

REGINA versus TIAONTIN TAWAIA

HIGH COURT OF THE GILBERT ISLANDS

(Thompson J.)

Bairiki 30th May 1977

Criminal Case No 2 of 1977

Murder - plea of guilty of manslaughter
sentence - five years' imprisonment

The accused aged 21 years was charged with the murder of Kaietano Tokataake at Binoinano on Abemama on 7th November 1976 by stabbing him with a knife; The accused pleaded not guilty to murder but pleaded guilty to manslaughter. The facts were that the accused had had quite a lot to drink, went to the Island Night dance at the Maneaba, attempted to "excuse" the deceased who was dancing but the deceased refused and later the accused and the deceased went outside and walked together to a quiet place where the accused, thinking that the deceased was going to fight, deliberately took out his knife and gave the deceased one backhand blow in the stomach with the knife which caused his death.

HELD: That in the circumstances of the case and in view of the fact that the accused had already served seven months in prison awaiting trial he would be sentenced to 5 years' imprisonment to take immediate effect.

J. A. B. Disney, Crown Counsel, for the Crown
Mr. D. Kirton appeared for the accused.

THOMPSON J:- The accused is a man of generally good character. The offence is serious. There was provocation and some intimidation but the use of a lethal weapon was out of all reasonable proportion to the requirements of self-defence, so far as they existed at the time when the blow was struck.

2. The Fiji Court of appeal has given guidance on a number of occasions as to the principles to be applied when sentencing an offender for manslaughter in the Gilbert Islands. Having regard for those principles, for the previous generally good character of the accused, for the

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seriousness of the offence and for the mitigating factors to which the attention of the Court has been drawn by both Mr Disney and Mr Kirton, I consider that the appropriate sentence to impose, is six years' imprisonment. However, the accused has been in custody now for nearly seven months. That is the equivalent of a sentence of just under one year's imprisonment less one - third remission.

3. Accordingly I sentence the accused to serve 5 years imprisonment, the sentence to take effect from to-day.

4. Accused informed of right of appeal (sentence only) to Fiji Court of Appeal.