



HIGH COURT OF KIRIBATI

Criminal Case N° 53/2017

THE REPUBLIC

v

ANTEREA BARANIKO

*Manrongo Kararaonnang for the Republic
Raweita Beniata for the accused*

*Dates of hearing: 18-20 November 2019
Date of judgment: 13 December 2019*

JUDGMENT

- [1] Anterea Baraniko is charged on information with 5 counts of defilement of a girl under the age of 13 years.¹
- [2] The offences are alleged to have been committed in 2010 and 2011. An information containing 3 counts of defilement was originally filed on 28 June 2012, however the matter lay dormant for some time before the Attorney-General entered a *nolle prosequi* on 3 July 2015. A further information, in the same terms, was then filed on 19 June 2017. That information did not comply with the formal requirements,² which led to the present information being filed on 15 April this year. The accused has pleaded not guilty to all charges.
- [3] Counsel for the prosecution called 2 witnesses, the first of whom was the complainant. She is now 20 years old, having been born on 5 September 1999. In 2010 she was living in Abaokoro village on North Tarawa at the house of the

¹ Section 134(1), *Penal Code* (Cap.67). Despite the repeal and replacement of section 134 by the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, with effect from 23 February 2018, this case has proceeded under the *Penal Code* as it was in force on the date of the alleged offences (as provided for under section 10(2) of the amending Act).

² Section 70, *Criminal Procedure Code* (Cap.17).

accused, with whom her mother had settled down a year or so before. The complainant would have been 10, going on 11, and was attending the primary school in Abaokoro. The household comprised the accused, the complainant, her mother and younger brother, and 2 sons of the accused from a previous relationship, Taonna and Beia, who were in their teens. The accused had 2 *buias*³ – the complainant, her mother and the accused slept together on one, while the 3 boys slept on the other.

- [4] The complainant recalled one early morning in 2010. She was alone on the *buia* with the accused. Her mother had been sent by the accused to get something from the village. The complainant's brother, who would have been about 7 years old at the time, was sleeping alone on the other *buia*. The accused forced the complainant to undress, before laying her down on the floor of the *buia*. He touched the complainant's vagina before inserting his penis (count 1). He repeatedly thrust his penis into her vagina. It was painful and uncomfortable for the complainant. The accused was not wearing a condom, and the complainant does not recall whether he ejaculated. After a while he got off her and wiped her vagina with a *lavalava*.⁴ The accused then left to go fishing. When her mother returned, the complainant told her what the accused had done. Her mother seemed not to be concerned by what the complainant had to say and the matter was not taken any further.
- [5] One evening, sometime after the first incident, the complainant was asked by her mother to go and get something from a boat that was moored in the lagoon not far from the house. It was high tide, so she had to enter the water to get to the boat. She was not wearing a shirt, only a skirt and underpants. When the complainant reached the boat she was surprised to see the accused there. He got into the water and held her, facing him, as they floated together. The accused pulled the crotch of the complainant's underpants to the side and inserted his penis into her vagina (count 2). As he thrust into her, the complainant felt a stinging sensation in her vagina. After a while the accused stopped and told the complainant to return to the house. He told her that if she told anyone what had happened, there would be consequences. She told no one.

³ A *buia* is a raised platform with a thatched roof, usually without walls. A similar, but smaller, structure of this kind is called a *kiakia*. *Buia* and *kiakia* are often used interchangeably.

⁴ A *lavalava* is an article of clothing. A rectangular piece of cloth, it is worn as a loincloth or skirt.

