

IN THE HIGH COURT OF KIRIBATI ) HIGH COURT CRIMINAL CASE NO. 56 OF 2004  
CRIMINAL JURISDICTION )  
HELD AT BETIO )  
REPUBLIC OF KIRIBATI )

THE REPUBLIC  
VS  
MAREWENTEBUKE KAMARIERA

FOR THE REPUBLIC: MR TION NABAU  
FOR THE ACCUSED: MS TAOING TAOABA

DATE OF HEARING: 5 & 6 JANUARY 2005

J U D G M E N T

The accused, Marewentebuke Kamariera is charged with murder:

Marewentebuke Kamariera on 24<sup>th</sup> of August 2004, at Buariki village, Onotoa island in the Republic of Kiribati, murdered Nei Buaraieta Mote.

On arraignment the accused pleaded not guilty to murder but pleaded guilty to manslaughter.

The prosecution rejected the accused's plea of guilty to manslaughter and thus the trial proceeded on the basis that the accused had pleaded not guilty to the charge of murder.

The prosecution has a strong circumstantial evidence. When the accused gave evidence he admitted he attacked the victim. His defence was that he did not intend to cause the death of the deceased or cause grievous bodily harm to the deceased. In order to prove its case the prosecution called six witnesses.

Mote Tiaeki (PW1). He is the father of the deceased (Buaraieta). On 24 August 2004 at about 7 pm the witness testified that he was at home with his daughter Buaraieta and other members of the family that evening. They wanted to amuse themselves so they decided to play cards. However it was getting dark and they did not have any kind of lighting in their house. So to overcome this lighting problem Buaraieta (deceased) then went on a bicycle to her aunt - Tiare Taunteang (PW2) to borrow a home made kerosene bottle light (lamp). Buaraieta never returned home alive after that bicycle ride to her aunt, and instead some children brought that bicycle back home with blood stains on it. When he saw blood stains on the bicycle the witness was concerned about the safety of her daughter and so he set out to look for her. He first of all then asked the various people and children who were there as what happened with the bicycle, and whilst conversing with them thus he heard a loud scream and went to the spot where the scream came from and there he found his daughter lying on the ground dead under the pandanus tree. On looking at her he saw a cut mark (wound) on the neck across the throat, another cut mark (wound) on right hand side of the neck, and other cut marks or wounds on both wrists.

The witness simply saw the wounds as described but did not measure as how long and deep they were.

Tiare Taunteang is the second prosecution witness (PW2). He is aged 43 and lived at Buariki of Onotoa Island. She testified that on 24 August 2004 at about 7 pm Marewentebuke (accused) came to her house but did not see him clearly and he did not stay long either as shortly after she saw him leaving the house. Then after the accused left, the deceased also came and asked for the home made kerosene, bottle light which she gave her. When she (deceased) got the kerosene bottle light she (deceased) then left riding on her bicycle and never saw her alive again.

The witness said that Buaraieta is her niece and the accused is her grandson.

The third witness of the prosecution is Kamoki Teeim (PW3). He is aged 18 and lives at Buariki village of Onotoa Island. He testified that on 24 August 2004 at about 7 pm he saw the accused emerging from underneath pandanus tree holding a toddy knife in his hand. At that time when he saw the accused the witness was riding a bicycle and returning from the bush. He spoke to him (accused) and his breath smelt of alcohol. The witness stated also that he knew the accused as he was his class mate in school and a easy-going and playful man. The witness also said that the pandanus tree where he met with the accused was the tree under which the body of the deceased was found. In cross examination the witness confirmed that he met the accused near that pandanus tree before Buaraieta (deceased) was killed and her body was found.

The fourth prosecution witness is Maunganga Tatanu (PW4). He is aged 14 and comes from Buariki village of Onotoa Island. He testified that on 24 August 2004 whilst riding a bicycle at Buariki village he met up with the accused - Marewentebuke and Kamoki near a certain pandanus tree. He (witness) spoke to the accused and saw him (accused) carrying a toddy knife. The toddy knife was produced in evidence as Exhibit P1.

In cross examination the witness confirmed that when he spoke with the accused he asked him whether he was going to a meeting with them that evening and he told him that he was unfit to go to a meeting as he (accused) smelt of alcohol.

