



HIGH COURT OF KIRIBATI

Criminal Case N° 41/2019

THE REPUBLIC

v

BEETA TEKEEU

*Teanneki Nemta for the Republic
Raweita Beniata for the accused*

*Dates of hearing: 12-13 February 2020
Date of judgment: 17 February 2020*

JUDGMENT

- [1] Beeta Tekeeu is charged on information with engaging in unlawful sexual intercourse.¹ The offence is alleged to have been committed on 17 May 2019, at an unknown place on South Tarawa.
- [2] The first of the 3 witnesses called for the prosecution was the complainant. Special arrangements were put in place while she testified, without objection. The court was closed, and a curtain was pulled across so that the dock could not be seen from the witness box. The complainant is now 17 years of age. In May last year she was a Form 6 student at St Louis' High School in Teoraareke. On the day in question she was at school. That day, instead of regular classes, a church service was to be held. The complainant left school early, at about 10:00am. She went with a friend, Nei Ling, to the house of the accused nearby. The accused was known to sell *kaokioki*.²
- [3] At the accused's house, the complainant changed out of her uniform. She and Nei Ling bought *kaokioki* and sat down at a table to drink. She recalls drinking about 8 or 9 cups – they were big cups, but only half-full. They were drinking

¹ *Penal Code (Cap.67), section 129(1).*

² *Kaokioki (also called sour toddy) is the fermented sap of the coconut tree.*

and chatting. At some point they were joined by a boy named Tibou. The complainant became very drunk. She recalls being at the house of the accused for a long time, but she does not remember leaving. She has a vague memory of sitting in a car that was being driven by the accused.

- [4] The complainant's next clear recollection is waking up and seeing the accused's head between her legs. Her shorts and underpants had been removed. The accused was holding her legs apart. He was licking her vagina. It was still daylight, but the complainant had no idea where they were. She was on the back seat of the car and could see trees and bushes through the window. She did not know what to do. She began crying, and pleaded with the accused to take her home, before again losing consciousness.
- [5] The next time she woke up, the complainant was still on the back seat. The car was moving. She could see that they were passing through Nawerewere. She fell back to sleep. When next she woke up they were in Abarao. The complainant asked the accused to drop her there. He stopped the car and she got out. She went to the house of her friend lamwa. It was almost 6:00pm. She had something to eat, bathed and went to sleep. Later, her parents arrived and she went home with them.
- [6] Under cross-examination, the complainant said that she did not recall going to the toilet at the house of the accused. When it was put to her that she had told the police that her last memory was of going to the toilet at the accused's house, she responded that she could not recall all that she had said to the police. The complainant agreed that a complaint had been filed with the police 2 days after the incident. Her mother went with her to the police station. She rejected the suggestion that she had been pressured by her parents to lodge her complaint.
- [7] The complainant admitted that lamwa was her then-boyfriend. When her parents came to pick her up she had been sleeping next to lamwa on his *buia*.³ After bathing she had changed her shorts but was wearing the same shirt. She was not wearing underwear. When her parents arrived they told lamwa that they were taking the complainant home. Her father carried her to the car. Her parents had previously been unaware of her relationship with lamwa, but the complainant's brother had told them about him after the complainant had failed to return from school. The complainant rejected the suggestion that

³ A *buia* is a raised platform with a thatched roof, usually without walls.

she had argued with her parents about lamwa. They were more concerned about how the complainant had ended up in the accused's car. She told her parents that she had gone to lamwa's house because she was afraid to return home while she was still drunk. The complainant did not accept the proposition that her parents did not approve of lamwa. Nor did she agree that she had made up a story about the accused in order to prevent any blame falling on lamwa.

- [8] The complainant maintained that she had woken to find the accused licking her vagina. She had no idea where they were, although she thought that they might have been somewhere in Temwaiku. She had her back against the car door, and her legs were along the back seat. The complainant could not recall taking off her lower garments, nor could she recall putting them back on again. Later, when she was preparing to bathe at lamwa's hose, she realised that her underpants were on inside out, which had not been the case earlier that day.
- [9] The complainant said that, when she was dropped off in Abarao, she had told lamwa what the accused had done. He told her that she should go home and talk to her parents, but she did not want to return home while she was still intoxicated. The complainant said that she could not recall kissing the accused while they were in the car together. She also had no recollection of placing the accused's hand on her genital area while he was driving.
- [10] In answer to a question from the Court, the complainant said that, while the accused had his head between her legs, he was sitting in the driver's seat, which had been reclined.
- [11] The complainant was challenged by defence counsel as to how it could be possible for the accused to lick her vagina while he was sitting in the front seat. She maintained that that was how it had happened. She did not know whether the accused had removed her lower garments while he was in that position.
- [12] The second prosecution witness was Yuet-Ling Shiu, known as Nei Ling. She is 18 years old. Last year she attended St Louis' High School in Teauraereke. On Friday, 17 May 2018, instead of classes there was a school Mass, that went from 9:00am until noon. After Mass she went with the complainant and others to drink at the house of the accused nearby. They bought 6 bottles of *kaokioki* (each holding 1½ litres) and began to drink, sharing a cup they had borrowed

