



## HIGH COURT OF KIRIBATI

*Criminal Case No 74/2017*

**THE REPUBLIC**

**v**

**TEIAKOBWA TEIAKOBWA**

*Eweata Maata for the Republic*

*Teetua Tewera for the accused*

*Dates of hearing: 26-27 March 2019*

*Date of judgment: 1 April 2019*

### **JUDGMENT**

- [1] Teiakobwa Teiakobwa has pleaded not guilty to 1 count of assault occasioning actual bodily harm, contrary to section 238 of the *Penal Code* (Cap.67).
- [2] The offence is alleged to have occurred on 19 May 2017. An information was first filed in this case on 8 November 2017, charging the accused with 1 count of rape. That information was defective in that it failed to comply with section 70 of the *Criminal Procedure Code* (Cap.17). The Attorney-General filed a fresh information, in the same terms, on 25 September 2018. At a mention on 26 October counsel for the accused advised that his client would be pleading not guilty, and the matter was fixed for trial on Monday, 25 March 2019.
- [3] When the case was called on last Monday, counsel for the prosecution advised that her witnesses would only be arriving from Tabiteuea North that afternoon. She asked if the trial could be adjourned until the following day. I granted the application, but warned counsel that no further adjournments would be given. There had been ample time to prepare the matter for trial, and it was concerning that the prosecution had left its preparation so late.
- [4] The following day, counsel for the prosecution advised that she wished to call the complainant as a witness in the trial. Counsel for the accused objected, on the basis that the prosecution had not previously listed the complainant as a witness,

and no witness statement had been provided to the defence. Section 251 of the *Criminal Procedure Code* is relevant:

**251 Additional witnesses for prosecution**

- (1) No witness who has not given evidence at the preliminary inquiry shall be called by the prosecution at any trial unless the accused person has received reasonable notice in writing of the intention to call such witness.
- (2) The notice shall state the witness's name and address and the substance of the evidence which he intends to give.
- (3) The court shall determine what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence and determined to call him as a witness.

- [5] The information having been filed by the Attorney-General under section 70(1) of the *Criminal Procedure Code*, there was no preliminary inquiry in this matter. In order to address the requirement for notice to the accused, it is the practice in such cases to provide the defence with copies of all documents from the prosecution case file. That occurred in this matter. However, as the complainant lives with a disability (she is deaf), her statement had not been recorded by the investigating police. It was not until the morning of what was to be the first day of the trial that counsel for the prosecution informed counsel for the accused of her intention to call the complainant as a witness. At that point, there was still no witness statement in existence, and the prosecution was unable to comply with its obligations under section 251. A further adjournment was requested to allow for the complainant's statement to be taken. Counsel for the accused objected, adding that, if an adjournment was given, additional time would then be needed for the accused to consider the implications of the statement. I reminded counsel for the prosecution that only the day before I had told her that there would be no further adjournments. This dilemma was of the prosecution's own making. Had there been adequate and timely preparation for trial, the situation would not have arisen. In the circumstances, I refused counsel's request for an adjournment and ruled that the complainant would not be permitted to testify.
- [6] Counsel for the prosecution then advised that, without the complainant's testimony, they could not proceed on the rape charge. A *nolle prosequi* was entered under section 68(1) of the *Criminal Procedure Code*, and the accused was discharged. Counsel then filed an information charging the accused with 1 count of assault occasioning actual bodily harm. Counsel for the accused had been forewarned of this possibility, and no objection was raised. The accused was arraigned on the fresh information and pleaded not guilty. The trial proceeded on that information.
- [7] Three witnesses were called for the prosecution. The first of these was Katoataake Kaoma, the mother of the complainant. She is 59 years old, and a

resident of Utiroa village on Tabiteuea North. In the early hours of 19 May 2017, Katoataake was woken from her sleep by what sounded like a scream. She then heard a second scream, and recognised the voice as being that of her 19-year-old daughter, Nei Bwaukin. Katoataake left her house and ran to her daughter, who was at the well of their next-door neighbour.

- [8] Katoataake saw that Nei Bwaukin was distressed and naked, squatting down in an apparent attempt to cover herself. Her eyes were red and swollen and her lower lip was bleeding. She was crying. Katoataake asked Bwaukin who had done that to her. Bwaukin said that she did not know the name of the person, but she knew his house. Katoataake suggested the name of the accused, and Bwaukin nodded. The 2 women went back to the house and later went to the police station to file a complaint.
- [9] The second prosecution witness was Nei Kabooa Kourabi, the 23-year-old sister of the complainant. Early in the morning of 19 May 2017, she was getting ready to sleep at her house in Utiroa. She heard what she thought was a dog. She heard the noise again and realised that it was a scream. She went to where the noise had come from, and saw her sister at the well and a man running away. She could see from the moonlight that it was the accused. Kabooa and her husband Bwatiua set off after the accused, who had retrieved his bicycle and cycled away. They returned to Nei Bwaukin and asked her to confirm the identity of the man. She mentioned the name of the accused's brother-in-law. Kabooa then went to the house of the accused and confronted him. He apologised, but Kabooa told him that he needed to apologise to her parents.
- [10] The final prosecution witness was Kabooa's husband, Bwatiua Aam. On the night in question he was woken by his wife, who had heard a noise. She said, "Isn't that Bwaukin?" Bwatiua stood up and replied, "No. It wasn't." He then heard a second scream. They went outside and Kabooa called her sister's name. Bwatiua saw Bwaukin at the well, pointing at a man who was running away. Bwatiua ran after the man, who retrieved a bicycle and rode away. He recognised him as the accused when he passed under a light. Bwatiua later went with his wife to the house of the accused. The accused, who smelt of alcohol, apologised, saying that it was not his intention, as he was just playing with her. Bwatiua told him to apologise to Bwaukin's parents. The accused then asked his mother to go and apologise on his behalf.
- [11] A medical report and the record of the accused's interview with police were tendered by consent.
- [12] The medical report, prepared by Dr Atuna Mareko, records that the complainant was examined at 2:20am on 19 May 2017. Dr Atuna observed some tenderness in the left parietal area of Bwaukin's scalp. Her lower lip was tender and swollen, with some bruising. There was also some tenderness, bruising and abrasions to the complainant's genitals.