The fifth witness of the prosecution is Teim Betaia (PW5). He is aged 45 and comes from Buariki village of Onotoa Island. He testified that on 24 August 2004 at about 7 pm he was at his house. And he said that in relation to Mote's house (PW1) his house (witness) is opposite that of Mote's house and between the two houses (Mote and Tetim) there is a main road. Plan of the location of houses was shown to the witness and was produced in evidence as Exhibit P2. The witness agreed that Exhibit P2 is the rough plan of part of Buariki village where the witness's (Tetim) house, Mote's house, Tiare's house and accused's house, the main road, the well (which the accused used when having a bath) the pandanus tree (where the deceased's body was found), the lagoon and the ocean side. The rough plan indicates:

The main road in the middle of the village;  
 Top of the page, is the lagoon side;  
 On right hand side are two squares. Above the main road on top on right hand side of the plan is the witness's house (Tetim);  
 Opposite Tetim's house below the main road on the right hand side is Mote's house;  
 On the left hand side above the main road is Tiare's house (PW2);  
 A star at the middle of the page going towards the direction of ocean is a pandanus tree (where deceased was killed and her body was found);  
 A box in the middle of the plan below the main road is the accused's house;  
 A circle at the right hand side immediately below but next to main road is the well (where the accused had a bath);  
 A continuous line drawn on the plan at the middle of the road on the right hand side near or next to the well to Tiare's house is the line drawn by the accused himself as the direction he took when he left the well after finishing his bath. He took the main road and walked all the way back to his house (accused).

At about 7 pm the accused came to the witness at his house and asked him for the water-fetching can to use to draw water from the witness's well for his bath (accused). The witness said he allowed the accused to use his

water-fetching can and so the accused had his bath at the witness's well but could not see him from his house as it was already dark then. The witness stated also that the accused did not return the water-fetching can after he finished his bath but he (witness) found the can at place on spot where the body of the deceased was found. The water-fetching can was produced in evidence as Exhibit P2.

In cross examination the witness stated that the accused borrowed his water-fetching can about half an hour after the body of deceased was found and that night it was dark, and the well is about 30 or 40 metres from his house and thus he could not see the accused from his house when he had his bath (accused) nor saw the accused taking the water fetching can to the scene of crime where body of deceased was found.

Pursuant to section 126A of the Criminal Procedure Code (Cap 17) the caution statement of the accused was tendered formally by the prosecution and was admitted as Exhibit P4. The caution statement of the accused is as follows:

"I Marewentebuke Kamwantera wish to give my statement. I want someone to record it down in writing. I have been told that I am not obliged to say anything but only on my own free will and that whatever I say can be used in court as evidence.

On Tuesday 24/08/04 sometimes after seven in the evening I was drinking sour toddy. At that time, I wanted to smoke, so I took my toddy knife (the exact one which DC 236 Mareko has shown to me). On my way to look for a pandanus leaf (rauara), I saw Nei Buraieta cycling towards the north carrying a lamp in one hand. I hid myself from her in order to scare her off. When she got nearer, I ran to her and cut her neck with the toddy knife. I cut her throat first and then the side of her neck. I was only playing (pretending) to her thinking that I was using the blunt side of the knife. I was surprised when she fell to the ground shaking and blood was scattered everywhere. I was surprised when I held her from behind to see blood bleeding from her neck which soaked my black T-shirt (the one shown to me by DC 236 Mareko). It was at that moment that I realised that had wounded Nei Buraieta. I took off to Buraitan carrying my knife to seek assistance from the Police. I took a bath in the sea before heading for the Police Station. On my way I saw that a group of people had formed at the place that I left Nei Buraieta at, so I decided to go to Temao to hide at Nei Terooti's house. I left my black T-shirt and toddy knife which I used on Nei Buraieta. I was arrested by the police at Nei Terooti's place.

I have read the above statement and had been told that I may correct, change or add anything to it. This statement is true and was made out of my own free will.

Signed: Accused; PC 125; DC 236

DC 236: I want to ask you a few questions in relation to the allegation against you. You are not obliged to answer but only if you are willing to do so as questions and answers will be recorded in writing and may be used as evidence.

