



HIGH COURT OF KIRIBATI

Criminal Case N° 12/2018

THE REPUBLIC

v

ROBERT TEETOA QUADINA

*Pauline Beiatou, Director of Public Prosecutions, for the Republic
Raweita Beniata, Director of the Public Legal Service, for the accused*

Dates of hearing: 4-7 November, 3 December 2019

Date of judgment: 20 December 2019

JUDGMENT

- [1] By information filed on 20 July 2018, Robert Teetoa Quadina is charged with the murders of Sarah Jane Moses and her 3-year-old son, Jack Waim Moses.¹ The offences are alleged to have been committed on or about 9 December 2017 at Betio, South Tarawa. The accused has pleaded not guilty to both counts.
- [2] The case against the accused is entirely circumstantial, with the evidence before the Court largely unchallenged. Thirteen prosecution witnesses were called. The accused also made an unsworn statement from the dock.²
- [3] The only account of the months leading up to the deaths of Sarah and Jack came from the accused. So as to place the evidence of the prosecution witnesses in context, I will first set out some of what he had to say.
- [4] The accused and Sarah were in a relationship at the time of her death. She had been married to Bryce Moses, a Nauruan man, who was Jack's father.

¹ Section 193, *Penal Code* (Cap.67).

² As provided for under section 256(2), *Criminal Procedure Code* (Cap.17).

Bryce and the accused had been friends, which was how the accused came to know Sarah. For a period in 2017 the accused stayed with the couple in Betio. According to the accused, the relationship between Bryce and Sarah was a volatile one. After an argument, Sarah told Bryce to return to Nauru, which he did, taking Jack with him. Sarah then asked the accused to come and stay with her. She was upset and missing her son. The friendship between Sarah and the accused soon developed into a sexual relationship. They began living together in October 2017. They expressed their love for each other and intended to marry, as soon as they were divorced from their respective spouses. Sarah suggested that they get married in Vanuatu, where the accused's mother was living.

- [5] In late 2017, Sarah was planning a trip home to Australia. She wanted the accused to come with her, to meet her family and friends. She helped the accused to get his passport and paid for his ticket. They spent several weeks in Australia, during which time Sarah travelled to Nauru alone to fetch Jack. The 3 of them then travelled back to Kiribati in late November. About 2 weeks after they returned, the accused's wife informed him that she was willing to consent to a divorce. It was a Friday, and the accused and Sarah agreed to go out that evening to celebrate the news. Sarah would organise a babysitter for Jack.
- [6] That brings us to the first of the prosecution witnesses.
- [7] At about 6:00 on that Friday evening, 8 December 2017, Teena Teiango arrived at Sarah's house to babysit Jack. She had not been to the house before. She had been asked to babysit by a relative who worked with Sarah at the Kiribati Institute of Technology. The accused was at the house with Jack. Sarah arrived home at about 8:00pm, but did not stay long. After Sarah left, Teena saw the accused drinking beer, under the porch outside. A little while later he also left. As the accused was about to leave, Jack started crying and clung to his leg. Teena then watched some videos with Jack and put him to sleep in the master bedroom at the western end of the house.
- [8] Shortly after midnight Teena went out to the living room and found that the accused and Sarah had returned. The accused was cleaning the couch. Teena asked him where Sarah was, and he replied that she was talking to someone outside. Teena saw Sarah at the front of the house, standing on the passenger side of a car that had its headlights on. She could not see anyone else. Teena

returned to the master bedroom, where she saw that Jack was asleep. Sarah came into the room, saw that Jack was sleeping, and left. Shortly after that, Teena went to Sarah in the kitchen, and told her that she was leaving. The accused was lying on the couch in the living room. It appeared to Teena that both Sarah and the accused had been drinking – she could smell alcohol on them – although neither seemed to be greatly affected. Teena went to wait for her ride at a nearby bus stop. The gate to the property was open.

