

INTERVIEWING CHILD WITNESSES OF CHILD SEXUAL ABUSE CASES



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ABSTRACT

Article History

Received: 13 March 2018

Revised: 27 April 2018

Accepted: 30 April 2018

Published: 2 May 2018

Keywords

Child abuse

Child witness

Child interview

Video recording.

The Evidence of Child Witness Act 2007 makes provision for a child witness's statement to be video recorded during police investigation with the aim of reducing the trauma of the child in recalling the crime against him/her and avoiding face-to-face confrontation with his/her abuser in court. An increasing number of interviews with child witnesses have been video recorded by the Sexual and Child Investigation Division (D11) of the Royal Malaysia Police but only 20% or lesser of the recordings have been eventually tendered in courts over the years. Face-to-face interviews with ten former and current D11 officers were conducted to determine the factors contributing to the low percentage of utilization of video recorded statements. It was found that the factors of such shortfall are: the accused perpetrators were not charged in courts due to the lack of concrete evidence or the complainants/victims withdrew the case; the perpetrators pleaded guilty in courts; the child witnesses were considered by the Deputy Public Prosecutors (DPPs) competent to testify in courts and thus the pre-recorded statements were disregarded; the weaknesses of the video recording; and the lack of logistical support in the courts to facilitate the testimony of child witness. A case study of an incident where a four-year-old Chinese girl was raped by her kindergarten principal's husband between January and April 2008 in Penang further revealed that under-staffing in D11 and weaknesses of the Evidence of Child Witness Act 2007 also pose obstacles to the effective production of quality video recordings by the police. Section 6(2)(a) and (b) of the Act require that the transcript of the video recording to be produced in the original language, and be translated in cases where the language is not Bahasa Malaysia. Thus extra burden is put on the shoulders of D11 officers in cases involving non-Malay child victims. The problem is compounded by the dearth of female officers who are conversant, both orally and in written form, in dialects or languages other than the national language as well as having been trained to conduct the video recording. It is suggested that Section 6(2)(a) and (b) of the Act to be amended. Instead, section 112 of the Criminal Procedure Code may be adopted where the interview of witnesses may be conducted in any language but the written statements recorded in Bahasa Malaysia, and where necessary, the service of an interpreter may be used.

1. INTRODUCTION

Child abuse is on the rise every year and has reached an alarming stage. The seriousness of the problem has prompted the Prime Minister of Malaysia, Dato' Seri Najib Bin Abdul Razak to establish a special task force to handle and control crime and violence against children on 26 August 2016. This came about in the wake of a murder case of a five-year-old boy by his relative. This task force is chaired by the Minister in the Prime Minister's Department, Dato' Seri Azlina Binti Othman Saad, who is in charge of legal matters (Jalil, 2016).

The efficacy of police investigation determines the conviction rate of child abuse perpetrators, which in turn plays an important role in curbing crime and violence against children. One specific piece of evidence that an investigating officer must obtain in order to bring child abusers to justice is the child witness' testimony.

Royal Malaysia Police statistics show a continuous increase of child witness interviews done with video recording over the years, but unfortunately only very few of the video-recorded statements have been tendered in courts. This paper examines the problems faced by the police in the process of video-recording child witnesses' statements and the weaknesses of the Evidence of Child Witness Act 2017. It seeks to provide a clear picture on the effectiveness of video recording child witness interview. It is the aim of this paper to determine the reasons why not many video recorded child witnesses' statements have been tendered in courts compared to the total number of statements recorded. For this purpose, a case study of video recording child witness interview is discussed. This case study examines the whole process of conducting video recording of a child witness' statement. For conclusion, this paper makes some suggestions to improve the current recording procedure as well as to the Evidence of Child Witness Act 2017.

2. PROBLEM STATEMENT

The Royal Malaysia Police (RMP) have conducted video recordings of child witnesses' statements from the year 2011 to 2015. In 2011, there were only 130 statements video-recorded. In 2012 and 2013, 126 video recordings were made for each year. In 2014, the number jumped to 433, indicating an increase of 244%, and in 2015 a further increase of 42% was registered with the total number of 617 video recordings made. Unfortunately, the high number of the statement video recordings did not match with a desirable proportion of statements adduced in courts. The use of the video recorded testimonies for prosecution was in fact few and far in between. There were 11 (8.46%) and 10 (7.93%) video recordings tendered in 2011 and 2012 respectively. In 2013, there were only 25 video recordings (19.84%) tendered. In 2014 and 2015, the figures were 90 (20.78%) and 84 (13.61%) respectively. This can be seen in the Figure 1, which shows the number of child witnesses' statements video recorded by the police from 2011 to 2015 compared to the number of statements tendered in courts (Royal Malaysia Police, 2015).

