



HIGH COURT OF KIRIBATI

Criminal Case N° 6/2019

THE REPUBLIC

v

TAAUA BAI AA

*Tewia Tawita for the Republic
Batitea Tekanito for the prisoner*

Date of sentencing: 20 May 2019

SENTENCE

- [1] Taaua Baiaa has been convicted after a trial on a charge of rape, contrary to section 128 of the *Penal Code* (Cap.67). The facts of the case are set out in my judgment, which was delivered on 13 May 2019.
- [2] The prisoner is now 33 years of age; he would have been 31 at the time of the offence. He is unemployed and is married with 2 children. He has 3 minor convictions for traffic offences from when he used to be a bus driver, but nothing else. I am prepared to treat him as a first offender.
- [3] The prisoner's offending was serious. The women of Kiribati should be free to go about their business without fear of harassment, assault and rape at the hands of men like him.
- [4] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ Under section 129 of the *Penal Code* the maximum penalty for rape is imprisonment for life. The Court of Appeal has held that an appropriate starting point for a contested case of rape is a sentence of 5 years' imprisonment.²
- [5] I consider the following matters to be the aggravating features of this case:
 - a. the prisoner threatened to kill the complainant;

¹ *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

² *Attorney-General v Tanre Tengke; Teitiniman Kaurake v Republic* [2004] KICA 10, at [13].

- b. while the complainant was perhaps fortunate to sustain only minor injuries, violence was used, beyond that inherent in the nature of the offence of rape – the prisoner put his hands around her throat and pushed her against the wall;
- c. the prisoner did not use a condom and ejaculated inside the complainant's vagina, thereby exposing her to the risk of both pregnancy and sexually-transmitted infection.

For these matters I increase the prisoner's sentence by 3 months.

- [6] I turn then to the mitigating features of this case. For the prisoner's previous good character, I deduct 3 months.
- [7] The prisoner has demonstrated no remorse for his actions. He went to trial, as is his right, but, by doing so, he has foregone the reduction in sentence that he would have received had he pleaded guilty.
- [8] The prisoner has spent a total of 16 days in custody awaiting sentence, 9 days after his initial arrest, and 7 days since his conviction. As a consequence, I reduce his sentence by a further month, to take account of the effect that the rules concerning parole will have on his ultimate sentence.
- [9] It has taken more than 2 years to conclude the prosecution of this case. While that is not as bad as I have seen in other cases, it is still unacceptable. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a modest reduction in his sentence to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.³ I will reduce his sentence by another month.
- [10] Taking all of the above matters into account, the prisoner is sentenced to be imprisoned for a period of 4 years and 10 months. The sentence is to run from today.


Lambourne J
 Judge of the High Court



³ *Attorney-General v Li Jian Pei & Taaiteti Areke* [2015] KICA 5.