- [6] The following year, the family went to the nearby village of Marenanuka, to spend time with the complainant's maternal grandmother. They stayed there for about 1 month. One afternoon the accused was planning to go to the bush to collect coconuts. He asked the complainant's mother to accompany him, but she refused. The accused then told the complainant that she was to go with him. She was afraid that, if she refused to go, her mother would smack her. The accused and the complainant went into the bush to the ocean-side of the house. As the complainant was collecting coconuts, the accused called to her and she went to him. He was naked and had placed his *lavalava* on the ground. He told her to remove her clothes. She was afraid, as she knew that the accused had an axe and a bush knife. The complainant took off her clothes and lay down on the *lavalava*. The accused spread her legs and licked her vagina. He then inserted his penis into her vagina and began thrusting (count 3). After a while he finished and stood up. The complainant felt pain in her vagina, which was wet. The accused wiped her vagina with his *lavalava* and told her to get dressed and return to the house. She did as she was told. The complainant testified that she wanted to tell her grandmother what had happened, but she was not home. She did not want to tell her mother because of the way she had reacted after the first incident.
- [7] During the family's stay in Marenanuka the accused engaged in 2 further acts of sexual intercourse with the complainant in the bush. The circumstances of each occasion were the same as the previous incident. The accused told the complainant to accompany him to the bush to collect coconuts. Once there the accused took off his clothes and instructed the complainant to do the same. After she undressed and lay down on the *lavalava* the accused had sexual intercourse with the complainant by inserting his penis into her vagina (counts 4 and 5).
- [8] Sometime later, while the complainant and her mother were attending an island night, her mother asked whether the accused had done anything to her. The complainant told her mother what the accused had been doing. Her mother later told the complainant's grandmother, who reported the matter to police. Shortly after that the complainant went to live with her father.
- [9] In cross-examination, the complainant was asked whether there were neighbours nearby to the family compound in Abaokoro. She agreed there were neighbours, but the houses were separated by a bushy area. With respect to the first incident, the complainant was asked how she knew that

her mother had been sent by the accused to the village. She said that had been her understanding. She explained that the accused had not used force to get her to remove her clothes; he had spoken sternly, as if he was trying to frighten her. The complainant was asked where Beia and Taonna were that morning. She could not say, but she was sure that her brother was sleeping alone on the other *buia*. She agreed that she had not called out for help, and said that she did not know what the accused would have done had she called out. The complainant rejected the suggestion that it was someone other than the accused who had had sexual intercourse with her on the *buia* that morning. She agreed that it had been dark, but there was some moonlight by which she could see his face. She also knew his voice.

- [10] The complainant was asked about the first of 2 statements she had given to the police, dated 21 September 2011. She agreed that she had told the police that the accused's penis had gone inside her vagina "a little bit", but she did not recall telling them that the experience had not been painful, or that the accused had subsequently licked her vagina. The complainant explained that the statement had been taken by the police using her grandmother as an intermediary. She would tell her grandmother what had happened and her grandmother would then convey that to the police. The complainant agreed that she had signed the statement after it had been read to her, but she said that she had not really been listening. In her initial statement to police the complainant said that there had been other times when the accused had had sexual intercourse with her, but these acts were not particularised in any detail. She agreed that her statement did not specifically mention the incident in the lagoon at Abaokoro, nor the several incidents in the bush at Marenanuka. She maintained however that these incidents had occurred, and she had not made them up.
- [11] In response to the proposition from defence counsel that the accused had never owned a boat, the complainant said that she thought that the boat was his, as she recalled him purchasing fuel for the boat. She could not remember what it was that she was supposed to retrieve from the boat that evening, although she recalled that the accused had told her that he would bring it with him later. Her mother had not asked about it when she returned to the house. She had been away about 20 minutes.
- [12] The complainant rejected the suggestions that the accused had never gone to the bush while at Marenanuka or that, if he had, it had never been just the

2 of them. She did not agree that only the boys had collected coconuts. She maintained that the incidents in the bush at Marenanuka had occurred in the way she had described.

- [13] The complainant said that she had not told anyone what had been happening because the accused had said that there would be consequences for doing so, although she agreed that he had not specified what those consequences would be. The conversation with her mother at the island night had been a long time after the last of the incidents in the bush at Marenanuka.
- [14] The complainant agreed that the accused fished regularly while they were at Abaokoro, although he did not go fishing while they were at Marenanuka. It was put to her that the accused had borrowed the canoe of Tongaiaba to go fishing, but she said that she knew nothing about that.
- [15] The only other prosecution witness was Eretia Kawatu, the mother of the complainant. She is now 32 years of age and lives at Betio.⁵ In 2010 and 2011 she and her 2 children were living in Abaokoro with the accused and his 2 sons. The accused was a village warden. He would frequently go out fishing; often in the afternoon after work, and in the morning on weekends. There were 2 *buias* at the house of the accused; Eretia slept with the accused and the complainant on 1 *buaia*, while the 3 boys slept on the other. She recalled a time while they were in Abaokoro when the complainant told her that the accused had touched her vagina and breasts. Eretia did not believe her daughter and did nothing about it. She recalled later going to stay with her mother in Marenanuka.
- [16] In cross-examination, Eretia said that not all the family went to Marenanuka; the accused's son Taonna stayed behind. They were in Marenanuka for about a week. She recalled that, while there, the boys collected firewood in the bush. The complainant stayed at the house with her and the accused.
- [17] Eretia said that the accused would go fishing in an aluminium boat that she thought belonged to his brother, who lived at Ambo on South Tarawa. She rejected the suggestion that the boat belonged to a neighbour named Atiria. She said that the accused had had the boat for a long time. She did not agree that the accused only ever fished from a canoe.