3. METHODOLOGY

The main research method used in this study is face-to-face interview. Ten experienced criminal investigating officers who had worked or are still working in the Sexual & Child Investigation Division (D11) of the RMP in few states of West Malaysia were interviewed. In addition, it is also based on a case study of child sexual abuse which took place in George Town, Penang. Since the informants were involved in the field, they would certainly be good informants. All of them were the enforcement officers who were totally familiar and experienced in interviewing child witnesses. They were competent and in the position to give their opinions on the relevant issues. Besides, they have been working with the Royal Malaysia Police for a minimum of five years with at least three years experience in Child Abuse Unit or handling child abuse cases.

4. LEGAL FRAMEWORK

The Evidence of Child Witness Act 2007 was passed on 28 August 2007 and came into effect on 31 December 2007. The spirit of the Act is to have child witnesses' statements recorded by ways of video recording during

investigation, with the aim to reduce the trauma of child witnesses in having to recall the incidents and go through the mental torture again in courts later. The Act also provides a child witness to give evidence in the court room but shielded by a screen between the child witness and the accused person or by the live link or by video recording. A child witness means a person under the age of 16 years who is called or proposed to be called to give evidence in any proceedings but does not include an accused or a child charged with any offence (Cheung, 1997).

“Video recording” involves a police officer and a child witness. The police officer solicits the oral evidence from the child witness through an interview. This video recording can be tendered and admitted as evidence during the examination-in-chief of the child witness. Thus, the child witness would only be cross-examined and re-examined in court (Glanville, 1987). The advantages of the utilization of the recorded evidence are less trauma for the child witness, the freshest possible evidence is obtained, pleas of guilty are encouraged as the accused who asserts his/her innocence is in a better position to do so when he/she knows the details of the child’s evidence before the trial (Glanville, 1987).

This video recording evidence shall be admitted as evidence of examination-in-chief with the condition that the contents of the video recording shall be subject to the Evidence Act 1950 (Jalil, 2016). Besides, the recording officer who conducts the video recording must produce a certificate and such certificate shall be admitted as a prima facie evidence (Jalleh and Filmer, 2012) of the authenticity of the content of the video recording (Keary and Fitzpatrick, 1994).

However, for such video recording to be admitted, it must be accompanied by a transcript of the original language used in the video recording plus a translation of the transcript. This is compulsory when the language used in the video recording is other than the national language or Malay language, for instance the video recording is conducted in Mandarin, Tamil or other languages (Laws of Malaysia, 2001).

Even though the video recording is admitted under this provision, the child witness would still be called to be further examined by the Deputy Public Prosecutors (DPPs) who tendered the video recording in evidence. This happens when the Deputy Public Prosecutors (DPPs) opined that the child witness’s recorded testimony is insufficient to prove the case or the child witness need to testify in court to clarify on certain matter (LoM, 2006).

The court must assess and determine the evidence of a child witness. In other words, the court when considering the statement in the video recording as evidence shall also satisfy that the child witness has sufficient intelligence and understands the duty of telling the truth, even though he or she does not take oath (LoM, 2012). In general, if the child is able to understand the nature of the question and give the rational answer to the question, he or she is considered as a competent witness in giving the evidence (LoM, 2012). A competent witness will be treated as an adult witness and be subjected to cross-examination by the defense counsel.

Apparently, the prosecution has to bear a higher burden of proof in order to secure a conviction of a child abuse perpetrator as compared to other types of criminal cases. In child abuse case, a child who is under 18 years old is a key witness. In any proceedings against any person for any offence, if a child witness of tender year does not in the opinion of the court understand the nature of an oath but own sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth, his or her evidence may be accepted though not given upon oath. However, an accused shall not be liable to be convicted of the offence unless the child witness’s evidence is corroborated by some other material evidence (LoM, 2013).

In Malaysia, child abuse has been going on for a long time (LoM, 2015) and were given increasing media coverage over the years. The Child Act 2001 that came into force on 1st August 2002 was enacted inter alia, to protect children against abuses and violence. A child means a person under the age of eighteen (LoM, 2016). In general, there are three types of child abuse namely physical abuse, sexual abuse and mental abuse.

Recently, vast amendments were made on the Child Act (Amendment) 2016. Basically the Child Act (Amendment) 2016 consist four main amendments. Firstly, the child registry which contains records of convicts who committed crimes against children. Screenings will be conducted on individuals working with children as an

added safety measure. Meanwhile, Community Service Order (CSO) is a rehabilitation program for children who are involved in crime and also adult offenders or the child abuse perpetrators. The amendment also emphasized on family-based care for the child victims. Lastly, the amendment has imposed heavier penalty of up to RM 50,000 fine and 20-year imprisonment. The Child Act (Amendment) 2016 was gazetted on 25th July 2016 and came into operation on 1st January 2017 (Mohd and Noor, 2009).

