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IN THE SUPREME COURT OF NAURU

CRIMINAL CASE No.1/74

THE REPUBLIC

v

TEBOE RALPH TAMAKIN

CHARGE: MURDER c/s 302 and 305 of the Criminal Code Act 1899
of Queensland, First Schedule.

DATE OF HEARING: 18th November, 1974

APPEARANCE:

PROSECUTION:

Director of Public Prosecutions, Mr. D.J.A. Dowdall

DEFENCE:

Mr. G.R. Clark & Mr. R. Akiri

JUDGMENT:

The Accused was charged with Murder but very properly, in view of all the facts as revealed in the course of today's proceedings, the Director of Public Prosecutions agreed to accept a plea of guilty to the lesser offence of manslaughter.

Offences of manslaughter vary greatly in their nature and the degree of criminal and moral culpability. They range from offences so close to Murder that they need to be treated as being very nearly as serious as that offence, to offences in which the degree of criminal and moral culpability is so low that they do not warrant punishment. The offence committed by the Accused is well down that scale. In the course of a domestic quarrel he slapped his wife's face twice. The blows were not hard enough to cause bruising or laceration but nevertheless caused her to fall over and strike her head on a table or on the floor. The blow which her head received when she fell caused only a minor abrasion and bruising of the skin of her head but it also caused a blood vessel to burst inside her brain. Six days later she died of the compression of her brain caused by the bleeding from the burst vessel. From the time when his wife lost consciousness immediately after falling, the Accused did all he possibly could to assist her and he ensured that

she received prompt medical treatment. It was unfortunate that Nauru was temporarily without the services of a medical practitioner with the expert knowledge and experience to provide treatment which would almost certainly have saved the woman's life.

While it is impossible to ignore the fact that the Accused's assault on his wife was the event which caused her to fall and to injure herself so that she died, it is necessary, in considering the sentence appropriate to pass on the Accused, to have regard to the nature of the assault and the consequences which the Accused might reasonably have foreseen arising from it, if he had given any thought to the matter. There can be little doubt that, if the woman had not fallen and struck her head, nothing would have been heard of the incident or, if it had ever come to Court, the Accused, in view of his previous good character, would have, at the most, been sentenced to pay a fairly small fine. So far as foreseeability of consequences is concerned, no reasonable person would in the circumstances have foreseen as a real risk the tragic outcome of what the Accused did.

Thus, although the Accused was responsible for his wife's death and has properly pleaded guilty to manslaughter, this is not a case where a long sentence of imprisonment would be justified or where any deterrent sentence is needed. Mr. Martin, the Director of Police, has given evidence that the risk of the Accused committing any further offences involving violence is practically nil. He is a man of 45, who has been in regular employment for 27 years and holds a position of responsibility. He was previously a man of good character. He has undoubtedly suffered a great deal already. He has lost his wife whom, in spite of his assault on her that day, he clearly loved and whose companionship he had shared for 26 years. He has lost the affection of his son, whom he loves dearly. He has lost the respect of his fellow-citizens; in a small community such as Nauru's that is a serious matter for him. He will obviously go on for many years paying a heavy penalty for that one rash act done in the course of a domestic quarrel.

He has already been deprived of his liberty for nearly three months. In all the circumstances, notwithstanding that the offence involves the loss of a human life, I consider that such a period of deprivation of liberty is as great a punishment as this Court would have imposed; if he had not been in custody awaiting trial. As he has been in custody for that period, I sentence him to serve one day's imprisonment i.e. until this Court rises this afternoon.

I.R. THOMPSON
CHIEF JUSTICE