⁵ She was only 12 years old when she gave birth to the complainant in 1999.

- [18] Eretia testified that, while there had been an incident where she had been assaulted by the accused, generally he was a good man who had provided for her and the children. She left him after the conversation with her daughter at the island night, which had been held at the KPC compound in Abaokoro. Eretia denied that the accused had sent her away.
- [19] In re-examination, Eretia said that, while the family had been staying in Marenanuka, there had not been a time when her daughter went to the bush with the accused. Most of the time she had been the one to go to the bush while the complainant stayed behind at the house. The accused had still been going to work as village warden in Abaokoro while they were in Marenanuka.
- [20] Prior to closing her case, counsel for the prosecution applied to amend the information to correct date references in counts 3 and 5. There being no objection I granted the application. With that, counsel closed the prosecution case. I formally found that the accused had a case to answer and informed him of his rights.⁶ Counsel for the accused advised that his client would give evidence, and 1 additional defence witness would be called.
- [21] The accused is now 55 years of age. He settled down with Eretia in either 2009 or 2010, when she came with her 2 children to live with him in Abaokoro. His work as a village warden did not have a regular schedule, but he was required to work for 4 hours a day. He had 4 trees from which he cut toddy; he also fermented and sold *kaokioki*.⁷ When he was not working he went fishing in his canoe with Tebateiti. If his canoe was out of action he would sometimes use a canoe belonging to Tongaiaba. He would usually be away fishing for about 8 or 9 hours, more or less. There was only one aluminium boat in the village, and it belonged to Atiria, who lived nearby. The accused never went fishing in that boat. While he did have a brother in Ambo, his brother did not own an aluminium boat either.
- [22] The accused testified that the sleeping arrangements in Abaokoro had him sleeping on one *buaia* with Eretia and the complainant, while the 3 boys slept on the other *buaia*. The 2 *buias* were only a few metres from each other. The complainant and her brother were attending the primary school in Abaokoro,

⁶ In accordance with section 256(2) of the *Criminal Procedure Code*.

⁷ Toddy (or *karewe*) is the fresh sap of the coconut tree, collected morning and evening by tapping a spathe from the tree that has been bound before it can flower. *Kaokioki* is fermented toddy.

while Beia was at the Junior Secondary School and Taonna attended a secondary school in Taborio.

- [23] The accused could not recall any occasion where he sent Eretia away to the village, leaving him alone with the complainant. He said that he had never had sexual intercourse with the complainant, and denied the specific allegations that he had sexual intercourse with her on the *buia* and in the lagoon.
- [24] The accused recalled going to stay with Eretia's mother in Marenanuka. They were there for about a week, and he continued to come back to Abaokoro for work most days. He said that he never went to the bush with the complainant, and he had not gone to the bush at all while they were in Marenanuka.
- [25] The accused could not be sure, but he thought that he and Eretia separated sometime in 2012 or 2013.
- [26] Counsel for the accused tendered the record of his client's interview with the police, conducted on 24 September 2011. The accused told police that he and Eretia had settled down together in February or March of 2009. It was put to the accused that it had been alleged that he had had sexual intercourse with the complainant. He had spoken sternly to the complainant about removing her clothing before getting on top of her and inserting his penis into her vagina. The accused denied the allegations and denied having had a sexual relationship with the complainant.
- [27] In cross-examination the accused maintained that he had not had sexual intercourse with the complainant on the *buia*. He said that the 3 boys would have been on the other *buia*, making it impossible to do what was alleged without them seeing. He rejected the suggestion that his sons were often away from home, although he conceded that there might have been times when Beia could have left the house after everyone had gone to sleep. The accused also denied having had sexual intercourse with the complainant in the lagoon.
- [28] It was put to the accused that, when visiting Eretia's mother in Marenanuka in 2011, the family had stayed for about a month. He maintained that they had stayed for just over a week; his work commitments meant that a longer stay would not have been possible. The accused denied going to the bush with the complainant and denied ever having had sexual intercourse with her while they were in Marenanuka.

