

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

HIGH COURT CRIMINAL CASE No. 3 OF 2005

THE REPUBLIC
VS
MAURINTETAAKE TEBOO

FOR THE REPUBLIC: MS B BEIATAU AND T TOKAM
FOR THE ACCUSED: MR B BERINA

DATE OF HEARING: 28 FEBRUARY, 1 MARCH & 2 MARCH 2005

J U D G M E N T

The accused is charged with murder and the particulars are:

On the 20th December 2004 at Nuotaea village, Abaiang Island in the Republic of Kiribati, Maurintetaake Teboo murdered Ten Tebuaka Iakobo.

The prosecution's case is that on the morning of December 20, 2004, at Nuotaea islet on the island of Abaiang, the deceased Tebuka Iakoboo was collecting coconuts at his plot of land called Tekaawa. He was squatting and tying the coconuts together with his bush knife. Without being noticed by the deceased, the accused Maurintetaake Teboo came from behind and stabbed the deceased's neck with his knife. The deceased, without turning around, swung his bush knife over his shoulder and hit the accused's forehead causing a minor wound. The deceased then tried to stand up but the accused pushed him and he then fell on the ground. The accused then stabbed the left side of the deceased's stomach twice and also his back a number of times causing serious injuries. The deceased cried out and saying: "poor Tebuka O, he is dying" but the accused said "No" and he kept on stabbing him. When the deceased died the accused dragged him to a

In cross-examination the witness said that the deceased never challenged the deceased to a fight at all and she saw the accused lifting up his whitish small knife and stabbed the deceased with it. The deceased on the other hand used a bush knife of about an arm's length and struck the deceased with it. She (witness) confirmed in cross-examination that she herself really saw the accused.

She also said that the accused did not collect coconut fruits.

In re-examination she confirmed that the small whitish knife shown to her is the knife which the accused used when he stabbed the deceased and was produced into evidence and marked as Exhibit "P1".

The bush knife was also shown to the witness and she recognised it as the one which the accused used to strike the deceased with and was produced into evidence and marked as Exhibit "P2".

Temana Borerei (PW2) is the second witness of the prosecution and he is from Nuotaea village, Abaiang. He testified that on 20 December 2004 at about between 9 and 10 am he met up with the accused near the football field when he was on his way to cut his toddy tree. When he saw him the accused had an injury on his forehead on the right hand side and had also a lot of blood on his body on the right hand side of his body but the injury on his forehead was a small wound and was the only wound on the accused which he (witness) saw.

After he met up with the accused, the accused left him and he then decided not to cut his toddy tree and instead he set out to find out as what the accused was up to. So he went to the hospital to look for him there thinking that he might have gone there but he was not there. So he next went to the accused's house and found the accused there. When he spoke with the accused at his house (accused's) the accused told him that he had been to the bush and whilst there he saw the deceased and he attacked him (accused).

He also said that whilst at the bush he heard footsteps coming from behind him (accused) and when he looked back he saw the deceased raising up a bush knife to hit him (accused) with it but he (accused) saw it and managed to dodge it. However the deceased still manage to injure him and that's how they (accused and deceased) started fighting.

In cross-examination the witness said the accused told him that he punched the deceased and also stabbed him on the side of the stomach and said he (accused) did not know whether the deceased was dead or alive after he left him in the bush.

Teaoti Tebuka is the third prosecution witness (PW3). He testified that early in the morning of 20 December 2004 he recalled that his father - Tebuka (deceased) went out early that morning to collect dried coconut fruits from their land in the bush at Nuotaea. Then at about noon on the same day he heard a rumour that his father had been wounded at the bush whilst collecting coconut fruits.

After hearing this rumour the witness and his brother Tinana and some other persons set out to look for Tebuka (deceased) on a number of various plot of lands which they (Tebuka (deceased) and his family) own in Nuotaea and thought that the deceased could have gone to one of them to collect coconuts. After visiting some of these plot of lands the witness and his companions eventually found Tebuka's body on a plot of land called Tekawa.

The witness first saw a knee of the deceased sticking out above the ground near a shrub. He (the witness) then approached the body and saw the deceased was naked and also saw wound on the neck and on his body and also a lot of blood on the injury on the neck and also on the ground where the deceased's body lay. After the witness and his brother saw the body of their father in that condition, they all burst out crying. Then they (the witness and his brother Tinana) tried to lift the body of their father but they could not as his body was too heavy for them to lift and so they then placed body of their father on his own lavalava which they found lying on the ground near his body (deceased) and also soaked in blood.