- [9] While Teena was waiting, the accused came out and told her that he would ask Sarah about giving her a lift home. He then went back to the house. In the meantime, Teena's ride arrived, so she went to the front door of the house and called Sarah's name. There was no response, so she returned to the bus stop and went home.
- [10] Next door to Sarah's house, to the west, was the house of Mack Atarake's father. The houses are quite close together, perhaps 8 metres apart. In December 2017 Mack was 14 years old. He attended school in Fiji and was home for the holidays. He knew that an *I-Matang* woman lived next door with her son.³ On the night in question, he was in a bedroom at the eastern end of the house, playing on his phone. Sometime during the night – he was unsure of the time – Mack heard the sounds of an argument coming from next door. He could hear both a male and a female voice, but he could not discern what was being said. He did not recognise either voice. They were speaking in English. Mack heard banging noises from the other house. He was unsure as to how long the argument continued. He considered it none of his business.
- [11] At one point Mack went into an adjoining room, which was occupied by his sister. He was going to borrow her computer. From next door he heard the sound of something being thrown. He looked out of the window of his sister's room towards the other house but could not see what had made the noise. He saw a man walking in the next-door backyard. He did not recognise him as it was still dark. The man appeared to be holding a knife in his right hand. Mack saw him go towards the ocean, returning to the house a short time later. He did not see if he entered the house. Mack could not hear the woman's voice anymore, but a child was crying. After a while, the crying stopped. He heard a man exclaim, "Fuck!" Mack returned to his room and went to sleep.

³ An *I-Matang* is a foreigner (usually a white person).

- [12] When he awoke, it was early morning. Mack heard the sound of a car next door. He looked across and saw a man carrying a child. Mack recognised the man – he had seen him the previous afternoon returning to the house next door after having been out fishing. Mack did not know whether this man was the same person he had seen in the backyard of the house earlier, although he was of similar build. The man left in the car with the child and Mack went back to sleep. When he next woke up there was a crowd of people outside the neighbour's house.
- [13] Mack's sister Tokanimango was 18 years old at the time. On the night of 8 December 2017 she was sleeping in her room at the eastern end of her father's house in Betio. The room was on the ocean-side of the house. She knew that an *I-Matang* woman named Sarah lived next door. Tokanimango awoke at around dawn on 9 December. Mack had come into her room and was looking through the window towards Sarah's house. Tokanimango could hear a man and a woman arguing from inside the house. She could not make out what was being said, but it was clear that the argument was a heated one. The 2 people were speaking in English. The argument continued for some time. At one point, Tokanimango heard the man say, "Fuck!" The woman was screaming – it sounded as if she was being beaten. A child was crying. Tokanimango heard a loud bang, as if someone or something had hit a wall. She then went back to sleep.
- [14] Tokanimango had heard the sounds of arguing coming from Sarah's house on other occasions. One argument had concerned her so much that she told her parents, who called the police. Nothing had come of that, so she concluded that there was no point doing anything about what she heard on 9 December. It is not clear when the earlier arguments had occurred.
- [15] Tebanana Tebaei was a 22-year-old man who lived across the road from Sarah's house and a few houses to the east. Early one morning in December 2017 he was preparing to go and cut toddy.⁴ He heard raised voices coming from Sarah's house. To him it sounded like a couple fighting. He could not say for how long the argument continued. He left to go and cut his toddy.

⁴ Toddy (or *karewe*) is the fresh sap of the coconut tree, collected morning and evening by tapping a spathe from the tree that has been bound before it can flower.

