



## HIGH COURT OF KIRIBATI

*Criminal Case No 66/2016*

**THE REPUBLIC**

**v**

**TEKATIBA ANATI**

*Pauline Beiatau, Director of Public Prosecutions, for the Republic  
Reiati Temaua for the accused*

*Date of sentencing: 11 December 2018*

### **SENTENCE**

- [1] Tekatiba Anati has pleaded guilty to 1 charge of manslaughter, contrary to section 192 of the *Penal Code* (Cap.67). The maximum penalty is imprisonment for life.
- [2] An information was originally filed on 13 June 2016 charging the prisoner with murder, contrary to section 193 of the *Penal Code*. A second information (with slightly different particulars) was filed on 21 March 2017. Neither information complied with section 70 of the *Criminal Procedure Code* (Cap.17). On 3 August 2018 the Attorney-General rectified the defect by filing a fresh information (in the same terms) signed by her. When the matter was mentioned before me on 3 August counsel for the prisoner advised that his client would be pleading not guilty, so the matter was fixed for trial.
- [3] On 30 November the Court was informed that the prosecution had agreed to accept the prisoner's plea of guilty to manslaughter. An information to that effect was filed on 3 December, and a *nolle prosequi* was entered in respect of the murder charge. The prisoner was arraigned on 6 December and pleaded guilty.
- [4] The incident giving rise to this charge occurred on 29 December 2015. Early that morning, around 5:00 or 6:00, the prisoner returned to his house in Koinawa village on Abaiang, having spent the night drinking sour toddy with friends. He was drunk. His wife and children were not home. The prisoner planned to sleep, and was fixing his mosquito net. He was surprised when Itintawai Kaboraa came into his house, carrying a pot of cooked rice. He was also drunk. Itintawai was a fellow resident of Koinawa, but he and the prisoner were not friends.

- [5] Itintawai approached the prisoner and asked for some food to accompany the rice he had brought. The prisoner told him that he had no food. Itintawai was insistent, but the prisoner repeated that he had nothing to offer him. Itintawai became annoyed, and punched the prisoner in the face. This angered the prisoner and the 2 men began to struggle. They fell to the ground. The prisoner got to his feet, ready to continue the fight with Itintawai, but Itintawai called out for help. He was bleeding. The prisoner had been using a fishing knife to fix his mosquito net, and he was still holding it when the struggle with Itintawai began.
- [6] Itintawai sustained a single stab wound to his upper left chest. It was 2 inches long and 2-3 inches deep, puncturing Itintawai's lung. The prisoner ran to get help from his sister next door. When they returned, Itintawai was dead. The prisoner was arrested later that day, and made full admissions when questioned. He admitted to killing Itintawai, but denied that he had intended to cause him any harm. In accepting the prisoner's plea of guilty to manslaughter, the prosecution now acknowledge this to be true.
- [7] The prisoner spent more than a week in custody initially. He was sent to Tarawa, and released on bail in early January 2016.
- [8] The prisoner is now 29 years of age. He is married, with 4 children aged between 1 and 7. The prisoner leads a subsistence lifestyle and is the sole provider for his family. He has no previous convictions.
- [9] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal in *Kaere Tekaei v Republic*.<sup>1</sup> At the same time, I note that determining an appropriate sentence in any case is not a process that lends itself to precise mathematical calculation.
- [10] In *Kaere Tekaei* the Court of Appeal was considering an appeal against sentence for manslaughter. The appellant had been sentenced at first instance to 12 years' imprisonment. He was convicted following a trial for murder, with the trial judge accepting that the killing was provoked. The Court of Appeal held that an appropriate starting point was a 12-year sentence, but the various mitigating factors reduced the appellant's eventual sentence to imprisonment for 6 years and 3 months. The Court said:
- Sentencing for manslaughter is a difficult exercise because there is such a multiplicity of circumstances in which someone may cause the death of another by acting or omitting to do something unlawfully. There are consequently great differences in levels of culpability. Sentences therefore can vary considerably.<sup>2</sup>

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<sup>1</sup> Court of Appeal Criminal Appeal 1/2016, at [10]

<sup>2</sup> *ibid.*, at [11]

- [11] As such, 12 years is not going to be the appropriate starting point for all cases of manslaughter. The circumstances in *Kaere Tekaei* were considerably more serious than those in the case before me – the offence was committed in company; and the offenders had gone to the home of the deceased armed with a sword and a spear, looking for a fight.
- [12] The starting point in a case where provocation has reduced a charge of murder to one of manslaughter is almost always going to be higher than the starting point in a case where the death has been the result of criminal negligence on the part of the offender. Having reviewed sentences imposed by this Court in previous cases of manslaughter, I consider the starting point in this case to be a sentence of imprisonment for 6 years.
- [13] There are no aggravating features in this case.
- [14] The prisoner pleaded guilty at the first opportunity and is clearly remorseful. He is a first offender. For these matters he is entitled to some credit, and I deduct 18 months.
- [15] The prisoner has spent approximately 2 weeks in custody prior to sentence. As a consequence, I reduce the prisoner's sentence by 1 month, to take account of the effect that the rules concerning parole will have on his ultimate sentence.
- [16] It is relevant that there has been an unacceptable delay in the prosecution of this case. It has been almost 3 years since the commission of the offence. None of that delay can be attributed to the prisoner. For the reasons discussed by the Court of Appeal in *Attorney-General v 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.<sup>3</sup> I reduce his sentence by a further 3 months.
- [17] Taking all of these matters into account, the prisoner is to be imprisoned for a period of 4 years and 2 months. The sentence is to run from today.

  
**Lambourne J**  
Judge of the High Court



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<sup>3</sup> Court of Appeal Criminal Appeal 5/2015