Q1: Is that clear?

A: Yes it is.

Q2: Do you know Kamoki Teetim?

A: Yes I do.

Q3: Did you meet him that evening?

A: Yes, I met him before that thing happened to Nei Buraieta.

A4: What did you do to Nei Buraieta?

A: I cannot really recall.

Q5: When you first cut Nei Buraieta's neck, did you check whether or not it was the sharp end of the knife?

A: Yes I touched and felt it I thought that I was using the blunt side.

Q6: When you cut Nei Buraieta's neck for the first time, it must have been bleeding, why then did you cut it the second time?

A: I have no idea that she was wounded the first time that is why I cut her again.

Q7: Was there any dispute between you and Nei Buraieta for the last few days?

A: No. We have no dispute.

Q8: Were you drinking sour toddy at that time? According to your recollection, how much did you drink?

A: To my recollection I think I drank eight cups.

Q9: Were you so drunk at that time?

A: I was drunk but my mind was not affected.

Q10: Is there anything else you want to say?

A: None."

The sixth prosecution witness is Ntaake Teiwaki (PW6). She is a Medical Assistant presently stationed at Onotoa Island. She testified she examined

The deceased's body and made a report of that examination. Her report was produced in evidence as Exhibit P5.

She gave evidence and said that the cause of the death of the deceased was excessive loss of blood from the wounds at the neck on the throat and on the side of right hand side of neck.

She said also that she examined the deceased at about 8 pm and she (deceased) was already dead by then. Her body was placed on the buia and saw that her clothes and neck were soaked in blood.

In re-examination and her report she confirmed that the deceased suffered from two fairly long and deep straight and clean cut wounds at the neck:

- (1) A vertical wound was at the right hand side of neck near the ear down to neck: the wound measured 8 cm long, 4 cm deep
- (2) Horizontal wound was measured 10 cm long and 4 cm deep across the throat and extending to either sides of the neck.

The deceased also suffered some two minor injuries on both palms of her wrist.

With: no heart beat, no breath, no pulse and no blood pressure.

That concluded the case for the prosecution.

Counsel for the accused Ms Taoing Taoaba, then submits a no case to answer for the accused and argued that the prosecution has failed to prove that the accused intended to kill the deceased or cause grievous bodily harm to the deceased as the accused had mistakenly believed he used the unsharpened edge of the toddy knife to cut the neck of the deceased with the blunt instead of the sharpened edge. Unfortunately he had in fact used the sharpened edge. Further the accused had no known dispute of any kind with the deceased or any known motive whatsoever to kill the deceased.

Subsequently Mr Tion Nabau, counsel for the Republic argued that when the case of the prosecution is taken at its highest, the prosecution had made out a case against the accused to answer. Mr Nabau also referred me to paragraph 4-294 of Archbold 2000 (see also Archbold 2004, paragraph 4-294). Having heard submissions of counsel for the accused and counsel for the Republic for no case to answer I ruled that the prosecution had made out a case to answer against the accused.

Then the accused himself elected to give evidence.

Marewentebuke Karariera (accused). He is aged 17. On 24 August 2004 early in the evening at about 5 pm he testified he was at his house drinking sour toddy. Then later on he went and had a bath at Tetim's well using also Tetim's water fetching can to draw water with from the well. After his bath at the well he left the well and walked on the main road back to his house. At about 7 pm he left his house and went and looked for rauara (pandanus leaves for rolling tobacco smoke) walking to the west-south direction from his house. Then whilst looking for rauara he met two boys by the name of Kantaki and Maunganga. They are his friends and from Buariki village also. He stayed with these boys for about half an hour and then they parted company: the boys went to a meeting and he (accused) walked back home.

Then whilst walking home he saw a person riding a bicycle and recognised her as Buaraieta (deceased) from the light of the kerosene bottle lamp which she was holding in her left hand: "When I saw her I ran and started cutting away with the knife; cutting away the neck of Buaraieta. I thought I used the blunt side of the knife. I was just playing".