- [16] Nei Reeti Taaiteiti spent the night of 8 December 2017 at the house of her sister-in-law in Betio, next to the Council headquarters. She awoke early the next morning as she was unwell. As her mother was massaging her outside the house she heard a woman crying and a child crying. She could not be sure where the sounds were coming from. She heard a woman call out (in English), "Leave my son alone." The woman might have said, "Get away my son." Later in the morning she saw people gathering at the house across the road. When she had heard the sounds of crying earlier she noticed that the gate to that house was open all the way.
- [17] On the morning of 9 December 2017, nursing officer Iakobwa Tebao was on duty at the Betio Hospital. He had started work at midnight, and his shift was due to finish at 8:00am. At around 7:00am Iakobwa was in one of the wards when he was summoned to the Emergency Department by a security guard. There he saw the accused leaning on a gurney cradling a boy aged about 3 or 4 years. The accused was wearing denim shorts but no shirt, and the boy was wearing a t-shirt and underpants. The accused said, "Help my child first."
- [18] The child was in a critical condition. He had 2 wounds to the back of his head and was bleeding heavily. The wounds were circular – 0.5 to 1 centimetre in diameter. Iakobwa did not know what might have caused the injuries, but they did not look like knife wounds. There was also some minor bruising to one of the boy's eyes, and he was having trouble breathing. Doctor Tiaeki Tentoa attended to the child, assisted by Iakobwa and 2 other nurses. They could not stop the bleeding. The doctor had difficulty inserting an intravenous line, as the boy's veins had collapsed. One of the other nurses administered oxygen. Their efforts were unsuccessful, and the child died about 30 minutes after his arrival at the hospital.
- [19] When Iakobwa first saw the accused, he thought he looked tired. The accused was somewhat intoxicated and smelt of alcohol. While the team had been attending to the child, the accused was standing nearby. Iakobwa heard the accused say that they had been attacked. The accused asked if someone could go and see to his wife, because he had been unable to lift her to bring her to the hospital. He said 4 or 5 times that they had been attacked, although he did not say who had attacked them. Iakobwa told the accused to make himself comfortable while they looked after his son. The accused lay down on the floor and soon went to sleep.

- [20] After the child died, Iakobwa turned his attention to the accused. He saw 2 wounds on the accused's neck, one on either side of his trachea. They looked like knife wounds and were each 3 or 4 centimetres long. The accused also had scratches on his shoulder and upper back. None of his injuries were serious. Iakobwa saw dried blood on the accused's chest, stomach and arm. He cleaned and dressed the neck wounds, and inserted an intravenous saline drip. Before he could do any more, the accused was taken away by the police.
- [21] On 9 December 2017, Tanentoa Eria was a police constable attached to the Betio Police Station. He was on duty that morning and received a message from the Police Control Centre at about 6:00 or 7:00am. As a result, he and his partner went to the Betio Hospital. There he saw a nurse, who was treating a seriously injured child. He saw a man lying on the floor nearby. He could not get close enough to see clearly, as many people had gathered to watch. A short time later, Tanentoa went to a house in Takoronga, Betio, accompanied by an ambulance driver and a hospital security guard. His partner remained at the hospital.
- [22] At the house, the gate and the front door were wide open. Tanentoa looked through the door and saw the body of a woman, covered in blood. She was naked, with her underpants around one leg. Her breasts were exposed. There was a lot of blood. She did not appear to be breathing, but Tanentoa did not check the body for signs of life. He felt faint, as he had not seen anything like that before. Tanentoa reported his discovery to the Police Control Centre and instructed his companions not to touch the body.
- [23] Tanentoa then undertook a cursory check of the rest of the house with the security guard. He saw blood in one of the bedrooms, on the bed and on the floor, and there appeared to be a trail of blood from the bedroom to where the woman's body lay in the kitchen. There was a mobile phone next to the body. There were 2 cars parked outside the front of the house, one red, the other grey. Tanentoa saw a half-full bottle of spirits in the red car. He could not recall seeing any alcohol in the house. He was unable to say whether the back door of the house was open or closed. After checking the house he handed the case over to an officer from the Criminal Investigation Division.
- [24] Itaia Rereua is a Senior Constable with the Kiribati Police Service's Criminal Investigation Division (CID). He has received training in the detection of fingerprints and the collection of evidence from scenes of crime. Sometime

between 7:00 and 9:00am on 9 December 2017 Itaia went to a house in Takoronga, Betio, opposite the Council headquarters and next door to the house of Atarake. He was accompanied by a colleague from the CID. He went into the kitchen of the house and saw the body of a woman lying in a pool of blood. Itaia took several photographs of the woman, as well as the kitchen and other places in and outside the house.⁵ He also collected several items from the house and the yard as possible exhibits. Itaia had been at the house for about 30 minutes when a doctor arrived, accompanied by some nurses. The nurses cleaned the body and the floor around her.

