

IN THE HIGH COURT OF KIRIBATI) HIGH COURT CRIMINAL CASE No.25 OF 2004
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

THE REPUBLIC
VS
ATANTAAKE IAOKIRI

FOR THE REPUBLIC: MS EVEATA MAATA
FOR THE ACCUSED: MS BOTIKA MAITINNARA & MS JENNIFER TROUP

DATE OF HEARING: 7, 8 & 9 JUNE 2004

SENTENCE

Atantaake iaokiri: you have been found guilty of a serious crime of indecent assault which attracts a maximum penalty of five years' imprisonment. This is the second count on the indictment.

On the first count of the indictment under which you were charged with causing grievous harm contrary to section 220 of the Penal Code, you had pleaded guilty to that serious offence. That crime attracts a maximum penalty of seven years' imprisonment.

The facts of the case relating to the charge of indecent assault and the reasons for your conviction are contained in the Judgment which I delivered on 16 June 2004 and I shan't repeat them here.

I am told that you are 42 years old and married to Nei Manuia with no children. You are unemployed and live with an extended family at Bikenibeu. Your wife is employed at Kiribati Teachers' College, Bikenibeu.

In your favour is the fact that you are a first offender in respect to both offences. This means that you never been in trouble with the law nor with the police before. I therefore regard you as a person of good reputation and standing in society and blameless in the eyes of the law up to now. I will take that into account when fixing your penalties for both convictions.

On the other hand the aggravating factor about the offence of indecent assault with which you had been convicted is the fact that at the time when you committed that offence you had occupied a position of trust for Nei Ketia as you had been a stepfather to her since she was aged four or five years. You had been looking after her since that age when her parents were separated. Hence she had trusted you like her own natural father and looked up to you for protection and security in life. Yet you had breached that trust when you indecently assaulted her by sucking her breast.

That is very bad and sad for you and also for Nei Ketia. Now Nei Ketia's trust and respect for you as a loving and caring stepfather which she probably might have developed gradually for you over the years of her having been under your care and protection and even up to now could easily have vanished altogether now as the result of that unfortunate incident in question of 17 April 2004.³

However in terms of the seriousness of the indecency which you had committed against Nei Ketia it seems to me to be at the lower end of the scale of seriousness. In other words, the indecency you had committed against Nei Ketia is serious enough but it is not the most serious one in kind.

Both counsels for the prosecution and counsel for the defence had referred me to some helpful precedents on sentences imposed on defendants who had been convicted of indecent assault and grievous bodily harm. They are useful guidelines as precedents but no two cases are the same and each case must be decided on its own peculiar facts and circumstances. Likewise the penalty in the instant case will also be determined accordingly.

Causing Grievous Harm

You had pleaded guilty to the charge of causing grievous harm contrary to section 220 of the Penal Code (Cap. 67). This is a serious crime and attracts a maximum penalty of seven years' imprisonment. From the facts the stab wound you inflicted on the victim is very serious and life threatening one as according to medical evidence as produced into evidence by the prosecution and agreed to by the defence and marked as Exhibit P3 it was quite deep as it measures 3-5 cm in length and 5 cm in depth.

The summation of facts relating to the charge of causing grievous harm as provided by the prosecution and agreed to by the defence are attached herewith with this sentence as "Attachment".

The only part of the summation of facts which your counsel disagreed to and wishes to add to the summation is the fact that "the victim was also armed or carried a weapon with him namely a knife when he got out of the

door of his house to fight or attack the accused" after you challenged the victim (Biriam) to come out from his house and fight you.

I agree with the submission of counsel for the prosecution that the appropriate penalties for your conviction for the serious crime of indecent assault and for your pleading guilty to another serious crime of causing grievous harm is a custodial sentence in each case.

However I am mindful of the fact that you are a first offender, and that you had pleaded guilty to the charge of causing grievous harm at the first available opportunity.

I am told also that you had now reconciled with both victim (Biriam Rota and his family) and had apologised to Ketia (the complainant) and to her mother and you had also reconciled with Nei Ketia's family. I will take these factors into account when fixing your appropriate sentence.

So taking all the facts and all circumstances into account I sentence you as follows:

You will be imprisoned:

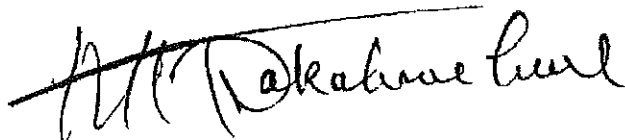
On first count for causing grievous harm for 16 months

On second count for indecent assault for 12 months

And as the first and second offence is separate and distinct as well as more than two months had passed between the first and second offence, I cannot regard it as one course of conduct. Counsel for the prosecution has suggested that I apply to this case the wide discretionary rule in passing sentence and especially consecutive sentences as approved by R v. Blake (1961) 45 Cr App R 292. I agree that a consecutive sentence is the appropriate sentence in this case. I therefore do impose it so accordingly. The sentence therefore are to be served cumulatively which means a total imprisonment of 2 years and 8 months.

The term will run as from today's date.

Dated the 18th day of June 2004

A handwritten signature in black ink, appearing to read 'Michael N Takabwe', written over a horizontal line.

THE HON MR JUSTICE MICHAEL N TAKABWEBWE
Judge