



HIGH COURT OF KIRIBATI

Criminal Case N° 4/2018

THE REPUBLIC

v

ETEROTE MAREWE

*Kanrooti Aukitino for the Republic
Teetua Tewera for the prisoner*

Date of sentencing: 27 May 2019

SENTENCE

- [1] Eterote Marewe has pleaded guilty to defilement of a girl under the age of 13 years, contrary to section 134(1) of the *Penal Code* (Cap.67).¹
- [2] The offence was committed sometime during the month of June 2016, at Temwaiku on South Tarawa. The complainant is the sister of the prisoner's wife. She was 12 at the time. Late one night the complainant was asleep when she was woken by the prisoner, who sucked her breast and placed his mouth on her vagina. He then got on top of her and inserted his penis into her vagina. He had sexual intercourse with her but did not ejaculate. The prisoner then told the complainant that he would hit her if she told anyone what he had done. Despite the fact that the prisoner's actions had been observed by his wife, the matter was not reported to police until early 2017.
- [3] An information was originally filed on 18 December 2017, charging the prisoner with 3 counts of defilement. On 9 May 2018, counsel for the prisoner advised the Court that his client would likely be pleading not guilty to the charges. On 9 July the prisoner failed to appear and a warrant was issued for his arrest. The accused surrendered himself voluntarily on 26 October. As the information did not comply with section 70 of the *Criminal Procedure Code*, the Attorney-General filed a fresh information on 30 October, reducing the

¹ Despite the repeal and replacement of section 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 offence (as provided for under section 10(2) of the amending Act).

number of charges from 3 to 2. On 23 November the Court was informed that the prisoner would be pleading guilty to count 1 but not guilty to count 2. The matter was fixed for trial. On 22 May 2019 (what was to have been the first day of the trial) counsel for the prosecution amended the information to withdraw count 2 and the prisoner was discharged on that count.

- [4] The prisoner is now 35 years of age, and was 32 at the time of the offence. He remains married to the complainant's sister, which I imagine must give rise to some tension within the family. He and his wife have 6 children, aged between 6 and 13 years. He leads a subsistence lifestyle. He has no previous convictions, but has subsequent convictions for damaging property and offences of violence (including domestic violence).
- [5] The prisoner's offending was very serious. No explanation has been offered for his conduct. His counsel accepts that he was not intoxicated at the time the offence was committed.
- [6] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.² The maximum penalty for defilement under section 134(1) is imprisonment for life. The Court of Appeal has held that an appropriate starting point in a case such as this is a sentence of 5 years' imprisonment.³
- [7] I consider the following matters to be the aggravating features of this case:
- a. as the complainant's brother-in-law, the prisoner was in a position of trust, and his offending constitutes a grave breach of that trust;
 - b. the complainant is very young, and the difference in ages between the prisoner and the complainant is significant;
 - c. by threatening the complainant, the prisoner added terror to what must already have been a very traumatic experience for her;
 - d. the prisoner did not use a condom, thereby exposing the complainant to the risk of both pregnancy and sexually-transmitted infection.

For all of these matters I increase the prisoner's sentence by 1 year.

- [8] As far as mitigating factors are concerned, the prisoner has no previous convictions. I do not consider that his subsequent convictions are relevant for present purposes. Despite initially indicating a plea of not guilty, I will treat his guilty plea as having been made at an early opportunity. I also take into account that the prisoner spent 1 week in custody after his arrest. For these matters I deduct 1 year and 3 months.

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

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

- [9] I see no evidence of any remorse from the prisoner for his appalling behaviour towards the complainant, other than his plea of guilty. Counsel for the prisoner submits that I should consider a customary apology, offered by the prisoner to the complainant and her family, as evidence of remorse. I am ordinarily fairly sceptical of apologies; they tend to be more an expression of regret rather than of remorse. There is no reason to think otherwise in this case. The prisoner remained silent when interviewed by police. In doing so he was exercising his constitutional right, so he cannot be given additional punishment, but it does give me cause to question the sincerity of his claim to be remorseful. No further reduction in sentence is warranted.
- [10] Finally, it has taken more than 2 years from the time the offence was reported to police to conclude the prosecution of this case. While some of the delay can be attributed to the prisoner's failure to appear in July 2018, it is still unacceptable. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a modest reduction in his 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 1 month.
- [11] The prisoner is convicted on his plea of guilty. Taking all of the above matters into account, he is to be imprisoned for a period of 4 years and 8 months. The sentence is to run from today.


Lambourne J
Judge of the High Court



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