



HIGH COURT OF KIRIBATI

Criminal Case N° 13/2019

THE REPUBLIC

v

ENRIKI ATANIMAN

*Pauline Beiatou, Director of Public Prosecutions, for the Republic
Reiati Temaua for the accused*

Date of sentencing: 1 November 2019

SENTENCE

- [1] Enriki Ataniman has been convicted following a trial on 1 count of defilement of a girl under the age of 13 years, contrary to section 134(1) of the *Penal Code*, and 3 counts of indecent assault, contrary to section 133(1) of the *Penal Code*.¹ At the beginning of the trial he pleaded guilty to 2 further counts of indecent assault involving the same complainant. The facts of the case are set out in my judgment, which was delivered on 27 September 2019.
- [2] The complainant for all offences is the prisoner's niece, although, by custom, she considered the prisoner to be her adoptive father, having been raised by him from shortly after she was born. She was aged 9 or 10 years at the time of the offences. The offending began with an act of defilement in early 2014, and continued with indecent assaults in early 2014 (touching of the breasts), mid-2014 (digital penetration of the vagina and touching of the genital area on the outside of the underwear), September 2015 (licking the vagina) and October 2015 (digital penetration of the vagina).

¹ Despite the repeal and replacement of sections 133 and 134 by section 4 of the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, which commenced on 23 February 2018, this case has proceeded under the *Penal Code* as it was in force on the date of the alleged offences (as provided for under section 10(2) of the amending Act).

- [3] This is yet another case where a person in a position of trust has exploited that position to gratify his sexual feelings with a young family member. Such offending risks long-term psychological harm to the complainant and threatens the fabric of the extended family unit.
- [4] Counsel for the prosecution has provided a victim impact statement, in which the complainant details the physical and emotional trauma she experienced as a result of the prisoner's offending. She has now missed many years of schooling, and speaks of feeling worthless and frightened. The complainant is haunted by memories of what the prisoner did, events that she frequently relives in her dreams. Despite these horrific experiences, I was impressed by the complainant's courage and resilience as she testified in the trial. I hope that, with continuing support, she will find a way to ensure that these events do not rule her life, and she will be able to live something resembling a normal life.
- [5] The prisoner is now 38 years of age; he would have been about 33 or 34 at the time of the offences. He has previously worked as a carpenter. He is still married to the complainant's aunt, with whom he has 5 children, aged between 8 and 20 years. He has no previous convictions.
- [6] The prisoner's only explanation for his conduct is to say that he was intoxicated on the occasion of each offence. His counsel says that he has a drinking problem. When questioned by police in October 2015 he exercised his right to remain silent.
- [7] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.² The offence of defilement of a girl under the age of 13 years carries a maximum penalty of imprisonment for life, while for indecent assault the maximum penalty is 5 years' imprisonment.
- [8] In order to avoid what might otherwise be a crushing sentence were I to treat each offence separately, I will apply the totality principle, and impose a single sentence in respect of all counts that I consider meets the gravity of the prisoner's offending.
- [9] With respect to the offences of defilement of a girl under the age of 13 years, the Court of Appeal has held that an appropriate starting point in a contested

² *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

case is imprisonment for 5 years.³ I consider the following matters to be aggravating factors:

- a. as the complainant's adoptive father, the prisoner was in a position of trust, and his offending constitutes a grave breach of that trust;
- b. while no physical force was used, there were implied threats from the prisoner of consequences for the complainant if she told anyone what he had been doing;
- c. the complainant was very young, and the difference in ages between the prisoner and the complainant is significant;
- d. there were elements of pre-planning in the conduct giving rise to the charge of defilement, involving the use by the prisoner of a ruse to get the complainant to accompany him to the football field – this was not opportunistic behaviour on his part;
- e. the offending occurred on several occasions;
- f. the actions giving rise to count 3 were accompanied by further acts of degradation, involving the prisoner ejaculating into the complainant's mouth and demanding that she swallow the ejaculate;
- g. the prisoner did not use a condom when he had sexual intercourse with the complainant, thereby exposing her to the risk of both pregnancy and sexually-transmitted infection.

For these matters I increase the prisoner's sentence by 3 years and 6 months.


[10] The prisoner has demonstrated little remorse for his actions, and there is little if anything to be said in mitigation, save that he has no previous convictions. He should be given some credit for his pleas of guilty to counts 4 and 5. For these matters I will reduce his sentence by 5 months.


[11] There has been an unacceptable delay in the prosecution of this case. The prisoner's offending was reported to police some 4 years ago. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a modest reduction in 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 another 3 months.

³ *Republic v Uriano Arawaia* [2013] KICA 11, at [18].

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

[12] Taking all of the above matters into account, the prisoner is sentenced to be imprisoned for a period of 7 years and 10 months. Under section 28(2) of the *Penal Code*, I order that the prisoner's sentence is to run from 27 September 2019, being the day on which he was first remanded into custody on these charges.


Lambourne J
Judge of the High Court



The seal of the High Court of Kiribati is circular. It features the national coat of arms of Kiribati in the center, which includes a shield with a sun, a wave, and a palm tree. The text "HIGH COURT OF KIRIBATI" is written around the top inner edge of the seal, and the Kiribati motto "I KIRIBATI E RIEFATA I KIRIBATI" is written around the bottom inner edge.