- [25] The initial photographs show the body of an *I-Matang* woman lying on her back on a pandanus mat on the kitchen floor. Her face is covered in blood, and a large amount of blood has pooled around her head. Kitchen tongs and a mobile phone lie near the body. The woman is shown wearing a sleeveless top, but no skirt or pants. Her underpants are bunched at the top of her left leg and appear to have been torn. The woman's genitals are exposed. There is blood on the floor through the doorway to the living room, continuing towards the hallway to the bedrooms. The master bedroom is in disarray. There is a large pool of blood on the floor in the corner of the bedroom, near a woman's handbag. There is what appears to be blood on the bedsheets, on some of the items on the bed, and on the bedroom ceiling.
- [26] The photographs taken after the woman's body had been cleaned reveal numerous injuries to her head and body. There are what appear to be at least 10 different knife wounds, as follows: the scalp on the top of her head; her forehead, above the right eye; below her left eye; her right jaw; the right side of her neck (twice) and another on the left side of her neck; her back; her upper left arm; the inside of her right thigh; and her right knee. There is extensive bruising to the left side of the woman's face, together with other bruising on her neck, left side and lower right leg.
- [27] Other photographs depict the following: a cleaver, found on the kitchen floor; a small chef's knife, the blade of which is apparently stained in blood, on the floor in an unspecified location in the house; a medium-sized chef's knife, found on the kitchen counter near a rice cooker; and a large chef's knife, found outside the house next to the western wall of the master bedroom.

⁵ Tendered as exhibits 1, 2 and 4.

- [28] Itaia did not find any blood in the adjoining bedroom, which had toys strewn everywhere. Amongst the items in the master bedroom, Itaia saw a t-shirt sitting on a pool of what appeared to be vomit. There was also a broken child's scooter. Itaia seized the t-shirt and a number of other items that he intended to check for fingerprints back at the office. These included a mug, a rum bottle (with a small amount of rum left), 2 empty cans (Woodstock and VB), a green jug, 2 pairs of shoes, a cap and a wine bottle. The cleaver and the small chef's knife that had been photographed were also seized, although they have subsequently been lost. The mobile phone that was found close to the woman's body was seized, but was not further analysed.
- [29] Itaia returned to the house 2 days later, which is when he discovered the medium-sized chef's knife in the kitchen and the large chef's knife outside against the wall. These were seized, and have been tendered as exhibits.⁶
- [30] On his second day at the house, Itaia discovered and photographed a fingerprint in blood in the hallway leading to the bedrooms. He later detected latent fingerprints on the mug, the rum bottle and the 2 empty cans he had taken from the master bedroom. None of the knives were checked for latent fingerprints. Itaia is not qualified to compare fingerprints, so the prints he discovered, together with a set of fingerprints taken from the accused, were sent to Australia for analysis in February 2018. Several of the other items seized were later tested for DNA by an analyst from the Australian Federal Police.
- [31] Namorua Tebaobao was one of the nurses who attended the house. She arrived at about 9:00am. A doctor was there already, accompanied by his wife. When she arrived at the house and saw the woman's body, Namorua checked for a pulse but could not find one. The woman was dead. At the request of the doctor, she and the other nurse washed the body, assisted by the doctor's wife. Namorua saw many wounds on the body, but was unable to say what might have caused them.
- [32] On the morning of 9 December 2017, Edward Natuteka was in the cell at the Betio Police Station. He had been arrested on suspicion of driving while intoxicated. Edward was chatting with the 2 others in the cell, a boy, aged about 12 or 13 years, and the accused. In the course of the conversation, the

⁶ Exhibits 5 and 3, respectively.

accused told him that he had been to a party and had gone back to a house in Takoronga with a woman. He said that they were drinking and enjoying themselves. He had fallen asleep and, when he woke up, he crawled to the woman and was crying beside her. The accused said that he saw a child. When he saw that the child was breathing, he took the child to the hospital. He said that he was very sad about what had happened, and that it was because of that incident that he was in the cell.