In cross-examination the witness confirmed that he knew that his father Tebuka (deceased) and Maurintetaake (the accused) had a land boundary dispute but the deceased had never encouraged them to fight with the accused.

The witness also said in cross-examination that he did not see any drag-mark on the ground near and around the body of the deceased. In re-examination the witness stated that there were a lot of dead leaves and blood marks on the ground near and around the deceased's body where it lay.

Terikai Moaniba is the fourth prosecution witness (PW4). She is aged 33, married and live at Nuotaea village of Abaiang Island. She has been a village nurse since 1990 and up to now.

As a village nurse she assisted a qualified nurse treating minor injuries of patients who sought medical treatment at the medical clinic.

On the 20 December 2004 she testified she dressed the wounds of the accused. She also said she saw a small wound on the forehead of the accused.

She also testified that she also examined Tebuka's (deceased) wounds on the right hand side of his neck, two wounds on the left hand side of his stomach and on his back. She said that all these wounds are very serious injuries and had caused the deceased's death and had been caused by a sharp instrument.

Tinana Tebuka is the fifth prosecution witness (PW5). He is aged 21. The witness testified that on 20 December 2004 he woke up early in the morning on that day around 6 or 7 am and went out on a bicycle to cut his toddy. After cutting his toddy he returned and the deceased (his father) quickly took the bicycle from him in haste and went out. He never saw his father again after he (deceased) went out that morning. Then at about 10 or 11 am the witness heard a rumour that his father had been wounded.

So the witness set out to look for his father. He first of all headed northward and visited some of their plots of lands but could not find his father's body except for his bicycle which he took with him. Then he met his brother Teuoti and continued searching for the body of their father but again could not find the body.

Then they eventually found the body of their father on the plot of land of theirs called Tekawa towards the northern boundary near the northern side of the babai pit. Teuoti the witness's brother first saw the body of their father.

The witness said that Teuoti went further eastward by himself ahead of the witness and then he (witness) heard a scream "Poor papa, he is dead". ("E kawa papa ba e a tia ni mate").

The witness also said that Teuoti was out of his mind and he did not know what to do.

When the witness and his brother Teuoti approached the body of their father they cried together near the body of their father. When observing the body of his father the witness saw serious injuries on the body of the deceased on the right hand side of the neck, two injuries on the left hand side of the stomach near the abdomen and on the back. The witness also saw the intestines of deceased coming out. The witness also saw that the deceased was naked and his right knee was raised above the ground and the witness straighten it out and rested it on the ground.

Then he met up with some people by the name of Tebwebwe and Kataua and they asked him as what has happened with their father (deceased) and the witness told them that their father is dead as he had been seriously wounded.

The witness also said after he spoke to Kataua, Kataua left and he told him he was going back to the village (Nuotaea) and informed the people that the deceased has died.

The witness also said that the name of the land upon which they found the body of the deceased is called Tekawa and the piece of land next to it is called Moeran.

The witness further stated that he saw some blood on forehead of the deceased and because he was so upset he did not examine his father's body in detail and his brother Teauti was with him also when he saw the body.

The witness denied in cross-examination that he knew his father (the deceased) disliked the accused and his father never told him anything about the accused.

Ekeru Bombe is the sixth prosecution witness (PW6) and is aged 45 and a special constable at Nuotaea village.

On 20 December 2004 he got wind of an accident relating to the Tebuka the deceased. So he informed the police about such accident. The witness also collected a bush knife with the black handle from the accused at his house which was given to him by the mother of the accused. At that time when he collected the bush knife the accused and some of his relatives were there also in the house.

The bush knife was shown to the witness and he confirmed that it was the bush knife that he had collected from the accused at his (accused) house.

The witness also collected a small knife from the accused from his house which was handed over to him again by the accused's mother.

Rui Atema is the seventh prosecution witness (PW7), is married and has been a policeman for more than four years and he is a detective constable for more than three years. He is the investigating officer in the present case.

He testified that 21 December 2004 he went to Abaiang and then Nuotaea to carry out the investigation in the present case. When he was at Nuotaea he first of all took photographs of the deceased. The photographs were shown to the detective constable and he confirmed that they were the

photographs of the deceased which he had taken at Nuotaea at KPC maneaba where the body of the deceased lay during the investigation in the present case. He tendered them and were produced in evidence and marked as Exhibit P3 a, b, c, d, e, f, g and h.

