



## HIGH COURT OF KIRIBATI

*Criminal Case No 45/2017*

**THE REPUBLIC**

**v**

**AMBEROTI TAWANGA**

*Pauline Beiatou, Director of Public Prosecutions, for the Republic  
Raweita Beniata for the prisoner*

*Date of sentencing: 7 March 2019*

### **SENTENCE**

- [1] Amberoti Tawanga has pleaded guilty to 1 charge of defilement of a girl under the age of 13 years, contrary to section 134(1) of the *Penal Code* (Cap.67).
- [2] Despite the repeal and replacement of section 134 by section 4 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 in force on the date of the offence (section 10(2) of the amending Act).
- [3] As counsel were unable to agree on the factual basis for the sentencing of the prisoner, this matter proceeded by way of a contested plea. The facts as I have found them to be, and on which I sentence the prisoner, are set out in my Ruling on Factual Matters, delivered on 15 February 2019.
- [4] The offence was committed on an unknown date between 1 July 2016 and 12 December 2016. Given my findings, it is probable that it was committed early on in that period. The complainant was aged 11 or 12 at the time, and the prisoner (who is her step-father) was 35 years old.
- [5] An information was originally filed on 25 April 2017. For reasons unclear, the matter was not mentioned in court until 31 July 2018. The original information was defective, in that it failed to comply with section 70 of the *Criminal Procedure Code* (Cap.17). On 25 September 2018 the Attorney-General rectified the defect by filing a fresh information (with slightly modified particulars), signed by her. At the start of the contested plea hearing, I granted an application from counsel for

the prosecution to amend the dates of the offending, and the prisoner pleaded guilty to the amended charge.

- [6] The prisoner is now 38 years of age. He remains married to the complainant's mother. At the time of his arrest, he was a boatman for the church. He has no previous convictions.
- [7] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.<sup>1</sup> The maximum penalty for defilement under section 134(1) is imprisonment for life. The Court of Appeal has held that an appropriate starting point in a case such as this is a sentence of 5 years' imprisonment.<sup>2</sup>
- [8] I consider the following matters to be the aggravating features of this case:
- a. as the complainant's step-father, the prisoner was in a position of trust, and his offending constitutes a grave breach of that trust;
  - b. the complainant is very young, and the difference in ages between the prisoner and the complainant is significant;
  - c. violence was used – the prisoner slapped the complainant, her arms and legs were bound, and she was gagged;
  - d. by threatening to kill the complainant, the prisoner added terror to what must already have been a very traumatic experience for her;
  - e. the prisoner did not use a condom, thereby exposing the complainant to the risk of both pregnancy and sexually-transmitted infection.

For all of these matters I increase the prisoner's sentence by 3 years.

- [9] I see no evidence of any remorse from the prisoner for his appalling behaviour towards the complainant, other than his plea of guilty. While he was within his rights to challenge the basis on which he was to be sentenced, his decision to do so largely negates the significant benefit that would ordinarily attach to a timely plea of guilty. For his plea, and his lack of previous convictions, I deduct 6 months.
- [10] I take into consideration the fact that the prisoner has been in custody awaiting sentence since 7 November 2018, a period of 4 months. The prisoner's sentence is reduced by a further 8 months, to take account of the effect that the rules concerning parole will have on his ultimate sentence.
- [11] It is relevant that there has been an delay in the prosecution of this case. It has been more than 2 years since the offence was reported to police. While that is not as long as the delay in some other cases, it is still unacceptable. For the

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<sup>1</sup> *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

<sup>2</sup> *Republic v Uriano Arawaia* [2013] KICA 11, at [18].

reasons discussed by the Court of Appeal in *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 therefore reduce his sentence by a further 2 months.

- [12] The prisoner is convicted on his plea of guilty. Taking all of the above matters into account, he is to be imprisoned for a period of 6 years and 8 months. The sentence is to run from today.

  
**Lambourne J**  
Judge of the High Court



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<sup>3</sup> *Attorney-General v Li Jian Pei & Taaiteti Areke* [2015] KICA 5