The accused also said that she had known Buaraieta for many years and she is more than 10 years old but younger than the accused. Buaraieta is also their relative from her grandparents and she is his aunt according to I-kiribati custom. The accused continued his account of the incident:

"After I cut her throat I knew her throat was cut. I held her shoulder with my left hand and with the right hand I cut her throat and when I let her go she fell down on the ground. Then I ran to Buraitan to report to the police but did not make it to Buraitan and the police station and instead I went to Temao".

The accused also stated he did not go to the police at Buraitan because villagers from Buariki village were already there with the police before he (accused) came. Instead he went to Temao village and stayed at Nei Roti's house where he was found and arrested by the police.

The accused also stated he was thinking of taking the deceased's body to her house but he never did so as he was afraid. The accused also stated he heard that evening that Buaraieta had died.

In cross examination the accused denied he knew the deceased was in the house of her parents (PW1) that evening. He also denied that he ever went to Nei Tiare's house that evening of the incident in question.

The accused also stated in cross-examination that his grandfather was selling sour toddy at his house and he started drinking sour toddy at his house at around 5 pm. He also confirmed in cross examination that he was

drunk during that evening of the incident in question but he still knew what he was doing. The accused also confirmed in cross examination that when she saw Buaraieta (deceased) carrying a kerosene home made bottle lamp:

**I followed her and grabbed her by the shoulder. The deceased was then riding a bicycle slowly and I held her by the shoulder and as I held her she didn't get off her bicycle to the ground but at on it. And when I cut her throat she did not cry or shout as I did the cutting very quickly.**

That concluded the case for the accused. I then heard addresses by counsel for the prosecution and counsel for the accused.

Counsel for the Republic submits that the prosecution has proved beyond reasonable doubt that the accused did actually intend to cause the death or grievous bodily harm to the deceased.

Counsel for the defence on the other hand submits that the prosecution has failed to prove the intention (men rea) of the accused to kill or cause grievous bodily to the victim.

Before I consider the evidence I direct myself that the onus of proof beyond reasonable doubt remains upon the prosecution from first to last. The Republic must prove the charge and each element of the charge beyond reasonable doubt and it fails to do so then the accused is entitled to be acquitted. There is no onus on the accused at any stage to prove his innocence.

In the present case to discharge its burden in respect of the charge of murder, the prosecution must prove beyond reasonable doubt that the accused caused the death of the deceased by an unlawful act or omission with malice aforethought..

Before I deal with the issue in detail in the present case I first of all turn to briefly consider the issue of intoxication which was referred to by Kamaki Teetim (PW3) who stated in his evidence that the accused smelt of alcohol when he spoke to him on that night of the incident in question. Maunganga Tatonu (PW4) also stated in cross-examination that the accused was not going to a meeting with them during that evening of the incident in question as "he (accused) was unfit to go to a meeting as he (accused) smelt of alcohol". The accused himself on the other hand admitted that he was drunk during the night of the incident in question but he was still able to know what he was doing that evening. Ms Taoaba, counsel for the accused never raised intoxication as an issue during the trial. Beyond reasonable doubt I am satisfied that the accused did consume some alcohol in the form of sour toddy but he was not so drunk as to be incapable of knowing what he was. It is not an issue and I will say no more about it.



The other point that I also need to deal with is the submission of Ms Taoaba - counsel for the defence that there is no known motive whatsoever for the accused to kill the deceased and hence lack of intention to cause the death or grievous bodily harm to the deceased.

It is entirely irrelevant to the accused's guilt that he had a good motive. However as evidence, motive is always relevant and if the prosecution can prove that the accused had a motive for committing a crime such motive makes it more likely that the accused in fact did commit the crime in question.

The central issue in the present case is whether the accused has the intention to cause the death or grievous bodily harm to the deceased.

There is no dispute about the fact that the accused did in fact kill the deceased by inflicting two fairly long and deep wounds (cuts) on the neck: one vertical wound (cut) near the right ear at the top of the neck extending down to the right hand side of the neck and measures 8 cm long and 4 cm deep (8 x 4 cm); and one horizontal wound (cut) on the throat extending across to either side of the front of the neck and measures 10 cm long and 4 cm deep (10 x 4 cm).

