

NOBORU YAOCH, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 56

Trial Division of the High Court

Palau District

July 30, 1954

Defendant was convicted in Palau District of assault and battery in violation of T.T.C., Sec. 379. On appeal, defendant contends that force used by him was exerted in self-defense and therefore conviction should be reversed. The Trial Division of the High Court, Associate Justice James R. Nichols, held that force used by appellant was in excess of that which he was privileged to use.

Affirmed.

1. Assault and Battery—Self-Defense

If victim of alleged criminal assault is aggressor, finding that accused in criminal case acted in self-defense is justified. (T.T.C., Sec. 378)

2. Criminal Law—Self-Defense

When one is acting in self-defense he may only exert such force as he has reasonable grounds to believe is necessary to protect himself from injury.

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3. Criminal Law—Self-Defense

One may not use any means of self-defense which is likely to cause injury or harm in excess of that necessary to protect himself from injury.

4. Criminal Law—Self-Defense

In determining whether particular means used in self-defense is or is not excessive, amount of force exerted, means or instrument by which it is applied, manner or method of applying it, and circumstances under which it is applied are factors to be considered.

5. Assault and Battery—Self-Defense

Where person accused of assault and battery contends he was acting in self-defense, and evidence shows he threw victim to ground and thereafter picked up rock and struck victim's head, he is held to have used force in excess of that which he is privileged to use in self-defense. (T.T.C., Sec. 379)

<i>Assessor:</i>	JOSEPH TELLEI
<i>Interpreter:</i>	FRANCISCO K. MOREI
<i>Reporter:</i>	ZELLA L. MOORE
<i>Counsel for Appellant:</i>	ROMAN TMETUHL
<i>Counsel for Appellee:</i>	SGT. ULENGCHONG

NICHOLS, *Associate Justice*

The Trial Court found the appellant guilty of the offense of Assault and Battery, as set forth in Section 379 of the Trust Territory Code. The appellant contends that the force used by him was exerted in self-defense and, because of that fact, his conviction should be reversed.

Two witnesses for the prosecution, including the victim, and the appellant testified at the trial. While the testimony is clear that two skirmishes occurred between the victim and the appellant immediately prior to the altercation in which the alleged offense occurred, the evidence is not clear as to who was the original aggressor. This first fight was stopped by the witness Keremius. The victim was admittedly the aggressor in the second fight, which was also stopped by the witness Keremius. In connection with the beginning of the third fight, the appel-

lant claims that the victim tore his shirt. Because of this alleged provocation, the appellant admits that he flung the victim on the ground and struck the victim's head with a rock, thereby inflicting an injury.

The appellant argues that the victim attacked him on three different occasions within a short period of time, and that the force used by him was exerted in self-defense. From American Jurisprudence on Assault and Battery, Section 47, he cites the following sentence in support of this contention: "If, however, he is pursued and is unable to get away from his pursuers, and the violence of the attack is such that it is reasonably certain that a great injury will be inflicted, he has the right of self-defense." The first paragraph in Section 67 of Miller on Criminal Law entitled "The Nature of Self-Defense", and Section 67(h) of Miller on Criminal Law entitled "The Duty to Retreat" were also cited in support of appellant's contentions.

The appellee argued that the appellant without reason, struck the victim on the head with a rock, thereby causing a severe injury. The appellee therefore contends that the appellant was guilty as charged, and that the judgment of the District Court should be affirmed.

CONCLUSIONS OF LAW

[1] If the appellant's contention that the victim was the aggressor in the third fight is true, a finding that he acted in self-defense could well have been justified.

[2-4] However, the authorities are in accord that when one is acting in self-defense, he may only exert such force as he has reasonable grounds for believing necessary for protecting himself from injury. One may not use any means of self-defense which is likely to cause injury or harm in excess of that necessary or reasonably believed to be necessary for one's own protection. In determining whether the particular means used is or is not excessive,

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the amount of force exerted, the means or instrument by which it is applied, the manner or method of applying it, and the circumstances under which it is applied are factors to be considered.

[5] Upon consideration of all the factors set forth above, it is the opinion of this court that the appellant, having thrown the victim on the ground, used force in excess of that which he was privileged to use in picking up a rock and striking the victim's head.

JUDGMENT

The finding of guilty and the sentence appealed from in Palau District Court Criminal Case No. 137 are affirmed.