused: **R. Tom**

**RULING**

**BACKGROUND**

1. The accused is charged for two counts of Rape of child under 16 years old contrary to Section 116(1)(a)(b) of the Crimes Act as per the Amended Information filed on 17<sup>th</sup> January 2023.
2. On 28<sup>th</sup> July 2023, a bundle of agreed documents was filed by Mr Tagivakatini for the accused and Ms Pulewai, the then prosecutor. The bundle of agreed documents included:
  - i. Birth Certificate of Tom Tom Bill
  - ii. Record of interview transcripts
  - iii. Audio Visual recording of the Record of Interview
  - iv. Video recording of the incident.
3. On 12<sup>th</sup> August 24, Mr Tom challenged the admissibility of the Record of Interview transcripts of the Accused on the following grounds:

- i. Interview taken without any allegation and proper caution put to the accused.
- ii. The record of interview was in English when in fact the interview was conducted in the Nauru language
- iii. Judge's Rules not being observed
- iv. Evidence of confession made in Nauruan but recorded in English – improper for oral evidence of it to be given

#### VOIR DIRE HEARING

4. Ms Suifa'asia called two witnesses. Senior Constable Jehu Ageidu was the interviewing officer in this case. He testified as follows:
  - He was the recording officer and interviewed the accused in the form of questions and answers. The interview was also recorded on video. He typed the questions and answers on a computer.
  - He interviewed the accused in both the English and the Nauruan languages.
  - The accused answered the question in Nauruan and he appeared to understand the questions posed in English.
  - He cautioned the accused about his right to remain silent and his right to counsel. The interview paused for the accused to speak to his lawyer.
  - In the interview, the accused made some admissions. He was not forced or threatened to make those admissions. The accused was not promised anything.
  - The video of the interview was recorded in a CD. Constable John Ross Dube typed the transcript of the interview.
  - He identified the transcript and agreed that it was recorded in English and not Nauruan. On the transcripts, his lines were in blue, Red were the responses by the accused and Black recorded what John Ross Dube said. It was the first time that he did a video interview.
  - Video of interview- tendered as PEx-1

#### Cross- Examination

- The accused was cautioned only once and not after every allegation.
  - He understands the Judges' rules that the exact responses of the accused need to be recorded. Accused did not sign the transcript.
  - Counsel submits that the record of interview- transcripts of the video are inadmissible.
5. Former Police officer John Ross Dube was the witnessing officer. In the course of the interview, he asked Sgt Jehu to ask the questions.
    - The accused was accorded his rights to remain silent and to consult his lawyer.
    - When the accused started describing the video, he took over the interview. With the accused's admissions- no force, threats or promises were given to the accused.
    - He identified the transcript of the interview. The accused was interviewed in Nauruan and not in English. The accused answered in Nauruan.
    - Record of interview was based on the video. He produced the transcript- transcribed in English- not in Nauruan.
    - He was advised to only transcribe in English as video was already in Nauruan.
    - Transcript tendered as PEx-2
  6. Mr Tom refers to the following cases:
    - i. *Benjamin v Republic [1975] NRSC 1* where the court said-

1. "As the English law of evidence is applied to Nauru by the Custom and Adopted Laws Act 1971, the English Judges' Rules should be observed in Nauru.
  2. In circumstances where a written record in English of a statement alleged to have been made in Nauruan should not be admitted as evidence because it could have been recorded in Nauruan, oral evidence of the statement should not be admitted
  3. Although it may be proper for the written record in English of a statement made in Nauruan to be admitted where the statement was interpreted from Nauruan to English and the person who recorded it was unable to write Nauruan, a written record should be made in Nauruan by the interpreter if he is capable of writing Nauruan
7. In *Republic v Timothy [2021] NRSC 4*- CJ Thompson said- Rule IV (d) of the judges' Rules provides that "whenever a police officer writes the statement, he shall take down *the exact words spoken by the person making the statement*". That particular words and phrases in the Nauruan language may be interpreted with different meanings or shades of meaning by different translators is well known to the Courts here. It is, therefore, not an adequate compliance with Rule IV (d) for a Nauruan police officer to record in English a statement made to him in Nauruan, having made the translation himself without recording the actual Nauruan words used.'
8. Ms Suifa'asia also filed helpful submissions. She refers to the following cases:
- *Benjamin v Republic [1975] NRSC 1*- discussed above
  - *Kelly v The Queen* unreported; CCA Sct of WA cited in *George Anthony Steen v R [2020] SASFC 60* where Gleeson CJ, Hane and Heydon JJ said:  
 ' [57] .. In the absence of an accurate record of what occurred during police interviews, disputes could readily occur about the authenticity of any admission said to have been made during such interviews, and about the propriety of the conduct of the police officers in question. Their Honours said:  
 " The disputes could turn not only of fabrication, but also of misunderstanding , misrecollection, coercion, or oppression in a broad sense. Considerable amounts of police time, too, were taken up in interviews slowly recorded by officers operating typewriters or writing in notebooks. Grave allegations were commonly made suggesting police brutality and pressure. Unfounded though many of these allegations may have been, they were damaging to public confidence in the criminal justice system. Over time the courts, law reform agencies and legislatures began to respond to these state of affairs. In particular, as audio recording became common in commercial and social life, and as the necessary equipment became more efficient, easier to operate, and cheaper, it was increasingly suggested that, either as a matter of sensible practice or as a precondition to admissibility, police interviews in criminal investigations should be electronically recorded.