5. FACTORS AFFECTING THE EVENTUAL USE OF VIDEO RECORDED CHILD WITNESS' STATEMENTS IN COURT

The purpose of video recording a child witness' statement is to use it in court later during the prosecution in order to prove the case against the accused abuser and to secure a conviction. However, only few such recordings would eventually be tendered in courts. From the interviews conducted, six factors have been identified as the factors contributing to the eventual use of child witnesses' statements video recorded by police investigation officers. The six factors are: insufficient evidence against the accused perpetrator, request by complainant or child victim to withdraw the case, ability of the child victim to testify in court, guilty plea by the accused perpetrator, quality of video recorded statements, and lack of logistics or facilities in court. Out of these six factors, only one is directly related to the skill of the recording officer.

6. INSUFFICIENT EVIDENCE AGAINST THE ACCUSED PERPETRATOR

It was found that the main reason for not tendering the video recordings is the lack of concrete evidence to charge the accused perpetrator. When the perpetrator is not charged in court, the video recording would naturally miss the chance to be adduced as evidence. To be fair, it is not easy to get concrete evidence in child abuse cases. Furthermore, some of the cases involved children of very young age who are not articulate or have difficulty in recounting the incidents to the police. Although the police might be able to collect other evidence like the medical report, chemistry report and others, in many cases the Deputy Public Prosecutors (DPPs) are of the opinion that the overall evidence is not strong enough. As a result, many children abuse perpetrators were not charged and the relevant video recorded statements had no chance to be tendered in courts. This problem always arises when the "shaken baby syndrome" appears where the victim is an infant or a child under five years old.

7. REQUEST BY COMPLAINANT OR CHILD VICTIM TO WITHDRAW THE CASE

In Malaysia, it is very common for the complainant of a child abuse case or the child victim himself/herself to request for a withdrawal of the case. The complainant or guardian of a child victim has the tendency to apply for the charge to be withdrawn especially if the perpetrator is someone related to them. They would write to the DPPs for the request because of their relationship with the perpetrator. This could happen during or after the investigation. In most cases, the perpetrators are the biological parents, step parents, baby sitters or baby sitter's family, relatives, or neighbours etc. The reasons for withdrawal request included the pressure and trauma to testify in court, embarrassment, shame and fear as a result of publicity. In some of these cases, where the DPPs entertained the requests to withdraw the case, all evidence, video recorded statements of child victims included, would not have the chance to be tendered in courts.

8. GUILTY PLEA BY THE ACCUSED PERPETRATOR

The third situation in which a video recorded child witness' statement failed to be utilized in court proceedings was when the child perpetrator chose to plead guilty in court. However, the percentage of child perpetrators pleading guilty in courts is low, more so in sexual abuse cases. This is because the penalties for sexual abuse are heavy compared to other types of physical abuse. A child sexual abuser can be punished with imprisonment of twenty to thirty years and whipping. In Malaysia, it is not uncommon to find suspects pleading guilty to charges of

physical abuse or outraging modesty. This is due to the fact that the maximum sentences for both offences are only ten years imprisonment. However, Child Act (Amendment) 2016 which came into force on 1st January 2017 has increased the physical punishment from ten years to twenty years imprisonment.

9. ABILITY OF THE CHILD WITNESS TO TESTIFY IN COURT

In some cases, the DPPs chose not to tender the video recording of a child witness' statement and preferred to call the child witness to the witness box instead. This happened when the DPPs opined that the child witness was able or ready to testify in court. According to Section 118 of the Evidence Act 2007, a child shall be competent to testify if he or she can answer the questions and give rational answers to those questions. It is in fact less troublesome for the child witness to take the stand than to tender her video recorded statement, and the resultant testimony would be more convincing and valuable.

In any case, the DPPs have the absolute discretion to determine whether to tender the video recording or to call the child victim to testify in court. It is clearly stipulated in the Criminal Procedure Code that the Attorney General shall be the Public Prosecutor and shall have the control and prerogative on all criminal prosecution and proceedings (Pence and Wilson, 1994).

10. QUALITY OF VIDEO RECORDED STATEMENTS

This factor is directly related to the skill of the recording officer. As mentioned earlier, The DPPs have the absolute discretion to determine whether to tender the video recording or to call the child witness to testify in court. Apart from the ability of the child witness to testify in court, another reason for DPPs not to rely on the video recorded statements was the lack of quality of such statements. Admittedly, some of the statements were poorly video recorded where not much incriminating information could be extracted. This happened when the video recording was too brief or that the recording officer used closed-ended questions instead of open-ended questions during the interview. Of course, there are some other reasons which will be discussed further in the second part of this paper on the problems faced by the recording officers when conducting child interview by video recording.