- [33] Edward observed injuries on the accused; to his throat and on his side. He could not say whether the accused was intoxicated or not.
- [34] Lee Sloan has been a crime scene investigator with the Australian Federal Police since 2011. He specialises in blood spatter analysis. Following a review of the photographs taken by Senior Constable Itaia and a visit to the scene of the incident in July this year, he prepared a report setting out his findings.⁷ Lee conceded that his conclusions were limited by several factors. He would ordinarily have attended the initial scene of the incident, and he had to proceed on the assumption that what appeared in the photographs to be blood was in fact blood. The source or volume of the apparent blood could not be determined, and it was not possible to know whether there had been any disturbance of the blood after the incident in question.
- [35] With those limitations in mind, Lee was of the view that the incident began in the bedroom, on the left-hand side of the bed, before progressing through the house to the kitchen. The blood observed in the hallway and into the living room came from a source that was either upright and mobile or being carried. The blood in the living room continuing into the kitchen is a drag mark, and is consistent with the source of the blood either dragging themselves or being dragged. Lee was confident that the marks show that the source of the blood moved from the living room into the kitchen and not the other way round.
- [36] Philip Herd is a fingerprint expert with the Australian Federal Police. He has 26 years' experience in the field. He analysed 4 latent fingerprints lifted by Senior Constable Itaia from various objects found in the master bedroom as well as the bloody fingerprint found on the floor of the hallway.⁸ He was able to say that both the fingerprint found on the rum bottle and the fingerprint in

⁷ Tendered as exhibit 6.

⁸ His report was tendered as exhibit 8.

blood came from the accused. Neither of the 2 prints found on the mug had sufficient detail for comparison or identification. The fingerprint found on the empty VB can could not be identified. It was not a print from the accused.

- [37] Carol Schenk is a forensic biologist with the Australian Federal Police. She has 14 years' experience. In July this year, Senior Constable Itaia provided her with several items from the scene of the incident, which she analysed for DNA.⁹ Her analysis was severely hampered by the absence of any reference samples from the accused or either of the deceased. As a consequence, none of the 13 samples could be linked to a known individual. Carol was able to identify DNA from one female and 2 males on several of the items. Many of the samples had multiple contributors. Two of the knives found at the house were tested. While DNA was found on the large chef's knife found outside the house, including from the female person, no blood was detected. Blood from the female person was detected on the blade of the medium-sized chef's knife found in the kitchen near the rice cooker.
- [38] I now return to the evidence of the accused, as recounted in the course of his unsworn statement.
- [39] The accused explained that, during the period he was living with Sarah, he was drinking heavily, often drinking to the point that he passed out. Sarah would join him when he drank, but it appears that she did not drink as much. On one of these occasions the accused passed out in the bathroom, naked. Sarah took a photograph of the accused and shared it with some of her friends as a joke. The accused was embarrassed by this.
- [40] On the evening of 8 December 2017, before going out, the accused drank some beer and some spirits. When Teena arrived to babysit Jack, the accused went to the Marina bar in Betio. It was maybe 7:45pm. He had arranged to meet Sarah there, but she had some work matters to attend to first. He met a fishing acquaintance, whose name he can now not recall. After talking for a while, the 2 men went back to the house in Takoronga. There they had some more to drink, and planned a fishing trip for the next day. After a while the other man left, and the accused returned to the Marina bar. He had not seen

⁹ Her report was tendered as exhibit 9.

Teena while he was at the house. He assumed that she was in the bedroom with Jack.