from the accused. The group stayed at the accused's house until late afternoon. By that time Ling was drunk, but not very drunk. In contrast, the complainant was so drunk as to be incapable. They were going to catch a bus home, but the complainant was too drunk.

- [13] Ling heard that the accused was going to drive to Temwaiku, so she asked him for a ride. The complainant could not walk unassisted, so Ling and a boy named Marewea had to carry her to the car. The complainant was placed in the front passenger seat of the accused's car, and Ling and Marewea sat in the back. As they drove, the complainant was crying and behaving strangely. She was not making any sense. She wanted to kiss Marewea and was trying to pull his head towards her. Marewea resisted, and the complainant grabbed the accused's head instead and kissed him on the lips. Ling tried to pull the complainant back into her seat, but she was not complying.
- [14] As the accused drove, Ling saw him put his hand down inside the front of the complainant's shorts. She could see his hand moving around. Ling told him to remove his hand, to which the accused responded, "It's all right. This will calm her down." The accused kept his hand inside the complainant's shorts for about 5 minutes. The complainant was crying and, although she did not say anything, Ling felt that it was clear from her actions that the complainant was not happy about what the accused was doing.
- [15] Ling got out of the car in Eita. She told Marewea not to leave the complainant alone with the accused, and to make sure that she got home to Bikenibeu safely. The complainant was still very drunk and was asleep or unconscious. Ling got out of the car and the accused drove off. Later that day, Ling heard that the complainant's parents were searching for their daughter.
- [16] Under cross-examination, Nei Ling said that she had been with 3 others drinking at the accused's house – the complainant, a boy named Tibou and a girl named Temoaiti. Marewea had not been drinking with them, but he was Temoaiti's cousin. They had seen him walking around after school had finished. There were others drinking at the accused's house that afternoon – some junior school students from St Louis'. Of the 6 bottles of *kaokioki* that Ling had bought, she and her companions had finished 5 by the time she left the accused's house. She left the last bottle with Tibou and Temoaiti.
- [17] Inside the accused's car, Nei Ling was sitting behind the accused and Marewea was behind the complainant. The complainant had been placed in

the front so that she could recline her seat and sleep. Even before the accused had placed his hand inside her shorts, the complainant had been distressed and crying loudly. Nei Ling did not know why. She attributed it to the complainant's intoxicated state. Ling rejected the suggestion that the complainant had grabbed the accused's hand and placed it on her genital area, on the outside of her shorts. She also rejected the proposition that the noises that the complainant was making were an indication that she was sexually aroused.

- [18] It was put to the witness that, while she was at the accused's house, the complainant had gone to the toilet with a boy, who had assaulted her while they were in the toilet together. Ling said that, while she had seen the complainant go to the toilet with a boy, nothing inappropriate had happened. The boy had turned away to urinate while the complainant sat on the toilet. It was possible to see this because the curtain over the doorway did not fully close off the opening. Ling denied that the boy had attempted to remove the complainant's clothing, almost exposing her breasts in the process. Ling did not hear the accused scold the complainant for her conduct. Nei Ling said that she was awake for the whole time she had been in the car.
- [19] Some days after that, Ling again met the accused. She asked him what had happened. The accused told her that he had engaged in sexual intercourse with the complainant. He said that he had been aroused by the complainant because she was the first school student he had known who was good at sex. She did not think at the time that the accused was joking.
- [20] It was put to Nei Ling that she had given a statement to the police on 22 June last year, but she could not recall the date. No one had told her to give a statement – she agreed to do so when approached by the police. Ling agreed that, prior to giving her statement, she had discussed with the complainant and others what had happened on the day of the incident.
- [21] The final prosecution witness was Marewea Rikawa, an 18-year-old student. On the afternoon of 17 May last year he was in the area of Teaoaraereke known as Tetaobe. As he was walking around, he saw the complainant, Nei Ling and Temoaiti. They were drinking *kaokioki* at the house of the accused. He knew Temoaiti as they are related. Marewea saw that the complainant was very drunk. She was falling asleep and needed help to walk. He helped Nei Ling carry the complainant to the accused's car. He put her in the front seat. He and Ling then got in the back and the accused drove off. As they were passing

through Ambo, Marewea saw the accused slide his hand down inside the front of the complainant's shorts. The accused kept his hand there for about a minute. Nei Ling was angry with the accused and told him to remove his hand. The accused complied.

