



HIGH COURT OF KIRIBATI

Criminal Case N° 20/2017

THE REPUBLIC

v

TEIORA MWAIO

*Teanneki Nemta for the Republic
Reiati Temaua for the prisoner*

Date of sentencing: 2 September 2019

SENTENCE

- [1] Teiora Mwaio has been convicted after a trial on a charge of rape, contrary to section 128 of the *Penal Code* (Cap.67). The circumstances of that offence are set out in my judgment, which was delivered on 16 August 2019.
- [2] The complainant was 14 years old at the time of the commission of this offence.
- [3] The prisoner is now 35 years of age; he would have been 31 at the time of the offence. He married in 2016 and has 2 children aged 2 and 3 years. He leads a subsistence lifestyle and has no previous convictions.
- [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 imprisonment for 5 years.² I adopt that term as the starting point in this case.
- [5] I consider the following matters to be aggravating factors:
- a. the complainant was raped while she was asleep and under the influence of alcohol; she was particularly vulnerable;

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. the complainant was a young girl, and the difference in ages between the prisoner and the complainant is significant;
- c. the prisoner did not use a condom, thereby exposing the complainant to the risk of both pregnancy and sexually-transmitted infection.

For these matters I increase the prisoner's sentence by 2 years.

[6] There is little to be said in mitigation, save that the prisoner has no previous convictions. I accept that the prisoner's offending was opportunistic, with no pre-planning. I also accept that the prisoner's intoxication was a significant factor in his offending, although that cannot excuse his conduct. 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. For his previous good character I will reduce his sentence by 3 months.

[7] I acknowledge that the offending involved no use of force, and the complainant sustained no physical injuries. However, the following remarks of the Court of Appeal in the cases of *Tanre Tengke* and *Teitiniman Kaurake* are relevant:

We note at the outset that to secure sexual intercourse through mistaken identity on the complainant's part is not inherently less serious than a case in which a complainant succumbs to intercourse through force or threats of force unaccompanied by violence beyond that inherent in the act of rape itself. The shock and distress for a woman who discovers during or after intercourse that the man involved is not her partner may be no less than in the more usual cases mentioned.³

While this case is not one of personation, I consider such cases to have significant similarities to the case of a person raped while she sleeps.

[8] This case was unusual, in that, in the course of sentencing submissions, the complainant asked if she could address the Court. She said that she had been approached by the prisoner's wife after he had been remanded in custody. The complainant said that she felt sorry for the prisoner's children and asked that the prisoner be given a suspended sentence. I am not happy that the complainant was put in this situation, particularly given her age. She was not at fault here, and is not to be blamed for the prisoner going to prison. It was extremely unwise for the prisoner's wife to ask the complainant to come to Court, and I wish to discourage – in the strongest possible terms – similar tactics being employed in the future.

[9] Finally, it has taken 4 years from the time the offence was reported to police to conclude the prosecution of this case. This is completely unacceptable.

³ *ibid.* at [14].

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.⁴ I will reduce his sentence by 6 months.

- [10] Taking all of the above matters into account, the prisoner is sentenced to be imprisoned for a period of 6 years and 3 months. Under section 28(2) of the *Penal Code*, I order that this sentence is to run from 16 August 2019, being the day on which he was first remanded into custody on these charges.


Lambourne J
Judge of the High Court



⁴ *Attorney-General v Li Jian Pei & Taaiteiti Areke* [2015] KICA 5.