

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

HIGH COURT CRIMINAL CASE No. 61 OF 2004

THE REPUBLIC
VS
TIRAE KABURE

FOR THE REPUBLIC: MR DAVID LAMBOURNE/MS PAULINE BEIATAU
FOR THE ACCUSED: MS TAOING TAOABA/MR KAROTU TIBA/
MS JENNIFER TROUP

DATES OF HEARING: 16 & 17 FEBRUARY 2005

J U D G M E N T

The accused is charged with murder:

On or about 15th October 2004, at Buariki village, North Tarawa in the Republic of Kiribati, Tirae Kaabure murdered Nei Nganga Tongobo.

He was 24 and living at Buariki, North Tarawa on the 29th November when he gave his statement to the police.

Most hotly contested at the hearing was the admissibility of the statement. After the accused had been arraigned and before the Solicitor General opened we had a voir dire, a trial within a trial, to determine whether the statement should be admitted. The voir dire took almost a full day. I gave the decision at the beginning of the second day of the trial.

The sequence of events as shewn on the Court record:-

On or about 15th October 2004 - death of Nei Nganga

20 October	Accused first brought before the High Court in Betio: application for bail adjourned
21 st October	No charge laid: accused discharged and to be returned to North Tarawa
1 st December	Accused charged with murder
3 rd December	Application for bail granted

The evidence on the voir dire was that on the 29th November the accused turned up at Police Headquarters, Betio and a statement taken from him. The accused told the police he wanted to be taken into custody: he was afraid of the victim's relatives: he said he had already been beaten up.

The three prosecution witnesses, Detective Constable Ioane Namai who took the statement, Detective Constable Arinteiti Atarin, the witnessing officer and Inspector Bamaere Tiira who on 29 November was a detective sergeant all denied ever holding out any promise of help or protection to Tirae to induce him to make the statement. The accused came to Police Headquarters wanting to make a statement. Ioane said he cautioned the accused in the conventional way before taking it. Arinteiti corroborated Ioane. [Although I did not know it during the voir dire, when the statement was admitted on the second day, I noticed the caution before the statement proper was taken.]

The best argument for the defence was that in the circumstances it would have been a great temptation to the police officers to give the accused some encouragement to speak so that he could be put in prison or at least protected from relatives.

The accused gave evidence on the voir dire. He was his own worst enemy. First having called Baarenia Kourataake, a gaol warder who had seen the accused on a morning in November outside the Betio prison asking to be locked up, the accused when cross examined by the Solicitor General said Baarenia was lying. Secondly he not only asserted that the police had promised him help and protection but also that he had not made the statement at all. He claimed he and Ioane were alone in the interviewing room: Arinteiti came in to witness the statement only after it had been written out: Ioane wrote out the statement without asking Tirae any questions: Tirae sat silent for an hour while Ioane wrote: the statement was not read back to him: he did not read the statement: he signed the statement wherever told to sign. He had thought he had signed something to do with assistance for the attack on him.

With the consent of prosecution and defence I looked at the statement in the vernacular and saw at a glance that it was in conventional question and answer form, each question and answer signed by Ioane, Arinteiti and the accused. I accepted beyond reasonable doubt the accuracy of the police evidence and was satisfied that no inducement was given and that it was Tirae's statement in question and answer form, taken by Ioane and witnessed by Arinteiti.

The Solicitor General acknowledged that the prosecution had the onus on the balance of probabilities of proving the statement had been taken voluntarily. The onus had been discharged.

Unfortunately Ms Taoaba was sick last Thursday, the second day of the hearing and could not continue her appearance. Her junior, Mr Tiba applied for an adjournment until Ms Taoaba could appear again. The Solicitor General supported him. I refused the application for several reasons. First a criminal trial should be interrupted only in a most serious emergency. This was not a serious emergency. Ms Taoaba had Mr Tiba as her junior and a junior always should be in a position to take over full conduct of a case. I had no idea how long Ms Taoaba would be sick and the Court lists were quite congested in the following days.

I did however give Mr Tiba, as this was his first criminal trial, an hour so that he could become fully familiar with the brief and suggested he might like to seek the assistance of the People's Lawyer. When the Court resumed Ms Troup appeared with Mr Tiba.

The Republic's case depended very much on the accused's admissions in the caution statement. Other civilian witnesses but one merely corroborated what the accused had admitted: seeing him go off with Nei Nganga late in the evening in the direction in which her body was found, the finding of the body tied to a pandanus tree and the opinion of the Medical Assistant, Nei Katarina Tekee, that the injuries she saw on the victim's neck were consistent with strangulation but not with hanging. The final witness Teratabu Iakoba had a conversation with the accused outside the court room some time on the first day of the hearing, last Wednesday. The accused said to Iakoba:

There's no problem. I've revealed everything related to me killing that girl. "Why?" "Because she was my relative and I was ashamed

The caution statement was admitted through Constable Ioane. To summarise it:-

The accused took the victim, a girl of 15 and his cousin, with him down a road past the Catholic cemetery, had sexual intercourse with her

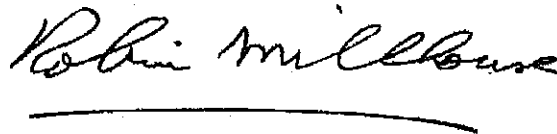
without her consent, strangled her so that she could not tell of the shameful (doubly shameful - intercourse with a cousin and rape) thing he had done, put the body in a sitting position, tore her shirt into strips and tied them round her neck and to a pandanus (it seems to make it look like suicide). About as full and detailed a confession as one can imagine.

The accused did not, as was his right, give evidence nor did he call any in his defence. I had ordered by consent that the evidence on the voir dire be evidence in the trial. The accused's evidence on the voir dire was not of much relevance but I bore it in mind during the trial.

The prosecution has proved the charge beyond reasonable doubt.

I find the accused guilty of murder.

Dated the 21st day of February 2005



THE HON ROBIN MILLHOUSE QC
Chief Justice

Sentenced to imprisonment for life.