IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 146 of 1977

THE REPUBLIC

v.

ANGELICA ITSIMAERA

CHARGE:

1. Reckless Driving: C/S 19(1) of the Motor Traffic Act, 1937-1973.

2. Driving a Vehicle Without Compulsory Third-Party Insurance: Contrary to Motor Vehicle (Third Party Insurance) Act, 1967-1973.

3. Failure to Stop after an Accident: C/S 23, Motor Traffic Ordinance, 1937-1973.

REASONS:

COUNT 1

It is common ground that the accident occurred through a collision between the car driven by the accused and a stationary motorcycle which was near the center line of the road. The prosecution version is that the rider of this cycle was attempting to kick start the cycle after it had stalled on the road. The prosecution very properly concedes that this was not a proper place at which to attempt to kick start the cycle.

As it is not quite clear whether the lights of the motorcycle were on at the time, the prosecution has again very properly conceded that this case should be dealt with on the supposition that the lights were not on.

The rest of this order proceeds on the basis that the accused has the benefit of these two points which the prosecution has conceded. But for them the charge against the accused could well have been a charge of manslaughter.

After giving the accused the benefit of these two circumstances, there still remains the fact that on a road which was straight and where nothing is suggested as having obstructed the accused's vision, she collided with a large stationary object which, had she been driving with due care and at the proper speed, she could certainly have avoided.

It is contended for the prosecution that the evidence shows that the accused was driving at an excessive speed. This version is certainly supported by the facts that the motor-cycle was pushed a distance of 37 feet and that the deceased sustained massive injuries of which he died before arrival at the hospital. The right side of the car was also extensively damaged. No brake marks have been found nor was there any sound of brakes or of screeching tires.

The speed limit throughout the Island has advisedly been fixed by law at 30 miles per hour. There can be no doubt that the accused was driving not only in excess of that speed but also in a manner so negligent that she could not avoid a large object which lay in her way. The road was certainly broad enough for her to have avoided this if she had been driving carefully.

It is said on behalf of the accused that the lights of her car were defective and the prosecution has not disputed that the lights did not throw a very good beam. If this be so, I consider it all the more reason why a driver should drive at a slower speed so as to have control of the vehicle within the extent of visibility of the lights. To drive with poor lights and at the same time to drive at an excessive speed so that the car cannot be controlled within the range of those lights only aggravates the offence.

It is to be remembered that Island road is the principal highway and that there are houses on either side. There is only a narrow pavement and children regularly play on the pavement and sometimes ride on the road. The safety of this road is vital to the life of the community and reckless driving upon it is, in my view, a serious offence.

The negligence of the accused was also such that she claims not to have seen the injured person at all. Mr. Keke has submitted that visibility of the center of this road would have been less because the car had a left-hand drive. I do not think this makes a difference, as one is required to drive in such a manner as to have a clear visibility of the entirety of one's path. The circumstance that she did not even see the deceased seems only to strengthen the case of reckless driving.

I have taken into account the circumstances Mr. Keke has mentioned relating to the argument that the accused had with her mother shortly before the accident and that she was

upset at the time. There is no material before me indicating that this was an argument of a serious nature such as would be taken into account as a mitigating circumstance.

The accused is one who holds a position of responsibility in the community and is a person who is expected to set an example by her respect for the law and for the safety of the community. I have given anxious consideration to her case but for the reasons set out above I have no alternative but to impose a sentence of imprisonment in regard to Count 1.

Taking into account the circumstances urged on her behalf I would impose a term of imprisonment of three months and also suspend her driving license for a year, effective from the date of her release.

COUNT 2

On this Count, the facts of which are not disputed, I impose a fine of $25.00. I have taken into account the fact that the car was not the car of the accused and that she borrowed it in good faith.

COUNT 3

On this Count, I would impose a fine of $100.00. I do appreciate that the accused could reasonably have feared physical harm if she stopped at the site but this does not exempt her from her duty to have reported the accident to the police station. There was a delay in doing this and it would appear that there was an initial refusal by the accused to accompany the police to the station. However, I have taken into account the fact that she did make a statement thereafter.

C.G. Weeramantry

C.G. WEERAMANTRY
Acting Resident Magistrate

25th July, 1977