



HIGH COURT OF KIRIBATI

Criminal Case No 63/2017

THE REPUBLIC

v

MEREKITEREKA TEMOANNA

Taburuea Rubetaake for the Republic
Taoing Taoaba for the accused

Date of sentencing: 18 December 2018

SENTENCE

- [1] Merekitereka Temoanna has pleaded guilty to 1 charge of indecent assault, contrary to section 133(1) of the *Penal Code*, and 2 charges of defilement of a girl aged between 13 and 15 years, contrary to section 135(1)(a) of the *Penal Code*. Both offences carry a maximum penalty of 5 years' imprisonment.
- [2] Despite the repeal and replacement of sections 133 and 135 by section 4 of the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, which commenced on 23 February 2018, this case proceeds under the *Penal Code* as it was in force on the date of the offences (section 10(2) of the amending Act).
- [3] The offences occurred over the course of 3 days in April 2017, at Tabiang village, Beru. The complainant is the prisoner's niece, being the daughter of his brother. She was aged 14 years at the time, and he was 52. They were members of the same household.
- [4] On the first day, early in the morning, the complainant accompanied the prisoner to the bush to hunt for crabs. Once there, they went to a *buiā* belonging to the prisoner. The prisoner went and lay down next to the complainant. He declared his affection for her, and said that he had wanted to lie with her, but had been afraid of his wife. The prisoner removed the complainant's dress, and asked her to take off her underskirt and pants, which she did. The prisoner got on top of the complainant, still wearing a lavalava and boxer shorts. He told her that she was not to tell anyone about what he was doing, otherwise he would kill her.

- [5] The prisoner proceeded to lick the complainant's vagina. He then engaged in non-penetrative sex, rubbing his penis between the complainant's thighs (*te bwaanna* in the Kiribati language). He ejaculated. The complainant was too scared to object and was not a willing participant. The prisoner reminded her not to tell anyone what had happened, because to do so would bring great shame on their family.
- [6] On the following day, late in the evening, the prisoner woke the complainant and told her to come and lie next to him. The prisoner's wife had gone to play bingo, and there were no other adults at the house. The complainant was afraid of the prisoner, so she complied. He told her to undress and she did. The prisoner then kissed the complainant, sucked her breasts and licked her vagina. He got on top of the complainant and had sexual intercourse with her, inserting his penis into her vagina. He was not wearing a condom, and withdrew prior to ejaculating. The next evening the prisoner again had sexual intercourse with the complainant, in much the same way.
- [7] Somehow the complainant's grandmother, who was on Tarawa at the time, heard rumours of what was happening between the prisoner and the complainant and made a formal complaint to police. The prisoner was arrested and cooperated fully when questioned on 22 July 2017.
- [8] An information was originally filed on 29 August 2017, charging the prisoner with 1 count of indecent assault, 1 count of rape (with defilement charged in the alternative) and a further count of defilement. The prisoner was served on Beru in August 2018 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 25 September.
- [9] As the original information failed to comply with section 70 of the *Criminal Procedure Code*, the Attorney-General rectified the defect on 28 September by filing a fresh information (signed by her). When the matter came before me on 16 November, counsel for the prisoner advised that her client would be pleading guilty to the count of indecent assault, as well as to the count of defilement charged in the alternative. She required further particulars with respect to the second defilement charge. Once those particulars were received, counsel for the prisoner advised the court that her client would be pleading guilty to that charge too. Counsel for the prosecution confirmed that they would accept the plea of guilty to the first defilement charge and not proceed with the rape charge.
- [10] The prisoner is now 53 years of age. He has no children, and his wife left him after his offending came to light. He leads a subsistence lifestyle. He offers no explanation for his conduct, apart from saying that he gave in to temptation.

- [11] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ Applying the totality principle, I will impose a single sentence in respect of all 3 counts that I consider meets the gravity of the prisoner's offending.
- [12] The prisoner is perhaps fortunate that the Republic agreed not to proceed with the rape charge. Had he been convicted of rape he would be looking at a much longer period of custody. I note that the equivalent offence under the amended *Penal Code* now carries a maximum sentence of imprisonment for life, so similar conduct in future should result in more severe penalties being imposed.
- [13] Many of the previous cases brought under section 135(1)(a) involve offenders much closer in age to the complainant, and very often the complainant is a willing participant. Few cases involve offenders in a position of trust with respect to the complainant. The case most similar to the one before me today is that of *Bwereieta lentaake*.² There the offender was sentenced to 3 years' imprisonment following pleas of guilty to 3 counts of indecent assault and a single count of defilement. The complainant was Bwereieta's step-daughter.
- [14] I am of the view that, in a case such as this one, an appropriate starting point is a sentence of imprisonment for 3 years.
- [15] I consider the following matters to be the aggravating features of this case:
- a. as the complainant's uncle, the prisoner was in a position of trust, and his offending constitutes a grave breach of that trust;
 - b. the complainant is young, and the difference in ages between the prisoner and the complainant is significant;
 - c. sexual intercourse occurred on more than 1 occasion;
 - d. there was clearly a degree of planning involved; the prisoner's conduct cannot be seen as opportunistic;
 - e. by threatening to kill the complainant, the prisoner added terror to what must already have been a very traumatic experience for her;
 - f. 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 18 months.

- [16] As far as mitigating factors are concerned, the prisoner has no previous convictions. His cooperation with police and his early plea of guilty entitle him to a reduced sentence. For these matters I deduct 15 months.

¹ *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

² *Republic v Bwereieta lentaake* [1999] KHC 3.

- [17] I have not been provided with any evidence of remorse from the prisoner for his appalling behaviour towards 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.
- [18] I note that the prisoner has spent 4 days in custody awaiting sentence.
- [19] Taking all of these matters into account, the prisoner is to be imprisoned for a period of 3 years and 3 months. The sentence is to run from today.


Lambourne J
Judge of the High Court

The seal of the High Court of Kiribati is circular, featuring a central shield with a sun, a bird, and waves. The text "HIGH COURT OF KIRIBATI" is written around the top inner edge, and "TE SONI AE E RIETATA I KIRIBATI" is written around the bottom inner edge.