

IN THE SUPREME COURT
REPUBLIC OF NAURU

Criminal Case No.40 of 2011

REPUBLIC

V

TASMAN ATTO

JUDGE: EAMES,C.J.
DATE OF HEARING: 16 November 2011
DATE OF SENTENCE: 25th November 2011
CASE MAY BE CITED AS: Republic v Tasman Atto
MEDIUM NEUTRAL CITATION: [2011] NRSC 19

Sentence - Manslaughter - ss. 303, 310 Criminal Code of Queensland Act 1899

APPEARANCES:

For the Prosecution

Mr W Kurisaqila DPP

For the Defendant

Mr K Tolenoa (Pleader)

CHIEF JUSTICE

- 1 Tasman Atto, you have pleaded guilty to the manslaughter of Frank Keppa who died on 14 June 2011 from head injuries caused by you on 11 June 2011.
- 2 Manslaughter is the unlawful killing of another person, not amounting to wilful murder or murder, and is an offence created by s.303 of the Criminal Code. That offence carries a maximum sentence of life imprisonment, by s.310 of the Code.
- 3 At about 6pm, 11 June 2011 in Nibok District you were observed fighting with Frank Keppa. At first both were standing up. You were swearing, saying "Fuck you, this is my mother's house". Then Keppa fell to the ground. A witness, Jonathan Agir, had been walking by with his grandkids. He said that you just kept on kicking, punching and kneeling the man while he was on the ground. He thought more than 10 additional blows were struck. That was not the last of the violence, however.
- 4 Later, another witness, Weston Doguape, said that when he arrived at the scene you were sitting on a chair on the balcony of Mr Keppa's house. Keppa was lying on the ground nearby. The witness asked you what you had done. You said that the witness knew nothing about what was between you and Frank Keppa. You said that during your younger days Frank Keppa had whacked you on the head with a portable radio. You said that you had already warned Keppa that one time you would come back to retaliate, and said that that is now the mission that has to be accomplished by today.
- 5 Both witnesses said you were drunk. Agir said you were fully drunk, as was Keppa. Mr Doguape thought you were talking nonsense. However, while Doguape was talking to you, you stood up and walked across to where Keppa lay face down on the ground. He was unconscious. You slapped him three times with your right forearm, calling him to wake up. You then turned him over. He was covered in blood and had bruises all over his face. Doguape was asking you to leave the man alone. When he was facing face up you kicked Mr Keppa very hard to the face, three

times.

6 Doguape left the scene but then returned, where he heard you say “that’s what you want to say”.

7 Police attended the scene, and found you trying to wake up Mr Keppa. You were drunk. Police arrested you for assault. Mr keppa was 57 when he died; you are now aged 37 years.

8 The victim was taken to hospital. He was semi-conscious and moaning in pain. His face and scalp were grossly swollen. The doctor asses that Mr Keppa had a severe head injury. He died from those injuries on 14 June, three days after admission.

9 This was a vicious, prolonged, assault.

10 As I have described, you told the witness, Mr Doguape, that there was bad blood between you and the victim. That allegation has been expanded by your family members when interviewed for the purposes of a pre-sentence report by the Chief Probation Officer.

11 You are now 37 years old. You had eight sisters from two relationships. Those children shared accommodation with their parents and also their uncle Frank Keppa. You described your childhood as being isolated and spent in fear of Frank Keppa. You said he tormented the family mentally and physically. That allegation has been supported by family members. One of his cousins, a former police officer, said that he attended the house many times in response to complaints by the de-facto wife of Mr Keppa and from family members. Police in those days treated domestic violence differently and would not lay charges, he said. Your sister Romina Atto gave evidence confirming those events. She said that over years Frank Keppa had regularly evicted family members from the home, and had used violence in doing so. The last time anyone had been evicted was about twelve months before you killed Frank Keppa.

12 Mr Keppa is not able to answer those allegations. On the evidence before me,

however, I would have to accept that there had been a history of violence against members of your family and also yourself, at least at times when you were younger. You claimed that to be the case when you so violently assaulted Mr Keppa, and although you were drunk, you plainly then thought you had a long standing grievance against him. But what happened in the past, cannot justify what happened on this day. You took the life of a man, when he was defenceless on the ground. Members of his family mourn him.

13 It is very much to your credit that this is your first offence in your 37 years. You are married with three children. You have a history of being a productive worker and provider for your family. You completed your secondary education and have many testimonials to your employment history. You had a range of jobs including labouring, but also got a trainee position at Nauru Phosphate Corporation in 1997 in the carpentry workshop, then worked with Ausaid and private businesses, getting experience in a range of work and earning praise for your good work. You worked with Ronphos for many years until made redundant in 2005. Your employers spoke highly of you. You are unemployed after being dismissed from central Meridian Inc earlier this year when you were charged.

14 Mr Aingimea tendered a number of impressive character references. One person, a senior Member of Parliament, described you as upstanding and a highly regarded member of the community. Another described you as a loving and caring person, with a fine family. You are active in church affairs.

15 You expressed deep remorse when interviewed by the Chief Probation Officer, and you said you were devastated to realise what you had done, once you sobered up. You have pleaded guilty, which is an important consideration in your favour.

16 It is clear that you were very drunk, but you were angry, too, and seeking revenge. Although I do not find that you saw Mr Keppa with revenge in mind. I accept that he started to fight you after you made a complaint to him and events then escalated, with old resentments spilling out.

17 Your plea shows that you did know what you were doing, even if your judgment was distorted by the liquor. The Republic has accepted your plea of guilty to manslaughter, which means that you did not form the intention to kill or to cause really serious injury.

18 Manslaughter is an offence for which a wide range of sentences are imposed, depending on the particular circumstances in which each death occurred. As the maximum available sentence demonstrates, however, it is regarded by the legislature as a very serious offence in all instances.

19 This case is not at the worst end of the scale, but nor is it a minor example of manslaughter.

20 Options other than imprisonment have been canvassed in submissions by Mr Tolenoa, but in my view, notwithstanding that this is your first offence, and notwithstanding the many good things that can be accepted about your character, only a sentence of imprisonment can be appropriate in this case.

21 Tasman Atto you are convicted of manslaughter and sentenced to four years' imprisonment, to date from the 14th day of June 2011.