

THE REPUBLIC
versus
NATANAERA NATANAERA & ELEVEN ORS

JUDGMENT

The three accused persons with five others were charged for Arson contrary to section 312 of the Penal Code and also for Common Assault contrary to section 237 of the Penal Code.

The five others pleaded guilty whilst the three accused pleaded not guilty, and were asked to stand down until the five others have been sentenced.

When the trial of the three accused was resumed the prosecution called five witnesses. The accused persons testified on oath on their own behalf and called no witnesses.

By inadvertence, the Common Assault count was not read to the accused persons. This fact was not discovered until after the close of the prosecution and defence cases.

The State Advocate as a result sought and was granted permission to withdraw that count.

The prosecution case as disclosed by the evidence of its witnesses is that on 28th June 1985 a meeting was held by men of Abatiku village an Islet in Abemama for the purpose of punishing one Tebakia Atonimarawa and one Taaua Kamaua, they having committed a breach of village rules.

At the meeting it was decided to burn down Tebakia's house since his offence was more serious than Taaua's offence. Taaua was to be whipped.

PW1 (Teitia Aretema) told the court that he was at the meeting when the decision to burn Tebakia's house and to whip Taaua were taken. He took part in whipping Taaua. At this juncture and as he was about to say what part the accused persons took I stopped him and discharged him from giving further evidence. This was done in the interest of justice because the accused persons were legal represented.

PW1 evidence clearly shows that he was an accomplice. Since he was not charged and no reason given as to why he was not charged with the others. His evidence was highly prejudicial to the case of the accused persons and of little value to the prosecutions case.

The next witness PW2 (Nei Teanuaue Anatio) told the court that whilst at home on 8th January one Eria called to ask her husband Tabakia to report at the KPC Maneaba where he is wanted by the men of the village. Her husband was out fishing at that time but when he returned she told him. He immediately left for the Maneaba. Twenty minutes after her husband left she saw a crowd of about 30 people heading towards the house with her hsuabd. The next thing she saw was

her house being set on fire, after she was asked to leave the house with her children. One Eriuta was leading the crowd when the house was set alight. Under cross examination she said that she did not recognise the 8th accused among the crowd.

PW4 Detective Corporal Areieta the investigating officer told the court that he obtained a voluntary statement from the 8th accused (Tataua Ruka). He tendered it as exhibit A with the English translation as exhibit A1. He also tendered as exhibit B-B1 a voluntary statement obtained from the 7th accused - Ruka Teng kai.

PW5 Detective Constable Tauatea tendered a voluntary statement he obtained from the 10th Accused Rarabu Riro as exhibit C-C1.

That was the prosecution's case.

The 7th accused in his defence said under oath that he did not take part in the burning of the house. The statement he made to the police was made through fear of what the villagers might do to him. If he had not joined the other villagers his house would have been burnt down and he would also have been whipped. Under cross examination he said he helped to rebuild the burnt house because he was sorry.

The 8th accused Tataua Ruka for his defence, said on oath that there was no evidence given against him by the woman whose house was burnt down.

He admitted whipping Taaua Kamaua.

Under cross examination he said he made the statement because he was afraid of what the villagers would do to him. What he told the police is not true.

The 10th accused Rarabu Riro said under oath that he was not guilty because he did not join in the burning of the house but guilty of whipping.

Under cross examination he said that his statement under oath is the correct statement.

That was the defence case.

On these evidence before me, I found the accused persons guilty as charged, and sentenced each of them to one year imprisonment suspended for 2 years. The meaning of the sentence was then explained to them. I then said that I will give a written reason why I found them guilty.

I now proceed to give those reasons.

The accused were charged with five others for committing the offence of arson under S312 of the Penal Code.

The relevant part of the section provides,

"S312 Any person who wilfully and unlawfully sets fire to (a) any building or structure whatever is guilty of a felony and shall be liable to imprisonment for life."

To secure a conviction the prosecution must prove

- i. that a building was set on fire.
- ii. that the setting on fire was done wilfully and unlawfully, and
- iii. that the accused were the people who set the house on fire

or

that they aided or abetted the setting of the house on fire."

There is evidence that the house belonging to Tebakia's wife was burnt down. Tebakia's wife as PW2 gave that evidence. That evidence was never in dispute. There was no evidence from the defence side alleging that the burning was done by accident. There was no evidence indicating that the burning was permitted under the law of the land. The evidence given as to why the house was burnt down do not constitute a defence in law, to the act. The burning was done as a mob sentence passed by the villagers for the breach of their village rule. The village rule had no force of law nor is the rule recognised by law.

The sentences passed on the complainants are not sentences passed by any of the courts constituted under the constitution. Therefore the sentences are unlawful and those carrying it out are guilty of committing an unlawful act.

I find as a fact that Tebakia's wife's house was burnt down and that the burning was done wilfully and unlawfully. The crucial question is, was it the accused persons who burnt down the house?

If they did not did they aid or abet the burning of the house?

The 7th accused in his evidence under oath denied taking part in the burning. He admits making a statement voluntarily to the police admitting that he took part in the burning of the house. His admission was because of fear of what the villagers might do if he did not take part. He did not deny making the statement nor did he allege that the statement was not made voluntarily. Although none of the prosecution witnesses identified him, I am satisfied by his admission in the statement he made voluntarily to the police, that he aided and abetted those who burnt the house.

I find as a fact that he aided and abetted the burning down of the house belonging to Tebakia's wife.

Similarly in the case of the 8th accused, although he was never identified as having committed that act of setting the house alight, I find as a fact from the answer he gave to police questions 54, 55, 59, 60, 61 and 63, that he did aid and abet the burning.

By virtue of section S21(1)(c) of the Penal Code the 7th or 8th Accuseds are liable to be charged as if they actually committed the offence.

I find both of them guilty as charged and convict them accordingly.

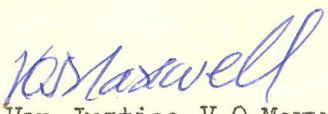
As to the 10th accused, in his evidence under oath he denied joining the burning of the house. He also was not identified by Tebakia's wife, but in answer to questions 21 and 22 put to him by the police he stated the active part he played. On the basis of these answers I find as a fact that he did actually took part, but not as an aider or abetter - but participant.

I therefore find him guilty as charged and convict him accordingly.

On being convicted all accused asked for leniency.

SENTENCE: One year imprisonment suspended for two years for each accused.

Right of appeal explained to them.


The Hon Justice V O Maxwell
CHIEF JUSTICE
26.8.86