

BAULES SECHELONG, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 179
Trial Division of the High Court
Palau District
July 23, 1959

Defendant was convicted in Palau District Court of having made accusation constituting "immoral allegation and vicious defiance" in violation of generally respected native custom. On appeal, defendant contends custom was not violated as accusation was true and made in good faith attempt to settle dispute. The Trial Division of the High Court, Chief Justice E. P. Furber, held that only violations of customs which are so serious as to be generally regarded as deserving punishment can be considered crimes in absence of legislation to define them.

Reversed.

1. Domestic Relations—Marriage

Both Palauan custom and English-American common law recognize strong public interest in protecting and encouraging harmony between husband and wife.

2. Custom—Crimes

If accused in criminal prosecution under local custom fails to observe present-day Palauan practice by trying personally to settle dispute, he has not committed any crime in doing so.

3. Criminal Law—Custom

Every failure to observe nicest details of polite custom cannot fairly be considered a crime.

4. Criminal Law—Custom

Only those violations of custom which are so serious as to be clearly regarded by great mass of population concerned as deserving some punishment can properly be considered crimes without any legislation to define them.

5. Custom—Violation

Some violations of custom may form basis for civil damages without being crimes.

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<i>Interpreter:</i>	SYLVESTER F. ALONZ
<i>Counsel for Appellant:</i>	WILLIAM O. WALLY
<i>Counsel for Appellee:</i>	JOHN O. NGIRAKED

FURBER, *Chief Justice*

This is an appeal from a conviction for having made an accusation against a woman in front of her relatives and husband, which is alleged to constitute "immoral allegation and vicious defiance" in violation of generally respected native custom of the Palau Islands.

The prosecution itself seems to have been in great doubt as to the exact elements of the crime in question. The complaint alleged that the accused made the accusation involved "falsely and maliciously". There was no evidence of "vicious defiance" aside from the making of the "immoral allegation".

The defense presented was that there was no violation of the custom because the accusation was true and was made in attempt in good faith to settle a dispute between the complainant and the accused's wife.

After substantial evidence had been introduced tending to show that the accusation was true, the prosecutor took the view that the truth of the accusation was not involved. In its written opinion the trial court adopted that view and made clear that it was not passing on the question of the truth of the accusation. Nothing was said in that opinion about the question of malice.

The appellant argues that the crime alleged here under Palauan custom is similar to criminal libel and that there was no crime shown because the accusation made by the defendant was shown to have been true—or certainly not shown beyond a reasonable doubt to have been false—and was also shown to have been made in a peaceable and respectful attempt in good faith to settle a domestic dispute.

The appellee argues that the allegation in the complaint that the defendant's accusation was false is surplusage and not essential to the crime, that malice also is either not essential or else it is to be inferred from the words admittedly used, and that if the accused really wanted to settle a dispute such as that involved here, he should have used an intermediary and not tried to do it himself even if, as some of the evidence tended to show, the complainant had herself invited him to come and discuss the matter.

CONCLUSIONS OF LAW

[1, 2] 1. The evidence for the prosecution, taken alone, indicates that the immediate incident involved here was precipitated by very upsetting remarks made by the complainant to the accused's wife. This court can find nothing in the evidence to show the slightest indication of malice on the part of the accused or throw doubt on his good faith. Both Palauan custom and English-American common law recognize a strong public interest in protecting and encouraging harmony between husband and wife. Consequently if the accused failed to observe the best present-day Palauan practice—concerning which there may be some doubt under the circumstances here disclosed—by trying personally to settle the dispute between his wife and the complainant, the court holds that he has not been shown to have committed any crime in doing so.

[3-5] 2. Every failure to observe the nicest details of polite custom cannot fairly be considered a crime. Only those violations of custom which are so serious as to be clearly regarded by the great mass of the population concerned as deserving, right down to the present time, punishment like imprisonment, fine for public benefit, or worse—such as banishment or exile for a period—can properly be considered crimes without any legislation to

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define them. Some violations of custom may carry with them no burden at all other than disapproval of the community or part of it. Other violations may form the basis for civil damages, but still without being crimes.

JUDGMENT

The finding and sentence of the Palau District Court in its Criminal Case No. 1307 are set aside, the finding is changed to "not guilty" and the accused acquitted.

EBAS, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 185

Trial Division of the High Court

Palau District

July 23, 1959

Defendant was convicted in Palau District Court of petit larceny of detached radiator of weapons carrier belonging to Trust Territory Government, in violation of T.T.C., Sec. 397. On appeal, defendant contends that no intent to steal was shown and that radiator had been or was going to be thrown away. The Trial Division of the High Court, Chief Justice E. P. Furber, held that all technical elements of larceny have been shown.

Affirmed.

1. Larceny—Intent

In criminal prosecution for petit larceny, even if accused intended to give detached radiator to purchaser of weapons carrier, he knew or ought to have known that he had no right to do this. (T.T.C., Sec. 397)

2. Larceny—Intent

In criminal prosecution for petit larceny, intent of accused, or his honest belief that no one would complain of his taking damaged radiator, go only to question of blame, that is, amount of sentence, factors to be considered by trial court. (T.T.C., Sec. 397)