- [41] When he got back to the Marina, Sarah met him outside. She told him that she had forgotten something. The accused was happy to return home, as he felt pleasantly drunk, and it was almost time for the babysitter to finish. He went back to the house ahead of Sarah and resumed drinking. Sarah came home a short time later. She talked with Teena and paid her. Teena then left. The accused followed Teena out, intending to close the gate. He asked her if she had transport to get home. Teena replied that it was on the way. The accused told her that he would ask Sarah about dropping her home. She said that she was happy to wait for her ride.
- [42] The accused went back inside the house and told Sarah that Teena was still outside. Sarah told him that she had already called someone to come and get Teena and he was not to worry. The accused forgot about closing the gate. After that, Sarah and the accused were drinking and enjoying themselves. They were in the bedroom with Jack, watching videos. Sarah was smoking. After a while Jack went to sleep and the accused went out to the living room. He was drinking spirits, and Sarah was drinking Woodstock (bourbon and cola in a can). The accused recalled that they were having a competition as to who could drink the most.
- [43] The next thing that the accused remembers is waking up on the floor of the kitchen, close to the storeroom door. He was confused and disoriented. He felt as if he was dreaming. He was in pain and experiencing extreme fatigue. The accused could see Sarah lying on the floor close to the front door. He crawled to where she was. She was still alive. He had trouble comprehending what had happened to her. The accused then thought of Jack. He told Sarah that he would go and look for Jack. He crawled from the kitchen towards the bedroom. He was unable to stand. When he reached the bedroom he saw Jack, and saw that he was breathing. The accused lifted him up to carry him to the car. He was still very fatigued and standing up made him feel dizzy.
- [44] The accused somehow got Jack into the car and he drove towards the hospital. He recalled hitting a motorcycle on the way there. He did not stop – he needed to get Jack to the hospital. On arriving, he crashed the car into the wall of the hospital. He got Jack inside and asked the staff to help him. He also asked for someone to go and check on Sarah, as she was still alive. His

vision was clouding over, and he felt like he was going to pass out. He lent against a bed. While Jack was being attended to, the accused lay down on the floor. He thinks that he passed out. When he came to, he had an intravenous drip in his arm. The medical staff were still working on Jack. Soon after that, the police arrived, handcuffed the accused and took him to the police car.

[45] The accused denied any responsibility for what happened to Sarah and Jack. He maintained that it was not in his nature to hurt them. He conceded that he had been a jealous man when he was younger, but he had changed.

[46] That brought the defence case to a close.

[47] In considering the evidence in this case, I remind myself that it is not for the accused to prove his innocence. His evidence is to be assessed in the same way as the evidence of any other witness. Even if I reject what the accused had to say, I still need to be satisfied beyond reasonable doubt of the prosecution case before he can be convicted. The burden rests with the prosecution to prove, beyond reasonable doubt, each and every element of the offences charged.

[48] The accused is facing more than 1 count. I am required to consider each charge separately, evaluating the evidence relating to that particular count to decide whether I am satisfied beyond reasonable doubt that the prosecution has proved its essential elements.

[49] In order to convict the accused of the offence of murder, I must be satisfied to the required standard of each of the following elements:

- a. that the victim is dead;
- b. that the accused caused the victim's death by an unlawful act or omission;
- c. that he did so with malice aforethought.¹⁰

[50] There is no doubt that both Sarah and Jack are dead. There is no doubt that they died as a result of the most grievous injuries. However, defence counsel

¹⁰ The expression 'malice aforethought' is defined in section 195(a) of the *Penal Code* as being "an intention to cause the death of or grievous bodily harm to any person".

submits that it is not possible for me to be satisfied that it was the accused who killed them.

- [51] Counsel for the prosecution concedes that there is no direct evidence that the accused killed either Sarah or Jack; the case against him is entirely circumstantial. That is not to say that a person cannot be convicted of murder based wholly on a circumstantial case. Circumstantial evidence has been described as being like a rope composed of several cords; whereas one strand of the rope might be insufficient on its own to support the burden of proof, a number woven together could be sufficient.¹¹
- [52] The Court of Appeal has said the following about circumstantial evidence:
- Where there is no direct evidence, and the prosecution relies on the inference to be drawn from such other evidence as there is, it must show not only that the inference is rational, but that it is the only rational inference that the circumstances allow; it must rest upon something more than mere conjecture.¹²
- [53] If, having regard to the whole of the evidence, there is a reasonable hypothesis that is consistent with the accused's innocence, then he must be acquitted.
- [54] I have no difficulty accepting the evidence of the prosecution witnesses. Little, if any, of it was seriously challenged by counsel for the accused. There were perhaps some differences among them as to what time the argument occurred, but it is not unusual for I-Kiribati to be imprecise about time.
- [55] It is clear that, sometime around dawn on 9 December, a heated argument arose between a man and a woman in Sarah's house. The man swore. A child was crying. The woman said, "Leave my son alone" or "Get away my son." This suggests that the woman was Sarah. However, no one identified the man's voice. A man was seen in the backyard of Sarah's house, possibly holding a knife. That man has not been identified, although he is of a similar build to the accused. A short time later, Sarah lay dying on the kitchen floor and the medical staff at the Betio Hospital were desperately trying to save Jack's life.
- [56] The forensic evidence from the Australian Federal Police experts is of little help. This is not intended as a criticism of the experts themselves. They could