The colour photographs clearly showed the positions and kind and sizes of the various gruesome and horrifying wounds on the body of the deceased namely: wound on right hand side of the neck P. 3b, two wounds on the left hand side of the stomach (P 3c, P3d and P3g and P 3h and wound on the back and other wounds on the forehead.

Photograph P3a shows the conditions of ground where the body of the deceased was found which appears to have been disturbed and covered with dead and green leaves and rubbish. It is also very soft and sandy and it appeared that people had already been there.

After taking the photograph of the deceased the witness then drew the sketch plan of the scene of the crime with assistance of Rajnish Ting (PW1). The plan was produced in evidence and marked as Exhibit P4.

After drawing the sketch plan the witness returned to the police station at the main island of Abaiang and took the caution statement of the accused. The caution statement was produced into evidence without any objection and was marked as Exhibit P5.

In his caution statement which he gave to the investigating officer on 22 December 2004 at 1710 hours the accused stated that the deceased had attacked him with the bush knife when he was collecting coconut in the bush but he dodged the blow by bending down and as the result he received a cut on the forehead. The deceased attacked him again for the second time but he did not hurt him as he managed to seize the bush knife from him (deceased) and then he left him (deceased).

The following questions and answers referred to below were prepared and written by the investigation officer on 22 December 2004 at 1710 hours. In his answer to question 17 he stated that he had caused the injuries on the body of the deceased with his knife (accused) which he carried with him.

In his answer to question 13 the accused stated that when he stabbed the left hand side of the deceased's stomach he held the knife with his right hand.

The accused also stated that when he returned to the village at that time his body was covered with blood (question 22). The accused also stated that when he returned from the bush he did not go back to his house nor

went to hospital but he set out to get rid of the blood of Ten Tebuka (deceased) which covered his body (question 25).

The following second caution statement of the accused and questions and answers given by the accused were prepared and written down by the investigating officer on 22 December 2004 at 2200 hours. In this second caution statement of the accused, the accused stated that he was in the north of Nuotaea islet on a plot of land called Tekawa looking for his pig' feed when the deceased approached him and told him that the land where he was, was not his. The deceased also challenged him to a fight and the deceased at that time carried a bush knife and he (accused) carried a small knife.

He stated also that when they fought the deceased struck him with his bush knife and the tip of such bush knife landed on his forehead (the accused) and injured him. The accused also stated that he and the deceased struggled in order to get rid of the bush knife which the deceased tied with a string to his hand. And as they struggled the deceased fell down on his stomach on the ground and he (accused) stabbed him in the back with his knife.

And as the deceased fell on ground the accused heard him saying "Poor Tebuka O, he is dying". In his answers to the questions put to him by the investigation police officer the accused stated the deceased fell on the ground because of the wound on the right hand side of his neck but cannot recall the wounds on the stomach (question 12).

The accused also confirmed that when the deceased fell down and said "Ten Tebuka is dead" he (accused) then stabbed him (deceased) with his knife and cut his stomach and chest (question 13).

The accused also admitted that his body and short were covered with the blood of the deceased when he returned (question 17). The accused also confirmed that when the deceased fell on the ground he (accused) stabbed his back and stomach from which wound his intestines came out (question 22).

The accused also confirmed that the deceased died as the result of the wounds on the stomach through which the intestines protruded (question 22).

The accused also confirmed that when the deceased died he dragged his body to underneath the pandanus trees to hide it because he had lost his mind at that time (question 27).

Finally the accused admitted he killed the deceased but he did not mean to do it (question 29).

Kataua Keiaki is the eighth prosecution witness (PW8). He is aged 57 and comes from Nuotaea village, Abaiang. The witness testified he heard about a fight taking place on the road. So he went to that place on the road but he could not see any fight there so he went to the accused's parent's house - Tebo and Nei Kanenei as he saw that there were many people there.

When he was at Tebo and Nei Kanenei's house he saw Maurintetaake (accused) with an injury on his forehead and his (accused) mother told him that he had been attacked by the deceased with the bush knife.

On hearing this the witness along with the sons of the deceased namely Tinana and Teuoti and his (witness) own son Bwebwenteata set out to look for Tebuka (deceased) in order to protect him (deceased) against any possible attack by the accused's relatives.