- [29] The defence then called Beia Anterea, the son of the accused. He is now 25 years old. In 2010 he was 16 and in Form 2 at the Junior Secondary School in Abaokoro. Beia's older brother Taonna attended a secondary school at Taborio, where he boarded during the week and came home on weekends. While Taonna was away at school the complainant would sometimes sleep on the *buia* with the 2 boys, and sometimes on the other *buia* with her mother and the accused. When Taonna was home the complainant would always sleep on the other *buia*.
- [30] The accused worked as a village warden and would go fishing on weekends. He fished from his canoe, going out on the high tide and returning on the high tide, some 12 hours later. The accused also sold *kaokioki*, fermented from toddy that Beia collected from coconut trees in Marenanuka and Abaokoro. Sometimes Taonna would cut toddy, but most of the time the toddy cutting was Beia's responsibility.
- [31] Beia recalled going with the family to visit Eretia's mother in Marenanuka. Taonna did not go with them. They stayed in Marenanuka for about a month. While there he would go to the bush with the complainant and her brother to collect coconuts. The accused and Eretia stayed at the house with Eretia's mother. Beia recalled that his father and Eretia separated shortly after their return from Marenanuka, while Beia was attending a youth camp in Betio.
- [32] Under cross-examination, Beia rejected the suggestion that his father's brother owned an aluminium boat, although he agreed that such a boat was moored in the lagoon near their house in Abaokoro. He did not know of any occasion while they were staying in Marenanuka when the accused went to the bush with the complainant.
- [33] In re-examination Beia clarified that the aluminium boat moored in the lagoon belonged to Atiria. To his knowledge, his father never used that boat.
- [34] That brought the defence case to a close.
- [35] In considering the evidence in this case, I remind myself that it is not for the accused to prove his innocence. His evidence is to be assessed like the evidence of any other witness. Even if I reject his evidence, I still need to be satisfied beyond reasonable doubt of the prosecution case before the accused can be convicted. The burden rests with the prosecution to prove, beyond reasonable doubt, each and every element of the offences charged.

- [36] The accused is facing multiple counts. I am required to consider each charge separately, evaluating the evidence relating to that particular charge to decide whether I am satisfied beyond reasonable doubt that the prosecution has proved its essential elements.
- [37] In order to convict the accused of defilement of a girl under the age of 13 years, I must be satisfied to the required standard of both of the following elements:
- a. the accused had sexual intercourse with the complainant; and
 - b. at the time of the sexual intercourse, the complainant was aged under 13 years.
- [38] 'Sexual intercourse' is defined as penile penetration of the vagina.⁸ The accused need not have ejaculated.
- [39] It is not disputed that the complainant was under the age of 13 years at all material times.
- [40] My consideration of the evidence in this case is complicated somewhat by the young age of the complainant at the time of the alleged incidents and the length of time that has passed since then. A young child may not always fully appreciate the significance of the things they see, hear and experience. Memories inevitably fade.
- [41] The prosecution case relies almost solely on the complainant's testimony. There is little support provided by Eretia's evidence. While the accused does not dispute that the complainant told her mother at Abaokoro that he had behaved inappropriately towards her, his counsel points to several inconsistencies in the complainant's account that he says should give me cause to question her credibility.
- [42] With respect to count 1, it is submitted that the scenario described by the complainant is implausible, given the close proximity of the boys sleeping in the other *buia*. There were also a number of discrepancies between the complainant's testimony and her initial statement to police. Counsel submits that the omission of any mention of vaginal bleeding is significant. He also

⁸ Section 161, *Penal Code*.

points to the fact that Eretia has no recollection of having been sent to the village by the accused, leaving him alone on the *buia* with the complainant.

