



HIGH COURT OF KIRIBATI

Criminal Case N° 22/2019

THE REPUBLIC

v

KIRION TEAKAI

Nenebati Tawita Tainimaki for the Republic

Reiati Temaua for the prisoner

Date of sentencing: 4 November 2019

SENTENCE

- [1] Kirion Teakai has pleaded guilty to 1 count of unlawful sexual intercourse, contrary to section 129(1) of the *Penal Code* (Cap.67), and 7 counts of sexual intercourse by a person in a position of trust, contrary to section 155A(1) of the *Penal Code*.
- [2] The complainant in this case is the prisoner's stepdaughter. The offences were committed between May and September 2018, when the complainant was 15 years of age and a Form 2 student at the Junior Secondary School on Tabiteuea North. The prisoner had married the complainant's mother, who is both hearing impaired and unable to speak, when the complainant was 5.
- [3] The offending involved repeated acts of non-consensual sexual intercourse between the prisoner and the complainant. Each occasion involved penile penetration of the complainant's vagina. The 8 counts are representative – the prisoner told police that he had sexual intercourse with the complainant at least 30 times during the period in question. The offending only came to light in September 2018, when the complainant's mother caught the prisoner *in flagrante delicto*, by which time the complainant had become pregnant (she later gave birth to the prisoner's child). It is not clear why the first occasion is charged as unlawful sexual intercourse (*ie.* without consent) while the

remaining instances are charged as sexual intercourse by a person in a position of trust (where the age of the victim is the relevant consideration). In any event, both offences carry a maximum penalty of imprisonment for life, so the distinction is perhaps academic.

- [4] The complainant had not previously engaged in sexual intercourse. The first instance, which occurred when the complainant accompanied the prisoner to collect coconuts, was very painful for her and caused her to bleed from her vagina. During the sexual intercourse the prisoner held his hand over the complainant's mouth and threatened that there would be consequences for the complainant if she called out.
- [5] Later that same month, the prisoner had non-consensual sexual intercourse with the complainant on the family *buia* after she had fallen asleep while he was massaging her. The complainant recalled 2 other acts of non-consensual sexual intercourse that occurred that month, also on the *buia*. Over the next 4 months, the prisoner engaged in several further acts of sexual intercourse with the complainant, at the house or in the bushes nearby.
- [6] An information was filed on 8 July 2019, charging the prisoner with unlawful sexual intercourse and 4 counts of sexual intercourse by a person in a position of trust. The prisoner had to be brought from Beru, and made his first court appearance on 20 August. Two days later the Attorney-General filed the present information and, on 20 September, a *nolle prosequi* was entered with respect to the original information. That day, counsel for the prisoner advised the Court that his client intended to plead guilty to all charges.
- [7] The prisoner is 47 years of age. He is not presently married – the relationship with the complainant's mother ended after his offending came to light. His only child is the one he has with the complainant, although he has never seen the child and provides no support. Prior to going into custody the prisoner led a subsistence lifestyle. He has no previous convictions.
- [8] Counsel for the prosecution has provided a victim impact assessment, prepared by the Social Welfare Officer on Tabiteuea North. The report details the physical and emotional trauma the complainant experienced as a result of the prisoner's offending. The matters set out in the report have not been challenged by counsel for the prisoner. The complainant feels stigmatised by her loss of virginity and pregnancy. She dropped out of school and has lost

contact with her social group. She feels guilty that she has brought another mouth to feed into a family that was already struggling financially. The complainant despairs at what the future might hold for her and her child.

- [9] This is an extremely serious case, of a kind that appears to be increasing in prevalence in Kiribati. No explanation has been put forward for the prisoner's conduct. His actions, involving repeated sexual violation of the complainant over several months by a person she regarded as her father, is abhorrent. At no time was the complainant a willing participant in these events. As her stepfather, it was the prisoner's duty to protect her, not to take advantage of her. He exploited his position 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.
- [10] Despite his admissions to police, the prisoner is to be sentenced only for the offences to which he has pleaded guilty, and not for any other conduct that has not given rise to a charge. The fact that the prisoner admitted to several other acts of sexual intercourse, and to having fathered the complainant's child, does however serve to place the offences to which he has pleaded guilty in a broader context.
- [11] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ In order to avoid what might otherwise be a crushing sentence were I to treat these offences 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.
- [12] Had these offences been committed prior to 23 February 2018, when the sexual offence provisions of the *Penal Code* were substantially amended, the prisoner would have been charged with rape. The Court of Appeal has held that an appropriate starting point in a contested case involving a single count of rape is imprisonment for 5 years.² It is likely that, as a consequence of the amendment of the *Penal Code* and the introduction of new offences, the time is right to revisit the starting point for sexual offences attracting a maximum

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].

penalty of imprisonment for life. However, the special features of this case are such that it would not be appropriate to undertake that task here.

[13] The prisoner compelled the complainant to engage in multiple acts of sexual intercourse over a period of several months. This places his conduct towards the upper end of the range of seriousness for offending of this kind. I am of the view that an appropriate starting point in a contested case involving multiple offences of sexual intercourse without consent is 14 years.

[14] I consider the following matters to be the aggravating features of this case:

- a. as the complainant's stepfather, the prisoner was in a position of trust, and his offending constitutes a grave breach of that trust;
- b. the complainant was young, and the difference in ages between the prisoner and the complainant is significant;
- c. while there was no violence beyond that inherent in the act of non-consensual sexual intercourse, there were threats from the prisoner, including threats to kill the complainant if she told anyone;
- d. the prisoner engaged in sexual intercourse involving penile penetration of the complainant's vagina while not using a condom, so it is unsurprising that his actions resulted in her pregnancy, but he also exposed her to the risk of sexually-transmitted infection.


For all of these matters I increase the prisoner's sentence by 3 years.

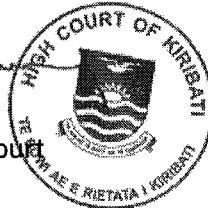
[15] In mitigation, the prisoner has pleaded guilty at a very early stage. I am satisfied that, despite his inability to explain why he acted in the way he did, the prisoner is remorseful for his actions. For these matters, and his previous good character, I reduce the prisoner's sentence by 5 years.

[16] The prisoner is convicted on his pleas of guilty. Taking the above matters into account, he is sentenced to be imprisoned for a period of 12 years. 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.

[17] I wish to make a final comment, for the benefit of the Parole Board. Although the prisoner will become eligible for release on parole after having served half of his sentence, it is my strong recommendation to the Parole Board that the prisoner not be released from prison on parole unless the Board is

satisfied that appropriate measures are in place to protect any young women and girls who will be living at the place at which the prisoner intends to reside on his release.


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 name "MARI AE E RIETATA I KIRIBATI" is written around the bottom inner edge.