[58] Gleeson CJ, Hayne and Heydon JJ noted that the utility and desirability of an accurate video recording was not limited to ensuring the accuracy or voluntariness of any admission that was made, adding:

" [It] came to be viewed as a commonplace , not only in circles favourable to defence interests but also in police circles, that despite its financial cost, the electronic recording of police interviews, particularly video- recording, would

generate real advantages. It would be useful in providing a means of establishing exactly what was said; in proving that requirements for cautioning and other formalities had been complied with; in narrowing the time within which it could be alleged that threats had been made; in helping to estimate the fairness and propriety of the questioning; and in helping to evaluate, by assessment of the demeanour and manner of the interviewee in responding, the reliability of what was said.”

9. Counsel concludes:

- The language used was Nauruan
- The interview was conducted in question and answers
- The questions and answers were in part English and Nauruan
- The accused was cautioned- his right to silence and right to legal representation was put to him
- The interview was paused to allow the accused to contact his lawyer
- After speaking with his lawyer the accused exercised his right not comment to (some) questions put to him
- When a video was shown to him, the accused voluntarily answered questions in the interview
- There was no threat, promises or force applied on the accused to obtain his answers

## DISCUSSION

10. I agree totally with the observations of Gleeson CJ, and JJ Hane & Heydon quoted above on the utility of the video recording of police interviews of suspects. Indeed, such practice will- *“It would be useful in providing a means of establishing exactly what was said; in proving that requirements for cautioning and other formalities had been complied with; in narrowing the time within which it could be alleged that threats had been made; in helping to estimate the fairness and propriety of the questioning; and in helping to evaluate, by assessment of the demeanour and manner of the interviewee in responding, the reliability of what was said.”*
11. It is to be noted that the observations in the *George Anthony Steen v R [2020] SASCF 60* quoted above, did not say anything on the translation of what was said in the video recording in cases where the interview is conducted in a language other than English.
12. The issue before the Court in the present case is whether the record of interview of the accused, as transcribed from a video by former Constable John Ross Dube, complied with the requirements under Nauruan law as covered under the *Benjamin v Republic [1975] NRSC 1 and Republic v Timothy [2021] NRSC 4* cases discussed above.
13. From the evidence adduced yesterday, I am satisfied that the interview of the accused was conducted in Nauruan. The accused answered the questions in Nauruan.
14. The exact Nauruan words used in the questions by the police officers and the responses by the accused were not recorded in the record of interview. In fact, the video interview was interpreted in English and then recorded.

## CONCLUSION

15. I therefore find that Rule IV(d) of the Judges’ Rules have not been complied with in the present case. As stated in *R v Timothy above*- “However, in this case that oral evidence was objectionable for precisely the same reason as the recorded statements, namely that it was not an account of what the appellants actually said in Nauruan but of former Constable John

Ross Dube's translation. Further, to admit such oral evidence is to ignore a principal purpose of the requirement of the Judges' Rules that a suspect's statement should be recorded in writing, namely to safeguard him against defects in the police officer's memory.

16. I rule that the transcript of the video interview of the accused conducted by Senior Constable Jehu Ageidu and former Constable John Ross Dube and transcribed by former Constable John Ross Dube on 06<sup>th</sup> December 2022 inadmissible.

**DATED this 14<sup>th</sup> Day of August 2024.**



**Kiniviliame T. Keteca**

**Acting Chief Justice**

