IN THE KIRIBATI COURT OF APPEAL
Criminal Jurisdiction
CRIMINAL APPEAL NO. 1 OF 1983.

Between:

KEETI TEEBO — APPELLANT

- and -

THE REPUBLIC OF KIRIBATI — RESPONDENT

M.W. Lodge for the Appellant
W.J. Hazelton for the Respondent

Date of Hearing: 5th March, 1984
Delivery of Judgment: March, 1984

JUDGMENT OF THE COURT

Speight J.A.,

The appellant was convicted on 27th March, 1983 in the High Court at Betio of having murdered a 5 year old female child Nei Kinateao Ioane at Tuarabu, Abaiang Island on 21st or 22nd August, 1982.

Two grounds were advanced in support of the appeal:

(a) That the verdict was against the weight of evidence;

(b) That the verdict was based entirely on unreliable circumstantial evidence, the prejudicial effect of which outweighed its probative value.

In so far as the second ground uses the words "unreliable" and "prejudicial" it seems to be an attack

upon findings as to credibility and significance of admissible evidence - but credibility is of course function of the fact finding tribunal - in this case the learned Chief Justice - and that is not a matter which can be ventilated on appeal.

Mr. Lodge for appellant obviously appreciated this fact when he stated at the outset that he would argue both grounds together - and it comes down to a submission that the verdict was against the weight of evidence.

Now this was a case entirely of circumstantial evidence - no one witnessed any fatal act; no one saw any unequivocally sinister conduct by the appellant. There were simply number of independent items of evidence, each equivocal or innocent in nature which it was claimed, when taken in conjunction, proved the guilt of the appellant.

The function of an appellate court in such cases, is two-fold.

(a) Was the allegation that certain individual facts existed proved by admissible evidence;

(b) Was a conclusion of guilt based on such proved facts one which a Court not only could have come to, but must have come to the exclusion of the reasonable possibility of innocence.

For many years cases of circumstantial evidence have been discussed as if they were in a special category. Different judges and different courts have used a variety of tests. Perhaps a representative expression of the approach can be expressed :

"Is the accused so set about with suspicious circumstances pointing to his criminal involvement, that one is compelled to conclude that no conclusion other than

that of guilt is compatible with the facts. In other words, can one think of no reasonable explanation of the facts which is compatible with innocence?"

Of more recent times it has been said that this analysis is no more than occurs whenever a fact-finding tribunal reaches a conclusion that guilt has been proved beyond reasonable doubt regardless of the type of evidence. The test can be expressed. Is there any reasonable hypothesis consistent with innocence. If so then the burden of proving guilt beyond reasonable doubt has not been discharged.

The identity of the approaches is demonstrated in McGreevy v. Director of Public Prosecutions 1973 1 All E.R. 503. The head note in that report adequately reflects the more detailed and admirably expressed views of Lord Morris of Borth-y-Gest who delivered the opinion of their Lordships.

> "In a criminal trial it is the duty of the judge to make clear to the jury in terms which are adequate to cover the particular features of the case that they must not convict unless they are satisfied beyond reasonable doubt of the guilt of the accused. There is no rule that, where the prosecution case is based on circumstantial evidence, the judge must, as a matter of law, give a further direction that the jury must not convict unless they are satisfied that the facts proved are not only consistent with the guilt of the accused, but also such as to be inconsistent with any other reasonable conclusion."

Nevertheless, to ask oneself whether the proved facts are also compatible with innocence is an effective way of testing whether there is proof beyond reasonable doubt.

So this appeal has proceeded, and proceeded correctly, upon the basic question :-

> Was the verdict of guilty based on evidence which out to have led the fact-finding

tribunal to no other conclusion - or should
a proper tribunal have recognised that
legitimate doubt could not be excluded.

On that basis we turn to the evidence - and say at once that we recognise the unchallengeable position of advantage of the learned trial Judge who heard and saw the witnesses; and we recognise that the transcript of evidence, due to the exigencies of the service, may not be the verbae ipsissimae of the witnesses.