- [22] Nei Ling was dropped off in Eita. Marewea stayed in the car and they drove away. The accused then stopped the car at Bangantebure. He gave Marewea \$20 and told him to go and buy beer. Marewea went and bought 4 cans of Red Horse beer and brought them back to the car. He gave the beers to the accused, who gave 2 cans to the complainant. The complainant then passed 1 can to Marewea, which he placed on the floor of the car. They drove away. When they reached the Evergreen petrol station in Bikenibeu, the accused stopped the car. He told Marewea to get out and gave him \$1 for his bus fare back to Teoraereke. He was reluctant to leave the complainant, but felt that he had to do what the accused wanted. Marewea got out of the car and the accused drove off, with the complainant still in the front seat. She appeared to be sleeping.
- [23] Under cross-examination, Marewea said that he had gone in the car with the complainant and Nei Ling because Temoaiti had asked him to. He said that he was sure that he had seen the accused's hand inside the complainant's shorts. Marewea did not recall a subsequent conversation with the accused about the matter. He denied that he had fallen asleep in the back of the car.
- [24] That brought the prosecution case to a close. I found that the accused had a case to answer. His rights were explained to him.⁴ Counsel for the accused advised that his client would be giving evidence, and he anticipated calling 1 defence witness.
- [25] The accused is 58 years of age. He testified that, on 17 May last year, he was at his home in the Tetaobe area of Teoraereke. He was caring for his 3-year-old grandson while his wife was at work. At his house the accused had a pool table, from which he was able to make some money. People would come by to play pool and drink *kaokioki*. The accused did not have a licence to sell *kaokioki* and he did not consider himself to be a *kaokioki* seller. He would give people *kaokioki* and, in return, they would give him money as a contribution towards the cost.

⁴ In accordance with section 256(2) of the *Criminal Procedure Code* (Cap.17).

- [26] The accused recalled that Nei Ling came to the house that day with the complainant and 2 boys. He had not met the complainant before, but Ling had been to the house often. Ling addressed him as 'Uncle'. None of the group were wearing school uniforms, but the accused knew that the complainant was a student. When they arrived he gave Ling a 1.5 litre bottle of *kaokioki*. She gave him money for it.
- [27] Nei Ling and her friends drank *kaokioki* and played pool. At one stage, the accused saw the complainant kissing a boy while Nei Ling took photos with her mobile phone. The accused told the complainant to stop as he felt that her behaviour was inappropriate. They appeared to be a bit drunk. The accused thought that they had been drinking before they arrived at his house. He saw a bottle of spirits in the backpack of 1 of the boys. The complainant and the boy continued kissing, so the accused again asked them to stop. The couple then went to the back of the house. The accused saw the complainant almost expose her breasts so he scolded her again, saying that such behaviour was inappropriate in the daytime. They stopped and went to 1 of the accused's *buias*. The complainant appeared to pass out. By this time the group had been at the accused's house for more than 2 hours. They were still drinking from the bottle of *kaokioki* that Nei Ling had bought when they first arrived.
- [28] The accused wanted to go to Temwaiku to buy some more *kaokioki*. Nei Ling asked him if they could come with him as the complainant was incapable. Marewea and Ling carried the complainant to the accused's car and put her in the front seat, which they reclined. Marewea and Ling got in the back seat. Marewea had not been with the group in the beginning, but he joined them after about an hour and drank with them.
- [29] As the accused was driving towards Bikenibeu, the complainant grabbed his left hand and placed it on her genital area, on the outside of her shorts. Before that she had been moving about quite violently, and the accused was worried that she might hit her head on the window. It seemed that she was calmer while his hand was on her genital area, so he did not pull away immediately. When he did pull his hand away, the complainant again took his hand and put it back on her genital area. When they reached the end of Eita village, Ling asked to be dropped off. As she got out of the car, Ling saw the accused's hand on the complainant's genital area. She scolded the accused and told him to remove his hand. He pulled his hand away. Ling then told him that the

complainant was still too drunk to be taken home. She asked the accused to take the complainant for a ride to give her a chance to sober up. The accused then drove away.

