

TRUST TERRITORY v. LINO

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

LONE LINO

Criminal Case No. 65

Trial Division of the High Court

Marshall Islands District

May 26, 1972

Prosecution for assault and battery with a dangerous weapon. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, found defendant guilty where he had asked a group of men if any would stand and help man defendant had seriously wounded with a machete, one man grabbed the machete in an attempt to disarm defendant, and defendant pulled it from the man's hand, thereby cutting him.

**1. Assault and Battery With a Dangerous Weapon—Acts Constituting**

Where defendant, after severely wounding one man with a machete, asked who among a group of nearby men would stand up and help first man attacked, a man grabbed the machete in an attempt to disarm defendant, and defendant pulled it out of second victim's hand, thereby

cutting him, defendant committed assault and battery with a dangerous weapon. (11 T.T.C. § 204)

**2. Assault and Battery—Elements of Battery**

The application of force constituting a battery need not be a direct striking blow, but may be indirect. (11 T.T.C. § 204)

**3. Assault and Battery With a Dangerous Weapon—Defenses**

Where defendant, who had severely wounded a man, asked a group of nearby men who among them was a friend of wounded man and would help him, that a man grabbed defendant's machete in an attempt to disarm him was a normal response to the situation and such response was not a defense to assault and battery with a dangerous weapon, occurring when defendant pulled the machete from second victim's hand, thereby cutting him. (11 T.T.C. § 204)

**4. Custom—Conflict With Law**

Custom of forgiving one who has offended or harmed you may not be applied in a criminal case, for the law requires punishment of anyone convicted of a statutory offense. (1 T.T.C. §§ 14, 102)

**5. Custom—Conflict With Law**

When custom of forgiving one who has offended or harmed you conflicts with the law it must give way to the law. (1 T.T.C. §§ 14, 102)

**6. Custom—Conflict With Law**

No custom, however long and generally it has been followed, can nullify the plain purpose and meaning of a statute. (1 T.T.C. §§ 14, 102)

**7. Custom—Conflict With Law**

The desire of the victim of a crime not to have the perpetrator punished because the victim has forgiven him under a custom will not be allowed to affect the enforcement of any applicable criminal statute. (1 T.T.C. §§ 14, 102)

*Assessor:*

KABUA KABUA, *Presiding Judge  
of the District Court*

*Interpreter:*

MICHAEL CAPELLE

*Reporter:*

NANCY K. HATTORI

*Prosecutors:*

RUSSELL W. WALKER, ESQ., *Dis-  
trict Attorney*, and BEIA

LALEJ, *District Prosecutor*

*Counsel for Accused:*

BENJAMIN M. ABRAMS, *Esq.*,  
*Public Defender*, and ANIBAR  
TIMOTHY, *Public Defender's  
Representative*

TURNER, *Associate Justice*

The defendant was accused of two counts of Assault and Battery with a Dangerous Weapon contrary to 11 T.T.C. 204. The assaults occurred in the street near the Kitco Club on Ebeye Island, Kwajalein Atoll, after the club bar had closed for the evening.

An interesting question of law, warranting written findings and conclusions, has been raised by the defense challenge to the sufficiency of the evidence relating to the second count of the amended information alleging assault with a dangerous weapon upon Atrik Nelson, whose name appears in the information as Nelson Tobej. It also has been indicated by defense counsel that an appeal will be taken from a guilty verdict. It is therefore necessary that written findings and conclusions be made.

With respect to the assault upon Nelson, the Court takes the version given by the defense witnesses as to what happened. According to these witnesses, when the accused approached a group sitting outside the Kitco Bar after it closed, he asked:

“. . . who among us was Kimura's (the other victim) friend that is willing to stand up and help Kimura?"

According to another defense witness, Heskaiia Ramon:

“. . . people shouted to us, telling us to watch out for the knife he had."

Nelson and two others jumped up toward the accused, and according to Nelson:

"I was reaching out to grab hold of the knife, that is how I cut my hand."

