

IN THE HIGH COURT OF KIRIBATI) HIGH COURT CRIMINAL CASE No. 54 OF 2005
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

THE REPUBLIC
VS
MEAMEA THOMAS

FOR THE REPUBLIC: Ms PAULINE BEIATAU
FOR THE ACCUSED: MR GLENN BOSWELL

DATE OF HEARING: 1 MARCH 2006

DECISION ON DISPUTE OF FACTS

During submissions on sentencing there was a dispute between prosecution and defence on a fact. Mr Boswell told the Court that the deceased, when the prisoner came into the house, indecently touched his client's genitals. This had happened before: it had greatly upset the prisoner. Now the deceased did it again. The prisoner who was standing, punched the deceased. The deceased fell off the chair on which he was sitting, hit his head, was injured and died. Ms Beiatau disputed there had been indecent touching on that morning before the prisoner punched the deceased.

The dispute had to be resolved. If the deceased had indecently touched the prisoner again that morning it would be a provocation. Not a defence to the charge of manslaughter but some explanation as to why the prisoner did as he did: relevant to penalty.

I heard evidence from three witnesses: The evidence of Nei Tamarawa Teoiaki was irrelevant.

Nei Beenii loane, the prisoner's grandmother, maintained that the prisoner came into the house (it is of solid construction with a concrete floor slightly above the level of the ground outside) and immediately hit the deceased:-

As soon as he stepped on to raised floor he hit him.

The prisoner in examination in chief stuck to the account Mr Boswell had given in submissions: that the deceased had previously indecently touched his genitals and that the deceased had done it again this morning before he punched the deceased. In cross examination he changed his evidence:-

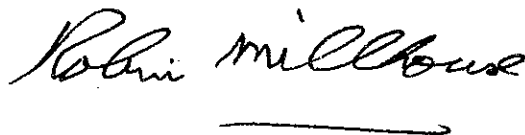
He did not poke my genitals before I punched him.

Mr Boswell protested that his client could not have understood the question. The question was put three times. Mr Interpreter also in translating Ms Beiatau's question added an explanation. The prisoner gave the same answer three times: the deceased had not poked his genitals before he punched the deceased. I am satisfied the prisoner understood what he was being asked and meant to answer in the way he did.

The onus of proving the facts on a plea of guilty, as in a trial, is on the prosecution beyond reasonable doubt (*Blackstone's Criminal Practice, 1991 "Disputes about the facts following a plea of guilty" D16.2 et seq.*)

I am satisfied beyond reasonable doubt that the deceased did not indecently touch the prisoner on this morning before the prisoner punched him.

Dated the 2nd day of March 2006



THE HON ROBIN MILLHOUSE QC
Chief Justice

Note: Pros. informed Court on day of submissions that her sub. has not yet finished.

- : One disputed facts - evidence on that was heard.
- : Ct informed Pros. that her ^{final} subm be heard after judgment of disputed facts being heard.