- [30] When they reached the Catholic area of Bikenibeu, the accused stopped the car and told Marewea to get out. That day was not the first time the accused had taken Marewea to Bikenibeu, and that place was usually where he asked to be dropped off. Marewea had not asked to get out of the car. He was asleep in the back seat, and the accused assumed that was where he wanted to go. The accused did not want Marewea to stay in the car as it was possible that he might need to pick up people in Temwaiku, and there would not be room if Marewea stayed.
- [31] The accused then drove 2 loops around Bikenibeu, taking the back road to the Kiribati Teachers College from Mackenzie Point. He did not know where the complainant lived, and he did not want to drop her off just anywhere in her condition. However the accused needed to get to Temwaiku, so eventually he drove in that direction with the complainant still in the car. He intended to approach Temwaiku from the Bonriki side, so he drove along the Ananau causeway towards the airport. It was about 5:00pm. As they neared the Bonriki police station the complainant woke up. She then pleaded with the accused to take her to her boyfriend's house in Abarao. The accused agreed, so he turned the car around and drove back to Abarao. He stopped the car close to where some people were playing volleyball and asked 1 of the players to go and get the complainant's boyfriend. Shortly afterwards the boyfriend came. The complainant got out of the car and went with him. By this time it was close to 6:00pm. The accused's *kaokioki* supplier closed at 6:00, so the accused decided to go home without going to Temwaiku.
- [32] The next day, Nei Ling came to see the accused. She asked him, "How was it?" The accused replied, jokingly, "I ate her vagina." The accused wanted to tease Ling because she had scolded him the day before when she had seen him with his hand on the complainant's genital area.
- [33] Under cross-examination, the accused said that Ling and the complainant had arrived after midday. He denied that they had arrived wearing their school uniforms. He also denied having seen Temoaiti that day. The accused maintained that he had given Nei Ling only 1 bottle of *kaokioki*, and denied having sold her 6 bottles. He agreed that Nei Ling gave him \$4 for the bottle of *kaokioki*, and said that he paid his suppliers in Temwaiku \$3 per bottle. The

accused said that it had been going on towards 4:00pm when he had left Teoraereke to drive to Temwaiku. The accused rejected the suggestion that he had put his hand inside the complainant's shorts. He denied that he had chosen not to drop the complainant at her house because he intended to take advantage of her.

- [34] The accused maintained that he had not licked the complainant's vagina. He rejected the suggestion that, when he had admitted having done so to Ling the next day, he was telling the truth.
- [35] In answer to questions from the Court, the accused said that the complainant had never been in the back seat of his car. He denied having given Marewea money for beer, or for his bus fare.
- [36] After the accused had given evidence, his counsel said that they would not be calling a witness after all and brought the defence case to a close.
- [37] In considering the evidence in this case, I remind myself that it is not for the accused to prove his innocence. His evidence is to be assessed like the evidence of any other witness. Even if I reject his evidence, I still need to be satisfied beyond reasonable doubt of the prosecution case before the accused can be convicted. The burden rests with the prosecution to prove, beyond reasonable doubt, each and every element of the offence charged.
- [38] I referred earlier to the special arrangements that were in place while the complainant gave evidence. I have not drawn any adverse inference against the accused, nor have I placed any extra or undue weight on the evidence of the complainant because of these arrangements.
- [39] In order to convict the accused of the offence of engaging in unlawful sexual intercourse, I must be satisfied to the required standard of each of the following elements:
- a. the accused engaged in sexual intercourse with the complainant;
 - b. the sexual intercourse was unlawful.
- [40] Sexual intercourse is defined as being one of a number of acts involving penetration of, or contact with, the genitals or anus of another.⁵ For the

⁵ *Penal Code*, section 127A.

purposes of this case, sexual intercourse includes the mouth or tongue of 1 person touching the genitalia or anus of another.⁶

