



HIGH COURT OF KIRIBATI

Criminal Case No 28/2018

THE REPUBLIC

v

MANIBWEBWE BAON and TINAA TINGA

Taburuea Rubetaake for the Republic
Teetua Tewera for Manibwebwe Baon
Kiatoa laoniman for Tinaa Tinga

Date of sentencing: 30 November 2018

SENTENCE

- [1] Manibwebwe Baon has pleaded guilty to 1 count of attempted rape, contrary to section 130 of the *Penal Code* (Cap.67). He stands co-accused on that charge with Tinaa Tinga, who pleaded not guilty. Tinaa also pleaded not guilty to 1 count of assault occasioning actual bodily harm, contrary to section 238 of the *Penal Code*. Tinaa was convicted on both counts following a trial. The facts of this case are set out in my judgment in Tinaa's trial, delivered on 26 November.
- [2] The maximum penalty for attempted rape is 7 years' imprisonment, while the maximum penalty for assault occasioning actual bodily harm is imprisonment for 5 years.
- [3] In determining the appropriate sentence for the prisoners, I am mindful of the approach to sentencing recommended by the Court of Appeal in *Kaere Tekaei v Republic*.¹ At the same time, I note that determining an appropriate sentence in any case is not a process that lends itself to precise mathematical calculation.
- [4] Counsel for the prosecution submits that the only appropriate sentence in this case is one of immediate imprisonment.
- [5] I am informed by counsel for Manibwebwe that his instructions correspond with the account given by the complainant during the trial. The plan had been for his

¹ Court of Appeal Criminal Appeal 1/2016, at [10].

client to hold the complainant down while Tinaa raped her, after which he would take his turn. Although initially a willing participant, Manibwebwe changed his mind after Tinaa punched the complainant, knocking her out. He put his clothes back on and left the pit. He cooperated fully with police when he was arrested later that day, making full admissions. He pleaded guilty as soon as the charge was reduced from rape to attempted rape. I accept that Manibwebwe has shown considerable remorse. He is entitled to a significant reduction in sentence.

- [6] In contrast, Tinaa has demonstrated no remorse. He maintains his innocence. Tinaa went to trial, as is his right, but, by doing so, he has foregone the reduction in sentence that he would have received had he pleaded guilty.
- [7] I consider the following to be significant aggravating factors: the offences were committed in company (*ie.* there was more than 1 offender); violence was used, beyond that inherent in the rape that was being attempted, leaving the complainant with injuries to her face and body; and, following the attack, the complainant was abandoned in the pit, naked, unconscious, and extremely vulnerable.
- [8] Both men were affected by alcohol at the time of the offending. This in no way excuses their conduct, but may go some way to explaining why they were willing to engage in such callous behaviour against a member of their extended family, someone who had been their friend.
- [9] Neither prisoner has any previous convictions. Other than the fact that 1 pleaded guilty and the other was convicted after a trial, the most significant difference in the personal circumstances of the 2 prisoners is their age. Manibwebwe is 18, and was 17 at the time the offence was committed. Tinaa is 37 years old. This, along with Tinaa's assault of the complainant and the other matters discussed above, leads me to the view that, of the 2, Tinaa is significantly more culpable.
- [10] Counsel for Tinaa submits that I should have regard to the fact that his client is married, with 4 young children. As I pointed out during submissions, this is something that his client should have thought about before attacking the complainant. It cannot in any way mitigate the sentence that Tinaa must receive.
- [11] Tinaa's counsel also suggested that the delay in the prosecution of this case is such that his client should receive a reduction in his sentence, to compensate him for a breach of his constitutional right to be afforded a fair hearing within a reasonable time.² The charge was filed a little over 7 months after the offence was committed. A trial has now been completed some 6 months after that. In the circumstances of Kiribati, I do not consider that to be an unreasonable period of time within which to conclude the matter. No reduction in sentence is warranted.

² See *Attorney-General v Li Jian Pei*, Court of Appeal Criminal Appeal 5/2015

- [12] The prisoners have spent 3 days in custody awaiting sentence.
- [13] Of the comparable cases placed before the court, I find greatest assistance from the case of *Aamon Riaua v Republic*.³ The similarities in that case include the family relationship between the appellant and the complainant, and the use of violence. Aamon was sentenced to imprisonment for 3 years after a trial on charges of attempted rape, attempted sexual intercourse with a collateral and assault occasioning actual bodily harm. He abandoned his appeal against sentence when his case came before the Court of Appeal. However, I consider the facts of that case to be less serious than those before me today. That was an attack by an individual; in this case I must deal with 2 offenders acting together.
- [14] In determining an appropriate sentence for Tinaa, applying the totality principle, I will impose a single sentence in respect of both counts that I consider meets the gravity of his offending. Taking all of the above matters into account, I sentence Tinaa to imprisonment for a period of 3 years and 3 months.
- [15] I am conscious that there must ordinarily be parity between sentences imposed upon co-offenders. For the reasons discussed above however, I am of the view that Manibwebwe's circumstances warrant a sentence somewhat shorter than that given to Tinaa. I sentence Manibwebwe to imprisonment for 2 years.
- [16] As Manibwebwe's sentence is within the scope of section 44 of the Penal Code, and at the urging of his counsel, I turn to consider whether, in light of his personal circumstances, his sentence should be suspended. The most compelling matter in Manibwebwe's favour is his youth. I consider it unlikely that he will commit further offences, and he is likely to benefit from having an ongoing incentive not to.
- [17] In the circumstances, I will suspend Manibwebwe's sentence. I therefore order, under section 44(1) of the Penal Code, that his sentence of imprisonment for 2 years referred to above is not to take effect unless, within the period of 2 years from today's date, he commits another offence punishable by imprisonment.


Lambourne J
Judge of the High Court



³ Court of Appeal Criminal Appeal 5/2000