He then advised the two sons of the deceased to go and look for their father whilst he (witness) and his son Bwebwenteata rested for a while in a bush hut as they were tired.

Then whilst they were resting and waited for Tinana and Teuoti the witness heard a shout and his name (witness) was being called out. They (Tinana and Teuoti) then came to the witness and told him that they had found their father and he was already dead. They also said they saw a lot of wounds on his body.

Following this they then all went to where the deceased's body was lying and the witness said that he saw dragged marks with blood marks on it and also a lot of blood marks near the babai pit, a pandanus root also soaked with blood and a lavalava which was also soaked with blood and the babai pit had also a lot of blood in it and the deceased was naked and lying on his back with his right leg and knee being raised up above the ground.

The witness said also that he saw two wounds on the stomach and the intestines protruded. With all these conditions he knew that the deceased was already dead.

At this juncture the witness suggested to the sons of the deceased to go back to the village and sought help.

The witness himself then went back to the accused's house and when he met him (accused) he asked him whether he was the one who really killed the deceased. The accused did not answer the witness's question and instead he asked the witness whether the deceased was really dead. The

witness then told the accused that the intestines of the deceased came out from his stomach and how could he survive after all this?

The witness asked the accused again to make sure he understood his question "Did you really kill him (deceased)? In reply the accused nodded his head in agreement that he really killed the deceased.

During a long and vigorous cross-examination the witness generally confirmed his evidence in chief. And at the end of the cross-examination the statement of the witness was produced into evidence and marked as Exhibit D1.

This statement of the witness generally confirmed and supported the testimony of the witness in the examination in chief.

That concluded the case for the prosecution. The accused himself then elected to give evidence.

Maurintetaake Teboo (accused) is aged 36 and married with three children. He is unemployed and comes from Nuotaea village, Abaiang and he was there last year and recalled having fought with the deceased also last year.

On 20 December 2004 he recalled having gone north of Nuotaea islet to the bush to collect coconuts for his pig's feed.

After he collected some coconuts he left his bicycle and these coconuts together and went westward to the lagoon side to collect more coconuts. And as he was walking along he encountered the deceased and during that encounter he (deceased) rebuked him and told him that the land where he was does not belong to him.

At that time the deceased was carrying a bush knife with him and challenged the accused to fight with him and told him to go and fight with him at a clearing near the babai pit. The accused said that he was carrying a small knife with him.

The deceased then led the way walking ahead and the accused followed suit. When they reached the clearing they stopped and then the deceased struck the accused on the forehead with his bush knife.

The accused said that the deceased was going to hit him (accused) for the second time but the accused prevented him from doing so by quickly going under his right arm (deceased) and sheltered himself there. The accused then struggled with the deceased in order to take his bush knife from him.

Then the deceased fell down and tried to get his bush knife but by then the accused had already severed the string from the bush knife. The accused also said that he took the deceased's bush knife with him to his house when he left the deceased in case he (deceased) attacked him again. The accused also stated that he never stabbed the deceased on the right hand side of neck nor on the stomach.

The accused also stated that the deceased was still alive when he left him in the bush. The accused also said that during their struggle the deceased injured him on the forehead by hitting him with the tip of his bush knife and he could not remember whether this had occurred when they stood or fell down.

Regarding the evidence of Nei Rajnish (PW1) that she saw him (accused) stabbing the deceased on the right hand side of the neck, the stomach and the back and all over the body of the deceased the accused denied all this and said that Nei Rajnish was telling lies.

And as regards to the first caution statement which he (accused) gave to the police (22/12/04 at 1700 hours) the accused said that that statement where it was stated that the accused "was lifting his bush knife to strike me" (the accused) was wrong and what is correct was that "he challenged me to a fight" with him first.

In cross-examination the accused confirmed that the bush knife which was shown to him was the one which the deceased was using when he (accused) fought with him. He also confirmed that when he (deceased) told him to fight with him in a clearing and then he (deceased) walked ahead of him (accused) to the clearing and he (accused) followed suit closely behind the deceased in a distance of about two metres apart outside the clearing and in the clearing they were about a metre and half (1½) apart. And when they were about one and half metres apart the deceased struck him with the bush knife which he held in his right hand.

When counsel for the prosecution suggested to the accused that his left hand side should have been hit by the deceased's bush knife as he (deceased) held his bush knife in his right hand and the accused was facing the deceased.

