

IN THE HIGH COURT OF KIRIBATI )  
CRIMINAL JURISDICTION )  
HELD AT BETIO )  
REPUBLIC OF KIRIBATI )

HIGH COURT CRIMINAL CASE NO. 26 OF 2004

THE REPUBLIC  
VS  
RUOIKABUTI MATAROA

FOR THE REPUBLIC: MS POLE TEBAO  
FOR THE ACCUSED: MR BANUERA BERINA

DATE OF HEARING: 24 & 25 MAY 2004

### J U D G M E N T

The accused, Ruoikabuti, is charged with murder:-

**RUOIKABUTI MATAROA on or about 5 March 2004 murdered Teawatei Kinata at Eita village on the island of Tabiteuea North.**

The prosecution had a strong circumstantial case. When the accused gave evidence he admitted attacking the victim. His defence was provocation.

On the evening of Friday 5<sup>th</sup> March this year there was a drinking party at the house of Teingoa Rerei in Eita village. They were drinking yeast: two packets of yeast made two buckets of drink. As one may expect when an intoxicant or narcotic is being consumed memories are blurred. From the evidence I cannot make precise findings as to times and measurements. I should say immediately that I have no reasonable doubt about the

truthfulness and general accuracy of the prosecution witnesses but I cannot rely on their estimates of time.

No doubt, though, that early in the night, may be some time after 9 o'clock, both Ruoikabuti and Teawatei were at Teingoa's house, drinking: discussion between them turned into argument: argument turned into quarrel. A challenge to wrestle came to nothing. Teawatei taunted Ruoikabuti about his seating position in the maneaba and about his clan, making disparaging remarks concerning the manliness of its members. What Teawatei said made Ruoikabuti very angry. It is not clear who challenged whom to a wrestle. The witness Teeba Taboia said Ruoikabuti challenged Teawatei. Ruoikabuti on the other hand, when he gave evidence:-

**He challenged me to a wrestling match. I didn't respond: I was afraid: he was very fit and healthy.**

This was a drinking party. I should consider the question of drunkenness: whether the accused was drunk, so drunk that he did not know what he was doing. I mention drunkenness to put it aside. I am satisfied the accused, although affected, knew at all times what he was doing. He knew what was going on round him. Mr Berina did not raise the defence of drunkenness and it does not arise.

I return to the narrative. Some time after the quarrel Ruoikabuti left Teingoa's house. Later he came back. This time, beside the torch which he had had with him before, he had a bush knife. The knife was not exhibited: Teeba described it as being the length of an arm:

**Accused came by: he was carrying his torch and his knife - long 1 foot - the length of my arm. Black blade: I was 3m away. Ruoikabuti said he was happy to leave his wife and children: his knife was new: he was going to try the newness of the knife. He got on to buia: went away after a quite long time. He returned. I was asleep for a long time. Teingoa and accused and I went into the bush to drink. Ruoikabuti left. We went to hide ourselves because we were afraid.**

Tatonga Butoa is a lad in Form III at school. He did not give his age: I estimate him to be in the early to the mid teens. He came to the drinking party. He said he was "not really drinking" whatever that may mean.

Tatonga helped Ruoikabuti to leave Teingoa's house. "(I) assisted him towards his house". He himself went home to Nei Meaua's house. His aunt, Nei Tetang, was there and so was Teawatei. Tatonga went back to Teingoa's house:-

We started drinking. Accused appeared: he was carrying knife and torch. Knife length of an arm. Handle of wood: blade looked black. Apologized to Teingoa. "This knife of mine is new and Teawatei shall try the newness of my knife". I said to accused "Hey, man. We thought you were very drunk". Accused pretended to be stupid "Am I drunk?" I was afraid (because of knife). Accused went to get his lighter: came back - almost 10 minutes. He left (in a rush) and didn't have a smoke. I lay down. Accused came back and called out for a smoke (told him we couldn't light the lighter). He asked me if I loved him and I said I loved him and his children. He said "Teawatei is lying on the eastern side of your house".

Later:-

I went to see the deceased, lying down beside some plants breathing a little: injuries on head. Then may be after 0200 .... accused came by, asking "Who is that? He is severely wounded". Shone his torch at deceased, with right hand: left hand on face of torch - [light through fingers].

The victim Teawatei was probably attacked some time between the time the accused went to get his lighter and his return calling out for a smoke.

What of Teawatei's movements? Tatonga saw him at Nei Meaua's house. Nei Tetang Tematang was asleep in the house:-

Woken up by deceased - cross with him because he wanted a smoke. Tatonga and someone else with him - Teawatei stayed about two hours: others left when I was cross. In those two hours he was injured. I prepared his local cigarette - 5-7 minutes, Teawatei sitting in front of door. Stayed 10-15 minutes and went to my mother's house. Deceased related. His bike under breadfruit tree [took it my mother's]. Heard sound of movement - heard a banging sound. ----- Saw deceased lying on ground, snoring. In two or three minutes went tiptoe outside. Pool of blood under his face he was lying on.

