

IN THE HIGH COURT OF KIRIBATI)
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

CRIMINAL CASE NO. 5 OF 2000

THE REPUBLIC

v.

TIMI URIAM

**FOR THE REPUBLIC:
FOR THE ACCUSED:**

**MS POLE TEBAO
MR NEIL ALLEN**

DATE OF HEARING:

16, 17, 18, 19, 20 OCTOBER 2000

J U D G M E N T

The accused Timi Uriam comes before me charged with one count of rape contrary to section 128 of the Penal Code. It is alleged that on or about 25 November 1999, on Abemama, the accused raped Nei Oribe Ikatau.

The burden carried by the prosecution in this case and in all criminal prosecutions is an extremely onerous one. They must prove the offence and every element thereof beyond any reasonable doubt. In this case there is no dispute that sexual intercourse took place - the only issue here is whether the complainant consented.

The only witness for the prosecution who could testify as to what happened in the bush that day in November last year was the complainant. Her very obvious intellectual disabilities made her a difficult and frustrating witness. Her testimony was all over the place and riddled with inconsistencies. However she could not be budged on the point that at no time did she consent to sexual intercourse with the accused.

Of the other witnesses for the prosecution, almost all of them had some problem or another. Tounnang, Karata and Titaka

are all related to the complainant and have cause to support her version of events.

In the case of Karata I have particular reason not to accept her testimony. She gave evidence that she believed that her aunt was being raped by the accused. However she did nothing to help her and went off instead to cut copra. On her return to the house she didn't even stop to enquire after Oribe's wellbeing. Her reactions to what she said she saw and heard are completely incredible. I am not prepared to accept any of her testimony. That is unfortunate for the prosecution because she is really the only witness who may have been able to bolster the case for the prosecution. Tounnang was only able to testify Oribe's distress and her appearance. Titaka also described the apparent injuries. For reasons I will discuss later I find neither witness terribly helpful.

I am required by law to warn myself as to dangers of convicting on the uncorroborated testimony of one witness. In the absence of corroboration I may still convict if I nonetheless find the witness to be credible.

I must first ascertain whether there is any evidence capable of amounting to corroboration. I find that there are three pieces of evidence which potentially fit this description. The first relates to the injuries sustained by the complainant. These have been variously described but I am left with no conclusive evidence. I have heard that the complainant was medically examined. However the nurse from the clinic did not testify. As an independent witness she could have been of considerable assistance to the Court. I am left with several conflicting descriptions. In the end I prefer the evidence of the only truly independent witness Sgt Kaiorake. He testified that he saw only some scratches to the face of the complainant. There are several possible explanations for this injury but only one of these is sinister.

The second piece of evidence potentially corroborative of the complainant's evidence is the damage to her clothing. Varying accounts were given, but her clothing was not produced and on this point I find myself coming back to the evidence of Sgt

Kaiorake. I cannot be satisfied that there was any damage to Oribe's clothing.

The third matter is the complainant's distress on her return home. Tounnang described the complainant as being in considerable distress. However not even the complainant herself supports this. In any event I must regard distress with caution as it is part and parcel of the complaint and not necessarily corroborative. In the circumstances I am left with doubt that the complainant was in fact in distress at the time of making her complaint.

While, as a matter of law, there is evidence capable of amounting to corroboration I cannot be satisfied to the requisite standard that any of it is true.

In the absence of corroboration I must look closely at the complainant's evidence. While I find myself feeling considerable sympathy for the complainant, I cannot accept her account of what happened. I am unable to say that she is lying but nor can I say beyond any reasonable doubt that she is being truthful.

This is not to say that the accused is without blame in this whole affair. I find his behaviour difficult to comprehend and his motives suspect. At the very least he has taken advantage of an old woman with severe intellectual disabilities. He has done himself no favours by portraying himself as the victim in this sorry affair. However, he is entitled to have the benefit of the doubt I am experiencing.

The prosecution, not having proved the commission of the offence to the required standard, I find the accused not guilty and he is discharged accordingly.


DAVID LAMBOURNE
COMMISSIONER