- [41] Sexual intercourse is unlawful if done without the consent, or an honest and reasonable belief in the consent, of the other person involved in the activity, other than for a genuine medical or law enforcement purpose.⁷ A person consents to an activity only if the person freely and voluntarily agrees to the activity.⁸
- [42] Counsel for the prosecution submits that I should accept the testimony from the complainant, Nei Ling and Marewea. She further submits that there was no way the complainant could have consented to sexual intercourse, as she was either asleep or unconscious at the time.⁹
- [43] The accused maintains that no sexual intercourse occurred between him and the complainant. It was the strong submission of his counsel that there was clearly some kind of conspiracy between the complainant and her friends to target the accused, in an attempt to deflect attention away from the complainant's relationship with her boyfriend, of which her parents disapproved. Counsel for the accused conceded that, if I were to accept the evidence of the complainant, the conduct attributed to the accused is sufficient to constitute the offence of engaging in unlawful sexual intercourse.
- [44] The prosecution case relies almost solely on the complainant's testimony. There is nothing from the accounts of the other witnesses that can be said to directly corroborate the complainant's assertion that sexual intercourse occurred. While it is no longer necessary that I warn myself of the dangers of convicting the accused based solely on the complainant's uncorroborated testimony,¹⁰ I must still weigh her evidence very carefully. If I find the complainant to be a credible witness, then it is open to me to convict the accused, even on her evidence alone.
- [45] The complainant has little recollection of what occurred that day in the accused's car. I observed her closely as she testified, and I found her to be an

⁶ Paragraph (f) of the definition of 'sexual intercourse' in Section 127A of the *Penal Code*.

⁷ See the definition of 'unlawful' in section 127A of the *Penal Code*.

⁸ *Penal Code*, section 128(1).


⁹ *Penal Code*, section 128(2)(b)(vi).

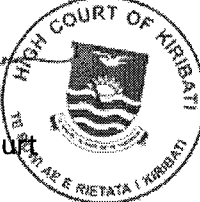
¹⁰ *Evidence Act 2003*, section 11.

impressive and truthful witness as to the matters she could recall. She did not attempt to embellish her testimony in any way. She remained consistent in her account of the incident and was not shaken under cross-examination. I am of the view that the complainant was doing her best to honestly recall what had happened to her.

- [46] While I consider the complainant to be a credible witness, the same cannot be said for the accused. He does not need to satisfy me of anything, but I found him to be quite evasive on a number of matters. He was clearly being deliberately coy when discussing whether he sold *kaokioki* from his house. He had a disconcerting habit of giving the impression that he was unable to remember the complainant's name while he testified, in a way that I found particularly unconvincing. Furthermore, I consider his account of getting to within a few minutes of his intended destination only to abandon his mission so that he could take the complainant all the way back to Abarao to be simply unbelievable. I also consider his admission to Nei Ling a day or so later to be very significant. He says that he was joking, but I do not accept that. The accused maintains that he did nothing wrong while he was alone with the complainant. If so, it is a remarkable (and very unlikely) coincidence that he would admit to having done the very act he was alleged to have performed on the complainant, even before any complaint had been filed with the police.
- [47] Finally, the accused says he left Teoraereke before 4:00pm. He dropped the complainant at Abarao before 6:00pm. It would have taken him no more than 30 minutes to drive from Teoraereke to the place in Bikenibeu where Marewea got out of the car, leaving him alone with the complainant for at least 90 minutes. His account of how that time was spent does not add up. While there is no longer any presumption of impropriety for a man and a woman to be alone together, I am satisfied that the accused had both the time and opportunity to commit this offence. It is certainly not conclusive of anything, but it adds to the weight of the evidence against the accused.
- [48] Needless to say, I do not accept the suggestion put forward on behalf of the accused that he is merely the victim of a conspiracy cooked up by the complainant and the other prosecution witnesses. I also reject counsel's submission that it would be physically impossible for the accused to have placed his head between the complainant's legs while he was in the driver's seat of the car and she was on the back seat. With the driver's seat reclined, it is not difficult to see how this could have been possible.

- [49] Despite my criticism of the accused's version of events, I remind myself that my assessment of the evidence is not a competition between the witnesses for the prosecution on the one hand, and the accused on the other, nor is it a balancing act. I must ask myself whether, having regard to the entirety of the evidence, the prosecution has established each and every element of the charge to the required standard.
- [50] Having carefully considered the evidence before me, I am satisfied beyond reasonable doubt that the accused engaged in sexual intercourse with the complainant while she was either unconscious or asleep, and therefore incapable of giving consent. Although the issue was not raised by defence counsel, I am satisfied that the accused did not have an honest and reasonable belief that the complainant consented to the act of sexual intercourse.
- [51] I am therefore satisfied beyond reasonable doubt of the guilt of the accused on the charge of engaging in unlawful sexual intercourse. I find him guilty and he is convicted accordingly.
- [52] I will hear counsel as to sentence.


Lambourne J
Judge of the High Court



The seal of the High Court of Kiribati is circular. It features a central shield with a sun, a bird, and a fish. The text 'HIGH COURT OF KIRIBATI' is written around the top inner edge of the seal, and 'I KIRIBATI E RIETATA I KIRIBATI' is written around the bottom inner edge.