

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

CRIMINAL CASE NO. 7 OF 2000

THE REPUBLIC
V.
NAWERE AUTAENE

FOR THE REPUBLIC: MR TION NABAU
FOR THE ACCUSED: MR NEIL ALLEN

DATE OF HEARING: 31 JULY 2000

REASONS FOR RULING

The accused pleaded not guilty to arson. The particulars of offence:-

Nawere Autaene on the 15 February 1998 at Tabiang village on Beru, wilfully and unlawfully set fire to two local dwelling houses the properties of Terebu Takuia.

On that morning Terebu had, through Timau Riwi, a special sergeant, asked the accused to remove his canoe from Terebu's land.

In the afternoon the accused turned up at Terebu's house, saying, "Haven't you ever heard of Nawere who is the most violent of men? Why are you concerned with my canoe?" He had an axe in his right hand and a knife in his left. He hit Terebu's bicycle with the axe. Terebu left looking for Timau. He did not return home until about 10 o'clock at night when he saw that his two houses had been burned down.

Taekabu lobu was Terebu's neighbour. In the afternoon, from her house, she heard banging and went to see what was

happening. She saw the accused hitting a bicycle with an axe: she saw him go to Terebu's sleeping house and she went with him: he grabbed the mosquito net and cut it with a knife: he went back to the bike and started hitting it again: he went and cut the spathes of Terebu's coconut trees. My note:-

I walked (about 30m), turned round saw Terebu's house had gone on fire. I was the only one present. After he cut spathes do not know where he went. I left: he was at the coconut trees. No one else about at that time.

During her cross examination, in answer to me, she said, "I didn't see him set fire to the house."

Timau Riwi was in 1998 a special sergeant to Police. He confirmed that Terebu had come to him in the morning and he had passed on to the accused Terebu's request that he remove his canoe.

In the afternoon Terebu came back to his house complaining that the accused was hitting his bike. Timau saw that Terebu's houses were no longer there: only burning pieces of wood.

Timau went to the accused's house and asked him, "Why have you done this? Can't you control yourself?" Before Timau could give the accused's answer, Mr Allen for the accused objected saying that I should disallow any further question on the topic.

Mr Allen mentioned the Judges' Rules. He acknowledged that I have a discretion whether or not to allow further evidence on the matter. He complained that Timau should have warned the accused of his right to remain silent.

After some reflection I refused to disallow further questions. It just seemed to me to be unreal in the circumstances to expect Timau to give such a warning. Here he was, almost literary in the heat of the moment, asking the accused why he had done such a thing. He asked questions any citizen might have asked.

I therefore allowed Mr Tion Nabau, prosecuting, to go on.

As sometimes (indeed quite often) happens, Timau's further evidence was an anti climax:-

I asked him about what happened: then I had a little discussion with him and I said I was going to arrest him.

When I asked him what had happened, he only answered that that other man was becoming too stuck up. He did not say anything else.

That was the case for the prosecution. Mr Allen then submitted that his client had no case to answer. I accepted the submission because there was no direct evidence that the accused has set fire to the houses, either from the observation of witnesses or by admission by the accused. On the state of the evidence at the close of the case for the Republic no jury properly instructed, could have found the accused guilty: likewise I, acting as both judge and jury could not find him guilty.

There was a strong circumstantial case: the accused was probably guilty – but I felt I must have a reasonable doubt: someone else could have lit the fires.

I accordingly found the accused not guilty and discharged him.

I give these Reasons for my ruling, not because of an appeal but as a courtesy to the Prosecution in the hope that it may be helpful as a guide in future cases.



THE HON ROBIN MILLHOUSE QC
CHIEF JUSTICE
(04/08/00)