



HIGH COURT OF KIRIBATI

Criminal Case N° 31/2018

THE REPUBLIC

v

MATIKEE TOROMON

Eweata Maata for the Republic

Teetua Tewera for the prisoner

FILE NOTE

- [1] The prisoner has pleaded guilty to indecent assault, contrary to section 133(1) of the *Penal Code*,¹ and entering a dwelling-house in the night with intent to commit a felony, contrary to section 294(a) of the *Penal Code*.
- [2] The circumstances giving rise to these charges occurred at Eita village, South Tarawa, at around 1:00 or 2:00am on 31 October 2017. The complainant, who was naked, was asleep next to her husband on a *buia*. The prisoner entered the *buia* and sucked the complainant's breast. He then removed his shorts and underpants, got on top of the complainant and placed his penis between her thighs. The complainant assumed that he was her husband, but realised her mistake when she saw her husband sleeping beside her. She screamed and the prisoner ran away. He was chased and caught by the complainant's husband, who beat him with a stick. The prisoner was then tied up to await the arrival of the police.
- [3] The original information, filed on 5 July 2018, charged the prisoner with 1 count of rape and 1 count of entering a dwelling-house in the night with intent to commit a felony. As that information did not comply with section 70 of the

¹ 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 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).

Criminal Procedure Code, on 9 November the Attorney-General filed a fresh information (in similar terms). On 23 November counsel for the prisoner informed the Court that his client would be pleading not guilty, and the matter was set down for trial.

- [4] On 4 June 2019 (which was to have been the first day of the trial) counsel for the prosecution amended count 1 of the information to substitute a charge of indecent assault. Counsel for the prisoner then advised that his client would now plead guilty to both charges.
- [5] The prisoner is now aged 21 years. In the course of submissions, counsel for the prisoner provided the Court with several medical reports, 2 of which had been prepared by Dr Aritite Kauongo, the psychiatrist in charge of Te Meeria mental health ward. It transpired that, in 2014 (when he was 17), the prisoner was diagnosed with schizophrenia. Prior to the offences he had been admitted to Te Meeria several times, with the last admission occurring in February 2017. After that however, the prisoner missed several follow-up appointments and stopped taking his medication. The day after his arrest he was re-admitted to Te Meeria. Dr Arite reports that, around the time of the offences, the prisoner was experiencing auditory hallucinations, persistent insomnia and bouts of aggression. He was “mentally unwell”.
- [6] Since then, the prisoner has been complying with his treatment regime. He is functioning well enough to have secured entry to the Marine Training Centre. However Dr Aritite stresses the importance of the prisoner maintaining his treatment, and continually monitoring his mental well-being.
- [7] The offence of indecent assault carries a maximum penalty of 5 years’ imprisonment, while the maximum sentence for entering a dwelling-house in the night with intent is imprisonment for 7 years. Such offending will ordinarily attract a custodial sentence. The prisoner’s conduct, sucking the breast of the complainant and engaging in non-penetrative sex, sits in the middle of the range for offences of this kind. However his mental health issues warrant special consideration. I am satisfied that the prisoner is genuinely remorseful. He has no previous convictions and his pleas of guilty were entered as soon as the prosecution withdrew the rape charge.
- [8] Before passing sentence on the prisoner, I want to give him a further opportunity to demonstrate his commitment to complying with his treatment

