



REPUBLIC OF NAURU

THE REPUBLIC

V

DIPIER MAU

**D.P.P. for the Republic
Pres Nimes for the Accused**

Hearing Dates 16, 17, 18, 21 February 2005

JUDGMENT

1. **The accused, Dipier Mau, was charged with a number of offences, arising from the same incident were brought pursuant to sections 317, 320, 339, 75, 359 of the Criminal Code.**
2. **The Charges arose out of an incident occurring at a young peoples party on 11 January 2004 held at the old N.P.C. Furniture store. There were about forty people of both sexes present. The party had been going all night from about 8pm. Music and drinking constituted the programme of the party along with minimum disco lighting. It appears most were inside but some were outside near the entrance. The night was lightened a little with some moonshine as one witness disclosed. The incident took place about 5.30a.m.**
3. **The accused had not been present all the evening. On the first occasion about midnight he went to the party with a friend Kap Agadio, and managed to get into a fight with one, Odanga Agigo. As he described it in his evidence he was baited into a fight when Odanga spat at his face. He stated he then fought Odanga and won the fight. After that he left.**

4. Next time he returned on his motor cycle probably around 5am with Ataga Amwano who was two or three years younger.
5. No sooner were they there when Ataga met up with Israel, known as Pinoi Motiti, an old school rival. It appears they immediately fought and when approached by the accused, Dipier Mau, Ataga told him let him continue his fight with Pinoi.
6. Others, however, perhaps wisely, thought they should stop, but the accused faithful to the instructions of his friend, Ataga decided to see that the fight continued. He said he thought he was outnumbered so looked around and picked up a knife from a motorcycle which he thought was his own, but said was not. A rather odd and somewhat unbelievable statement. The knife had a chrome silver blade and handle as described by Adeang in total about 9 or 10 inches. The accused said he held it in his right hand. He then, in turn, got rid of Ninian Agigo and Shanko Canon by some deft moments using strength and the knife to scare the two away presumably to leave the way clear for the fight to continue.
7. However, at this point, the fight had stopped both the pugilists walking away but not before Pinoi made a finger gesture, described by two witnesses as rude, towards Ataga, who then launched into, as the accused stated, a tirade of offensive language back at Pinoi. The accused then took the action of accosting Pinoi who had been some few metres away. He rushed him from the front and immediately Pinoi fell from a stab wound to the heart just above the left nipple. The accused in evidence admitted the knife was still in his right hand but that he had not meant to kill Pinoi or cause him harm.
8. With Pinoi on the ground bleeding profusely, the accused left the scene on his motor-bike.
9. Pinoi was transported by others to the Nauru hospital at about 5.45 a.m. and was immediately attended to by medical staff. Dr. Lu the attending doctor gave evidence that the victim, Israel Motiti, died from a stab wound in the left nipple about 1cm in width which broke the pericardium and entered the heart. He died from the internal bleeding. The defence made something of the hour of death on the death certificate but there was no doubt that the cause of death was the stabbing wound.
10. The description of the incident that I have just recorded is a fair one and appears to be the correct sequence. The five witnesses for the prosecution and the accused differed in some details. More particularly when Shanko intervened - was it at the time of the Ataga and Pinoi confrontation or later between Pinoi and the accused. In an incident that may not have lasted more than a minute or so, there is always likely to be some discrepancy of the visual and audible record of each

witness and their recollection afterwards. From an assessment of them all, the description that I have accepted is the most probable. In the end, the nub of it was the actual act of stabbing and its consequence. I say more later regarding intention.

