

REGINA versus IOANE KINTA
HIGH COURT OF THE GILBERT ISLANDS
(Thompson J)

Bairiki 2nd June 1977

Criminal Case No 1 of 1977

Manslaughter - "res gestae" - circumstantial evidence
- burden of proof on prosecution - provocation -
intoxication - intoxication not amounting to insanity
- sentence - three years' and six months' imprisonment.

The accused, aged 19 years, was charged with the manslaughter of Telaniwi Matantarawa at Utirona village, Tabiteuea North on 1st January 1977 by stabbing him with a knife during the course of a quarrel which Telaniwi picked with the accused during some drunken revelry that was taking place to celebrate the new year. The accused denied that he had kicked the deceased and put forward the defence that his 7" long knife which was in his pocket may have accidentally stabbed the deceased during their pushing each other.

- HELD:(1) That the Crown had discharged the burden upon it of showing that the wound suffered by the deceased was inflicted by the accused's knife, that no other explanation was reasonably possible and that the accused was guilty of manslaughter as charged.
- (2) That in view of the mitigating factors and the principles of sentencing in manslaughter cases, recently stated by the Fiji Court of Appeal the accused was sentenced to 3 years' and six months' imprisonment to take immediate effect.

J. A. B. Disney, Crown Counsel, for the Crown.

THOMPSON J:- The accused, a youth aged 19 years from the Island of Tabiteuea North, is charged with the manslaughter of another man, Tekaniwi Katantarawa, at Utiroa Village on Tabiteuea North. He is alleged to have killed Tekaniwi in the early hours of New year's Day this year.

2. Many of the facts relevant to the issues in this case are not in dispute. The accused, who has given evidence on oath, has admitted some. Others of which he had no personal knowledge were the subject of undisputed evidence by prosecution witnesses. I find those facts proved beyond all reasonable doubt. They are -

- (1) that during the hours between 7 p.m. and midnight on 31st December, 1976, a number of persons, including the accused and Tekaniwi, gathered in the house of Tanawai in Utiroa village in order to drink fermented toddy and sing;
- (2) that at about midnight all of those people left Tanawai's house and went together to sing outside the Protestant maneaba in the village in order to celebrate the New Year;
- (3) that they were asked to go away and come back later because a religious service was being held in the maneaba, and they did so;
- (4) that, when they returned after about 15 - 30 minutes, they stood in a group just outside the maneaba and began to sing to the people inside;

- (5) that, while they were singing, Tekaniwi picked a quarrel with the accused and, after pushing aside a man named Teiwaki who tried to restrain him, started pushing the accused;
- (6) that shortly afterwards Tekaniwi walked to the maneaba, bent over, holding his stomach;
- (7) that he lay down in the maneaba and was seen then to have a wound in the abdomen through which part of his intestines protruded;
- (8) that he was attended by a doctor after a short while and taken to hospital by car;
- (9) that he died at 1.16 a.m. of shock caused by massive internal bleeding from severed arteries in the mesentery;
- (10) that the injuries from which death resulted were all caused by one stab wound, $1\frac{1}{4}$ inches long and 2 inches deep, situated $1\frac{1}{2}$ inches to the left of, and level with the umbilicus;
- (11) that from the time when the accused was in Tānawai's house until after Tekaniwi had sustained his injuries the accused had a knife in his possession, about 7 inches in length, with a pointed blade (i.e. of the dagger type) 4 to 5 inches long;
- (12) that, shortly after Tekaniwi went into the maneaba wounded, the accused went up to a youth named Teekea a short distance from where the struggle had taken place, was holding his knife in his hand and gave the knife to Teekea;
- (13) that the accused asked to borrow Teekea's bicycle and, having been given permission to do so, rode off on it;
- (14) that at about 2 a.m. two police officers, having searched for the accused among those celebrating the New Year in the village, went to his home, a distance of rather more than 500 yards, and there found him lying, either asleep or pretending to be asleep, inside his mosquito net;
- (15) that they arrested him and told him that he was suspected of wounding Tekaniwi; and

(18) that the accused denied knowing anything about it and has never at any time since admitted striking Tekaniwi with his knife.

