



HIGH COURT OF KIRIBATI

Criminal Case No 79/2016

THE REPUBLIC

v

KORERE BOITI

*Tewia Tawita, Senior State Attorney, for the Republic
Angitonu David for the accused*

Date of sentencing: 18 December 2018

SENTENCE

- [1] Korere Boiti has pleaded guilty to 3 offences under the *Penal Code*: 1 count of entering a dwelling-house in the night-time with intent to commit a felony, contrary to section 294(a); 1 count of child stealing, contrary to section 246; and 1 count of indecent assault, contrary to section 133(1). The first 2 counts each carry a maximum penalty of 7 years' imprisonment, while indecent assault carries a maximum sentence of imprisonment for 5 years.
- [2] Despite the repeal and replacement of section 133 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 offence (section 10(2) of the amending Act).
- [3] The offences occurred on 26 September 2015, at Terikiai village on Tabiteuea North. The complainant was 8 years old at the time, and the prisoner was 20. The complainant is related to the prisoner by marriage, in that her uncle is married to his aunt.
- [4] At about 5:30am, the complainant was sleeping under a mosquito net with her mother. The complainant's father was asleep under an adjoining mosquito net. The prisoner entered the house and carried the complainant away without waking her, or her parents. The complainant awoke to the realisation that she was outside, on the ground behind their toilet. She saw the prisoner come out of the toilet. He removed her pants, pulled his penis out of his shorts and got on top of her. The prisoner kissed the complainant and placed his penis between her thighs. He rubbed his penis on the outside of her vagina.

- [5] By this time the complainant's parents had woken to find that their daughter was missing. They started looking for her, calling her name. On hearing them calling, the prisoner told the complainant to be quiet, and covered her mouth with his T-shirt. He picked her up again and started to carry her further into the bush. The complainant cried out, at which point the prisoner released her and she ran back to her house.
- [6] When the prisoner was questioned by police, he said that he had no memory of what had happened.
- [7] An information was originally filed on 29 August 2016. For reasons unclear, the case was not mentioned by the court until it visited Tabiteuea North in June 2018. The accused was not served with notice to appear as, by that time, he was living on Tarawa, having been banished from his village. He was eventually served in October, and first appeared on these charges on 2 November. He was not legally represented, and asked for time to get a lawyer. When he next appeared, on 30 November, his lawyer informed the court that her client would be pleading guilty to all charges.
- [8] As the original information failed to comply with section 70 of the *Criminal Procedure Code*, the Attorney-General rectified the defect on 4 December by filing a fresh information (in the same terms) signed by her.
- [9] The prisoner is now 23 years of age. He married last year and he and his wife have a young baby. He works as a security guard and is the family's sole breadwinner. He still has no recollection of the matters giving rise to these charges, and offers no explanation for his conduct, other than to say that he was very intoxicated.
- [10] 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 addresses the gravity of the prisoner's offending.
- [11] The offence of child stealing is not one that comes before this Court very often. Counsel referred me to 2 cases.² In each case the victim was only a year old. Both offenders were convicted following a trial, and both had previous convictions for serious sexual offences. They were each sentenced to 3 years' imprisonment. The only other case I could find went to the Court of Appeal.³ The circumstances of that case were far more serious than the matter before me, and the offender was sentenced to 5 years' imprisonment. None of these cases are particularly helpful.

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

² *Republic v Bauro Tabaki* [2001] KIH 49, and *Republic v Kooka Eebwara* [2007] KIH 93.

³ *Ritate Tetaua v Republic* [2002] KICA 7.

- [12] I have found greater assistance from cases of indecent assault, where the victim is of a similar age to the complainant in this case. The other offences committed by the prisoner were clearly matters preparatory to the indecent assault, and can be dealt with as aggravating factors.
- [13] In *Buraitoa Tainimaki*, the offender pleaded guilty to 1 count of indecent assault, after he had led the 11-year-old victim away from where she was sleeping and digitally penetrated her anus.⁴ Buraitoa was 58 years old and had previous convictions from some time before. He was imprisoned for 12 months.
- [14] In *Atanimoa Tetara*, the offender pleaded guilty to 1 count of indecent assault, involving an act of non-penetrative sex with a 4-year-old victim.⁵ Atanimoa was aged 19 and had no previous convictions. He was also sentenced to 12 months' imprisonment.
- [15] The actions of the prisoner in entering the complainant's family home and stealing her away add significantly to the seriousness of this case. The communal way of life in Kiribati, involving as it does an inherent lack of privacy and insecure sleeping arrangements, can result in children being left particularly vulnerable. Any person preying on a child must be dealt with severely, as a clear deterrent to others.
- [16] 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. There are no further aggravating features. The prisoner is perhaps fortunate that the complainant sustained no injuries, although the experience would undoubtedly have been a traumatic one for her.
- [17] As far as mitigating factors are concerned, the prisoner is a young man with no previous convictions. His early plea of guilty entitles him to a reduced sentence. For these matters I deduct 12 months.
- [18] There has been an unacceptable delay in the prosecution of this case. It is more than 3 years since the commission of the offences. None of that delay can be attributed to the prisoner. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a modest reduction in sentence to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.⁶ I reduce his sentence by a further 2 months.
- [19] I note that the prisoner has spent a total of 5 days in custody, following his arrest and awaiting sentence.

⁴ *Republic v Buraitoa Tainimaki* [1998] KIHc 73.

⁵ *Republic v Atanimoa Tetara* [1998] KIHc 76.

⁶ *Attorney-General v Li Jian Pei & Taaiteti Areke* [2015] KICA 5

[20] Taking all of these matters into account, the prisoner is to be imprisoned for a period of 1 year and 10 months. I am not prepared to suspend the sentence, which is to run from today.


Lambourne J
Judge of the High Court

