

IN THE HIGH COURT OF KIRIBATI) HIGH COURT CRIMINAL CASE No. 10 OF 2005
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

THE REPUBLIC
VS
KAOTINTEUN TARABO

FOR THE REPUBLIC: THE SOLICITOR GENERAL, MR DAVID LAMBOURNE
WITH MS EWEATA MAATA
FOR THE ACCUSED: MR GLENN BOSWELL

DATES OF HEARING: 4, 5 & 6 JULY 2005

J U D G M E N T

Kaotinteun Tarabo was originally charged with three offences - murder, aggravated riot and directing intimidation. At the end of the prosecution case the Republic entered a nolle prosequi on count 3, directing intimidation.

[I am puzzled why the Republic used the term "aggravated riot" in the charge. The Ordinance (s. 22) speaks only of "riot".]

The particulars of murder and aggravated riot:-

On the 27th day of October 2004, at Temanokunuea, Butaritari in the Republic of Kiribati, Kaotinteun Tarabo murdered Tooni Timon.

On the 27th day of October 2004, at Temanokunuea, Butaritari in the Republic of Kiribati, Kaotinteun Tarabo, with other persons, took part in a riot and unlawfully destroyed: three local houses, the property of one Baretarawa Bio; three local houses, a store and a motel, the property of

Kaotinteun arranged the transport. He hired three trucks, two from the Co-op, one from the Council (the Unimane Association paid for them) to pick up men from each village. The result: some hundreds of young men and unimane assembled at the airfield. They were taken by vehicle to Watikano village and walked the remaining three or four kilometres to Temanokunuea.

1. Why was the visit to be at night?
 2. Who organised it?
 3. What were they to do when they got there?
1. A visit during the day would have been more appropriate if the aim were simply to reason with the rebels. I can only conclude that the visit was to be at night to be the more intimidating for the local people: they would not know who had come, how many there were, why they were there or what they meant to do. Very frightening.
 2. Anyone who at night has had to move a large body of men knows that it does not just happen. It must be carefully organised. Men had to be assembled in the assembly area, the airport, moved to the forming up place, Watikano village, given their final orders as to their particular objectives in Temanokunuea, given the order at H hour, the agreed time, to move across the start line from Watikano village and approach their objectives. Kaotinteun in giving evidence said he gave no directions, only the time transport would arrive: it must have been the unimane from the various villages who decided on the plan of action. That is absurd. The unimane had no time. I do not accept that they met somehow in the dark at the airfield and agreed on a plan. Besides there is no evidence of it apart from Kaotinteun's suggestion. Although I doubt it matters who made the final plan as Kaotinteun had already set the operation in motion there is only one person, Kaotinteun, who could have organised this: he admits organising the transport and going round to give the signal for the operation that night. He admitted in answer to me:-

Not to be done that very day (24th October) but if they still refused later on the punishment was to be carried out. I was entrusted with job if they refused to obey I was to go round and get transports ready. It was left to me if they refused - Under the obligation entrusted to me I decided that this should be done on 27 October. No one told me this to happen on 27 October.

Kaotinteun made the decision, planned the operation and gave the signal and counseled the unimane in each village that the operation was to take place that night. If he had not gone round from village

the nursing officer. She gave evidence at both trials that when she examined Tooni's body about 7 o'clock the next morning he was dead. He had severe wounds to the back of his head.

I find beyond reasonable doubt that Tooni was beaten and stoned to death and his body thrown over the seawall.

Mr Boswell in making the submission of no case to answer argued that maybe Tooni was still alive when he was thrown over the seawall and drowned lying on the beach. First I do not accept that he was still alive when he was thrown over and, even if he were alive, it would have made no difference in law if he were lying there incapacitated and drowned: his attackers would have caused his death just the same.

To sum up the facts. Kaotinteun was the ring leader: counselled the unimane who counseled the people of their villages. Kaotinteun made the decision to attack. He organised the operation. He caused the men to gather to carry out the attack. They did carry it out and in the course of it Tooni was killed. Meanwhile Kaotinteun made sure he and his family were out of harm's way.

What of the law?

The Solicitor-General relied on section 21(1)(d) of the *Penal Code* and section 23:

21(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say
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(d) Any person who counsels or procures any other person to commit the offence.

23. When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counseled or a different one, or whether the offence is committed in the way counseled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

In either case the person who gave the counsel is deemed to have counseled the other person to commit the offence actually committed by him.-----

- (1) When 3 or more persons -
- (a) *assemble or are assembled with intent to commit an offence;*
or
 - (b) *being assembled conduct themselves in a manner intended or likely to cause any person reasonably to fear that the persons so assembled will commit a breach of the peace or will by such conduct provoke other persons to commit a breach of the peace,*

they are an unlawful assembly.

The assembly of the young men was an unlawful assembly.

Section 21 makes what happened a riot:-

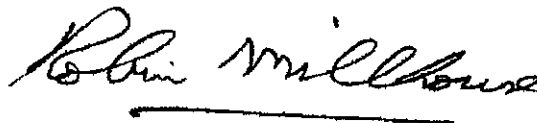
21(1) When any person taking part in an assembly which is an unlawful assembly by virtue of section 20(1) commits a breach of the peace the assembly is a riot.

There was certainly a breach of the peace.

For the same reason as Kaotinteun is guilty of the murder of Tooni Timon, so he is guilty in taking part in the riot by the application of section 23 of the *Penal Code*.

I find the accused guilty of both murder and of aggravated riot.

Dated the 18th day of July 2005



THE HON ROBIN MILLHOUSE QC
Chief Justice