



HIGH COURT OF KIRIBATI

Criminal Case No 54/2016

THE REPUBLIC

v

MARUIA TAOROBWA

*Ateti Tekawa for the Republic
Reiati Temaua for the prisoner*

Date of sentencing: 11 March 2019

SENTENCE

- [1] The prisoner has been convicted following a trial on 1 count of rape. The facts of the case are set out in my judgment, which was delivered on 5 March 2019.
- [2] The prisoner is now 27 years of age; he was 22 at the time of the offence. He leads a subsistence lifestyle. He has a young child with a woman on Nikunau, but has had no contact with them since September 2018. He has no previous convictions.
- [3] The prisoner's offending was serious. The women of Kiribati should be free to go about their business without fear of harassment, assault and rape at the hands of men like him.
- [4] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ The maximum penalty for the offence of rape, provided for under section 129 of the *Penal Code*, is imprisonment for life. 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
- [5] I consider the following matters to be the aggravating features of this case:
 - a. the initial stages of the attack were carried out with an accomplice, who remained nearby throughout the commission of the offence – the complainant would undoubtedly have feared that she was going to be raped by 2 men;

¹ *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

² *Attorney-General v Tanre Tengke; Teitiniman Kaurake v Republic* [2004] KICA 10, at [13].

- b. while the complainant was perhaps fortunate to sustain only minor injuries, violence was used, beyond that inherent in the nature of the offence of rape – the prisoner punched the complainant repeatedly in the stomach, and put his hands around her throat;
- c. the prisoner did not use a condom, thereby exposing the complainant to the risk of both pregnancy and sexually-transmitted infection.

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

- [6] I turn then to the mitigating features of this case. For the prisoner's lack of previous convictions, I deduct 3 months.
- [7] The prisoner has demonstrated no remorse for his actions. He 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. I am advised by his counsel that the prisoner apologised to the complainant shortly after the offence but, given his insistence that nothing improper happened, it is difficult to know what it was he was apologising for. I place no reliance on the apology.
- [8] The prisoner has spent 6 days in custody awaiting sentence.
- [9] It has taken 4½ years to prosecute this case. Such a delay is unacceptable. 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.³ I will reduce his sentence by another 3 months.
- [10] Taking all of the above matters into account, he is to be imprisoned for a period of 5 years. The sentence is to run from today.


Lambourne J
 Judge of the High Court



³ *Attorney-General v Li Jian Pei & Taaiteti Areke* [2015] KICA 5