As has been said no one saw any fatal blow - no one saw any criminous conduct by the appellant. The little girl Kinateao went to the beach on the afternoon in question to swim with another child aged 6 - Teretia - and Teretia's mother Agnes. The two later people eventually left her there and no witness thereafter saw her alive. Her dead body was found washed up on a beach some distance away the following morning with injuries which showed that she had been strangled and subsequently been put into the sea. How she came by her death, and at whose hands could only be determined by attempting to reconstruct her movements.

The case is beset with difficulties about times and we think Mr. Lodge for the appellant placed too much reliance on estimates given by various witnesses.

It must have been mid afternoon - say 3 p.m. when the swimming occurred.

After a while Agnes left leaving the two little girls at the beach.

Kinateao had taken her panties off, before she went swimming. She dropped them somewhere near the house of the accused which must be adjacent to the beach.

After a while the little girl Teretia left - presumably to go home. She was a witness at the trial and

was allowed to give evidence, though only 6 years old.

She said she had seen Kinateao go into accused's house after the swim. The learned Chief Justice said of her that although he gave her evidence some weight he warned himself of its unreliability and said that he did not give it great weight.

Later in the afternoon accused was seen to enter the water and was in the lagoon carrying a fish basket - an article 17 inches long but quite capacious. He was seen to spend quite some time in the water.

The prosecution case is that by that time the little girl had been strangled and that accused was carrying her body for disposal in the sea. One witness said that it appeared that there was a weight in the basket, but the cross-examination showed this to be reconstructed opinion and highly suspect. The learned Chief Justice thought little significance could be attached to it. The accused in a caution statement said that he took the basket to wash food particles from it - not the most convincing explanation for there was a well more conveniently at hand to his house.

As the afternoon drew on the parents became apprehensive about their child. Again we do not think times can be ascribed with any accuracy to their movements and their enquiries.

They saw the accused twice. On the earlier occasion, and possibly at about the time when Teretia had gone off home, they were talking to him.

The record of their evidence is equivocal.

The father said :

> " My wife asked him if he saw Kinateao but he said he only saw Agnes' daughter."

Now other evidence seems to make it clear that accused must have seen Kinateao in or about the area that afternoon. The accused later, in a caution statement, said he had been woken up that afternoon by children's voices, including Teretia and Kinataeo. He did not go out but told them to go away as they were disturbing his plants.

The learned Chief Justice took this statement - that he only saw Agnes' daughter - as a lie because he must have heard (and indeed seen) Kinateao.

If it was a lie, (and great weight must be given to the conclusion of the trial Judge) then it was a lie told at a time when apparently he was not under suspicion.

Despite modern views of the caution which must be exercised before adverse inferences are taken from an accused's lies, such a false statement at a time when apparently no suspicion existed against him, may be a sign of the lie which arises only from a guilty conscience.

But with all respect to the trial Judge we have some doubts as to whether this is shown to have been a lie. The father said the remark was made at a time when accused was complaining about damage done to his plants by the children.

And the mother, who was the immediately following witness, said that in that conversation - which she put at 3 p.m.,- fairly early in the events - he had been speaking about children damaging his plants and he said Kinateao was the one who reported this to him.

So that relying on the record, as we must, the remark that he had not seen Kinateao might have been in the context of children who damaged plants.

The Chief Justice did not apparently understand it that way, and we give full weight to that, but we must

also give weight to the record.

The tragedy finally unfolded when the girl's dead body was found on the beach the following morning at a site approximately a mile away.

The medical evidence was scanty, but it was not challenged that the child had suffocated, apparently from external force to the neck and there was damage to the vagina and rectum indicated sexual abuse.

This fact lent significance to other piecesof evidence.

A friend of the accused, one Bauro had been with accused twice that afternoon at his house.

