

IN THE HIGH COURT OF KIRIBATI) HIGH COURT CRIMINAL CASE No. 37 OF 2004
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

THE REPUBLIC
VS
TEBUAI UAAI

FOR THE REPUBLIC: MS PAULINE BEIATAU
FOR THE ACCUSED: MS JENNIFER TROUP

DATE OF HEARING: 20 JULY 2004

J U D G M E N T

Tebuai Uaai has been charged with two offences in relation to an 18-year old St Louis High School student. The offences are wrongful confinement and common assault. The respective particulars:-

On the 5th April 2004, on South Tarawa, Tebuai Uaai wrongfully confined Nei Taoniman Takaeang in his saloon car without her consent.

On the 5th April 2004, at Teoraereke, Tebuai Uaai unlawfully assaulted Nei Taoniman Takaeang in his saloon car.

Nei Taoniman, a Form VI student, had been at school during the day, the Monday in Holy Week, and to mass at 6 o'clock in the evening. After mass she was waiting opposite the Cathedral at Teoraereke for a bus to go home. It was nearly dark. She was still in school uniform.

Tebuai, the Member for Parliament for Tabiteuea South, had during the day been looking after an old man, one of his constituents, waiting for the boat

to go home. The old man had been drinking beer and had left the empty cans in the back of Tebuai's white saloon car. Tebuai said he himself had not been drinking with him, had had no beer during the day. As he was driving from Bairiki towards Bikenibeu Tebuai saw Taoniman waiting for the bus.

I give Taoniman's account:-

He said "Get on" but I said "I'll wait for a bus". "Get on because I know your parents and I'm on my way home". I got on then wished to get off. Told him I wanted to get off near the junior compound (next to Teitoiningaina) compound saying I was going to see a teacher. When we took the speed bump a bus overtook him on speed bump and he made as if to run into bus. Scared me approaching USP said I wanted to finish off some school work. When I asked to get off car at Teoraereke he said 'You're not getting off". At USP "Could I please get off here as I want to do some work at the USP". "You're not getting off". I got angry. "Why won't you let me get off?" Driving at fair speed and I saw a Form VII student Kakianako - stuck head out window wanted him to chase car - I motioned him to follow - whilst driving I opened door and he was looking at car. Accused struck me on right thigh told me to close door. "Shall I jump off?" "Jump off if you like". He drove a bit faster. He was swerving from side to side. Other cars about. I was afraid to jump off. I closed door: made plan: try to appease him..... He asked me where I lived: I said I lived at causeway although I live at Bikenibeu..... "Now let's go to the hotel and drink a little. I said 'Yes" because hotel close to my house.

The accused asked Nei Taoniman if she had any plain clothes in her bag. When she said she did not he said they would go to the Lagoon Club at Ambo:-

He asked if he had any beers in back: I said there weren't. "Do you mind if I get some beers at the shop?" I said I didn't..... Went to shop belonging to Johnny. "Don't get off: I'm going to get us some drinks". "I don't drink". "OK". I asked him to get me a coke. He went to store counter. I got out and put my bag on counter. I went round to shop door and asked Nei Ruru a Form VI student to open door. I ---- went in. Ruru is Johnny's daughter..... Accused said "Come on. Let's go". "No. I'm going to do some school work here". I saw my bag on front seat of car..... Ruru took bag.

Tebuai said he knew Taoniman's parents. He had not seen Taoniman for six years except standing by the road way.

....told her I knew parents. She got in. Drove towards Bikenibeu. I played tape: knew she a bit scared as bus coming towards us. Around USP she opened door and I tapped her right leg not to open it. She had told me she was going to jump. "You'll be killed". She was really scared. I didn't let her out as I was going to take her home. I saw she was scared but didn't let her out as I was going to take her to house. I thought of buying a beer to drink at home. Stop at store at Ambo. Told me she didn't drink. Went to store. She agreed to stop at Hotel as I had friends to meet: let them know I'd drop her and come back. At shop at Ambo. Bought two beers and coke. Took bag because thought it mine. I had asked her not to get out. While at counter - saw her behind counter inside store. Asked if she'd come or stay: she didn't reply..... My bag on floor. Both black. When I saw bag on counter I thought it mine. I opened bag inside to get money: found none: realized it was not my bag. Took it back to car with me, left it on seat and got money (to pay for drink). Having paid got into car. Shop keeper came and asked for bag. If shop keeper had not come I would have driven off with bag..... I was not forcing her to stay in car..... I didn't ask her why she opened the door. If she got out she'd hurt herself. Didn't think to stop car to let her out.

