



HIGH COURT OF KIRIBATI

Criminal Case No 15/2018

THE REPUBLIC

v

TAMIANO KANERE

*Taburuea Rubetaake for the Republic
Teetua Tewera for the accused*

Date of sentencing: 14 December 2018

SENTENCE

- [1] Tamiano Kanere has pleaded guilty to 1 charge of rape, contrary to section 128 of the *Penal Code* (Cap.67). The maximum penalty (set out 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 4 May 2017, at Temwaiku, South Tarawa. The prisoner had a reputation in the community as a traditional healer, specialising in female reproductive health. For 3 days he had been treating the complainant, at the request of her mother. The complainant was aged 14 years. The nature of her health problem is unclear. For the first 2 days, the treatment was administered in the presence of the complainant's mother. However, on the third day the prisoner was alone with the complainant. In the course of the "treatment", the prisoner licked the complainant's vagina, only stopping when her mother arrived. This act is not the subject of any charge, although it could clearly have been the basis for a charge of indecent assault.
- [4] On the fourth day, the prisoner asked the complainant's mother if he could take the complainant for a walk, on the pretext that she needed fresh air as part of her treatment regimen. While walking along the Ananau causeway, in the direction of the airport, the prisoner suggested that they have a rest. They went

into the bushes beside the road. There the prisoner told the complainant to undress. She refused. He forced her onto the ground, removed his shorts and then pulled off the complainant's underpants. The prisoner inserted his penis into the vagina of the complainant and had sexual intercourse with her. The complainant was not a willing participant.

- [5] The prisoner then forced the complainant to lie face-down. He inserted his penis into her anus and proceeded to have anal intercourse. This act is not the subject of any charge either. The complainant cried out and begged to be allowed to go back to her mother. The prisoner struck the complainant on the back of her head and told her that she was not to tell her mother what had happened.
- [6] A complaint was subsequently lodged with the police at Bonriki.
- [7] An information was originally filed on 22 January 2018, charging the prisoner with rape. The prisoner was served on Maiana in April with notice to appear, but he failed to attend court and a warrant was issued for his arrest. The warrant was executed and the prisoner made his first court appearance on 15 June.
- [8] As the original information failed to comply with section 70 of the *Criminal Procedure Code* (Cap.17), the Attorney-General rectified the defect on 10 August by filing a fresh information (signed by her). When the matter came before me on 17 August, counsel for the prisoner advised that his client would be pleading not guilty and the matter was set down for trial.
- [9] On 11 December – what was to have been the first day of the trial – the court was informed that a trial would not be required. Counsel for the prosecution had apparently been advised of this on the previous Friday. On arraignment the prisoner entered a plea of guilty.
- [10] The prisoner is 68 years of age. He has 7 adult children from his first marriage, and an 8-year-old daughter with his second wife. The prisoner leads a subsistence lifestyle. He has been diagnosed with hypertension, but is otherwise healthy.
- [11] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ In sentencing for a contested case of rape, the Court of Appeal has held that an appropriate starting point is imprisonment for 5 years.²
- [12] I consider the following matters to be the aggravating features of this case:
- a. as a traditional healer the prisoner was in a position of trust, and his offending constitutes a grave breach of that trust;

¹ *Kaere Tekaei v Republic*, Court of Appeal Criminal Appeal 1/2016, at [10]

² *Attorney-General v Tanre Tengke; Teitiniman Kaurake v Republic*, Court of Appeal Criminal Appeals 3/2004 and 7/2004, at [13].

- b. the complainant is very young, and the difference in ages between the prisoner and the complainant is significant;
- c. the prisoner led the complainant away from the safety of her family, so this was not an opportunistic attack; there was clearly a degree of planning involved;
- d. the act of anal intercourse, while not the subject of a separate charge, subjected the complainant to further humiliation;³
- e. the prisoner did not use a condom, thereby exposing the complainant to the risk of both pregnancy and sexually-transmitted infection.

For all of these matters I increase the prisoner's sentence by 3 years.

[13] The violence involved in this case, while more than was necessary to perpetrate the rape, is not so serious as to give me cause to increase the prisoner's sentence.

[14] As far as mitigating factors are concerned, the prisoner has no previous convictions. His plea of guilty entitles him to a lesser sentence but, because it came very late in the day, any reduction will be modest. For these matters I reduce the prisoner's sentence by 9 months.

[15] I have not been provided with any evidence of remorse from the prisoner for the indignities he inflicted on the complainant, other than his plea of guilty. It is just as likely that the plea is merely an acknowledgment of the strength of the Republic's case. There is nothing here to warrant any further reduction in sentence.

[16] I note that the prisoner has spent 3 days in custody awaiting sentence.

[17] Taking all of these matters into account, the prisoner is to be imprisoned for a period of 7 years and 3 months. The sentence is to run from today.


Lambourne J
 Judge of the High Court



³ *R v Billam & others* [1986] 1 WLR 349, at 351G