The defence of the accused on the other hand is that he never intended to kill or cause grievous bodily harm to the deceased. And even though he had killed the deceased by inflicting two fairly long and deep wounds on the neck (side and front) with toddy knife all these wounds should have never been inflicted at all in the first place except for the unfortunate mistake on the part of the accused himself: Instead of pretending to cut the neck of the deceased with the unsharpened edge of the toddy knife which he had intended to use in jest in the first place to frighten the deceased with into believing that a sharpened edge of the toddy knife was being used, in fact the accused had made a mistake and used a sharpened edge of the toddy knife instead of the unsharpened edge. Hence he seriously wounded the deceased and as the result she died from the wounds.

To decide whether or not the accused had in fact made a mistake in that he had used the sharpened edge of the toddy knife instead of the unsharpened edge as he had intended to do so to frighten the deceased with as a joke one needs to carefully examine the evidence and facts in the present case.

The medical evidence of Nei Ntaake Teiwaki (Medical Assistant) (PW ) clearly shows that the deceased had suffered two fairly serious long and deep life threatening wounds on the right hand side and front of the neck (throat) which the accused had inflicted on the neck of the deceased. And due to the loss of excessive blood from these wounds the deceased died.

As mentioned from the medical evidence there is no dispute at all that the accused did cause the death of the deceased by cutting the deceased's neck across the throat and to either side of the throat and on the right hand side of the neck from near the right ear down to the right hand side of the neck. Excessive loss of blood from such inflicted wounds killed the deceased.

There is also no dispute from the medical evidence that the two wounds which the accused inflicted on the deceased are of fairly long and deep and life-threatening in kind and extent. They are: 1) horizontal wound front of neck (throat extended to either sides of throat on the neck: 10 cm long and 4cm deep (10 x 4 cm); (2) vertical wound (from near the right ear extending down to right hand side of the neck): 8cm long and 4cm deep (8 x 4). A wound of 4cm in depth inflicted on a throat with the toddy knife's blade cutting across the throat as deep as 4cm inside the throat as the accused did to deceased in the present case is a very serious and deep wound for the neck and throat of a fully grown up person let alone the deceased's neck as she was a girl of tender age of 13 years old and was still growing and her throat and vital organs are still tender and developing. With this horizontal wound alone the deceased would have died almost instantly as the horizontal cut wound of 4cm in depth would, without any difficulty, damaged the oesophagus, the windpipe and other vital parts of the neck. The deceased was doomed to die.

In his caution statement the accused stated:

**I was surprised when she fell to the ground shaking and blood was scattered everywhere. I was surprised when I held her from behind to see blood bleeding from her neck which soaked my black T-shirt.**

Ntaake Teiwaki in her evidence and report also stated that the deceased was soaked in blood on her hair, her clothes and neck.

Beyond doubt I am satisfied that the horizontal wound inflicted by the accused on the neck of the deceased is a fairly long and deep and life-threatening wound. And thus I do not accept the evidence of the accused that he was only playing. And as if the horizontal wound alone as referred to above is not enough to kill the deceased, the accused also cut the right hand side of the neck of the deceased near the ear down to the side of neck - a vertical cut or wound. This wound is a fairly long and deep wound measuring 8cm long and 4cm deep. This is again a very serious and life threatening wound and it extended from near the right ear to almost to the shoulder blade. And the fact that the accused's shirt was soaked in blood as well as the deceased's hair and neck confirmed that this cut or wound is very deep as far as the side of neck is concerned and the vital blood vessels

on this right hand side of the neck would have been pierced and severed given the depth of the cut of 4cm.

No wonder then that the accused himself and deceased were both soaked in blood. The wound was deep and life threatening. By this vertical wound alone the deceased would have died without the horizontal wound as the accused did. Yet the accused did in fact inflict the vertical wound as well. Whatever reason the accused may have beyond doubt I am satisfied that the accused was not as he said in his caution statement:

**“only playing (pretending) to her thinking that I was using the blunt side of the knife (from accused’s caution statement).**

And again I do not accept his evidence that he was only playing.

Had the accused really been telling the truth that he was merely playing with the toddy knife and the deceased in that he merely tried to trick her to believe that he was cutting her throat with a sharp edge of the toddy knife to frighten her but whereas he was in fact cutting her throat with the unsharpened edge of the toddy knife (he thought but he didn’t). Had the accused really been playing why didn’t he check properly and carefully that he really use the unsharpened edge especially as he was cutting with what I-Kiribati know very well as the sharpest and well kept and rarely used knife but for cutting toddy only knife called a toddy knife.