- [43] With respect to count 2, counsel says that there is ample evidence from which I can be satisfied that the accused never owned an aluminium boat. He also submits that the inability of the complainant to recall what it was she had been sent to retrieve from the boat supports his contention that the incident never happened.
- [44] As regards counts 3, 4 and 5, none of the other witnesses could recall any occasion while the family was staying in Marenanuka when the complainant and accused went to the bush alone together.
- [45] There is nothing from the other witnesses that can be said to corroborate the complainant's account. While it is no longer necessary that I warn myself of the dangers of convicting the accused based solely on the complainant's uncorroborated testimony,⁹ I must still weigh her evidence very carefully. If I find the complainant to be a credible witness, then it is open to me to convict the accused, even on her evidence alone.
- [46] I observed the complainant closely as she testified, and I found her to be an impressive and truthful witness. She did not attempt to embellish her testimony in any way. She remained consistent in her account of the various incidents and was not shaken under cross-examination. Despite the matters identified by counsel for the accused, I am of the view that the complainant was doing her best to honestly recall what had happened to her. From Beia's evidence, it is entirely possible that, at the time of the events giving rise to count 1, the other *buia* was occupied only by the complainant's 7-year-old brother. Given the circumstances in which the police took the complainant's initial statement – using her grandmother as an intermediary – it comes as no surprise that there are differences between her statement and her testimony. The failure to mention vaginal bleeding is in no way significant; the complainant was never asked about this. In any event, it is well-understood that vaginal bleeding is not an inevitable consequence of first-time penetration.
- [47] I am satisfied that the accused was not the owner of the boat that was moored in the lagoon near the house. I do not accept Eretia's evidence on this point.

⁹ Section 11, *Evidence Act 2003*.


While the complainant said that she thought the boat belonged to the accused, it is easy to see how a child might make such an assumption. There was a boat but, in my view, the ownership of the boat is not determinative of the question as to whether the complainant was being truthful about what happened in the lagoon close to that boat.

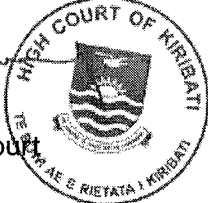
- [48] When having regard to the evidence as a whole in this case, there are other minor inconsistencies, but I do not consider these to be significant, especially given how long ago the events occurred. It is not unusual for people to not remember, or misremember, details that would not have been important at the time.
- [49] While I consider the complainant to be a credible witness, the same cannot be said for the accused. He does not need to satisfy me of anything, but I found him to be quite evasive on many issues. His claim that he went fishing almost every day, and was also responsible for cutting toddy in several coconut trees, is contradicted by his son Beia, whose evidence I prefer. I consider that the accused was exaggerating the extent of his absences from the house, in an attempt to show that he could not have been at home at the time the complainant claimed he had sexual intercourse with her on the *buia*. Having said that, I remind myself that assessment of the evidence is not a competition between the witnesses for the prosecution on the one hand, and the accused and his witness on the other, nor is it a balancing act. I must ask myself whether, having regard to the entirety of the evidence, the prosecution has established each and every element of each of the charges to the required standard.
- [50] With respect to each count, I am satisfied beyond reasonable doubt that the complainant was aged under 13 years at the material time.
- [51] With respect to count 1, I accept the complainant's evidence and am satisfied beyond reasonable doubt that the accused had sexual intercourse with her on the *buia* at Abaokoro in the manner she described.
- [52] With respect to count 2, I am satisfied beyond reasonable doubt that the accused had sexual intercourse with the complainant in the lagoon at Abaokoro.

[53] With respect to each of counts 3, 4 and 5, I am satisfied beyond reasonable doubt that the accused had sexual intercourse with the complainant in the bush at Marenanuka in the manner she described.

[54] Having carefully considered the evidence before me, for the reasons set out above, I am satisfied of the guilt of the accused on each of the counts. I find the accused guilty on all counts and he is convicted accordingly.

[55] I will hear counsel as to sentence.


Lambourne J
Judge of the High Court



The seal of the High Court of Kiribati is circular. It features a central shield with a sun, a wave, and a palm tree. The text "HIGH COURT OF KIRIBATI" is written around the top inner edge of the seal, and "TE KIRIBATI E RIETATA I KIRIBATI" is written around the bottom inner edge.