11. LACK OF LOGISTICS OR FACILITIES IN COURT

The Evidence of Child Witness Act 2007 has come into effect about ten years ago, yet we still do not have Courts for Children in all the states in Malaysia. Consequently, most of the child abuse cases are still being heard in ordinary criminal courts. The Court for Children is only used when the accused is an under-aged child but not the victim. Even in states with Courts for Children, these special courts exist only on paper as the proceedings are conducted in the premises of ordinary criminal courts. The saddest part is, the Courts for Children only sit once in a week or every fortnight due to the shortage of court rooms, magistrates and social welfare officers who are also acting as advisors in the Court. During a child abuse hearing, the DPP has to work together with the court staff to prepare the equipment and facilities like video player, screen or other arrangement to prevent the child witness from seeing the accused in the court room. Normally, things like cloth, white board or partition are used to separate the child witness from the child perpetrator. This is to fulfil the requirement of Section 4 of the Evidence of Child Witness Act 2007 that a child witness, while giving evidence in the court, may be shielded by means of a screen or other arrangement from seeing and being seen by the accused person. However, in situations when such arrangement could not be made, the child witness has to testify in front of the accused.

12. CASE STUDY DISCUSSION

A case of child sexual abuse which took place in George Town, Penang is examined as case study (RMP, 2008). In this case, a four-year old Chinese girl was raped by her kindergarten principal's husband between January and April 2008. The complainant was the mother of the victim. Initially, the complainant found some blood stain in her

daughter's panties after school. The child victim told the complainant that she was raped by an uncle in the toilet of the kindergarten. The perpetrator was a 45-year old Chinese man. He was also the kindergarten co-owner.

On 16 March 2010, the accused was charged under Section 376(2)(e) of the Penal Code, an offence of having sexual intercourse with a woman with or without her consent, when she is under twelve years of age. The offence carries a jail term between ten to thirty years plus whipping. The George Town Sessions Court sentenced the accused to twenty years jail and ordered him to be whipped ten times.

However, on 5 September 2011, the conviction was overturned by the High Court which ruled that it could not blindly accept what was stated by a child of tender age or the child victim when there was no evidence to corroborate her testimony. The High Court ruled that there was no conclusive evidence of penile penetration, thus there was no legal and factual basis to find the accused guilty of rape. The judge also held that the child victim's testimony was highly imaginative and tainted with fantasy, as well as being inconsistent and contradictory with various accounts given (Tariq, 2013).

This case clearly highlighted the difficulties faced by child victims when accessing justice through the court. Normally no pedophile, no matter how perverted, would commit crime against a child openly or in front of a third party. Section 133A of the Evidence Act 1950 which requires a child witness's testimony to be corroborated is a stumbling block to the prosecution. It is tough for the prosecution to get independent evidence due to the discreet nature of sexual crimes. The Women's Centre for Change (WCC) has called on the courts to give greater consideration to the testimonies of child witnesses. WCC executive director Loh Cheng Kooi said the same standards could not be applied to a child witness as an adult. Obviously a child may recollect what has happened but not necessary in the proper sequence as a child's language and recollection are different (Jalleh and Filmer, 2012).

13. VIDEO RECORDING OF A CHILD WITNESS

In this case, the child victim was a four-year old Chinese girl who could only speak Mandarin. Section 6(2)(a) of the Evidence of Child Witness Act 2007 requires that a video recording shall not be admitted unless accompanied by a transcript of the original language used in the video recording. In this case the original language was Mandarin. Hence a transcript in the Chinese Language had to be prepared by the interviewing/recording officer. Ideally the interview/recording should be conducted by a female officer from the Sexual and Child Investigation Division (D11) who is conversant in both the oral and written Chinese Language, and is equipped with the child interview skill. Unfortunately, there was no such Chinese female officer in the Penang Contingent Police.

At the same time, Section 6(2)(b) of the 2007 Act clearly states that the video recording shall be accompanied by a translation of the transcript, if the language used in the video recording is other than the national language. As the language used in this case was Mandarin, which is not the national language, the interviewing/recording officer had to prepare two different sets of transcripts namely the original in the Chinese Language and the translated version in Bahasa Malaysia.

The above provisions have created many problems to the police in cases where the child victim or witness is not a Malay but of other race like Chinese, India, Punjabi, Kadazan, Iban and so on. In the RMP, majority of senior police officers are Malay and other races only comprise about 25%. A senior police officer means a police officer of any rank from the Inspector-General down to and includes an Inspector on probation (RMP, 2008). On top of it, RMP is also facing problem to place adequate child abuse investigating officers in every state of Malaysia. RMP is dominated by male officers, and the proportion of female officers does not exceed 20%. To make matters worse, these female officers have to be posted to various departments in RMP as well, thus creating a shortage of officers specialising in sexual and child abuse investigation.

At present, there are ten departments in the RMP namely the Management Department, Criminal Investigation Department, Special Branch, Narcotic Crime Investigation Department, Internal Security and Public Order Department, Commercial Crime Investigation Department, Strategic Resources and Technology (StaRT)

Department, Crime Prevention and Community Safety Department, Integrity and Standard Compliance Department, and Traffic Investigation and Enforcement Department. The Criminal Investigation Department consists of thirteen divisions, one of which is the Sexual and Child Investigation Division (D11). Thus, it is impossible for RMP to post female senior police officers of different races to the D11 division in every state of Malaysia.

