



## HIGH COURT OF KIRIBATI

*Criminal Case No 18/2018*

**THE REPUBLIC**

**v**

**TAMUERA BEBEUNGA**

*Pauline Beiatau, Director of Public Prosecutions, for the Republic  
Reiati Temaua for the accused*

*Dates of hearing: 11-12 March 2019*

*Date of judgment: 15 March 2019*

### JUDGMENT

- [1] Tamuera Bebeunga has pleaded not guilty to 1 count of murder, contrary to section 193 of the *Penal Code* (Cap.67).
- [2] This case has proceeded with admirable swiftness. The offence is alleged to have occurred on 9 February 2018. An information was originally filed in this case on 20 February, 11 days later. However, that information was defective in that it did not comply with section 70 of the *Criminal Procedure Code* (Cap.17). The Attorney-General rectified the defect by filing a valid information on 1 August 2018.
- [3] The trial proceeded in a somewhat unorthodox manner. At the start of the trial, counsel for the accused made a number of formal admissions under section 126A of the *Criminal Procedure Code*. A medical report and the record of the accused's interview with police were tendered by consent. The matters in issue were therefore confined to the question of whether or not the accused had been provoked by the deceased such that the charge of murder should be reduced to manslaughter under section 197(a) of the *Penal Code*.
- [4] The first of 2 witnesses called for the prosecution was Uritaake Bwatii. He is the 16-year-old nephew of the accused. Late in the evening on the day in question Uritaake came to the accused's house in Eita village. He was drunk, and had run away from his father, who was going to beat him for drinking. The accused was a seller of sour toddy. When Uritaake arrived, a young man named Tiaeki Tieem was there, drinking sour toddy with a friend. The accused was drinking with them on his *buia*, and was very drunk.

- [5] Uritaake was hungry, so he asked the accused for money to buy something to eat. He went and bought tinned fish, but dropped some of the change on his way back to the house. The accused was angry and scolded him for being careless. Uritaake asked the accused to prepare the food for him, but the accused told him to wait. Uritaake then proceeded to open the tin, using the accused's toddy knife. This angered the accused even more. He scolded Uritaake again, and punched him. Tiaeki and his friend came over and told the accused to stop. The accused then got angry with them for interfering. He said to them, "Leave me alone with my family." He told them to go. Tiaeki asked for their change and the accused refused to give it to him. He yelled at Tiaeki and the other young man to go away.
- [6] Tiaeki hit the wall that surrounded the raised platform of the *buia* with his fist. The accused and Tiaeki then fought, using their fists. As the fight progressed the pair moved outside the fence surrounding the accused's land, but Uritaake could still see them. The accused then broke away and quickly returned to the *buia*, from where he retrieved his toddy knife. Tiaeki remained outside the fence. The accused went back to Tiaeki and stabbed him with the knife in the chest. Tiaeki walked away and then collapsed in a rubbish pile. Uritaake ran off and returned to his father. He did not see the accused again that night.
- [7] The toddy knife was tendered in the course of Uritaake's evidence, without objection. The blade of the knife is 17cm in length, and is keenly honed. The handle is 11cm long. The knife has clearly seen considerable use.
- [8] In cross-examination, Uritaake agreed that the accused had told Tiaeki to leave more than twice. Prior to hitting the wall of the *buia*, Tiaeki had said to the accused, "*Ko na nora te I-Onotoa.*" This translates to "You will see a person from Onotoa." In the lead-up to the fight, Uritaake considered Tiaeki to be the aggressor, and it was Tiaeki who had thrown the first punch.
- [9] The other prosecution witness was Nei Papete Saipolua. She is a 23-year-old resident of Eita village, living near to the accused. She was at home with her sister-in-law on the night in question. The accused came, calling for Papete's sister. Papete invited him in. He said, "A person is dead." He then told her what had happened, referring to Tiaeki as "the boy" or "the kid". The accused said that Tiaeki had interfered with his business while he was talking to his son. The accused got angry when Tiaeki hit his house. They fought. When Tiaeki fell down, the accused got his knife and stabbed him.
- [10] Papete could see that the accused was drunk, but he seemed to be in control. He did not stagger or sway when he walked, and he was not slurring his words, although he was speaking softly. Papete saw splashes of blood on the accused's shoulder, shorts and hands. She asked the accused to go outside to the hammock and wait. After a while, the police came and took the accused away. Papete later saw Tiaeki's body in the banana circle, among the rubbish.

