

TITHIN MOON, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Appeal No. 10
Appellate Division of the High Court
January 24, 1958

Appeal from conviction of burglary and petit larceny in violation of T.T.C., Sec. 391 and Sec. 397, in Yap District. Appellant contends that evidence was insufficient to prove guilt beyond a reasonable doubt. In a Per Curiam opinion, the Appellate Division of the High Court, held that trial judge had opportunity to hear witnesses and judge their credibility and that appellate court would not substitute its judgment on these issues for that of trial court.

Affirmed.

Appeal and Error—Scope of Review—Witness Credibility

Where trial court has opportunity to hear witnesses and judge of their credibility, judgment of trial court will be affirmed as to these issues.

Counsel for Appellant: ROSCOE L. EDWARDS, *Public Defender*
Counsel for Appellee: ALFRED J. GERGELY, *District Attorney*

Before SHIVER, MANIBUSAN, *Temporary Judges*
PER CURIAM

The appellant was convicted of the crime of burglary and petit larceny in the Yap District. He contends on appeal that the corpus delicti was not shown beyond a reasonable doubt; that he was entitled to a dismissal of the information at the close of the government's case; and that the sentence imposed upon him constituted cruel and unusual punishment. This last point is obviously without merit as the sentence was two years with the last six months suspended. The maximum sentence for burglary is ten years.

The evidence which the trial court was entitled to believe showed that the appellant was at the house of Wag at about 11:00 o'clock p.m., February 25, 1957. This house

was open, the walls not having been built. The appellant left Wag's house and went to another house belonging to Wag a short distance away. This house was normally occupied by Adagil, the daughter of Wag but Adagil had been absent from the house for a few days. The appellant was seen by Kengim, a municipal policeman at Adagil's house and Adagil's mother testified that she saw the appellant flashing a light inside Adagil's house after she had heard him kick at the locked door. A bottle or jar of pomade was introduced by the prosecution without objection as having been found in the appellant's canoe and this was identified as being the property of Adagil. There was further testimony that there was a twenty dollar bill, the property of Wag and his wife in their chest at Adagil's. It was contended that the money was kept there for greater safety because Adagil's house was locked. The money was missing the next morning. Complaint was promptly made to the magistrate.

The appellant admitted that he had visited Wag's open house about the time in question but denied that he had entered Adagil's house. The trial court had the opportunity to hear the witnesses and to judge of their credibility.

The judgment of guilty is affirmed.