



HIGH COURT OF KIRIBATI

Criminal Case No 54/2016

THE REPUBLIC

v

MARUIA TAOROBWA

*Ateti Tekawa for the Republic
Reiati Temaua for the accused*

*Dates of hearing: 19-20 February 2019
Date of judgment: 5 March 2019*

JUDGMENT

- [1] The accused has pleaded not guilty to 1 count of rape, contrary to section 128 of the *Penal Code* (Cap.67).
- [2] Despite the repeal and replacement of section 128 by section 3 of the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, which commenced on 23 February 2018, this case proceeds under the *Penal Code* as it was on the date of the alleged offence (section 10(2) of the amending Act).
- [3] An information was originally filed in this case on 20 April 2016. That information was defective in that it failed to comply with section 70 of the *Criminal Procedure Code* (Cap.17). On 20 July 2018 the Attorney-General rectified the defect by filing a fresh information, signed by her.
- [4] Three witnesses were called for the prosecution. The first of these was the complainant. She is 22 years old and is now residing in the Marshall Islands. In September 2014 she was living with her father in Bangantebure on South Tarawa. On 10 September she visited her mother's relatives in Eita. That afternoon, she went with her friend Annie and others to drink sour toddy at a place in Eita known as Tebike. They returned to Annie's house on the main road at Eita in the early evening. Later that night, the complainant started getting ready for bed; she bathed and put on the dress that she slept in. She then realised that she had left her shoes at Tebike, so she went back to see if she could find them. She went to Tebike alone, as Annie was asleep already.

- [5] When the complainant got to Tebike she saw her cousin, Nei Teraaiti, who was drinking fermented yeast with a small group of friends. Teraaiti invited her to join them. She stayed with them for maybe an hour. In that time the complainant drank about 3 cups of yeast; she did not like the taste. She then left to return to Annie's house. She is not sure what time it was.
- [6] The path from Tebike to Annie's house took the complainant over a narrow causeway, a place that she called "the bridge". Before she reached the bridge, she saw 2 young men, the accused and his friend Manaima. She did not know them well, but had seen them around in Eita. The accused called out to the complainant and asked where she was going. They tried to touch her, and the accused suggested that they should accompany her. Manaima was laughing. She ignored them and kept walking.
- [7] One of the men – the complainant is not sure who – then dragged her by her hair. They grabbed her and lifted her up. The accused held the complainant around the upper body and Manaima held her legs. She struggled, trying to break free. They carried her to an area of mangroves. She managed to get away, but they caught her again. The men carried her to a place close to a small boat house near the mangroves and put her on the ground. The accused sat on the complainant and punched her in the stomach while Manaima had his hand over her mouth. The accused punched her repeatedly in the stomach. He also tried to choke her. For a time, Manaima held her legs. She screamed out and called for help, but nobody came. She was weak from the effort.
- [8] At some point, Manaima left. The complainant was lying on the ground and the accused tried to pull down her underpants. Even though she was struggling, he removed her underpants and tried to take off her dress, ripping it from under the left arm. Then the complainant felt the accused's penis penetrate her vagina. He proceeded to have sexual intercourse with her; he did not use a condom. The complainant could see Manaima some distance away, watching. She called to him for help, but he ignored her.
- [9] The sexual intercourse continued for a relatively short time – less than 5 minutes. The accused had not yet ejaculated when the complainant, in an effort to distract him, said that someone was coming. He stood up, and the complainant kicked him in the crotch. She jumped up and ran to a nearby house, which was perhaps 30 metres away. She climbed onto a *buia*, where there was a young man who the complainant did not know. She told him that she had been attacked, but he did not respond. The accused then came and told her to get off the *buia*. He told the other man that the complainant was his girlfriend. She responded that the accused was not her boyfriend and she did not know him. Soon after that the accused left, and the complainant stayed at that house until dawn. Later that day she went to the police station and filed her complaint.

- [10] Under cross-examination, the complainant maintained that she had not seen the accused when she had been drinking at Tebike with Teraaiti. She did not know whether he had been part of that group, but he was not there when she went back looking for her shoes. The complainant denied lying about the attack on her by the accused and Manaima.
- [11] The complainant was asked at length about the statement that she had given to police. She agreed that there were details from the version of events that she had given to the court that were missing from her statement. She explained that she had written the statement herself in a rush and, with the benefit of hindsight, could have provided more information. Had she taken more time she would have included more detail and tried to explain herself better.
- [12] It was put to the complainant that, while the accused was having consensual sexual intercourse with her, Manaima had shown up and asked the accused for his turn. She denied it. She also denied that she had asked the accused to get rid of Manaima, and that she only left when the accused got up to speak to him. She rejected the proposition that she had not resisted, and was adamant that she had not consented to sexual intercourse with the accused.
- [13] In answer to a question from the court, the complainant said that she was left with scratches to her face, left side and back after the attack. She did not see a doctor in connection with her complaint.
- [14] The second prosecution witness was Ioram Tiebane, a 34-year-old resident of Eita. It was his house to which the complainant had gone that early morning in September 2014. He was woken from his sleep by a loud bang, as if something had crashed into his house. He went outside and saw the complainant, who he knew from having seen her around the area. She jumped on to a *buia*, where Teawatei was sleeping. The complainant asked for help, and said that she had been attacked. As she was speaking, the accused arrived. Ioram knew the accused, as he lived nearby.
- [15] The accused said that the complainant was his girlfriend. He was following her because she had run away. The accused said that the complainant had lied to him about someone coming and then ran away. The complainant told Ioram that the accused was not her boyfriend. Ioram then led the accused away to a nearby hammock and told him to go back home. The complainant stayed on the *buia* for about an hour before leaving.
- [16] In cross-examination Ioram agreed that his house was quite close to the small boat house. It was perhaps a little over 20 metres away. He agreed that it was close enough that, if someone at the boat house had called out, he would expect to hear them. He had not heard anything that morning before being woken by the sound of the complainant crashing into his house. Ioram seemed a little uncertain as to whether the complainant had said that she had been attacked.

