

R. v. LAZALO TEMBO.

CRIMINAL REVIEW CASE No. 235 OF 1941.

Penal Code section 209—scope of “ necessities of life ”—failure to send wife to hospital not within section—powers of section 168 (2) of the Criminal Procedure Code cannot be invoked if the minor offence is very different from the offence charged—scope of section 214 of the Penal Code.

The facts and the law are set out in the judgment hereunder.

Robinson, A.C.J.: Accused was charged with failing to supply the necessities of life to his wife, *contra* section 209 Penal Code in that he failed to send her to the native hospital to give birth to her child. She died from haemorrhage.

It is clear to me that these facts do not fall within section 209 Penal Code. “ Necessaries of life ” are such as food, water and clothes.

The question is: do the facts fit any other section, and, if it is a minor offence, can the conviction be changed by virtue of section 168 (2) Criminal Procedure Code.

In my opinion, in the special circumstances of this case, the accused being a compound police boy at Lusaka, and medical attention being free and readily available, facts which he must have known, it could be said that an offence *contra* section 214 Penal Code¹ had been committed. It was his duty under the circumstances, not to omit to take precautions to avoid harm, especially as he had gone to his father-in-law for advice, and he had told him to take his wife to the hospital.

But that charge is so different from a charge *contra* section 209 Penal Code that the conviction cannot be changed by virtue of section 168 (2) Criminal Procedure Code. The conviction, therefore, must be quashed.

¹ Omitting to do an act it is one's duty to do thereby causing harm to a person.—*Editor.*