Again the times are vague but it seems that one of these occasions was before the child went missing, and one was after.

In one of them accused had told Bauro he was reading "a book about women" which was "very exciting".

When Bauro tried to enter accused's bedroom he was prohibited from doing so - an unusual thing to happen.

Unfortunately one does not know if this was before the child's disappearance, in which case it might have been merely to stop Bauro seeing or getting the book - or later when it might have been to hide something more sinister.

While speaking of the room it must be mentioned that a mat was later removed from the room because it appeared to have had blood on it.

Concerning this the accused told the police that there had been a cat fighting a rat there.

But an analyst in Australia found a spot of human blood.

Again this may have elevated the accused's explanation of the blood to the status of a lie, but unfortunately the record does not show whether the analyst saw the whole mat or only a portion cut from it, and so one cannot be sure whether he and the accused were referring to the same stain.

Finally on the question of the house we have the undisputed fact that the child's panties, taken off by her before her swim, were later found in the accused's house. An aspect emphasised by the prosecution in view of the sexual aspect of the case.

The learned trial Judge examined and discussed all these facts.

Though, as we have said repeatedly, we acknowledge his superior position in fact finding, we regret that he appears to have accepted as proved matters which on mature consideration must have had some substantial element of doubt.

Just to mention two:-

The significance of supposed lies -

(a) he took the blood/rat explanation as a lie - with respective we think that plainly open to doubt - so too the claim not to have seen the child.

(b) he appears to have treated the 6 year old's evidence that Kinateao went into deceased's house as proof. In view of her age and absence of corroboration this finding of the most damning piece of evidence must cause unease.

As best we can summarise the dependable and established matters were :

(a) The girl was near accused's house shortly before she disappeared.

(b) Her panties, discarded by her were later found in his house. He made a not unreasonable explanation - that he had a habit of gathering up stray pieces of cloth - lying around - indeed if he disposed of the body it would be odd if he left the panties so easily to view - as they were.

(c) He may have told a lie as to not having seen her, but whether it was or not is open to doubt. Similarly the supposed lie about blood was not established, for the record as to how much of the mat went to Australia is contradictory.

(d) There is room for the view that he had been looking at a pornographic book and hence was sexually aroused.

(e) The only evidence that the child was within his grasp is the uncorroborated evidence of a 6 year old girl.

(f) He was seen washing a large basket in the lagoon shortly after the time when the child seems to have disappeared.

(g) There was a spot of human blood on a mat in the house, but its age and origin are unknown.

The cases reported and unreported are redolent with discussions of the difference between suspicion and proof.

So often we are told that opportunity is not enough - there was certainly opportunity here.

Motive is relevant but not conclusive - there is colourable motive but little more.

Lies may be significant but are to be treated with caution - there is substantial doubt as to whether accused did lie.

But despite absence of direct evidence, the whole of circumstances may be so compelling as to exclude any reasonable possibility of innocence - they may force one to a conclusion of guilt.

One has only to ask - was this the only male adult who could have taken this child, and committed some horrible outrage upon her, and cast her into the sea - at some unknown time - after 3 p.m. or 4 p.m. or 5 p.m. or even later in the evening when she had been enticed away from the locality?

We wish to say that had the evidence of the deceased child entering the house of the accused been that of a reliable adult different considerations would apply. This was really the only crucial evidence and we cannot ignore the Chief Justice's assessment that it should not be given great weight.

In our view to conclude that the accused and only the accused could have been the perpetrator is against the legitimate possibilities which could be built upon this comparative paucity of reliable evidence. In our view the conclusion of guilt cannot be sustained.

Under the Court of Appeal Ordinance, this Court has the power to order a new trial or to direct a verdict of acquittal.

After all this length of time, it does not appear that any fact could now emerge which was not ventilated at trial. Indeed when asked Mr. Hazleton could not so submit.

Consequently the judgment of this Court is that the conviction is quashed and a verdict of acquittal is entered.

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