The accused however denied it and said that his right forehead was hit by the deceased. The accused was also cross-examined about the fact that half way through the interview he asked the police to stop the interview and started from the beginning again and said that he wanted this to be done as his first statement was wrong. The accused was also questioned about the inconsistencies in his story in the first interview and the second interview and he said that this happens because he lost his mind.

That concluded the case for the accused. I then heard addresses from counsel for the Republic and counsel for the accused.

Counsel for the Republic Ms P Beiatau and Ms T Tokam argued that the prosecution has proved beyond reasonable doubt that the accused intended to cause the death of the deceased by unlawful act namely the inflicting of serious wounds on the right hand side of the neck, on the left hand side of the stomach and on the back of the deceased as supported by the evidence of Ms Rajnish the principal eye witness of the prosecution and also the evidence of other prosecution witnesses.

Mr B Berina, counsel for the accused on the other hand argues that the prosecution has not proved that the accused caused the death of the deceased. And it is the case of the accused that somebody else apart from the accused has caused the death of the deceased.

Mr Berina also argues that there ought to be some doubt about the veracity of the evidence of PW1 relating to the coconut as none of the witnesses found or saw any coconut at the place where the fight took place.

Further the injury to the forehead of the accused is not consistent with how she described the way the deceased struck the accused. Also witness Kataua who saw drag mark, saw the drag mark from the babai pit. Yet according to the sketch plan (P4) drawn by the investigation police officer the fight took place in places marked X1, X2 and X3. Mr Berina further argues that the evidence of Kataua ought to be examined as well and submits that the witness knew more than he told the court.

Mr Berina also submits that even if the court were of the view that the accused caused the death of the deceased there is evidence for the court to find that the accused acted in self-defence.

Before I consider the evidence I must direct myself that the burden of proof to prove the guilt of the accused beyond reasonable doubt remains upon the prosecution from the beginning to the end of the trial. There is no onus on the accused to prove its innocence. The prosecution must prove the charge and each element of the charge beyond reasonable doubt and if it fails to do so the accused is entitled to be acquitted.

In the present case the prosecution must prove that the accused intended to kill the deceased or cause grievous bodily harm by unlawful act.

The principal and only eye witness in the present case is Nei Rajnish Ting (PW1) a young girl of tender age of 10. She had impressed me with her courage to give evidence in a cold unfamiliar and terrifying court

environment. Despite her initial hesitation, slowness and feeble voice when she testified she gradually unfold her evidence in a convincing and truthful manner. She even was able to correct Mr Berina counsel for the accused when he put to her that the deceased was the one who had challenged the accused first to a fight when they met up in the bush. She responded and denied that the deceased did challenge the accused to a fight.

In his submission Mr Berina, counsel for the accused argued that PW1's evidence is not supported to a large extent by the following evidence:

- None of the witnesses found or saw any coconut at the place where the fight took place. Whilst this may be true it largely depends on what the witness set out to look for at the time, whether it is the coconut or the deceased.
- Mr Berina also argues that the injury to the forehead of the accused is not consistent with how she described the way the deceased struck the accused.

I reject this point as PW1's evidence simply indicated the deceased did strike the accused with his bush knife and accused was very lucky that he was only hit with the tip of the bush knife. This was supported by the evidence of the accused himself. In any event the evidence is that the deceased hit the accused with his bush knife by swinging it back over his shoulder without actually turning his body around.

Mr Berina in his submission also argues that Teauti (PW3) did not see any drag mark.

Again whether one sees or does not see drag mark that largely depends on the witness himself or herself as what he or she had set out to look for in the first place. In the present case Teauti, the son of deceased just did not see the drag mark because he did not look carefully for them. He was concentrating on looking for his father (body) and he did find him and after he found his father he said he lost his mind.

Another point raised by Mr Berina in his submission was that Kataua who saw drag marks from the babai pit. Yet the sketch plan of scene of the crime drawn by the investigation police officer showed that the fight did not take place near the babai pit.

During cross-examination Kataua was given the sketch plan of the scene of crime and he appeared not to have been able to read and follow the plan and was confused. There is also evidence that the body of the deceased was found near the northern side of the babai pit (PW5) towards the northern boundary of the land Tekawa.

In cross-examination Nei Rajnish was quite firm and unshaken in her evidence, and despite her tender age I find her a convincing and truthful witness. I accept her evidence.

