



HIGH COURT OF KIRIBATI

Criminal Case N° 64/2017

THE REPUBLIC

v

MAREWE IOTEBWA

Teanneki Nemta for the Republic

Taoing Taoaba for the prisoner

Date of sentencing: 3 October 2019

SENTENCE

- [1] Marewe Iotebwa has pleaded guilty to 1 count of indecent assault, contrary to section 133(1) of the *Penal Code* (Cap.67), and 1 count of defilement of a girl under the age of 13 years, contrary to section 134(1) of the *Penal Code*.¹
- [2] The complainant in this case is the prisoner's stepdaughter. She was born on 6 May 2004. The prisoner married the complainant's mother in 2010. The offences were committed on unknown dates in 2014, when the complainant was in Class 5 at primary school. She would have been aged 9 or 10. At the time the complainant's mother was often required to travel for work, leaving the complainant in the care of the prisoner. He worked as a seafarer.
- [3] The conduct giving rise to count 1 occurred as the prisoner and complainant were returning home by bus after a shopping trip. The complainant sat on the prisoner's lap. The prisoner slid his hand inside the complainant's underwear and touched the outside of her vagina.
- [4] On another occasion, at a time when the complainant's mother was away overseas, the prisoner took the complainant and her younger sister to his cabin on board a ship that was moored at Betio port. The 2 girls went to sleep. Shortly after midnight, the prisoner woke the complainant, removed her

¹ Despite the repeal and replacement of sections 133 and 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 offences (as provided for under section 10(2) of the amending Act).

clothing and lay down beside her. He inserted his penis into the complainant's vagina from behind. She told the prisoner that it was painful, but he told her to endure it. The prisoner had sexual intercourse with the complainant for some time, eventually ejaculating on her buttocks. He did not use a condom.

- [5] I am told that a sexual relationship then continued between the prisoner and the complainant for several years. The complainant is said to have been a willing participant, despite her very young age. The relationship was only discovered when the complainant became pregnant in 2017, at the age of 13. While the prisoner accepts that he is the father of the complainant's child, he has not been charged with respect to any other acts of sexual intercourse.
- [6] It is hard to understand the basis for the decision not to charge the prisoner with further offences of defilement. Even if the complainant was unable to provide specific details of other acts of sexual intercourse, one would think that the act from which the complainant became pregnant should have at least given rise to a further charge. In any event, I sentence the prisoner today only for the offences to which he has pleaded guilty, and not for any other conduct that is not the subject of a charge. The fact that the prisoner admitted to an ongoing sexual relationship, and to having fathered the child of the complainant, does serve to place the offences to which he has pleaded guilty in some context.
- [7] The prisoner was interviewed by police on 10 August 2017, at which time he made admissions. Three days later he left for Nauru, and only returned to Kiribati in May 2019, after extradition proceedings were commenced. He first appeared in Court on these charges on 31 May. On 19 July defence counsel advised the Court that the prisoner would be pleading guilty.
- [8] The prisoner is now 40 years of age; he would have been 35 at the time the offences were committed. He has 3 children with the complainant's mother, but she left him after the complainant's pregnancy was discovered. He has no previous convictions.
- [9] This is an extremely serious case. The prisoner admitted his offending to police, which would ordinarily be seen as evidence of remorse. However, he claims that he was seduced by the complainant, and that she initiated the intimacy. Such a suggestion seriously undermines any claim to genuine remorse. To suggest that a 9-year-old girl would seduce a 35-year-old man is utter nonsense. This may be how the prisoner rationalised to himself over the years the depravity of what he was doing to his stepdaughter, but I do not accept it. She may have become a willing participant in their ongoing sexual relationship, but it was the prisoner's duty to protect her, not to take advantage of her. The notion that the complainant is somehow to be blamed for the prisoner's actions is offensive. The relationship between the prisoner

and the complainant 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.

[10] The offence of indecent assault carries a maximum penalty of 5 years' imprisonment, while for defilement of a girl under the age of 13 years the maximum penalty is imprisonment for life. In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.²

[11] In order to avoid what might otherwise be a crushing sentence were I to treat the offences separately, I will apply the totality principle, and impose a single sentence in respect of both counts that I consider meets the gravity of the prisoner's offending.

[12] The defilement count is the more serious of the two. The Court of Appeal has held that an appropriate starting point in a contested case of defilement of a girl under the age of 13 years is a sentence of 5 years' imprisonment.³

[13] 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 very young, and the difference in ages between the prisoner and the complainant is significant;
- c. there was a further offence of a sexual nature, namely the indecent assault on the bus;
- d. the prisoner's failure to use a condom when he had sexual intercourse with the complainant exposed her to the risk of sexually-transmitted infection.

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

[14] For the prisoner's previous good character and his early pleas of guilty, I deduct 2 years.

[15] More than 2 years have passed since the prisoner's offending was reported to police. Ordinarily that would provide a basis for a further modest reduction in sentence, under the principles set out by the Court of Appeal in *Li Jian Pei*.⁴ However, the first information was filed in this Court within weeks of the initial police complaint. Such swiftness is to be commended. By absconding

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

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

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

to Nauru shortly after his interview with police, the prisoner only has himself to blame for any delays in the resolution of this case. He is not entitled to a reduction in sentence on this ground.

[16] The prisoner is convicted on his pleas of guilty. Taking all of the above matters into account, he is sentenced to be imprisoned for a period of 6 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 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