11. The accused was first and foremost charged with murder pursuant to S. 302 (1) of the Criminal Code. On his own evidence he was carrying a knife and realized he had stabbed him when the victim called out that he had been stabbed. He stated that the reason he had the knife was not to kill but to scare people as he had done with Ninian Agigo and Shanko Canon.
12. Murder requires intent. And so also does the act of intending grievous bodily harm under S. 319 of the Code. At the time of the incident, when he inflicted the injury that resulted in the death of the victim, as a matter of law, I am to decide whether the accused intended to do him really serious harm. If my answer is 'Yes' then he will be guilty of murder. If the answer is 'No' then I would find him not guilty of murder but guilty of manslaughter. (See Reg v Cunningham [1982]AC 566 at 573. It is not my opinion that there is any defence of accident available in terms of S. 23 of the Code. The assault on the victim was, beyond any reasonable doubt, deliberate. (R. v Callaghan 1942 St.R.Qd 40)
13. To clear the decks, there was no evidence submitted either of provocation or self-defence. I do not accept on the whole of the evidence that the accused was ever in a position of fear, in fact, rather the opposite. He after all was armed with an offensive weapon and as one witness Shalock Denuga stated at the time he, Denuga remained still fearing he might be stabbed as well. No evidence of intoxication in terms of S.28 of the Code.
14. But none of the above necessarily indicates the intention of the accused to kill or cause serious harm. Although he had been belligerent earlier in that evening with, Odanga Agigo, he left after, in his words, Agigo lost the fight. Upon his return, it was his friend Ataga who started the fight with Pinoi. Arming himself with a knife could signal intent as with any offensive weapon. It certainly heralds danger but not necessarily an intent to kill or cause harm. He, the accused, simply cleared everyone out of the way with the use of his knife and physical force to allow the fight to continue.
15. Why, then, did he attack Pinoi? The evidence of the prosecution witnesses illustrate the aggressive stance taken by the accused towards Ninian Agigo, Shanko Canon and Pinoi Motiti. Though stated by Robin Tsimitsi that accused called Pinoi a 'fucking bastard' just before the fatal stabbing, the accused denies that and there is no evidence, other than that, of words being expressed. Although accused denies it, I

accept the evidence of Denuga and Adeang that Pinoi made finger gestures to Ataga immediately before accused accosted him. He was, in my estimation, giving physical support to Ataga who was still abusive towards Pinoi. The accused stated that Pinoi was at this stage not doing anything but it was then that the stabbing occurred. On the evidence of Denuga, Adeang and Tsimitsi, I am satisfied beyond reasonable doubt that the accused assaulted Pinoi Motiti. He had been actively involved in the fracas in support of his friend, Ataga, and his final act was to assist him against Pinoi whether because he reacted to the finger gesture or simply to keep Pinoi away from Ataga. It is unclear on the evidence how, in the course of the assault, the action of the right hand of the accused holding the knife resulted in the penetration of the heart. It happened quickly but with what deliberation or intent it is difficult to establish. In the result, I am not satisfied beyond reasonable doubt that he intended to kill Pinoi Motiti. The accused is not guilty of murder but guilty of manslaughter.

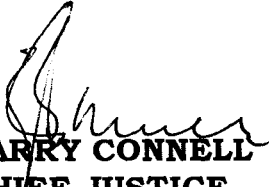
16. On the above analysis, I also find on count one that the accused is not guilty of intention to cause grievous bodily harm.
17. On the charge of unlawfully causing grievous bodily harm to Israel Motiti of stabbing him in the upper left chest and thereby causing his death, I find him guilty. The act was done, it was not excused and death followed as a result.
18. As to the charge, pursuant to section 75, I find him not guilty, and not guilty of the charge pursuant to S.359 of the Code.
19. The Accused has already pleaded guilty to 3 counts of offensive behaviour under the Police Offences Ordinance 1967.
20. On the charges involving Shanko Canon, I am not satisfied either of the intent or the degree of harm suffered by Shanko Canon and I, therefore, find the accused not guilty of intent to cause grievous bodily harm. Also, as I am not satisfied as to the injury suffered by Shanko Canon that there was an assault occasioning bodily harm I find the accused not guilty. On the charge pursuant to S. 75 of the Code, I find the accused not guilty. It is not sufficiently clear where the threatened violence took place. The amendment in 1975 to S.75 (2) of the Queensland Criminal Code, which is not operative for Nauru, would have accommodated the situation as it deletes the words 'in a dwelling house'. Without further argument, I am not prepared to acceded to the prosecution charge that there was a threat to fundamental rights and freedoms of Shanko Canon. I find the accused not guilty of this charge.

21. In summary -

I find the accused

- 1. Not guilty of murder but guilty of manslaughter pursuant to S.303 C. Code**
- 2. Not guilty on both counts of acts intended to cause grievous bodily harm under S. 317 C. Code**
- 3. Guilty of grievous bodily harm under S. 320 C. Code**
- 4. Not Guilty of one count of assault occasioning bodily harm involving Shanko Canon.**
- 5. Not Guilty on both counts of threatening violence under S.75 C. Code.**
- 6. Not Guilty on both counts of threats under S. 359 C. Code.**
- 7. Guilty of three counts of offensive behaviour under Sections 5 (a) and (d) Police Offences Ordinance 1967.**

22. I will hear any pleas from the accused - at 2.45 p.m.



**BARRY CONNELL
CHIEF JUSTICE
21 February 2005**