



HIGH COURT OF KIRIBATI

Criminal Case N° 38/2019

THE REPUBLIC

v

TEKABWEBWE TAMUERA

*Teanneki Nemta for the Republic
Raweita Beniata for the prisoner*

Date of sentencing: 2 September 2019

SENTENCE

- [1] Tekabwebwe Tamuera has pleaded guilty to rape.¹
- [2] The offence was committed on 5 November 2017 at Antaai village on Marakei island. The complainant (who was 23 at the time) was drinking fermented yeast with a group of friends, including the prisoner (to whom she is related). In the early hours of the morning, the complainant walked one of the friends home to Tekuanga village. Part-way through the journey they were joined by the prisoner. The complainant left the prisoner and their friend in Tekuanga and returned to Antaai. When she got to the area known as Terawarawa, she heard the prisoner calling her name. He then appeared on the path in front of her, blocking her way. It was around 3:00 or 4:00am.
- [3] The prisoner told the complainant that he wanted to eat her vagina. As a ruse, the complainant told the prisoner that they should go to a different place. She then attempted to run away. The prisoner hit her on the side of the head,

¹ *Penal Code (Cap.67), sections 128 and 129 – punishable by maximum sentence of imprisonment for life. 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, which commenced on 23 February 2018, this case has proceeded under the Penal Code as it was in force on the date of the offence (as provided for under section 10(2) of the amending Act).*

causing her to stumble. He grabbed her by the hair and pulled her towards him, putting his arm around her neck. The prisoner kicked the complainant's legs, causing her to fall to the ground. She was on her back, and the prisoner got on top of her. She spat in his face and he slapped her. He then held her hands above her head with one hand and lifted up her shirt and bra with the other. The prisoner sucked the complainant's breasts.

- [4] The complainant struggled. The prisoner asked her whether she wanted to live or die. She stopped struggling. The prisoner then punched her thighs, further weakening her resistance. He removed the complainant's shorts and underpants. He then removed his shirt and *lavalava*. He was not wearing any underpants. He commenced to have sexual intercourse with the complainant.
- [5] A man then walked by. Thinking that they were engaged in consensual sexual intercourse, he scolded the couple and told them to go somewhere else. The complainant told him that she was being raped. The man told the prisoner to get off the complainant, which he did. The man accompanied the complainant to the police station, where she filed a complaint against the prisoner.
- [6] The complainant was later examined by the island's Medical Assistant. She was found to have scratches on her nose and cheek, as well as a laceration to her genitals.
- [7] When interviewed by the police, the prisoner said that he had been very drunk and had no recollection of what he had done to the complainant. He accepted that what she had said was true.
- [8] An information was not filed in this Court until 30 August 2019. Due to delays in serving the accused on Marakei, he did not make his first appearance in Court until 30 December. On 14 February 2020, counsel for the prisoner informed the Court that his client would be pleading guilty.
- [9] The prisoner's offending was serious. While intoxication was clearly a contributing factor, it in no way excuses what he did. The complainant sustained only minor injuries, but the gravity of the prisoner's conduct cannot be ignored.
- [10] The prisoner is now 21 years of age, and was 19 at the time of the offence. He is not married and, prior to coming to Tarawa for court, he had been living with his parents. He left school after Form 1, and has since led a subsistence

lifestyle. He has no previous convictions. I am told that the prisoner has not consumed alcohol since the offence.

[11] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.² The Court of Appeal has held that an appropriate starting point for a contested case of rape is 5 years.³ I adopt that as the starting point in this case.

[12] I consider the following matters to be the aggravating features of this case:

- a. despite the fact that the prisoner is younger than the complainant, as her uncle (albeit some degrees removed) he had a customary obligation to protect her, and his actions were a breach of that duty;
- b. violence was used, beyond that inherent in the nature of the offence of rape;
- c. the prisoner made an implied threat to kill the complainant;
- d. the prisoner did not use a condom, thereby exposing the complainant to the risk of both pregnancy and sexually-transmitted infection.

For these matters I increase the prisoner's sentence by 1 year.

[13] As for mitigating factors, the prisoner cooperated with police and has no previous convictions. His youth and immaturity are also matters that warrant a modest reduction in sentence. For these matters I will reduce his sentence by 9 months.

[14] For his early plea of guilty, the prisoner is entitled to receive a significant discount. For this his sentence will be further reduced by 1 year and 7 months. That brings the sentence down to 3 years and 8 months.


[15] It has taken too long to prosecute this case. The offence occurred more than 2 years ago. As far as I can tell, for most of this time the case file sat neglected on a shelf in the Office of the Attorney-General. This delay violates the prisoner's constitutional right to be afforded a fair hearing within a reasonable time. For the reasons discussed by the Court of Appeal in *Li Jian*

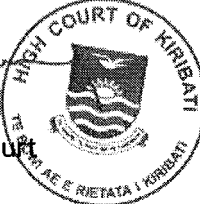
² *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

³ *Attorney-General v Tanre Tengke; Teitiniman Kaurake v Republic* [2004] KICA 10, at [13].

Pei, he is entitled to a reduction in his sentence to compensate him for this breach.⁴ I will reduce his sentence by another 2 months.

- [16] The prisoner is convicted on his plea of guilty. Taking all of the above matters into account, he is to be imprisoned for a period of 3 years and 6 months. I order that the prisoner's sentence is to run from 21 February 2020, being the day on which he was taken into custody on this charge.⁵


Lambourne J
Judge of the High Court

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

⁴ *Attorney-General v Li Jian Pei & Taaiteti Areke* [2015] KICA 5.

⁵ Under section 28(2) of the *Penal Code*.