The accused confirmed the incident of the opening of the door and Nei Taoniman trying to get out although he said he only "tapped her right leg". There is no dispute about the events at Johnny's store. Nei Ruth Johnny ("Ruru"), aged 18, another St Louis Form VI, said that Taoniman was crying when she came into the store.

Kakianako Nariki, aged 21, a Form VII student at St Louis, confirmed what Taoniman had said of seeing him:-

I was running in direction of Teaoraereke - saw saloon car - saw yellow and blue uniform saw person waving. Recognized person - Taoniman. I waved back - when alongside me she put her head out and said "Stop". I was running in opposite direction to car. I stopped and car drove off. I saw Taoniman opened door and quickly closed it as car overtook bus.

I was impressed by Nei Taoniman. As she was giving evidence I was inclined to accept it as true: those parts of it subsequently confirmed by others, the accused himself, Nei Ruth and Kakiaman I accept beyond reasonable doubt. All the prosecution witnesses I found trustworthy. The corroborated evidence is sufficient for me to reach a conclusion without relying on any evidence not corroborated.

Ms Troup in her final address submitted that her client had misunderstood, made a mistake of fact, believed all along that the young lady was anxious for him to take her home. How in the light of all the signs to the contrary he could possibly have thought that I do not know. The accused struck me as an intelligent, well educated man. He had in his car a young woman who made it perfectly clear that she wished to get out of the car: no one could have mistaken her wish. Yet he acted in word and deed to prevent her.

Of course, by the time Taoniman got out of the car at Johnny's she was no longer been detained. The accused's actions in putting her bag - he knew it was her bag - into his car again and being prepared to take it with him, are an indication that he still wanted her to go with him. His actions at Johnny's point to his state of mind earlier: he was determined she should go with him: he had the intention to detain her.

The accused is guilty of wrongfully confining Nei Taoniman at least from the time she called out to Kakiaman and probably from the time, soon after she got into the car, when she asked to get out, to get off at Teitoiningaina. (I say "probably" because her evidence on that is not corroborated by any other and I should give the accused the benefit of any doubt.) The confinement came to an end when she got out of the car at Johnny's.

Ms Beiatou referred me to the Queensland case *Burton v Davies and General Accident Fire and Life Assurance Corporation Ltd* (1953 St. R. Qd 26). That was a civil claim, amongst others, for damages for false imprisonment. Ms Beiatou argued that false imprisonment and wrongful confinement are the same offence by different names. In the Penal Code there is no offence of false imprisonment, but wrongful confinement is punishable under s.248. I accept Ms Beiatou's argument. Townley J (at page 30):-

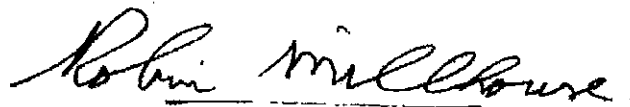
Her next claim is for damages for false imprisonment. This cause of action is founded upon his detaining her in his motor truck without her consent, not by actual physical force, but by driving at such a speed as to prevent her from alighting. I am of opinion that such conduct upon the defendant's part amounted to the wrong of false imprisonment. If I lock a person in a room with a window from which he may jump to the ground at the risk of life or limb, I cannot be heard to say that he was not imprisoned because he was free to leap from the window.

I agree.

As for the second count, even on the accused's account of a tap on the thigh, he was guilty of a technical, if trivial, assault. According to Nei Taoniman it was more serious but again I should give the accused the benefit of any doubt and accept his version.

The accused is guilty both of wrongful confinement and common assault.

Dated the 23rd day of July 2004

A handwritten signature in black ink, reading "Robin Millhouse". The signature is written in a cursive style with a horizontal line underneath the name.

THE HON ROBIN MILLHOUSE QC
Chief Justice