Another witness explained the scene:

"Q: Before Nelson walked towards Lone to grab the knife, were there any words that he said to him?"

A: None, the only thing he said was, 'Lone, give me that knife.'"

“I seen Nelson, he was trying to take the knife away from this gentleman and when he pulled the knife away from Nelson he cut his hand.”

Taking the testimony in the light most favorable to the accused, which is contrary to the rule, the Court concludes the accused, to prevent being disarmed, pulled a machete out of the victim's hand, thereby cutting him. As to the rule that the evidence should be considered in a light most favorable to the government, see *Debesol v. Trust Territory*, 4 T.T.R. 556, and cases cited.

The question of law then is whether or not the accused is criminally liable when instead of striking the victim with the machete, he pulled it from the victim's hand when he grabbed the blade to take the knife away from the accused.

[1,2] We conclude there is criminal liability because application of force need not be a direct striking blow but may be indirect. Wharton's Criminal Law, Volume 1, page 687, says:

“While a battery is often described as the inflicting of ‘bodily harm’ or ‘injury’, any unlawful touching of the person of another constitutes a battery even though no physical injury is inflicted thereby.” (Citing)

[3] Perkins, Criminal Law, 1957, p. 622, 623, 624, and 625, discusses the causal relationship between the acts of the wrongdoer and the “normal response” to the situation whereby the victim is injured. We hold the “normal response” in the situation arising here would be to disarm the individual who threatens harm. Defense's argument that an attempt to take the machete from Lone was “abnormal” is totally rejected. Equally unacceptable is defendant's suggestion that the accused “was standing holding a knife in an innocuous fashion.” The evidence is to the contrary.

As to the other count of the charge, the evidence is clear

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the accused attacked the victim, Kimura Riklens, and severely wounded him. Both the victim and Alfonso Capelle, in front of whose house the attack occurred, identified the accused as the machete wielder.

The testimony of the victim, Kimura, was most reluctant. When questioned by the Assessor, he admitted he had "forgiven" the accused in accordance with custom and had attempted to have the charge dismissed.

This situation frequently arises in the Trust Territory because it is recognized local custom for a victim to "forgive" and thereby avoid imposing punishment upon one who has offended or harmed him. It also is true that the Bill of Rights, 1 T.T.C. 14, provides that "due recognition shall be given to local custom . . . except as otherwise provided by law." Also, 1 T.T.C. 102 provides:

"The recognized customary law of the various parts of the Trust Territory shall have the full force and effect of law so far as customary law is not in conflict with (written and statutory law)."

[4-6] Even though we recognize this custom of "forgiveness", we may not apply it in a criminal case which requires punishment of anyone convicted of the statutory offense. When "forgiveness" is in conflict with written law, it must give way to such law. This Court is bound by the statement of the Appellate Division made in *Ngiruhelbad v. Trust Territory*, 2 T.T.R. 631, 636:

"No custom, however long and generally it has been followed, can nullify the plain purpose and meaning of a statute."

[7] The legislature has enacted criminal laws providing for punishment upon conviction in court. It is up to the Trust Territory Government to enforce the law. The desire of a victim not to have the accused punished because he has been "forgiven" under the custom may not affect the enforcement of the statute. This replacement of custom by written law is discussed in *Figir v. Trust Territory*, 4

T.T.R. 368. The only effect resort to the custom of forgiveness by a victim has upon prosecution for a statutory offense may well be the increased difficulty of obtaining proof.

In this case, there was sufficient information obtained from the victim, despite his reluctance to testify, which together with the testimony of the eyewitness Capelle, supports a finding of guilt as to the first count.

It is

Ordered, Adjudged and Decreed :

That Lone Lino is found guilty of Count One as charged of Assault and Battery with a Dangerous Weapon, a machete, upon Kimura Riklens, and

That Lone Lino is found guilty of Count Two as charged of Assault and Battery with a Dangerous Weapon, a machete, upon Nelson Tobej, also known as Atrik Nelson.