3. No witness, except Tanawai, has given evidence of having seen the accused strike Tekaniwi with his knife or even of seeing him with the knife in his hand during the struggle between the accused and Tekaniwi. Tanawai gave such evidence but, when it was pointed out to him during his cross-examination that he had made a statement to the contrary in his deposition at the preliminary inquiry, he repudiated it and said that he had not seen the accused strike Tekaniwi with a knife or having a knife in his hand. In re-examination he reverted again to the evidence he gave in the examination-in-chief but without any satisfactory explanation. He appeared to be trying to say whatever he thought might please the person questioning him for the time being and was obviously a witness on whom no reliance should be placed in respect of any matter not the subject of ample satisfactory corroboration evidence. There is none in respect of the evidence of seeing the stabbing or of seeing the knife in the accused's hand. It must, therefore, be totally rejected.

4. All those who were present at Tanawai's house and who gave evidence, except a youth named Taara, stated that they were very drunk. Taara confirmed this except in respect of himself. He is only 15 years old and said that he drank little. The accused himself confirmed that to some extent. All those witnesses gave evidence that the accused and Tekaniwi were both very drunk. I accept that evidence and the evidence that all except Taara were also very drunk.

5. All those witnesses, except Tanawai whose evidence cannot be relied on, stated that, although they were aware of the struggle or fight between Tekaniwi and the accused, none of them saw how it ended. It was not very light and the fight was not a noisy one. The group were singing when it started; they stopped either just before it ended or just after it did so. Taara has given evidence that, as the fight ended, just after Tekaniwi came away from the accused, he heard Tekaniwi say "You would not care less but you have just stabbed me intentionally". I am satisfied that the speaking those words formed part of the "res gestae" and that evidence of their being said was properly admissible. I was favourably impressed with the demeanour of Taara and am satisfied that he was trying to tell the truth and that he was not mistaken.

to those words being spoken. Because the incident occurred in the middle of drunken revelry in near darkness I consider that no reason to doubt the veracity or accuracy of Taara's evidence on this point arises from the failure of the others here to hear, or to remember having heard, the remark, or from his own failure to have seen more of the fight. Taara gave evidence that he did not know to whom the remark was addressed by Tekaniwi.

6. Evidence has been given by the police officers who came to the scene that, when Tekaniwi was in the maneaba wounded, he had no weapon. Other witnesses have given evidence that at no time during that night did Tekaniwi have a weapon. The accused has not sought to allege that, when Tekaniwi came to attack him, he was armed. Evidence has been given, however, that he was bigger than the accused and had a reputation for being bad-tempered and violent. I accept that evidence as true.

7. From the facts which I have found to be established it is clear that Tekaniwi suffered the fatal stab-wound immediately at the end of a fairly brief scuffle with the accused. All the witnesses and the accused himself have stated that, after Teiwaki was pushed aside, no one but the accused and Tekaniwi were involved in the struggle. At the start of the scuffle the accused had his knife in his left-hand trousers pocket; there is evidence of this from prosecution witnesses as well as from the accused. A short while later the accused went to Teekea, with the knife in his hand. The accused who was able at the trial to remember more than when he made a statement to Asst. Inspector Nabau on 12th January (Exhibit 1), was still unable to recall what happened between the time when he was scuffling with Tekaniwi and the time when he went to Teekea with the knife. He has given evidence, however, of the events from then on. His evidence is that he went to Teekea to borrow his bicycle to go and buy more drink, and that he took out his knife to hand to Teekea to keep and use while he was away, because Teekea's knife was tied to his bicycle. He has stated that he cycled round for a while and then feeling tired, went home and to bed. He has not stated any reason for the change in his plan to buy more drink and to return to the revelry, except that he felt tired. He has explained a remark which he made to Teekea that Teekea should not tell anyone that he had borrowed the bicycle; his explanation is that the parents of Teekea would have been displeased if they had learned that he borrowed their son's bicycle.

