

IN THE HIGH COURT OF KIRIBATI)
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

High Court Criminal Case 3 of 2000

THE REPUBLIC
v.
IOANETI NATION

FOR THE REPUBLIC: MS POLE TBAO
FOR THE ACCUSED: MS JOANNE FLEER

DATE OF HEARING: 29 & 30 MAY 2000

J U D G M E N T

The accused is a recluse. He has lived alone on the outskirts of his village, Tekaranga, on the island of Maiana. He is 45 years old, unmarried and has never worked.

He is charged with murder. The particulars of the offence:-

Ioaneti Nation on the 30th January 2000 murdered Kaamwane Tibwe at Tekaranga village, on the island of Maiana.

A person commits murder if he causes the death of another deliberately and unlawfully and at the same time does so with the intention either of causing death or of causing really serious bodily harm.

The victim, Kaamwane and his wife Nei Kaitibo Raoiroi lived not far away. The victim was in the business of exchanging coconuts for sour toddy.

In the last days of January this year a dispute arose between the accused on the one hand and the deceased and his wife on the other. It originated on Friday the 28th and culminated with the death of Kaamwane on the Sunday, the 30th. I must confess that I have found the detail of allegation and counter allegation in the dispute difficult to follow. That doesn't matter for the

purposes of a decision. It is not in doubt there was a dispute. Ms Fler, for the accused, has sought to argue that her client was provoked during his argument with the deceased and his wife, by what he regarded as unjust, false accusations against him. Ms Fler has argued that her client was thereby provoked into the killing.

Quite early on the Sunday morning, between 6 am and 7 am, the accused saw the deceased coming to cut toddy. The deceased had left his wife at home asking her to boil some water. When he had not returned within an hour she became anxious and went looking for him. This is my note of her evidence in chief:-

I found him in the uninhabited area, just east of air-strip. He was lying with the - weapon used to kill him, face upwards. I cried over on him, because I saw the weapon sticking just under his nipple: it was the dart of a sting-ray: around 4 but at time I'd lost my mind. It was very deep, only (2") protruding. He was wearing a T-shirt. The darts were buried very deeply. He hadn't died yet. "Who did this to you?" "loneti killed me". He died a little while afterwards: not very long. I don't know how many minutes: it was a matter of minutes and he passed away. I shook him and he was dead. I saw blood on his shirt, lots: blood beside him.

I accept that evidence.

How had this tragedy happened?

When the accused saw Kaamwane going to his toddy tree, he went towards it by another path so that he reached the spot at the time the deceased did. The accused reproached the deceased. The deceased was, naturally as his purpose was to cut toddy, carrying his toddy knife. The accused said that the deceased brandished it threateningly but acknowledged that the deceased did not use it against him at any time. An argument developed. The two moved to the vicinity of the accused's house. The argument grew warmer. The accused said he was afraid of the deceased. The accused picked up a stick to the end of which was attached a bunch of 4 or 5 sting ray darts. This is my note of his story:

He came to me at my house and got angry: I was afraid. Implement that was attached to what was embedded in him, the sting ray darts. It was attached to the stick that was broken. The stick isn't here: it was about an arm's length long. It can be used to mix a magic potion. I grabbed the stick and went out of house as deceased advancing upon me. Deceased very close to house, his toddy knife in hand. Mine is a raised floor house without walls. He was very close to my house: he said I was naughty, rude. He accused me of taking coconuts when they were my own. I lost my mind: don't know if angry or afraid. He advanced upon me and struck me first: that's when I got angry and then stabbed with the stick. While he was threatening me with knife, he aware I holding stick: he then told me, let us put our weapons aside and he laid his toddy knife down. At that time I had lost my mind so much I don't know whether I put my stick down or not. When he saw I didn't put my weapon down he advanced upon me again with his toddy knife. We were fainting then he retreated until he got to a coconut tree. He took an octopus hook from the tree and struck me: he had the toddy knife in his other hand.

..... He struck me with his left hand a blow to my right ear: he was left handed and transferred his toddy knife to his right hand. I tried to defend myself with the string ray barbs and because I was afraid and angry, lost my mind. We were struggling and maybe when I was defending myself the string barbs must have struck him on his left side. I did not know what was happening while we were struggling so when I was defending myself the barbs must have struck his left side. After that he dropped the weapons: I'd let go of stick after blow to my right ear. He then bent over to retrieve octopus hook but I had already hold of it. He retreated and got hold of the long stick and fainted at me with it as he didn't have his original weapons. He had his toddy knife in his hand but was using the stick to keep me at a distance. Not long afterwards he ran away with the long stick. I went back into the house and then took a path which led into the village and to his house. I saw him and took no notice of him. I went to village because I was afraid. He was lying in a puddle of water on the path leading to his house. I didn't give any thought to him.