The other prosecution witnesses' evidence corroborated or supported the evidence of that of Rajnish in one material particular or other. I also found them truthful witnesses and I accept their evidence.

In his submission Mr Berina suggests that the evidence of Kataua Keiaki (PW8) ought to be examined as well and submits that this witness knew more than he told the court. Kataua is not the principal eye witness for the prosecution but one of the witnesses of the prosecution. Mr Berina had vigorously cross-examined the witness when he testified and the witness was quite firm and unshaken in his evidence. I therefore regard Kataua along with other prosecution witnesses as being a truthful witness and I accept his evidence.

I do not accept the accused's evidence that the deceased had challenged him to a fight and that he (accused) did not kill or inflict any injury on the deceased during that fight. And in preference I accept the evidence of Nei Rajnish (PW1) of how death occurred.

The evidence of Nei Rajnish (PW1) who is the principal and only eye witness to the fight between the accused and the deceased on 20 December 2004 and to briefly summarise her evidence she proves that the accused had stabbed the deceased in cold blood and without any provocation on the part of the deceased from the back on the right hand side of the deceased's neck when he was squatting on the ground tying up his coconuts. The witness also saw the accused stabbing the deceased twice on the left hand side of the stomach as he was lying helpless on the ground. From such stab wounds the deceased bled profusely and his intestines protruded.

The witness also saw the accused stabbing the deceased on the back when he fell and again the wound was quite serious.

The witness also saw the accused inflicting other wounds on the body of deceased but they are not as serious and life-threatening and horrifying as the ones shown in the photographs which the accused inflicted on the right hand side of the neck, on the left hand side of the stomach and on the back of the deceased.

The witness also saw the accused lifting up his knife and then pulled it down and stabbed the deceased with. She also saw the deceased's bush knife which is about an arms length when he held and struck the accused with.

The witness also saw a lot of blood on the deceased and as well as on the accused. After he stopped stabbing the deceased the witness saw the accused dragging the deceased's body to some nearby shrub and left him there with his right leg and knee standing up above the ground.

Beyond reasonable doubt I am satisfied that the accused attacked the deceased and inflicted the wounds as described above.

The other prosecution witnesses also confirmed or supported in some material particular or other the evidence of Nei Rajnish (PW1).

Teman Borerej (PW2) testified that between 9-10 am he met up with the accused north of the football field and saw his body especially the right side of his hand downwards including his shorts were all covered with lots of blood. He also saw an injury on the accused's right side of his forehead but considered that all the blood on his body could not have come from that injury itself. The witness stated also that he had discussion with the accused and he (accused) told him that the deceased tried to strike him (accused) with his bush knife without his knowledge when they (accused and deceased) fought.

Terikaie Moanibae (PW4), a village nurse examined the deceased's body and testified she saw very serious injuries on the right hand side of the deceased's neck, two on the left hand side of the stomach and one at the back. She saw other wounds on the deceased's body but they are minor ones.

She also said that the deceased died from excessive loss of blood from the injuries on the neck, stomach and back of the deceased.

Teaoti and Tinana Tebuka (PW3 and PW5) are the sons of the deceased Tebuka and testified that Tebuka was dead when they found him near the babai pit: they also saw the right leg being raised above the ground.

They also saw lots of blood on the body and on the ground and also confirmed that their father had very serious injuries on the right side of the neck and the left side of the stomach. They also said that they found the body of their father on his own land called Tekawa on the northern side of the land boundary near the northern side of the babai pit.

Another prosecution witness called Kataua Keiaki (PW 8) also saw the body of the deceased where his (deceased) sons found his body. At the scene he saw lots of blood on the body of the deceased, the lavalava, and also on a pandanus root on the spot which was also full of blood. He also saw dragging mark on the ground. He also saw a very serious injury on the right

hand side of the neck of the deceased and also two on the left side of the stomach and one at the back of the stomach.

Ekeua Bombe (PW6) is another prosecution witness who collected the murder weapon namely a small whitish knife and the deceased's bush knife from the accused's house.

Beyond doubt I am satisfied that the accused had attacked the deceased and during that attack he inflicted very serious injuries by stabbing the deceased on the right hand side of the neck, on the left hand side of the stomach (twice) and on the back of the deceased from which wounds the deceased died. Further the accused himself had admitted that he had killed the deceased (see Answer to question 29, caution statement dated 22/12/04 at 2200 hours and the evidence of Kataua Keiaki PW8).

