

IN THE HIGH COURT OF KIRIBATI ) HIGH COURT CRIMINAL CASE No. 50 OF 2006  
CRIMINAL JURISDICTION )  
HELD AT BETIO )  
REPUBLIC OF KIRIBATI )

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THE REPUBLIC  
V  
TOKIA BWATERIKI

FOR THE REPUBLIC: Ms PAULINE BEIATAU  
FOR THE ACCUSED: MR KAROTU TIBA

DATE OF HEARING: 9 JANUARY 2007

JUDGMENT

The accused, a boy of 17, is charged with rape:-

On the 29 January 2006 at Bairiki, Tarawa in the Republic of Kiribati, Tokia Bwateriki had unlawful sexual intercourse with Kabane Tawaia without her consent.

Nei Kabane gave evidence that in the early hours of the morning – she said about 2 to 3 o'clock – she was at home, asleep with her husband and grand daughter. She felt herself being penetrated by a penis. Someone was over her with his arms on either side. She tried to get hold of him but succeeded only in grabbing a shirt which he had over his head. He ran away. She gave chase:-

He ran away but fell down. Light not on. Ran towards ocean side. Titiu's house outside light on. I was chasing him – 10-15m from him. I was calling out his name – recognized when I was chasing him. When I called, he turned round. "Since you have grown up don't run away". Knew him as he is someone from our area. (Examination in chief).

**I was looking at him all the while until he evaded me. I definitely recognized him. I called his name – he turned round – I recognized him. I recognized him.** (Cross-examination).

The lady was definite in her identification of the accused and not shaken in cross-examination.

The other prosecution witness was Nei Kauea Tanginako, a young woman of 19. Nei Kauea had been drinking that night with another girl and three boys of whom the accused was one. The group broke up about 1 o'clock. Tokia was there until she left.

The defence was a denial: it was someone else. After drinking Tokia said he was very drunk. The others took him home to Teekea's house about 1 o'clock. He slept until he was beaten by the victim (whom he knew: there is a family relationship) after 8 o'clock. Once home he did not leave again. He had denied to Nei Kabane when she was beating him that he had done it.

Tokia was supported by Nei Ataata Matie who slept that night in Tokia's house. She got up a lot during the night: her child was suffering from asthma:-

**Know Tokia. Wasn't there during night but I was home when he returned after 0000-0100. Went straight to sleep: had to pass to get to his sleeping place. I wouldn't know if he did go out.** (Examination in chief).

**No clock in house: (times) my estimation. If he had gone out he wouldn't have had much time to go because I was waking frequently.** (Cross-examination).

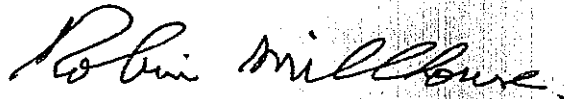
Nei Kabane's evidence of identification is so strong that – even though I bear in mind the dangers of relying on identification evidence – I accept it beyond reasonable doubt. I do not believe that Nei Kabane could possibly have been mistaken.

Times given by all witnesses were estimations and each estimation could well be out. An example: Nei Kabane said she found Tokia "about 4 o'clock – about dawn": dawn on South Tarawa is after 6 o'clock.

Beyond reasonable doubt, the accused must have committed the crime either before he went to Teekea's house to sleep or when he went out and came back, unnoticed by Nei Ataata.

The accused is guilty of rape.

Dated the 10<sup>th</sup> day of January 2007

A handwritten signature in cursive script that reads "Robin Millhouse".

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THE HON ROBIN MILLHOUSE QC  
Chief Justice