Obviously this is a perennial problem confronting the Sexual and Child Investigation Division (D11) all over Malaysia. In the first place, they have to find a female police officer who can communicate and understand the language of the child witness, if the latter does not speak Malay or English. In addition, this female police officer must be one who had attended the child witness interview video recording training programme. The problem becomes more acute when the child witness is only able to speak in certain dialect like Hokkien, Cantonese, Teochew, Tamil, Sikh and so on.

Since this case study involved a Chinese child witness, the subsequent discussion will focus on the problems faced by the Chinese police officers from the Sexual and Child Investigation Division (D11). Firstly, a Chinese police officer who can write in the Chinese Language might not be able to understand all Chinese dialects. Conversely, a Chinese police officer who can understand the dialect of a child victim is not necessarily able to write in Chinese. In Malaysia, not all Chinese children go to the Chinese schools. Even though the majority of Chinese female police officers have studied the Chinese Language up to different levels – from Primary Standard Six to Secondary Form Five, with a few up to Form Six – their proficiency and competency in interviewing and recording child statements can be a point of contention.

The main challenge of an interviewing/recording officer is not in producing the translation of the transcript in the national language, Bahasa Malaysia as required under Section 6(2)(b) of the Evidence of Child Witness Act 2007, but to prepare a transcript in the original language used in the video recording, which in the case of a Chinese child witness or victim, must be in the Chinese Language, irrespective of the type of dialect spoken. In reality, there are many Chinese officers who can only speak in Mandarin but are not able to write in Chinese.

In this particular case, the interviewing/recording officer was a senior police officer with the rank of Assistant Superintendent of Police (ASP). She had studied the Chinese Language until Form Six. During the investigation, she was working in the Major Crime Division (D9) in Malacca Contingent Police. Due to the difficulties in getting a Chinese female police officer who had attended the child witness interview video recording training programme and is able to write in Chinese, she was instructed to assist in this case. As a result, she had to travel all the way from Malacca to meet the child victim at the Child Interview Centre (CIC) of Police Headquarter in Bukit Aman, Kuala Lumpur.

Before the interviewing/recording officer started to interview the four-year old child victim, she had to break the ice to build a good rapport with the girl, in order to make her comfortable to tell what exactly happened. This is no easy task as not all child victims are the same. Prior to the interview, the recording officer or interviewer must be able to communicate with and understand the child witness. Subsequently, the interviewing/recording officer has to inform the child that the video recording will take place in the interview room. In this case, the officer informed the child that there was another police officer sitting in a technical room, which was located next to the interview room, to conduct the video recording on them.

The interviewing officer had to keep on persuading the child witness who was moving around in the interview room to sit down as the camera might not be able to capture her. During the interview, she had to test and assess the level of understanding of the child witness by asking specific questions to determine the child witness's ability to differentiate between right and wrong.

Apart from that, the interviewer had to deal with the diction of the child, in particular to figure out the specific terms used by the latter to describe certain parts of human body like the private part, breast and so on. It is common among children to use certain peculiar words for human anatomy. In this case study, the child victim used

the word “*bird bird*” to describe the penis of the perpetrator and “*pet pet*” to describe her vagina. In order to ascertain the penetration of the penis into the child victim’s vagina, the recording officer had to use the investigative tools such as anatomical dolls with genitalia, breasts and separate fingers. Subsequently, the child victim managed to demonstrate through the anatomical dolls that the perpetrator had raped her. Most of the child victims would only reveal their cases to the police officers whom they are comfortable with.

In a particular case, the child victim totally refused to tell anything to the police officer even though she had been brought to the Child Interview Centre (CIC) a few times. Subsequently, different female police officers have to be assigned to approach and build rapport with her but she still remained silent. Later, one male police officer was instructed to talk to her and she finally related the incident to him. Investigation revealed that she was actually physically abused by her stepmother which left her with the impression that all female adults are bad.

In other cases, police officers also encountered few child witnesses who refused or were not in the mood to reveal their encounters in the first interview. There were also child witnesses who told part of the story and the recording officers had to arrange for second and even more sessions of the interview to get a complete account of the incident. As such, it is important to assign a well-trained recording officer to conduct the interview. The interviewing/recording officer must not only be well-trained, but also has the patience and enthusiasm for the tasks.

The video recording in this case took about one hour. During the interview, the child witness sometimes said something else to the interviewer and not directly answered the questions put to her. At times, she remained silent to certain questions and the interviewer had to rephrase the questions. On a few occasions, she just nodded in response to questions put forward by the interviewer. When she heard about the arrest of the perpetrator by the police, she spontaneously said that she wished she could punch the perpetrator for what he had done to her. According to the victim, she dared not tell anyone about the incidents because the perpetrator had threatened to kill her and her family members by pointing a knife to her neck.