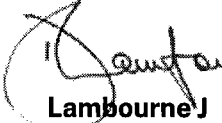
¹¹ *Thomas v R* [1972] NZLR 34.

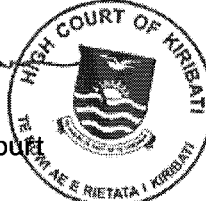
¹² *Makitera Tamaroa v Republic* [2009] KICA 21, at [10], citing the High Court of Australia judgment of Brennan and Gaudron JJ in *Knight v R* [1992] HCA 56; (1992) 175 CLR 495, at 509-510.

only work with what they were given. The failure to provide the DNA expert with any reference samples meant that her evidence was of no assistance at all. The fingerprint evidence only confirms what is not disputed – the accused was in the house that night. The blood spatter expert’s testimony assists in understanding where the initial attack occurred, but there is no way of knowing whether the blood in the bedroom came from Sarah, or Jack, or both of them. The directionality of the blood smears suggests that they were a result of Sarah crawling, or being dragged, from the living room into the kitchen. Unfortunately that does not help to identify the person who inflicted her injuries.

- [57] Counsel for the prosecution submits that there is no evidence that anyone else was in the house at the time. She says that this leads to an inescapable inference that the man arguing with Sarah was the accused, and that he must have killed both Sarah and Jack. I am not so sure. It is true that, when Teena left shortly after midnight, the accused and Sarah were the only adults in the house. However, that was several hours before the argument. It is entirely possible that a third adult was in the house that early morning, either at the invitation of the occupants or unbidden, and that person killed Sarah and Jack and wounded the accused.
- [58] The accused says that he has no recollection at all of how Sarah and Jack came to be injured. He had been drinking heavily, and has a history of blacking out when drunk. It is not inherently implausible for him to have no memory of what happened in the house that morning. He too sustained injuries, and his actions in rushing Jack to the hospital and seeking help for Sarah are not consistent with a version of events in which he was the person who caused their injuries.
- [59] There is nothing to suggest that the accused was prone to violence, or that he and Sarah had a volatile relationship. While Tokanimango told the Court that she had previously heard arguments at the house, we do not know whether this was during the time that the accused was living there. It is possible that the arguments she heard were between Sarah and Bryce.
- [60] Teena’s description of the interactions between the accused and Jack suggests that their relationship was an affectionate one. It is difficult to envisage a scenario in which the accused is responsible for causing serious injuries to the boy only a matter of hours later.

- [61] On a full consideration of the evidence in this case, I find that I cannot be satisfied to the necessary standard that the accused killed either Sarah or Jack. This is an incredibly sad case. It is easy to see how one might consider the testimony of the witnesses and conclude that it is more likely than not that it was the accused who killed Sarah and Jack. But it is not enough to have suspicions. It does not matter what we believe; all that matters is what can be proved. A conclusion that the accused is the likely killer is not sufficient – I must be satisfied as to his guilt beyond reasonable doubt.
- [62] As such, given that the prosecution has failed to establish the second of the 3 elements of the offence of murder, I must find the accused not guilty. He is accordingly acquitted on both counts and discharged.


Lambourne J
Judge of the High Court



The seal of the High Court of Kiribati is circular. It features a central shield with a sun, a wave, and a palm tree. The text "HIGH COURT OF KIRIBATI" is written around the top inner edge of the seal, and "I KIRIBATI" is written around the bottom inner edge.