Mr Berina in his submission raises the defence of self-defence as being an alternative defence available in the present case or as he put it "there is evidence for the court to find that the accused acted in self-defence".

The evidence that suggests that the accused had acted in self-defence is the evidence of the accused himself when he testified that the deceased had challenged him to a fight when he met him (deceased) in the bush collecting coconuts for his pig's food. The accused said he (deceased) told him to move to a clearing where they would have a fight and upon reaching the clearing the deceased then struck the accused straight away with his bush knife. Because the accused dodged the bush knife blow by bending down the deceased was only able to hit the accused with the tip of the bush knife on the right forehead and as the result the accused received a minor cut only on the right hand side of the accused's forehead. The deceased tried to attack the accused for the second time but he (deceased) did not succeed as the accused managed to seize the bush knife from him (deceased).

In any case the accused in his evidence denied having inflicted any injuries on the deceased at all during this fight. When one compares the accused's evidence and his caution statement which he gave on 22nd December 2004 at 2200 hours one would find there are inconsistencies between what the accused stated in his caution statement and in his evidence. For example in his evidence the accused stated that when he fought with the deceased he did not inflict any wounds at all on the right hand side of the neck, the left hand side of the stomach (two wounds) and the back of the deceased. Yet in that caution statement of 22 December 2004 taken at 2200 hours, the accused expressly stated: "when he (deceased) fell I really recalled that I stabbed his back with my knife. And when I stabbed his back I heard Tebuka (deceased) saying "Poor Tebuka O! he's dying".

So it can be seen that there is a direct conflict between what the accused stated in his evidence and caution statement referred to above and there are more examples of such inconsistencies throughout in the two caution statements and question and answers and in his evidence. Further the direct evidence of Ms Rajnish (PW1) which I accept, proves beyond doubt that the deceased never challenged the accused to a fight nor ever attacked the accused with the bush knife in the manner as stated and described by the accused in his evidence and caution statement. The deceased did in fact hit the accused with his bush knife by swinging it back across his shoulder without turning around when the accused attacked him by surprise from behind him (deceased).

And if there was one who had acted here in self-defence against the vicious surprised attack of the accused, no doubt, it was the deceased himself who, apart from the insignificant minor cut he had just barely caused to the forehead of the accused, in defending himself against such vicious surprise attack of the accused, the accused continued his onward fierce and brutal attack on the deceased till he rendered the deceased barely alive and of course the deceased died as the result of such gruesome and horrifying wounds.

Beyond doubt I am satisfied that owing to the inconsistencies between the accused's evidence and the said caution statements and the direct evidence of Ms Rajnish I find the accused unreliable and untruthful witness. I therefore reject his evidence on self-defence. And the evidence of the accused relating to self-defence having been rejected and as counsel for the prosecution submits the defence of self-defence fails as it is inapplicable in the present case for insufficient evidence.

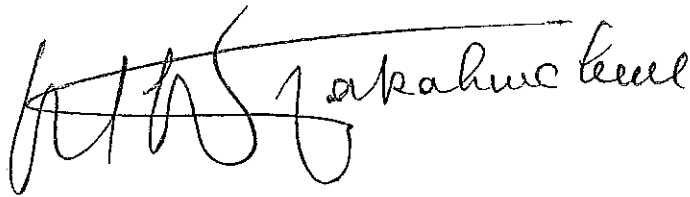
The attack in the present case is a deliberate attack on a man taken by surprise and unable to defend himself. (R v. Taurerei Mikaere Crim case No. 8 of 2000 page 4).

Taking into account the whole of the evidence in the present case I am satisfied that the prosecution has proved beyond reasonable doubt that the accused had attacked and seriously wounded the deceased. He killed him. The intention to cause grievous bodily harm if not death is clear from his actions. The wounds of the deceased supported it.

I therefore find you, Maurintetaake Teboo, guilty of the murder of Tebuka lakobo contrary to section 193 of the Penal Code Cap. 67 and I convict you accordingly.

In accordance with the mandatory penalty under the law I sentence you to imprisonment for life which is to commence from 2 March 2005 when you first went into custody.

Dated the 14th day of March 2005

A handwritten signature in black ink, appearing to read 'Michael N. Takabwe', written in a cursive style. The signature is positioned above the printed name of the judge.

THE HON MR JUSTICE MICHAEL N TAKABWEBWE
Judge