14. TRANSCRIPTS AND TRANSLATION

In this particular case, the interviewing officer had to rush back to her office in Malacca immediately after the video recording due to work commitment. She had to find her time after the office hours to prepare the transcript and then translate it into Bahasa Malaysia. She took almost two weeks to prepare the transcript in Chinese as the transcript must be properly typed out. This proved to be an uphill task for her as she was not proficient in Chinese *pinyin* or pronunciation system which is essential for typing in that language. She was also required to type each acclamation word mentioned and sound made by the child witness such as “*Er*”, “*Em*”, “*Ah*” and her gestures throughout the interview based on the video tape. When the transcript in Chinese has been completed, she started to prepare the translation in Bahasa Malaysia. Already bogged down with her desk job, she had to use her free time to do both the transcripts after the office hours. Full concentration was needed in preparing both the transcripts. This is crucial to avoid any discrepancies between the two versions and thus create opportunities for the defense counsel to challenge its admissibility in the court later.

From the discussion above, it shows that the officers in the Sexual and Child Investigation Division (D11) have extra workloads in cases involving non-Malay child victims where two sets of transcripts need to be prepared. Most of the interviewing/recording officers are also investigating officers. Rightfully they should be concentrating more in investigative works in order to produce good quality investigation papers. In this case study, the interviewing officer has high level of proficiency in Mandarin compared to her other Chinese colleagues who may have studied Chinese until Form Five or even lower. However, during the face-to-face interview with her, she complained about her stress and burden throughout the whole process of video recording until she was finally called to testify in court.

After she has submitted both the transcripts to the investigating officer in George Town, Penang, she was called to testify in the Penang Sessions Court. During the hearing, she was queried and challenged by the defense counsel for almost a day with regard to her proficiency in Mandarin or Chinese in preparing the said transcripts. The defense counsel challenged her on the accuracy of translation and whether she owns any certificate as a certified translator. At last she managed to counter the heated argument and convinced the court that her Form Six Chinese qualification was good enough for the task.

Few other interviewing or recording officers have also experienced the same thing when giving evidence in courts. Some were challenged for several hours on the accuracy of the transcripts prepared by them and also their qualifications in Mandarin/Chinese. According to some of them, they were instructed to be the interviewing/recording officer even they had no confidence to prepare the transcript in Chinese or other language. This is because it is not easy to get a non-Malay officer who can write in their own language and had attended the child witness interview video recording training programme. On top of that, these officers do not get any incentives or allowance for this difficult task.

The above problems have caused quite a number of non-Malay senior police officers to avoid being posted to the Sexual and Child Investigation Division (D11), especially those with the ranks of Inspector and Assistant Superintendent of Police (ASP) who are often enlisted for this task. As the incidence of child abuse involving non-Malay victims is quite high while the number of non-Malay police officers is comparatively low, their workload in this respect is quite demanding. Some non-Malay officers would either apply for study leave or request to be transferred to other departments. As a result, some D11 divisions need to either get the assistance of interviewing/recording officers from other states, or apply to the ministries for counsellors, court interpreters and teachers etc to translate the transcripts.

In the Police Contingent of Kuala Lumpur, there is a Chinese counsellor of grade S41 working in the D11 division. She was requested to act as an interpreter in a few video recordings which involved Chinese child witnesses. Actually there is a Chinese senior police officer with the rank of Inspector working in this Division as well. However, she can only speak Mandarin but is not able to write in Chinese. When this Chinese Inspector interviews a child witness, the Chinese counsellor would also have to sit in as interpreter. The odd thing is, firstly the Chinese Inspector will pose the questions to the Chinese child witness in Bahasa Malaysia through the Chinese counsellor. The Chinese counsellor will then translate it into Mandarin to the Chinese child witness. After the Chinese child witness answers the questions in Mandarin, the Chinese counsellor will then translate it into Bahasa Malaysia to the Chinese Inspector.

Once the video recording is completed, the Chinese counsellor has to prepare the transcript in Chinese as required under Section 6(2)(a) of the Evidence of Child Witness Act 2007, whereas the Chinese Inspector will prepare the translation of the transcript in Bahasa Malaysia as required under Section 6(2)(b) of the same Act. This process causes a waste of time, energy and overlapping of works by both the recording officer and interpreter.

Several years ago, the Officer-in-Charge of Criminal Investigation (OCCI) of the state of Selangor gave instruction to video record the statements of all child abuse victims who are under sixteen years old. This has directly increased the workloads of the police officers who work in D11 division in Selangor. Apparently children nowadays are more mature and able to speak fluently. Children who are ten years old or even younger are able to speak and express themselves well. Instruction to conduct video recording for all child abuse victims has also increased the workloads of the non-Malay interviewing/recording officers in the state itself, as they have to prepare more transcripts and translation of the transcripts compared with other states in Malaysia.