- [11] The medical report, prepared by Dr Ratu Jone Cakobau, records that Tiaeki was dead on arrival at the hospital in Nawerewere. He had a single large chest wound, oval in shape, 8 or 9cm in diameter and 10cm deep, to the left of the sternum. Tiaeki had died from the wound as a consequence of a massive haemothorax and pneumothorax (bleeding and accumulation of air in the chest cavity), as well as a pericardial tamponade (compression of the heart by bleeding in the pericardial sac) and damage to the ascending aorta (a main artery).
- [12] The police interview with the accused was conducted the day after Tiaeki's death by Detective Constable Taareita Herman. At the beginning of the interview, it was explained to the accused that he was alleged to have stabbed Tiaeki in the chest, resulting in his death. The accused was asked to explain what had happened. He gave a version of events similar to that described by Uritaake, although he did not tell the police what Tiaeki had said ("*Ko na nora te I-Onotoa*"), nor did he mention the fist fight that had preceded the stabbing.
- [13] That brought the prosecution case to a close.
- [14] I formally found that the accused had a case to answer, and informed him of his rights, as required by section 256(2) of the *Criminal Procedure Code*. Counsel for the accused advised that his client would not be giving evidence, nor would he be calling any witnesses.
- [15] In considering the evidence in this case, I remind myself that it is not for the accused to prove his innocence. The burden rests with the prosecution to prove, beyond reasonable doubt, each and every element of the offence charged.
- [16] In order to convict the accused of the offence of murder, I must be satisfied to the required standard of each of the following elements:
- a. that Tiaeki Tieem is dead;
  - b. that the accused caused Tiaeki's death by an unlawful act or omission;
  - c. that he did so with malice aforethought, as that expression is defined in section 194 of the *Penal Code*.
- [17] Counsel for the accused concedes that each of these elements has been proven. He argues however that the prosecution has failed to negative the defence of provocation.
- [18] Section 197(a) of the *Penal Code* provides that an accused who would otherwise be guilty of murder is guilty only of manslaughter if the accused was provoked by the deceased into losing his self-control. Section 198 requires the provocation to be enough to make a reasonable person act as the accused did. This requires application of a 2-step process:
- First, was the accused actually provoked into losing his self-control as a result of which he committed the act which killed the deceased? Secondly, was the

provocation such that it was capable of causing a reasonable person to lose self-control and to act in the way that the accused did?<sup>1</sup>

[19] Despite the clear language of section 197 (“proved on his behalf”), the burden of negating the defence of provocation remains on the prosecution throughout.<sup>2</sup>

[20] Counsel for the accused submits that I should be satisfied that the accused was provoked into losing his self-control by the following:

- a. Tiaeki interfered in a private dispute between the accused and his nephew;
- b. Tiaeki persisted, even after having been told that it was none of his business;
- c. Tiaeki said, “*Ko na nora te I-Onotoa*”, which, while not a threat, could be understood as him telling the accused that he should not disrespect a person from Onotoa;
- d. Tiaeki hit the wall of the *buia*;
- e. Tiaeki was the aggressor, and threw the first punch;
- f. Tiaeki did not leave when the accused returned to the *buia* to get the knife.

[21] While I have no difficulty in finding that Tiaeki did and said all of these things, I do not accept that the accused actually lost his self-control. On consideration of the evidence, I am satisfied beyond reasonable doubt that the accused, while drunk and no doubt angry, remained in control throughout his altercation with Tiaeki. He engaged in the fight as a willing participant, and only broke away to arm himself. Returning to the *buia* to retrieve the toddy knife was a deliberate act, and not the act of a man who was out of control. Uritaake thought that Tiaeki was getting the better of the accused in the fight, and arming himself was the accused’s way of ensuring that he did not lose.

[22] Even if I am wrong on this point, and the accused had in fact lost his self-control, I am satisfied that Tiaeki’s words and deeds were not such as would be capable of causing a reasonable person to lose self-control.

[23] Having been satisfied beyond reasonable doubt of the necessary elements of the offence of murder, and being further satisfied that the prosecution has negated the defence of provocation, I find the accused guilty. He is convicted accordingly.

[24] While there is only one sentence that can be imposed on a conviction for murder, I will hear counsel as to the fixing of a non-parole period, if any.

  
**Lambourne J**  
 Judge of the High Court



<sup>1</sup> *Republic v Beretia Bakaatu* [1996] KICA 1, also *Ruoikabuti Mataroa v Republic* [1998] KICA 2.

<sup>2</sup> *ibid.*