



## HIGH COURT OF KIRIBATI

*Criminal Case No 60/2016*

**THE REPUBLIC**

**v**

**TEKARAWA TAKARIA**

*Taburuea Rubetaake, State Attorney, for the Republic  
Teetua Tewera for the accused*

*Date of sentencing: 5 September 2018*

### **SENTENCE**

- [1] Tekarawa Takaria has pleaded guilty to 1 charge of rape, contrary to section 128 of the *Penal Code* (Cap.67). The maximum penalty (provided for under section 129 of the *Penal Code*) is imprisonment for life.
- [2] Despite the repeal and replacement of sections 128 and 129 by section 3 of the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, this case proceeds under the *Penal Code* as it was in force on the date of the offence (section 10(2) of the amending Act).
- [3] The offence occurred on the morning of 9 May 2015, at Temakin, Betio. The prisoner and the complainant had been in a sexual relationship for about 2 years, although they were not living together. The prisoner was 22-years-old at the time. While not stated, I proceed on the assumption that the complainant was of a similar age. The prisoner and the complainant had been out drinking fermented yeast the night before, although the complainant went home early. At about 11:00am the prisoner, who had continued drinking through the night and was very drunk, went looking for the complainant.
- [4] The prisoner found her asleep in a hammock. He woke her up, which upset the complainant. He then punched her in the face. The prisoner was also holding a stick. Fearing further violence, the complainant accompanied the prisoner to his house, where he had sexual intercourse with her. She did not consent. At one point she was able to convince the prisoner that she needed to go and urinate, which gave her an opportunity to escape.

- [5] The complainant reported the matter to Police later that day. On being medically examined, the complainant was found to have lacerations to her nose and lip, but no other injuries.
- [6] The prisoner was interviewed by Police the next day, and made full admissions. For reasons that are not clear, an information was not filed with the Court until 13 May 2016, over a year later. The file then sat in the Court registry until August 2017, which was when the prisoner was first served with notice of the charge. His first appearance in Court occurred on 12 September 2017, when he asked for time to engage a lawyer. The case then fell off the Court list, and did not come back again until 23 July 2018, when the prisoner asked for more time to get a lawyer.
- [7] When the matter was mentioned before me on 27 July, the question was raised as to whether the information complied with section 70 of the *Criminal Procedure Code* (Cap.17) (see *Republic v Manibwewe Baon and anor*<sup>1</sup>). By the next mention date, the Attorney-General had rectified the defect by filing a fresh information (in the same terms), dated 8 August 2018 and signed by her. Counsel for the prisoner informed the Court that his client would be pleading guilty.
- [8] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal in *Kaere Tekaei v The Republic*.<sup>2</sup>
- [9] In *Attorney-General v Tanre Tengke*<sup>3</sup>, the Court of Appeal held that an appropriate starting point for a contested case of rape would be a sentence of 5 years' imprisonment. I adopt that approach.
- [10] The offending in this case falls towards the lower end of the spectrum. The following are relevant considerations: the offending involved a single act of intercourse; the violence involved in this case is relatively less serious than the degree of violence seen in many rape cases; and the prisoner and the complainant had, to that point, been in a relationship and had previously engaged in consensual sexual intercourse. That is not to say that a man can force his partner to engage in sexual intercourse against her will – this Court rightly regards such behaviour as very grave, requiring the imposition of a significant penalty.
- [11] I take the view that the prisoner's offending is aggravated by the fact that he did not use a condom when he had sexual intercourse with the complainant, and he ejaculated inside the complainant's vagina, thereby exposing her to the risk of both pregnancy and sexually-transmitted infection.
- [12] As far as mitigating factors are concerned, the prisoner was a young man at the time of the offending. He has no previous convictions. He apologised to the complainant in the days after the incident, and I am advised that the apology was

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<sup>1</sup> High Court Criminal Case 28/2018.


<sup>2</sup> Criminal Appeal 1/2016, at [10]

<sup>3</sup> Criminal Appeal 3/2004, at [13].

accepted. He is clearly remorseful. In the years since the offence was committed, the prisoner has had a child with another woman, and any sentence of imprisonment will clearly have an impact on his daughter.

- [13] By cooperating with the Police, and pleading guilty at what I consider to be the earliest opportunity, the prisoner is entitled to a significant reduction in sentence.
- [14] A delay of 1 year from the time the prisoner made a full confession to Police to the date on which a charge was filed with the Court, with a further delay of 15 months before the prisoner was served with notice of the charge, is simply unacceptable. This is a very straightforward case. It is now 3 years and 4 months since the date of the offence. Had this matter been dealt with expeditiously, the prisoner's sentence would likely have been served by now. For the reasons discussed by the Court of Appeal in *Attorney-General v Li Jian Pei*<sup>4</sup>, the prisoner is entitled to a further modest reduction in sentence, to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.
- [15] The prisoner has spent 19 days in custody awaiting sentence.
- [16] Taking all of these matters into consideration, I sentence the prisoner to imprisonment for a period of 3 years.

  
Lambourne J  
Judge of the High Court



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<sup>4</sup> Court of Appeal Criminal Appeal 5/2015