

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

High Court Criminal Case 14 of 2000

THE REPUBLIC
vs
BAKOAA TEBOO

FOR THE REPUBLIC: MS POLE TEBAO
FOR THE ACCUSED: MS EMMA HIBLING

DATE OF HEARING: 20 JUNE 2001

J U D G M E N T

The accused was originally charged with murder but the Republic did not proceed with that. Instead, on the morning of the trial, Ms Hibling for the accused not objecting, Ms Tebao, prosecuting, handed up a fresh charge of assault occasioning actual bodily harm. To that the accused pleaded not guilty.

It was in May 2000. The victim, Kaoma Kris, a man in his early 20's, got very drunk. He was making a nuisance of himself, wanting to fight the catechist in their village of Nikutoru on South Tabiteuea. During the afternoon the village warden arrested him, cuffed his hands behind his back and tied him up. Kaoma managed to get free but was caught and again arrested. In the evening he escaped but with the help of several men in the village he was found again.

The Republic called only two witnesses as to the facts. Itimati was caught by the village wardens (of whom the accused was one – his original co-accused Tabiang, now dead, was another) helping the victim take off the hand cuffs. Not long after the wardens led Kaoma away again, Itimati heard a scream: he said he recognised Kaoma's voice. Itimati saw

Kaoma again, this time with an injury on his forehead: he did not actually see the injury, just blood covering the forehead.

Baketi said that very early the next day, about 3 am, the victim came to his house asking for help to get rid of the hand cuffs. Baketi then noticed the skin on Kaoma's forehead was split and there was blood. Earlier in the previous evening Baketi had heard a scream:-

Heard the bang sound, then screaming. I went to where noise was coming from. I saw Kaoma lying down: Bakoa was standing on the side where his head was and Tabiang right at back of his feet. Bakoa had torch with him. Kaoma lying on his side with his hands tied up with hand cuffs. Bakoa was on the side where Kaoma's head was. Bakoa was standing, holding torch in his hand. I did not see Kaoma's head: when I helped to stand him up I did not see any injuries on him. I saw injuries when he came to house early in the morning: quite long after I'd helped to stand him up. I did not see any injuries when I helped to stand him but I felt blood on his forehead.

The final prosecution witness was Nei Arote Uriam, the medical assistant. She, several days later, examined the victim's body. Her report was exhibited and is the only information I have as to what happened to Kaoma:-

I went to see a dead man found by some fishermen on the reef at about 4 pm – 5 pm (Teobokia). On arrival the corpse is very smelly and the legs are tied with a rope. This is on the 22/05/2000. On examination:

Head - 3" length 3" depth) lacerated cause by
Forehead - 2" length 2" depth) object -----

Ms Hibling submitted there was no case to answer. I rejected the submission because there was evidence of the accused standing next to the victim who had been heard to scream, lying with blood on his forehead. I thought this called for an explanation.

The test is set out in the Queen vs Galbraith (73 CAR 124): the judge should stop the case "only if there is no evidence upon which a jury properly directed could properly convict" (per the Lord Chief Justice at 125). I thought that a jury properly

directed could properly convict but conviction would depend on the view which the jury took of the strength of the evidence.

Ms Hibling told me that her client would not give evidence and the defence would not call other witnesses.

I therefore have to put myself in the place of a jury and consider whether on the evidence the accused is guilty beyond reasonable doubt of assault occasioning actual bodily harm.

Ms Hibling had extracted from Nei Arote that the injury on the forehead could have happened when the victim hit his head on the ground or on a stone, as well as by a blunt instrument. There was evidence that Tabiang (at one time) and Bakooa (at another) was carrying a torch. A torch may be used as a "blunt instrument". Ms Hibling pointed out that there was no direct evidence of an assault and there were other people about: other names had been mentioned by Itimati and Baketi.

Although there is quite a strong prima facie case against the accused, he standing beside the victim soon after the injury is likely to have been caused, I could not but have a reasonable doubt about his guilt. The injury could have been caused in some way other than a blow from the accused, or it may have been inflicted by someone else.

I find the accused not guilty of assault occasioning actual bodily harm.

What of the lesser charge of common assault lurking in the graver charge? Is the accused guilty of common assault?

Hand-cuffing Kaoma and tying him would be an assault unless it were justified in law. The accused was a village warden. I assume he had authority to arrest a person suspected of an offence. From the way in which Kaoma was behaving I should think even a citizen's arrest would have been justified.

Once arrested something had to be done to restrain Kaoma. In the absence of a lock-up, hand cuffing and tying may have

been justified. Put it the other way, I must have a doubt that the way in which the accused and Tabiang treated Kaoma was not justified. The accused is not guilty of common assault.

The accused is not guilty of any offence.

Dated the 25th day of June 2001

A handwritten signature in blue ink that reads "Robin Millhouse". The signature is written in a cursive style with a horizontal line underneath it.

THE HON ROBIN MILLHOUSE QC
CHIEF JUSTICE