- [13] The police interview with the accused was conducted on 5 June 2017 by Detective Constable Takenibeia Bauro. At the beginning of the interview, it was explained to the accused that it had been alleged that he had had sexual intercourse with the complainant.
- [14] After covering a number of preliminary matters, the accused was asked to explain what had happened. He said that he had cycled to the house of Teotiuea to buy a smoke. He called Teotiuea's name and then saw Nei Bwaukin bathing next to the well. He called to Bwaukin and she screamed. This angered the accused, who then threatened to have sexual intercourse with her. He held her mouth with his hand before running away, collecting his bicycle on the way.
- [15] Several specific questions about the incident were then put to the accused. He conceded that, on the night in question, he was drunk, having consumed fermented yeast earlier in the evening. He propositioned Nei Bwaukin, who shook her head and screamed. He blocked her mouth with his hand, but she kept screaming. When he ran away he was chased by Bwatiua. The accused claimed to have had consensual sexual intercourse with Nei Bwaukin approximately 2 weeks earlier.
- [16] That brought the prosecution case to a close.
- [17] Counsel for the accused then submitted that his client had no case to answer. I rejected the application. Despite the absence of any direct evidence from the complainant, the accused had admitted to police that he had assaulted her by grabbing her mouth. Injuries to the complainant's mouth had been confirmed by both Nei Katoataake and Dr Atuna. This was enough to satisfy the requirement of section 256(1) of the *Criminal Procedure Code* that there be some evidence that the accused had committed the offence. I ruled that the accused had a case to answer. I then informed him of his rights, as required by section 256(2) of the *Criminal Procedure Code*. Counsel for the accused advised that his client would be giving evidence, and would not be calling any other witnesses.
- [18] The accused is 24 years old. On the night in question, he and a friend each drank about 10 cups of fermented yeast. The accused then went to a nearby *maneaba* and asked where he might be able to buy a smoke. He met the complainant's brother there, who suggested that he go to Otiuea's house. When he got there, the accused saw the complainant bathing beside the well. He went up to her and asked (using hand signals) if she wanted to come with him. He wanted to have sexual intercourse with her. She had previously been his girlfriend, and they had had consensual sexual intercourse once before. Nei Bwaukin screamed, so the accused put his right hand over her mouth. She screamed again. He could see people approaching, so he ran to his bicycle and cycled away.

- [19] In cross-examination, the accused agreed that Nei Bwaukin also shook her head while he had his hand over her mouth. He said that they were facing each other, and rejected the suggestion that he had grabbed the complainant from behind.
- [20] In answer to a question from the Court, the accused said that Nei Bwaukin had also tried to slap his hand away. That brought the defence case to a close.
- [21] In considering the evidence in this case, I remind myself that it is not for the accused to prove his innocence. The burden rests with the prosecution to prove, beyond reasonable doubt, each and every element of the offence charged.
- [22] In order to convict the accused of the offence of assault occasioning actual bodily harm, I must be satisfied to the required standard of the following elements:
- a. the accused unlawfully assaulted Nei Bwaukin;
  - b. in doing so, he caused her bodily harm.
- [23] There is no dispute that the accused assaulted Nei Bwaukin by putting his hand over her mouth to try and stop her from screaming. It is not claimed on the accused's behalf that the assault was in any way authorised, justified or excused by law. The only real issue then is whether the assault led to Nei Bwaukin sustaining any bodily harm.
- [24] 'Harm' is defined in section 4 of the *Penal Code* as "any bodily hurt, disease or disorder whether permanent or temporary".
- [25] Dr Atuna's report speaks of injuries to Nei Bwaukin's scalp, lower lip and genitals. However, there is no evidence to suggest that the accused did anything that could have caused the injuries to the complainant's scalp and genitals. The only contact between the 2 was the accused's hand on the complainant's mouth, so I will focus on the injury to the complainant's lower lip. There is no doubt that this injury, though minor, amounts to bodily harm. The question then is whether the injury was caused by the accused's assault on the complainant.
- [26] In the absence of testimony from the complainant as to what caused the injury, there is no direct evidence; the evidence on this point is entirely circumstantial. Direct evidence is not required, but I must be satisfied that the only rational inference that can be drawn from what has been proven is that the accused caused the injury to the complainant's lip. After consideration of the evidence, I am satisfied that this is the only rational inference to be drawn. The accused admitted that, while he was covering the complainant's mouth, she shook her head and tried to slap his hand away. Very shortly after that, Katoataake saw that Nei Bwaukin's lip was bleeding, an injury confirmed by Dr Atuna. I am satisfied beyond reasonable doubt that the accused caused the injury to the lip of the complainant in the course of assaulting her.

[27] I find the accused guilty of the offence of assault occasioning actual bodily harm, that harm being an injury to the complainant's lower lip, and he is convicted accordingly.

[28] I will hear counsel as to sentence.

  
**Lambourne J**  
Judge of the High Court