Nei Tetang estimates Teawatei stayed at the house two hours. I cannot be confident that it was two hours but I am confident her estimate represents a significant time. Prosecution evidence leads to the conclusion that the time between the quarrel and Ruoikabuti's attack on Teawatei was a significant, quite a long time.

The accused on the other hand says the time was much shorter:-

....he said those words. I can't give exact time how long after I hit him. I went to my house to get knife and torch: may be from here to beach -

(100m). I didn't speak to anyone. I went back to drinking party - he wasn't there. I stayed - may be I had a smoke - talked to them telling stories - may be two minutes. I didn't get my smoke. Walked from my house and then walked to the motorcycle to take me to my wife. When I met up with Teawatei very near to my house. From time I left drinking party to meeting Teawatei may be five minutes.

Teawatei was taken to the hospital. Detective Constable Mweretaka Roobe saw him there early in the morning. Teawatei was injured and unconscious. He was flown to Tarawa the same day.

Dr Tiaon Tekanene saw him at the Central Hospital. His report:-

O/E unconscious, responds to painful stimuli. Able to move right side but very little movement of the left side.

- Left pupil is dilated and fixed - non reactive
- Right pupil is pin point
- Both nostrils clogged with clotted blood
- A clean incised gaping wound 10cm long extending from the occipital portion of the left temporal region to the inner portion of the left eye as per diagram
- Edges of the fracture skull bones were visible through this gaping wound
- Brain tissues were protruding through the fracture skull edges
- No active bleeders but some oozing

Dr Tekanene added in the report a diagram of the skull to shew the position of the "gaping incised wound" - round the left eye and extending above and beyond the left eye.

In Dr Tekanene's opinion it was a clean cut, caused by the force of a sharp object: it could have been a sharp knife.

The accused admitted striking the victim. Undoubtedly the injury was caused by his bush knife.

Dr Matikora Itonga was on duty when the victim died.

The defence of provocation would reduce murder to manslaughter. Section 197(a) of the Penal Code:-

Where a person by an intentional and unlawful act causes the death of another person the offence committed shall not be of murder but only manslaughter if any of the following matters of extenuation are proved on his behalf, namely -

- (a) That he was deprived of the power of self-control by such extreme provocation given by the person killed as is mentioned in the next succeeding section;

The test is whether, taking into account everything both done and said according to the effect which it would have on a reasonable man (cf the (English) Homicide Act 1957, s.3) the provocation was sufficient to deprive the reasonable man of the power of self-control.

Section 197 of the Penal Code requires the provocation to be "extreme". While the words said by Teawatei to Ruoikabuti were unpleasant, hurtful and insulting I cannot find that they amount to extreme provocation such as would provoke a reasonable I-Kiribati man to lose his self-control.

If the accused did lose his self-control one would have expected him to have attacked, to have wrestled with the deceased immediately the words were said. Whoever issued the challenge the opportunity was there. Yet on his own evidence Ruoikabuti avoided it. He says his resentment grew:-

**Mind affected. I came back with a torch and knife. Mind affected. I came back to have a fight with those drinking. Made me go mad. Looked for Teawatei. Met up with Teawatei beside Meaua's house on the main road. I didn't talk to him; hit him straight away. I suddenly hit him. Did not know. He was on a bicycle and I was walking. He came towards me on the road. When I hit him he was on his bicycle. With my knife - not sure which part of body I hit: he said nothing. I found out where I hit him.**

Just as the provocation was not such as to cause an I-Kiribati to lose his self control so the provocation did not cause the accused to lose his. Made him angry but not out of control.

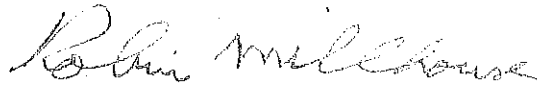
There is another consideration. In the *King v Duffy* (1949) 1 All ER 932 Devlin J used the phrase "a sudden and temporary loss of self-control". It has been accepted ever since as the test. I am satisfied that a significant, perhaps substantial time passed from quarrel to attack. Far too long for any provocation before Ruoikabuti's attack on Teawatei to be "sudden". The accused acted with deliberation. He went home, got his knife, returned to Teingoa's, found the victim, attacked him, came back and told Tatonga where the victim was, went to the scene to have a look. His deliberate actions shew that the accused was in control of himself: his attack on the victim was not suddenly after the claimed provocation. To sum it up: even if an I-Kiribati would have lost his self-control (which he would not have), even if the accused had lost his self-control (which he did not), his loss would not have been "sudden".

Section 197 requires that matters of extenuation should be proved on behalf of the person causing the death. The section requires the accused to prove extreme provocation. He has not done so. Even assuming that the onus remains always on the Republic to negative extreme provocation, the Republic has beyond doubt negated it.

The prosecution proved beyond reasonable doubt all the elements of murder: the accused has admitted the attack.

The accused is guilty of murder.

Dated the 28<sup>th</sup> day of May 2004

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

THE HON ROBIN MILLHOUSE QC  
Chief Justice