As a matter of practice, DPPs would require video recording to be done if the child witness is not able to speak fluently. There are some situations in which the DPPs do not feel confident or satisfied with the written statements recorded by the investigating officers. The written statements refer to examination of witnesses by the police under

Section 112 of the Criminal Procedure Code. This happens when the DPPs opine that the police officer who examines the child witness has actually coached or led the child witness during the process of the statement.

15. RECOMMENDATIONS

Many video recordings of child witnesses' statements have been conducted, especially in the state of Selangor, but in actual fact only few were ever tendered or used in court. In the year 2015, there were 201 video recordings in Selangor but only 35 were tendered in court. In other words, only 17.41% of the video recordings had the chance to play their intended evidential role. As such, it is high time to look into the constraints and the effectiveness of the video recording of child witnesses, especially on the necessity of translating the transcript, if the language used in the video recording is other than the national language (RMP, 2015).

The standard method used by the police in recording a written statement under Section 112 of the Criminal Procedure Code (CPC) should be adopted for video recording of child witnesses' statements. Normally, a senior officer of the same race as the complainant, witness or suspect would record the statement under Section 112 of the Code (Tariq, 2013). A senior police officer while recording such a statement is allowed to make direct translation from the language spoken into Bahasa Malaysia. For instance, a Chinese or Indian senior police officer when recording the statement of a witness who speaks Chinese or Tamil is allowed to record the statement in Bahasa Malaysia. In other words, the conversation between the recording officer and the witness can be in any language or dialect but the written statement is in Bahasa Malaysia.

Whereas in cases where the recording officer and the witness cannot communicate to each other due to language barrier, an interpreter could be used during the process of recording. The interpreter can be a police personnel, detective, clerk etc. who is able to assist in the translation. When the recording of the statement is completed, the interpreter reads out the statement to the witness in the original language, followed by the signatures of the recording officer, interpreter and witness in every page of the statement form. This is to prove that the witness understands the content of his or her statement which has been recorded.

Section 112 of the CPC has been enforced and widely used in all criminal investigation since 10 January 1976. So far the issues of language proficiency of the recording officer or interpreter and the accuracy of the translation have never been challenged in court. In situation where the court has any doubts about the written statement, the recording officer or the interpreter may be called to testify.

The statements recorded under Section 112 of the CPC may be tendered in court. Such statements can be accepted as part of the evidence under Section 32(1) of the Evidence Act 1950¹. This may happen when the statement was made in the course of, or for the purposes of, an investigation or inquiry into an offence under or by virtue of any written law² and where the statement was made by a public officer in the discharge of his duties.³. Besides, the court may also impeach the credit of a witness⁴ if his or her testimony is contradicting with the earlier statement recorded under Section 112 of the CPC.

16. CONCLUSION

The investigative process especially in sexual abuse cases is distressing to the victims. Victims are often required to repeatedly recall in numerous interviews their traumatic experience by various professionals including

¹ Statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases.

² Section 32(1)(i) of the Evidence Act 1950.

³ Section 32(1)(j) of the Evidence Act 1950.

⁴ Section 155 of the Evidence Act 1950.

teachers, school counselors, social workers, police officers, nurses, physicians, health and mental health professional. Thus, interviewing of a child witness should only be conducted once but not done repeatedly by the different professional groups.

In December 1995, the Interdisciplinary Child Protection Special Investigation Team was formally established in Hong Kong. Since then, child abuse cases have been handled by both the government and NGO's staff to deal with the problem of resource shortage (Cheung, 1997). Whereas in Thailand, every police district has a special team consists of four to five persons to conduct the video recording. The team members include police, NGO and social workers.

In the United States of America, for example Missouri, Maryland and Kansas, police officers do not conduct video recording of child witnesses' statements. This is also practiced in United Kingdom and France. Such duty is conducted by officers from other independent agencies, such as the social worker, NGO or an officer from children's hospital or whoever appointed according to the laws and regulations of their countries. This would enable the police to focus on the investigative works, collect evidence, apprehend and charge the perpetrator in court. This practice also ensures transparency in the process of investigation and to avoid biasness.

Based on the discussion above, the amendment to Section 6(2)(b) of the Evidence of Child Witness Act 2007⁵ is necessary to ensure the transparency and efficiency of child abuse investigation. This would indirectly reduce the workloads and the level of stress of police officers from Sexual and Child Investigation Division (D11), especially the non-Malay police officers who have to bear the hassle in preparing the translation of the video recording transcript.

The Evidence of Child Witness Act 2007 came into force about ten years ago. Since then the provision in Section 6(2)(b) has increased the burden of the Sexual and Child Investigation Division (D11). Interviews with the D11 police officers revealed that some of them, especially the non-Malays have applied for transfer to other departments or applied to go for full-time study due to the work pressure.