I have taken that from the accused's evidence in chief. In cross examination by Ms Tebao, leading for the prosecution, he said, "I became angry, lost my mind. He had advanced on me and struck me. I defended myself with darts. When I say I lost my mind I don't mean I completely lost it, still aware of some things happening".

The father-in-law of the deceased, Raoiroi laboo, was called to the scene. He saw the body of his son-in-law:-

The man was dead, Kaamwane. The accused was not there. My daughter crying beside him. I went to check: he was dead probably from the wounds in the left chest. I took him from my daughter: saw he was dead. There was only 1 wound, under his left nipple. Darts of a sting ray. They had broken off from the stick, to which they'd been attached:.....

Nei Maenam Tawetia is a lady of 39. She lives in the village. The accused came to her house early in the morning looking for her husband:-

I asked him why. He said, "I have fought Kaamwane and killed him". He only said that he killed that man.

.....I asked him why and he first said because they'd been fighting.

In cross examination at first the accused said he had forgotten speaking to Nei Maenam (he had said in examination in chief only that he'd gone to relatives in the village) but then said, "perhaps I did tell her: I'm not sure". [He had admitted killing him in his cautioned statement.] The significance of the evidence of Nei Maenam is that the accused knew quite well what he had done. Yet he himself denied realising that he had inflicted a mortal wound and just left the accused lying on the path: no attempt to help him or to call help for him.

On those facts, which I find proved beyond reasonable doubt, Ms Flear attempted to erect the defences of provocation and self defence. I am afraid that the facts simply do not support either defence. What had gone before the Sunday morning certainly did not lead to "a sudden and temporary loss of self control" (per Devlin J quoted by Lord Goddard CJ in **R v Duffy** 1949 1 All ER 932). Nor did anything the deceased said or did on the day lead to such a loss of self control.

I remember this account of events comes from the accused who can be expected to have put the best gloss he could on them. I can be confident that the actions of the deceased were

no more provocative or threatening than the accused has described: rather, if anything, they are likely to have been less so.

My conclusion beyond reasonable doubt is that the two had a fight and in the course of it the deceased received a mortal wound. The deceased drew blood first from the accused with the blow to the right ear but the accused replied by stabbing the deceased in the chest with a most terrible weapon which penetrated the heart: retaliation out of all proportion to his injury.

I am fortified in this conclusion by the absence of any explanation, before he came to court, of being provoked or of acting in self defence. He said nothing of the kind to Nei Maenam, merely said they had been fighting. There is nothing of provocation or self defence in the Caution Statement but only the faintest suggestion not sufficient to support the defence, in the Question Interview:-

Q7. When Kaam'ane first struck you with the octopus fishing rod what did you do then?

Ans: I protected myself with the back part of my weapon spear for I held it with both of my hands.

Q8. When did you actually stab Kaam'ane?

Ans: I stabbed him right after the moment I protected myself when he struck me with his octopus fishing rod.

The two of them simply had a fight in the course of which the deceased received a mortal wound and died soon after. As I said in the Republic v Rifuka Siakisini (HCCrC 8/99 at page 9):

When two men get into a fight and one of them is killed, that is murder. (R v. Orton 39 LT 292, (1873) 14 Cox 226).

Ms Fler called a psychiatrist, Dr Zhang Si Xia. Dr Zhang has seen the accused three times since he has been in custody on remand. She said he has no mental illness. He has an abnormal personality, some of the characteristics of which are to make him selfish, stubborn, easy to anger, easy to fight.

Dr Zhang said that there is no name in English for his type of personality. In her notes which are exhibited she called it "epileptoid" but the notes say, "in reality, it has nothing to do with epilepsy." [The accused said he suffers from epilepsy.]

Dr Zhang's notes and her oral evidence confirm me in my view of the accused and in the findings I have made about what happened. Given the man's personality it is likely that it was he who set out to confront the deceased rather than vice versa.

The onus of proof throughout the trial has been on the Republic to prove beyond reasonable doubt all elements of the crime of murder. It has discharged that onus, including negating beyond reasonable doubt the defences of provocation and self defence.

I find the accused guilty of murder.

Robin Millhouse

THE HON ROBIN MILLHOUSE QC
Chief Justice