

EBAS v. TRUST TERRITORY

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)

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

FURBER, *Chief Justice*

This is an appeal from a conviction of petit larceny of a detached, used, and damaged radiator of a weapons carrier, which radiator belonged to the Trust Territory Government although the weapons carrier to which the radiator is claimed to have been assigned, had been sold—apparently as surveyed government property.

The appellant advanced two grounds for his appeal:— First, that intent to steal had not been shown beyond a reasonable doubt because the accused had not profited by the taking, but had just given the radiator to the man to whom he believed the government should give it anyway as a part of the weapons carrier he had bought; and second, that the radiator either had been or was going to be thrown away. His counsel argued that the only real mistake that the accused had made was not to notify his American supervisor about the situation.

The appellee argued that defendant had clearly admitted taking the radiator and that this was done before there was any intent to give it to the purchaser of the weapons carrier.

CONCLUSIONS OF LAW

[1] 1. This case is governed by the principles explained in the first paragraph of this court's conclusions of law in the case of *Marbou v. Trust Territory of the Pacific Islands*, 1 T.T.R. 269. Even if the accused only intended to build up good will by giving the radiator in question to the purchaser of the weapons carrier, he clearly knew, or ought to have known, he had no right to do this. Even on his theory of the case, all the technical elements

of a larceny have been shown. See Miller on Criminal Law, par. 114, p. 365-370.

[2] 2. Taking the evidence in the light most favorable to the accused, the best that can be said for him is that he may have honestly believed that no one would complain about his taking the damaged radiator. There is also an inference from the evidence of the complainant, who was the accused's American supervisor, that if he had not been under some form of pressure, or had been previously informed of all the facts, he might not have brought this matter to court. On the other hand, the evidence gives strong indication that any intent to give the radiator to the purchaser of the weapons carrier arose some time after the taking. In any event, these matters go only to the question of how much the accused should be blamed for what he did or, in other words, the question of the amount of the sentence. In the opinion of this court, the trial court gave adequate consideration to these matters in the relatively light sentence which it imposed.

JUDGMENT

The finding and sentence of the District Court for the Palau District in its Criminal Case No. 1369 are affirmed.