



HIGH COURT OF KIRIBATI

Criminal Case N° 76/2017

THE REPUBLIC

v

KAUTUNAMAKIN MANTAIA

Teanneki Nemta for the Republic
Reiati Temaua for the prisoner

Date of sentencing: 25 June 2019

SENTENCE

- [1] Kautunamakin Mantaia has been convicted after a trial of 1 count of indecent assault, contrary to section 133(1) of the *Penal Code*, and 2 counts of defilement of a girl under the age of 13 years, contrary to section 134(1) of the *Penal Code*. The facts of the case are set out in my judgment, which was delivered on 17 June 2019.
- [2] The complainant for all 3 offences is the prisoner's niece. She was aged 9 or 10 years at the time of the indecent assault and the first count of defilement, and 10 or 11 years at the time of the second count of defilement.
- [3] The complainant testified that the prisoner had sexual intercourse with her once or twice a week from the time of the first offence until mid-2016, when she was in Form 1 at junior secondary school. This is disputed by the prisoner. I cannot and do not take these allegations into account when sentencing the prisoner, but they assist in placing the offending behaviour in context, and in understanding how the complainant came to be a willing participant in the sexual intercourse with the prisoner in 2014.
- [4] Despite the fact that the complainant was a willing participant for the latter offence, the relationship with the prisoner was a grossly unequal one in which the prisoner exploited his position of trust to gratify his sexual feelings with the complainant. Such offending risks long-term psychological harm to the complainant and threatens the fabric of the extended family unit.

- [5] The prisoner is now 31 years of age; he would have been about 25 or 26 at the time of the offences. He leads a subsistence lifestyle, although he has previously had labouring jobs on Tabiteuea. He has 1 child, aged 7 years, and his wife is currently 4 months' pregnant. He has no previous convictions.
- [6] The prisoner offers no explanation for his conduct. When questioned by police in February 2017 he denied the complainant's allegations.
- [7] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ The offence of indecent assault carries a maximum penalty of 5 years' imprisonment,² while for defilement of a girl under the age of 13 years the maximum penalty is imprisonment for life.
- [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 case is imprisonment for 5 years.³ I consider the following matters to be aggravating factors:
- a. as the complainant's uncle, the prisoner was in a position of trust, and his offending constitutes a grave breach of that trust;
 - b. a knife was brandished in the commission of the offences giving rise to counts 1 and 2;
 - c. the complainant was very young, and the difference in ages between the prisoner and the complainant is significant;
 - d. sexual intercourse occurred on more than 1 occasion;
 - e. when having sexual intercourse with the complainant, the prisoner did not use a condom, 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. This is in line with the guidance from the Court of Appeal in *Uriano Arawaia*, where similar conduct led the Court to say, "Looked at in its totality the offending justifies a term of imprisonment of 7 to 8 years."⁴

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

² Parliament recently increased the maximum penalty for indecent assault to imprisonment for 7 years, so an offence committed on or after 23 February 2018 should attract a higher sentence.

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

⁴ *ibid.*

- [10] There is little if anything to be said in mitigation, save that the prisoner has no previous convictions. For this I will reduce his sentence by 3 months. 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.
- [11] There has been an unacceptable delay in the prosecution of this case. The prisoner's offending was reported to police some 2½ 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.⁵ I will reduce his sentence by another 2 months.
- [12] Taking all of the above matters into account, the prisoner is sentenced to be imprisoned for a period of 7 years and 7 months. Under section 28(2) of the *Penal Code*, I order that the prisoner's sentence is to run from 17 June 2019, being the day on which he was first remanded into custody on these charges.


Lambourne J
Judge of the High Court



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