IN THE HIGH COURT OF KIRIBATI)
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

HIGH COURT CRIMINAL CASE NO. 28 OF 2005

THE REPUBLIC
VS
MORETI TARITA

FOR THE REPUBLIC: MS RURIA ITERAERA
FOR THE ACCUSED: MR AOMORO AMTEN

DATE OF HEARING: 16 JANUARY 2006

JUDGMENT

The accused is charged on four counts - of rape, indecent assault, abduction and wrongful confinement. All charges relate to the same incident on 12 February 2005. The particulars of each count are:-

Rape — On 12 February 2005 at Takoronga, Tarawa in the Republic of Kiribati, Moreti Tarita had unlawful sexual intercourse with Teatu Teunaia without her consent.

Indecent Assault — On 12 February 2005 at Takoronga, Tarawa in the Republic of Kiribati, Moreti Tarita unlawfully and indecently assaulted Teatu Teunaia.

Abduction — On 12 February 2005 at Takoronga, Tarawa in the Republic of Kiribati, Moreti Tarita with intent to have sexual intercourse took away and detained Teatu Teunaia against her will.

Wrongful Confinement — On 12 February 2005 at Takoronga, Tarawa in the Republic of Kiribati, Moreti Tarita wrongfully confined Teatu Teunaia.

In the absence of particulars distinguishing the allegations of indecent assault from those of rape it was unnecessary to charge both offences. The accused having been found not guilty of rape, the court was obliged to consider whether the accused was guilty of the lesser offence of indecent assault. All the elements necessary to prove indecent assault are elements which must be proved as some of the elements of rape.

Likewise with abduction and wrongful confinement. Subject to argument (the point was not raised) I should think that the elements of the crime of wrongful confinement are the same as some of the elements of abduction.

In short, to cover all the alleged wrongful activities of the accused he need have been charged only with rape and abduction.

One issue alone was in contest between prosecution and defence: the issue of consent. There was no dispute on the facts even down to most details of the events of that afternoon and evening.

The 12th February 2005 was a Saturday. During the afternoon Moreti and his cousin Temakau Uriam were in the Banni bar in Betio, drinking. Nei Teatu came in: she was looking for her friend Nei Kateia to give her a tibuta. Moreti took a fancy to her and called her over. They sat together. Between five and six o'clock they left and caught the bus to Ueen te Rooti where a party was going on. Although Teatu did not mention his accompanying them, Temakau was with them on the bus. On arrival Teatu and Moreti spent a few minutes talking to those already drinking at the party. They then went to a kiakia where they spent several hours together and had sex twice. Once Temakau came and brought them food. Later Teatu had a wash, left (unknown to Moreti) and caught a bus to the Betio Police Station. She and Moreti had been together three to four hours. She and her boy friend (whom she had left during the afternoon at Solar Energy waiting for her) went to the Betio hospital where she was examined by Dr Keen Reue at about half past eleven. His report:-

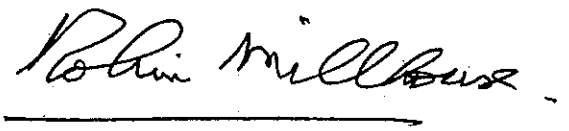
Brought in by boy friend and a policeman. Unkempt as skirt was covered with dirt and sperm-like stuff.

Internal orifice was covered with white liquid. No evidence of blood. Hymen is absent. No laceration noted.

together for three to four hours, a good part of that time with other people and yet, she says, she could not get away from him.

I cannot, at the very least, but have reasonable doubts about the guilt of the accused. As an element of each charge is that the accused used force or threat of force to overbear the girl, and the use of threats or force not having been proved beyond reasonable doubt I find the accused not guilty on each count.

Dated the 18th day of January 2006



THE HON ROBIN MILLHOUSE QC
Chief Justice