

IN THE COURT OF APPEAL OF KIRIBATI
CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 1 OF 1997

BETWEEN

NTAENE NAWERE
Appellant

AND

THE REPUBLIC
Respondent

Date of Hearing: 4 March 1998
Delivery of Judgment: 9 March 1998

Mr D Lambourne for the Appellant
Mr D Sim for the Respondent

JUDGMENT OF THE COURT
(Gibbs V.P., Connolly and Ryan JJ.A)

On 30.5.97 the applicant was convicted before Lussick C.J. of the murder of one Temoai, also known as Kantaua on 8 June 1996 at Betio. It is not in doubt that Temoai died that night as a result of being stabbed in the neck. The deceased and the applicant had arrived late that night at the house of Taumarea and Nikutabu, a young man of 18, who was there, witnessed the arrival of the two men and the stabbing of the deceased by the applicant in the back of the neck. Nikutabu ran out of the house but witnessed a second stabbing of the deceased by the applicant as he lay on the floor. The critical events were in short compass. Immediately before the arrival of Temoai and the applicant Nikutabu

had been taking a cassette apart with a knife. On their arrival he saw the applicant grab Temoai by his clothes and pull him into the house. His account of what occurred next may be summarised as follows: The applicant asked Temoai: "Why did you deceive me?" Temoai replied: "I wasn't deceiving you but there were many people there". The accused at this stage grabbed the knife from Nikutabu and again asked Temoai: "Why did you deceive me?" He received the same answer. The accused repeated the question 2 or 3 times and each time received the same answer. The accused had been sitting down. He got up and stabbed the victim in the back of the neck. Nikutabu had been sitting alongside the applicant when this happened. Nikutabu became afraid and ran from the house and stood beside the road. He looked back and, through the door, saw the accused stab the victim a second time, again in the neck, while the victim was lying on the floor. Sometime later Nikutabu returned to the house. The accused had gone and Nikutabu saw the victim lying face up on the floor with a lot of blood around him. The applicant made formal admissions that the deceased died from loss of blood and that either of the two wounds to his neck could have caused the fatal bleeding.

There being no doubt that the deceased was killed by the applicant and that, despite having taken a considerable quantity of alcohol the latter was aware of what he did, his intention to kill is not in doubt and the only remaining issue is provocation. It is contended that the exchange between the two men referred to above is evidence of provocation on the part of the deceased. We are unable to accept this. The words of the applicant can only be regarded as a complaint or rebuke. Just what was involved is known only to the applicant. However, the response of the deceased was a denial of whatever the applicant, who initiated the short exchange, was reproaching him with. The deceased's response seems to have been placatory rather than provocative and the conversation deposed to by Rotite that the applicant told her and others that a person was dead or nearly dying,

that he had stabbed someone, a homosexual, a faggot coupled with his statement to Constable Meita that he was angry with the deceased because he was in love with "that effeminate man" amount to clear acknowledgment of his responsibility for the death of the deceased.

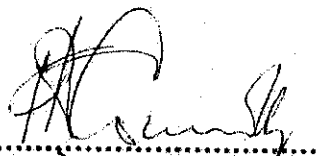
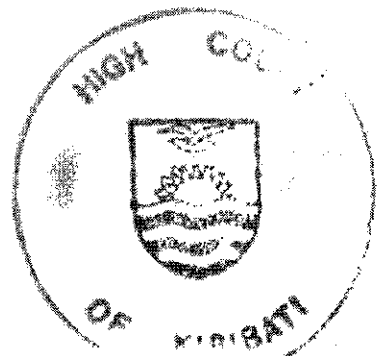
There being no evidence which even suggests provocation on the part of the deceased and clear evidence of deliberate stabbing of the deceased in the neck by the applicant, he was properly convicted of murder and the application for leave to appeal must be dismissed.

The notice of appeal suggests that the judgment of Lussick C.J. "appears to place some onus on the applicant" to establish provocation whereas the burden lies on the Republic to exclude it once raised on the evidence. The fact however is that nothing capable of being regarded as provocation, whether for a lethal attack or at all, is raised by the evidence. It follows that his Honour did not err in declining to speculate as to why the applicant stabbed the deceased twice in the throat.

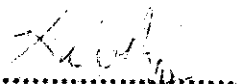
The application for leave to appeal is refused.



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Vice President



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Judge of Appeal



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Judge of Appeal