Why did the accused target to cut the neck especially the throat of the deceased instead of other parts of deceased had he really been playing with the deceased? Say he could have made a superficial cut on the back, side of arm etc. Yet he chose to cut the deceased’s neck not merely superficially scratching it but cutting it as mentioned earlier, 10cm across and 4cm in depth and not only once but twice. It is well known as counsel for the prosecution stated that cutting a person’s neck as the accused did to the deceased is the quickest way to kill that person. And to cut the neck twice as the accused did to the deceased in the present case is to ensure that the deceased died instantly and silently. Beyond doubt I am satisfied that the accused did set out to seriously injure and hurt the deceased.

There is also evidence that the deceased had suffered some minor wounds at both palms. Beyond doubt I am satisfied that when the accused cut the deceased on the throat and right hand side of neck, whilst he simultaneously grabbed the deceased on the shoulder the deceased must have struggled and tried to stop the accused to cut her neck. Further beyond doubt I am satisfied that the accused did not cut the throat of the deceased in jest but specifically to injure and hurt the deceased.

In his answer to one of the questions put to him by the investigation police officer: when you cut Nei Buraieata's neck for the first time, it must have been bleeding, why then did you cut it the second time? He answered: "I have no idea she was wounded the first time that is why I cut her again. Beyond doubt I am satisfied that the accused did set out to seriously injure and hurt the deceased. And as counsel for the prosecution Mr Nabau stated in his submission which I accept, it would be against common sense that after the accused cut the throat of the deceased for the first time the accused would not know, nor even feel he had wounded her.

Additionally Mr Nabau in his submission also stated that the accused's description of the deceased in cross-examination that she did not ever cry out or scream after he first cut her throat, is also against common sense which I accept.

Further the behaviour of the accused at the critical moment when he had seriously wounded the little girl (deceased) was most bizarre and hard to understand. The little girl was supposed to be his close relative and he himself has seriously wounded her and her condition was quite critical at that point in time. Under such circumstances one would expect the accused to do everything in his power to try and save whatever little amount of life was still left with the little girl. He stated that he tried to see the police to help but never managed to get to the police station. It never occurred to him also to ask the relatives to help the wounded helpless girl, say his own parents or grandfather or Nei Tiare Taunteang (PW2) or call the nurse at the clinic or anyone else whom he knew could help the helpless wounded little girl. In fact he did nothing to try to ask anyone at all to try and save the life of the little girl.

Instead he abandoned the deceased and left her alone lying on the ground covered all over with her own blood and never bothered to see the deceased after he claimed he went to see the police to seek help.

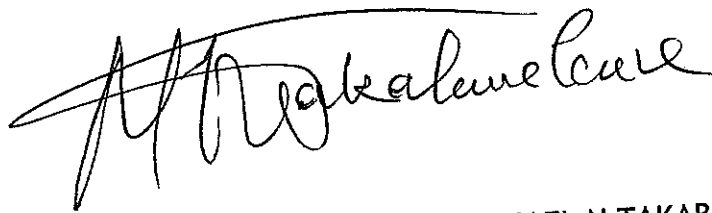
Beyond doubt I am satisfied that the behaviour of the accused at the critical moment in the life of the little girl (deceased) was not what is considered the normal behaviour of a close relative who has mistakenly seriously wounded an innocent harmless girl of 13 years old.

Taking the whole of the evidence into account I am satisfied that the prosecution has proved beyond reasonable doubt that the accused has seriously wounded the deceased. He killed her. The intention to cause grievous bodily harm if not death is clear from his actions. The wounds of the deceased supported it.

In accordance with section 193 of the Penal Code (Cap 67) I found you guilty of murder and I convict you accordingly.

In accordance with the mandatory penalty under the law I sentence you to imprisonment for life.

Dated the 14<sup>th</sup> day of January 2005

A handwritten signature in black ink, appearing to read 'Michael N Takabwe', written in a cursive style.

THE HON MR JUSTICE MICHAEL N TAKABWEBWE  
Judge