

IN THE KIRIBATI COURT OF APPEAL]
CRIMINAL JURISDICTION]
HELD AT BETIO]
REPUBLIC OF KIRIBATI]

Criminal Appeal No. 1 of 2017

BETWEEN THE REPUBLIC APPELLANT

AND KAREWENNANG BERU RESPONDENT

Before: Blanchard JA
Handley JA
Hansen JA

Counsel: *Tewia Tawiita* for appellant
Reiati Temaua for respondent

Date of Hearing: 10 August 2017

Date of Judgment: 16 August 2017

JUDGMENT OF THE COURT

[1] This is a prosecution appeal against a suspended sentence of 12 months' imprisonment imposed on the respondent for perjury, contrary to s.7 of the *Penal Code*, Cap 67.

[2] The respondent, who lives on the island of Aranuka, made an allegation of rape against her husband. The alleged victim was her daughter, and his step-daughter. Her husband was arrested and imprisoned on remand for about a month, after which he was freed on bail pending trial. He denied the allegation.

[3] The trial commenced on 1 August 2013. Both the respondent and the alleged victim gave evidence concerning a rape of the latter. After two days the trial was adjourned and, extraordinarily, did not re-commence until 25 September 2015. By then the prosecutor had been handed by the husband (then the accused) a letter written by the present respondent in which she said that what she had told the Court, the police and her own lawyer about her husband raping her daughter was all lies.

[4] The case was adjourned again and when it resumed on 18 November 2015 the respondent was recalled to give further evidence. She confirmed that she had written the letter received by the prosecutor and that what she had told the Court at the hearing in August 2013 was untrue. Her husband had not raped her daughter. Her family had forced her to lie so that her husband would leave the island. She also admitted forcing her daughter to lie to the Court.

[5] As a consequence of these admissions the husband's trial did not proceed further and a verdict of acquittal was entered. By the time of her sentencing in the High Court the respondent and her husband had reconciled their differences and as the Judge recorded, the family were "now together living happily".

[6] The respondent pleaded guilty to the charge of perjury. At her sentencing, and again in this Court, the prosecution pointed out the seriousness of the offence, which impacts on the administration of justice. In this case the respondent's lies had caused her husband to be imprisoned and then on bail for a lengthy period, during which time she did not retract them. Because the respondent claimed that she was really scared of her husband the

police had in fact opposed bail being granted. They had also arranged for the respondent to be accommodated in Tarawa in a place where she would be safe from him. The Republic had also incurred the expense of flying five or six witnesses to Tarawa for the trial and paying them a subsistence allowance.

[7] The prosecution therefore sought a custodial sentence.

[8] Zehurikize J's sentencing remarks were extremely brief. He acknowledged the seriousness of perjury and the "severe" sentence it attracts. However, he said, the respondent had pleaded guilty and saved the Court's time and scarce resources. She had first given evidence incriminating her husband. Then she had made an "about turn" saying this was false:

"Why she made this turn-around is only everybody's conjecture. But it transpired there were family forces in the background".

She appeared remorseful.

[9] The Judge said that considering all the circumstances and the trauma the family has gone through he sentenced the respondent to 12 months' imprisonment suspended for the same period.

[10] We have been provided with a transcript of the sentencing hearing. It is plain from a reading of it that the Judge had grave doubts about whether the respondent had in fact committed perjury at the hearing in August 2013 despite her acceptance of guilt relating to that occasion. He canvassed with counsel the possibility that it was when she retracted her allegations under oath in November 2015 that she was not telling the truth and that the retraction may have been as a result of family pressure. However he

proceeded to sentence on the basis of the case advanced by the prosecution and her acceptance of guilt in relation to it. We must likewise proceed on that basis despite sharing the Judge's concern.

[11] Perjury is a serious crime, recognised in the seven year maximum sentence provided for in the Criminal Code. Normally, indeed almost always, a person convicted of perjury will face a prison sentence which will not be wholly suspended. In *R v Simmonds* (1969) 53 Cr App Rep 488 at 489 Parker LCJ said:

“Many people do not realise that perjury is a very serious offence; justice could not be administered unless people spoke the truth on oath. Again it is very difficult to prove, and accordingly it must be understood that perjury, when proved, attracts a severe penalty”.

[12] This was confirmed by the England and Wales Court of Appeal in *Attorney-General's Reference No. 63 of 2005* [2005] EWCA Crim 2520 at [6] where the Court said that the authorities make it plain that an offence of perjury will *prima facie* result in an immediate sentence of imprisonment. In *R v Coombes* [2003] QCA 388 it was observed that perjury strikes at the essence of criminal justice and the public's confidence in it. Indeed in some jurisdictions, Queensland being one of them, the maximum penalty is as much as 14 years. That must, however, be borne in mind in obtaining guidance from the authorities.

[13] In all the cases to which we have been referred the defendant had either committed the perjury in an attempt to make a monetary gain or to avoid making a loss, or in an attempt to avoid or reduce punishment for his or her own offending, for example, by diverting the blame to someone else who was before the Court. The present case is therefore unusual. It is true that, on the

admitted facts, the respondent did imperil her husband by giving false evidence at his trial for rape, but he did not go to prison in the end as a result of her perjured evidence because she made the retraction. His time in custody on remand preceded the perjury, so was not caused by it, and afterwards he continued to be on bail. That diminished the need for a deterrent sentence. The respondent also acted under pressure from her family.

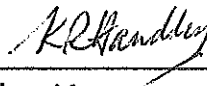
[14] We also bear in mind that the respondent and her husband have reconciled. To impose a sentence of imprisonment without suspending it would punish both her husband, who has already spent time in prison, and also her two primary school age children.

[15] This is a prosecution appeal in which it must be shown that the sentence was manifestly inadequate to punish the crime.

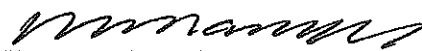
[16] Not without some hesitation, we have decided that the merciful sentence imposed by Zehurikize J should not be disturbed. We dismiss the appeal.



Blanchard JA



Handley JA



Hansen JA