8. One witness, Nei Abikaira, has given evidence of seeing a bloodstain on the blade of the knife later that morning. Her evidence is not corroborated in any way. The police were unable to recover the knife and subject it to forensic examination. The witness claimed to recognise the stain as a blood stain but there is evidence that such knives are used for cutting fish and for other purposes. Without a forensic test a blood stain is not identifiable as necessarily of human origin. I can place no reliance, therefore, on Nei Abikaira's evidence for the purpose of determining whether there was a human blood stain on the blade of the knife. There is no other evidence that there was any such stain.

9. So there is no direct evidence that the accused's knife was the weapon by which the wound was inflicted on Tekaniwi. However, there is the very cogent circumstantial evidence to which I have already referred. Where all the evidence available to prove any essential element of an offence is circumstantial, it is necessary for the prosecution to prove that there is no other reasonably possible explanation of that evidence. It is not for the accused to satisfy the Court that any such explanation is true. The onus of proof is entirely on the prosecution to establish its case beyond reasonable doubt.

10. In this case I am satisfied that the Crown has discharged the burden upon it of showing that the wound suffered by Tekaniwi was inflicted by the accused's knife. No other explanation of the wounding is reasonably possible.

11. However, the accused has suggested that the wound may have been caused accidentally, that Tekaniwi, as he went in to attack the accused, may have thrust himself against the knife in the accused's pocket. I reject this explanation as being not reasonably possible for two reasons. First - and the less cogent - Tekaniwi said immediately that he had been stabbed intentionally. That is, of course, evidence only of what he thought; he may have been mistaken. But, second, the accused has given evidence that Tekaniwi attacked him from the front. Neither of them fell over. They merely pushed one another; they did not wrestle. If the knife was carried in the accused's trousers pocket, it would have projected out of the pocket, not towards the front but towards the back. I have examined the pockets of Exhibit A carefully to ascertain the angle at which a 7-inch knife would project from any of them. It would not project forward from any pocket. There

There are no blood stains on the shorts; but there is no conclusive evidence that there was no opportunity to wash out any such stains; accordingly I have given no weight to the absence of stains. Nevertheless, for the reasons which I have stated, I am satisfied that it is not reasonably possible that the knife caused Tekaniwi's wound while it was still in the accused's trousers pocket. The explanation having been eliminated, there is no reasonably possible explanation other than that the accused had the knife in his hand when it stabbed Tekaniwi.

12. It has been established that before the incident the accused had the knife in his pocket. He must, therefore, have taken it out after being attacked. Quite possibly he took it out in order to defend himself. But as Tekaniwi was unarmed he had no need to defend himself with such a weapon. No doubt he was provoked and being very drunk he may not have formed the specific intention to do grievous harm. Murder had, therefore, not been proved. But provocation and the lack of specific intent are no defence in respect of the offence of manslaughter. The accused's drunkenness had clearly not reached the stage of stupor when it can be categorised as insanity nor was it such as to cause the accused to act as an automaton. His actions immediately before and immediately after the scuffle were, by his own account as well as that of the prosecution witnesses, purposeful.

13. Accordingly I find that it has been proved beyond all reasonable doubt that the accused unlawfully killed Tekaniwi by stabbing him with a knife. I find him guilty of the offence as charged in the information.

14. I convict the accused of manslaughter contrary to section 192 of the Penal Code (Cap 8.)

15. The mitigating factors in this case are principally the fact that the deceased was the aggressor and, to a lesser degree, the age of the accused. Also there is no evidence that he struck the blow in anger rather than in an excess of self-defence. The introduction of the lethal weapon into what was only a scuffle, an unarmed struggle, was serious. It is unfortunate that the youth of Tabiteuea should carry such dangerous weapons when they go out drinking, where the risk of quarrels is increased by intoxication. Possibly the events in this case will serve as a warning to them of the inherent danger of doing so. For the purpose of imposing sentence, however, I accept that the accused's carrying of the weapon

was not an indication of any intention on his part to use it upon other persons.

16. I have, in deciding upon the sentence to impose in this case, had regard to the principles of sentencing in manslaughter cases in the Gilbert Islands stated in a number of recent cases by the Fiji Court of Appeal.

17. I take into account the fact that the accused has been in custody for five months.

18. I sentence him to imprisonment for three years and six months, to take effect from to-day.

19. Accused informed of right of appeal against conviction and sentence to the Fiji Court of Appeal.