



HIGH COURT OF KIRIBATI

Criminal Case No 67/2017

THE REPUBLIC

v

TAMAROA MIKAERE

*Tumai Timeon, Senior State Attorney, for the Republic
Teetua Tewera for the prisoner*

Date of sentencing: 23 October 2018

SENTENCE

- [1] The prisoner has been convicted following a trial of 1 offence of rape, contrary to section 128 of the *Penal Code* (Cap.67). The maximum penalty (provided for under section 129 of the *Penal Code*) is imprisonment for life. The facts of this case are set out in my judgment, which was delivered on 18 October 2018.
- [2] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal in *Kaere Tekaei v Republic*.¹ At the same time, I note that determining an appropriate sentence in any case is not a process that lends itself to precise mathematical calculation.
- [3] 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
- [4] There are significant aggravating circumstances in this case. The prisoner is the complainant's uncle by marriage, and has known the complainant since she was a child. They were members of the same extended household at the time, with the complainant and her husband and the prisoner and his wife all residing (with other members of the family) on the same plot of land at Tabwakea. The prisoner knew of the complainant's hearing problems and intellectual impairment. His conduct involved a substantial breach of trust.

¹ Court of Appeal Criminal Appeal 1/2016, at [10].

² *Attorney-General v Tanre Tengke; Teitiniman Kaurake v Republic*, Court of Appeal Criminal Appeals 3/2004 and 7/2004, at [13].

- [5] As I said to counsel in the course of submissions, the communal way of life in Kiribati, involving as it does an inherent lack of privacy and insecure sleeping arrangements for most people, requires us all to abide by an unwritten compact not to take advantage of the vulnerable in our communities. The prisoner has shown complete disregard for that compact.
- [6] Alcohol was likely a factor in the prisoner's offending behaviour, but this cannot in any way excuse his conduct on that night.
- [7] I acknowledge that the offending involved no use of force, and the complainant sustained no physical injuries. However, the following comments of the Court of Appeal in the cases of *Tanre Tengke and Teitiniman Kaurake* are pertinent:
- 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
- [8] The complainant was devastated on learning of the prisoner's deception, and it was inevitable that she would be the subject of some suspicion from her husband that she had been a willing participant in the encounter, despite being blameless.
- [9] I take the view that the prisoner's offending is further aggravated by the fact that he did not use a condom when he had sexual intercourse with the complainant, and he ejaculated inside the complainant's vagina, thereby exposing her to the risk of both pregnancy and sexually-transmitted infection.
- [10] It is to the prisoner's credit that he has no previous convictions of any consequence.
- [11] As the prisoner is the sole breadwinner for his wife and 6 children, I acknowledge that any sentence of imprisonment will clearly have an impact on his family. This is an unfortunate consequence of his offending, and should not be considered as in any way mitigating the sentence he must receive.
- [12] I understand that, in the days since his conviction, the prisoner's wife has made a customary apology to the complainant, which was accepted. However, I am of the view that this provides no assistance whatsoever to the prisoner, from whom there has been no evidence of any genuine remorse.
- [13] The prisoner 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.

³ *ibid.*, at [14]