However, in re-examination, he returned to his earlier evidence that she had asked for help because she was being attacked.

- [17] The final prosecution witness was Detective Sergeant Mareweiti Ruuka. He had interviewed the accused on 12 September 2014. The record of that interview was tendered without objection.
- [18] At the beginning of the interview, it was explained to the accused that it had been alleged that he had assaulted and strangled the complainant and punched her in the stomach, before dragging her to the bushes and raping her while he was drunk. After covering a number of preliminary matters, the allegations were again explained to him, and he was asked to respond. He said that all he knew was that he had been very drunk. He recalled that the complainant had been one of the drinking companions, but he could not remember anything about what he was alleged to have done. Despite that, he accepted the truth of her allegations.
- [19] In response to specific questions, the accused said that he knew the complainant, but not well. He said that the first time he had actually met her was after 11:00pm on 10 September, when they were drinking together. When asked where he had been early the next morning, the accused said that he was very drunk and could not recall where he had been. It was put to him that he had assaulted the complainant, strangled her and taken her to a remote place. He responded that he did not know about that as he was very drunk. He was asked if he had had sexual intercourse with the complainant. He said that he could not really be sure, but he accepted that it was true. He confirmed that he accepted the allegations against him. When asked how much he had had to drink that night, the accused said that he had consumed more than 20 cups of fermented yeast.
- [20] That brought the prosecution case to a close.
- [21] I formally found that the accused had a case to answer, and 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 call 1 witness.
- [22] The accused is 27 years old and lives at Eita. On the night in question, he had been responsible for preparing the fermented yeast for the group. They started drinking at Tebiki at about 11:00pm. Manaima was there, as was Nei Teraiti and a number of others. At one point, he was asked to go and buy something from the store. When he returned, the complainant had joined the group. He chatted with her. The drinking continued until he began to feel sleepy. The accused slept, and when he woke he was alone. He saw the complainant walking along the beach towards him. He tried to be flirtatious, and asked, "Can I spend some time with you to chat?" She ignored him and kept walking. He spoke to her a little more forcefully, and she stopped to talk with him. They spoke for a few minutes. The accused told the complainant that he wanted to have sex with her. They walked together towards Ioram's house, holding hands, and ended up near some

ironwood (*te ngea*) bushes. They lay on the ground together and engaged in consensual sexual intercourse. The complainant had her arms and legs wrapped around the accused. She was happy.

- [23] About 10 minutes after the intercourse began, Manaima interrupted them. He told the accused that he wanted to be “number 2”. The complainant told the accused to tell Manaima to go away. The accused got up and turned away to talk to Manaima. When he turned back, the complainant had left. He saw her walking towards Ioram’s house. He went after her, and she seemed to increase her pace. The complainant climbed on to the *buia* at Ioram’s house. The accused told her to get off the *buia* but she refused. She was angry.
- [24] In cross-examination, the accused rejected the account given by the complainant. He agreed that he had been very drunk earlier in the night but, after he slept, he had sobered up. He recalled clearly what had occurred when he met up with the complainant. When he told her that he wanted to have sexual intercourse, he held her hand and she said, “Okay, yes. I agree to where you will take me.”
- [25] When the accused was asked about what he had told the police, he said that during the interview he had felt like he was losing his mind. He did not know what to say, which is why he did not tell the police everything. He accepted that he had told police that he was so drunk that he could not recall what had happened, and that he had admitted to them that he had raped the complainant.
- [26] In answer to questions from the court, the accused agreed that he heard the complainant tell the people at Ioram’s house that he had attacked her, and that he was not her boyfriend.
- [27] The only other defence witness was Manaima Tito. He testified that, on the night in question, he had seen the accused from a distance. The accused was having sexual intercourse with a woman on the ground. Manaima approached. He heard the woman moaning in apparent pleasure. Manaima asked the accused if he could be next to have intercourse with the woman. The accused stood up, at which point Manaima realised that the woman was the complainant. He considered her to be his niece, so he no longer wished to have sexual intercourse with her. The complainant left, and the accused went after her. Manaima rejected the complainant’s version of events as it was put to him in the course of cross-examination.
- [28] That brought the defence case to a close.
- [29] 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.