Indeed, D11 has raised this issue and proposed to the relevant authority to amend Section 6(2)(b) of the Act, but until today no amendment has been made. Amendment to this provision can be made by referring to the Criminal Procedure Code (CPC), which has been widely used in all criminal cases for about 41 years.

Heavy workload, time constraint and lack of relevant training obviously have a significant impact on the quality of interviews and video recordings conducted by police officers, as well as the subsequent transcript and translation. The officers who are enlisted to help another Contingent have to shuttle between two states for the extra duty on top of her normal desk jobs. The fatigue of travelling can take a toll on her ability to concentrate during the interview. Hard pressed to prepare the transcripts and translation within a timeframe, she might not be able to come out with products of desirable quality. Indeed, numerous studies have reported that restriction on time is one of the major factors reported by officers to tolerate against thorough investigation and quality interviewing (Keary and Fitzpatrick, 1994).

It is suggested that a coordinated multi-agency interviewing of child witnesses is necessary to reduce the burden of the interviewers and the trauma of child victims. In Malaysia, a child victim would be interviewed at least three times by the police, medical officer and welfare officer. In some high profile child abuse cases, the child victims would also be interviewed by the child psychiatrist, child psychologist or even a counsellor. Thus, it is important for the interviewer to be highly skilled in interacting with children and knowledgeable on the abused-related topic (Pence and Wilson, 1994). Apparently, not many investigating officers who conduct the video recording of the child witness have the expertise in doing so even they have already attended the two-week child witness interview video recording training programme.

⁵ A video recording shall have accompanied by a translation of the transcript, if the language used in the video recording is other than the national language.

Funding: This study received no specific financial support.

Competing Interests: The authors declare that they have no competing interests.

Contributors/Acknowledgement: Both authors contributed equally to the conception and design of the study.

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Video Recording Of Child Witness Year 2011 - Year 2015

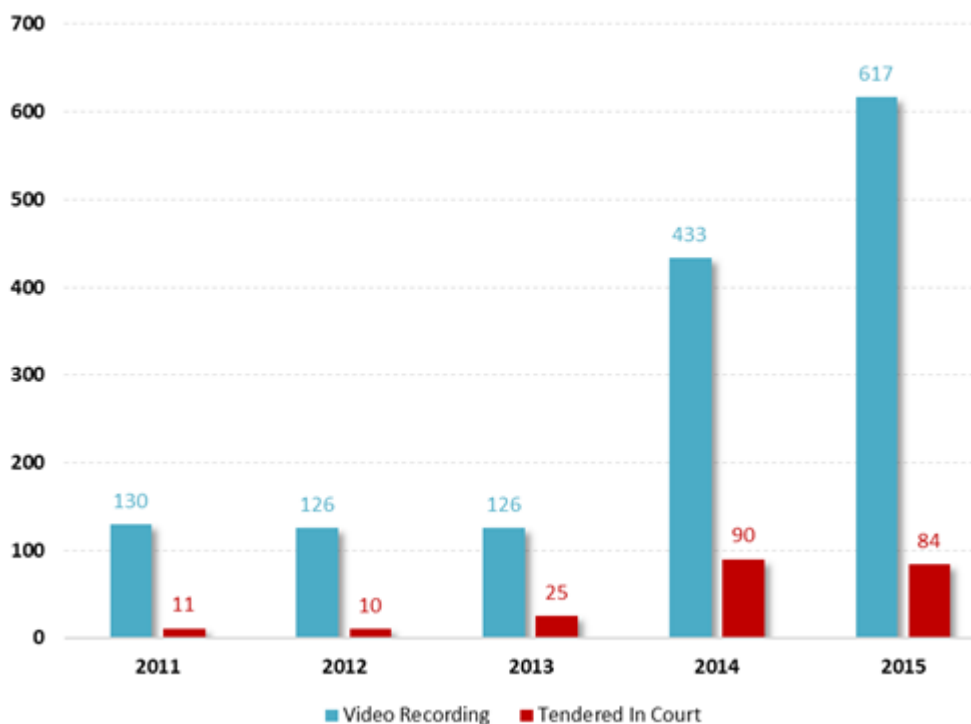





Figure-1. Video Recording of Child Witnesses' Statements and Statements Tendered in Courts (2011 –2015)
Source: Royal Malaysia Police Headquarter, Bukit Aman, Kuala Lumpur.

Table-1. Illustrate the setup and facilities of a Child Interview Centre (CIC)

	Interview Room	Technical Room	Anatomical Dolls
Purpose	To interview the child witness	To conduct the video recording of the interview	For the child witness to demonstrate the incident
Physical Spec	A room with sofa, table and a camera	A room with the specific technical equipment	Dolls with genitalia, breasts and separate fingers. There are adult and children dolls
Sample of Image			

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