

IN THE HIGH COURT OF KIRIBATI ) HIGH COURT CRIMINAL CASE No. 34 OF 2004  
CRIMINAL JURISDICTION )  
HELD AT BETIO )  
REPUBLIC OF KIRIBATI )

THE REPUBLIC  
VS  
ANTONIO TERIETA

FOR THE REPUBLIC: MS POLE TEBAO  
FOR THE ACCUSED: MR BANUERA BERINA  
DATE OF HEARING: 5 JULY 2004

### J U D G M E N T

The accused is charged with attempted rape:-

Antonio Terieta on or about the 30<sup>th</sup> July 2003, at Matang village on the island of Nonouti, attempted to rape Kotiku Ruru.

Kotiku and her husband, Atabe, had been staying with Antonio and his wife and children at Antonio's house at Rakantai, Matang village on Nonouti.

There was a lot of coming and going and drinking not relevant to the incident alleged. This is Kotiku's evidence of the incident:-

Accused sleeping: in shorts: sleeping on buia: his wife with me on buia: looking for lice. My husband (not there). I went to sleep. Accused got on top. Naked. His wife not there: children on buia. This was 1500-1600. Held my hands down: told me not to make a noise: I had on tibuta, skirt, under pants. I called for his wife. I was frightened. He pushed my knees, I rolled over and got down. I called for his wife. He put on his shorts, "Don't tell anyone". He only held on to both my hands: I lying on my back. Hands on both sides my body. He didn't do anything to my clothes. He said he'd punch my eye: when he got on top of me. I was struggling with him. My husband appeared.

Antonio denied that any such incident ever took place. He said he wanted to get rid of difficult house guests (Atabe was a jealous husband). He asked them to leave but they didn't want to. So he invented the story of getting

naked on top of Kotiku and told her to tell it to her husband. She did. They left.

There are two points in the trial. The first is whether, if the accused did get naked on top of Kotiku, it was an attempted rape. No evidence of erection: no removal or a demand for a removal of the woman's clothes: no other action but pinning her down by her arms. The Director of Public Prosecutions said there need not be an erection to prove an attempt. She knows of authority to that effect. Perhaps in some circumstances. There was no evidence of an erection or of no erection. An erection could have been an indication of intention. As the evidence has come out, there is no indication of an intention to rape. Ms Tebao relies on the accused having taken off his shorts, being naked. Perhaps that together with his being on top of the woman shews an intention to commit some indecency but not necessarily an intention to rape. His actions may have been an indecent assault, no more.

The second even more difficult point for the prosecution is whether there has been proof beyond reasonable doubt that the incident happened at all.

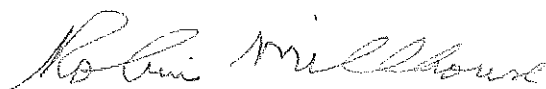
Mr Berina reminded me that it is said to have happened in broad daylight, no screens down round the buia. I remember Nei Kotiku saying there were children on the buia. Is it likely that in these circumstances a man would act as the accused is said to have acted?

"Far fetched" was Ms Tebao's description of the accused's story. In Kiribati custom, sexual intercourse with a relative is a very bad thing and this is what the accused would be admitting. Certainly it would be a bizarre way of getting rid of unwanted house guests.

The accused does not have to prove anything. I have to be satisfied of guilt beyond reasonable doubt on the whole of the evidence. I cannot be satisfied that the prosecution has proved the case beyond reasonable doubt. I have a reasonable doubt that the incident happened at all.

The accused is not guilty of attempted rape.

Dated the 7<sup>th</sup> day of July 2004



THE HON ROBIN MILLHOUSE QC  
Chief Justice