

TIMAS v. TRUST TERRITORY

2. The fines already paid are to be retained pending the outcome of these new trials and the amount so paid in any one of these cases is to be applied in payment of or toward the payment of any fine that may be imposed in that case as a result of the new trial. Any excess above such fine finally imposed, or the whole of the fine already paid in any of these cases which is disposed of without the imposition of any fine upon new trial, is then to be returned to the accused.

TIMAS and WANTER, Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellees

Criminal Case No. 116

Trial Division of the High Court

Truk District

December 22, 1959

Appeal from Truk District Court decision affirming conviction of accused by Community Court of Lukunor Municipality for violation of Municipal Ordinance No. 1-51, prohibiting drinking of yeast. Appellant contends that ordinance was invalid since it was not filed with Clerk of Courts and that there was insufficient evidence to find accused guilty beyond reasonable doubt. The Trial Division of the High Court, Chief Justice E. P. Furber, held that since ordinance was promulgated prior to executive order requiring filing, it was valid, but that evidence was insufficient to prove guilt of defendants beyond reasonable doubt.

Reversed and remanded.

1. Criminal Law—Statutes

Fact that no signed copy of municipal ordinance is on file with Clerk of Courts for Truk District is immaterial in conviction for violation of ordinance, where ordinance was passed prior to executive order requiring such filing. (T.T.C., Sec. 31; Executive Order No. 60)

2. Courts—Judicial Notice

Community Court may take judicial notice of ordinance and presume it was duly enacted in absence of evidence to contrary.

3. Criminal Law—Burden of Proof—Reasonable Doubt

In criminal prosecution, proof beyond reasonable doubt of all essential elements of crime is fundamental to Trust Territory system of justice.

4. Criminal Law—Complaint

Although time and place should be stated in criminal charge, it is sufficient if it is proved that crime was committed prior to bringing of charge, within period of limitations, and within jurisdiction of court, provided accused has not been misled to his prejudice.

5. Criminal Law—Burden of Proof

Finding of guilt in criminal prosecution cannot be based on inference drawn merely from arguments or lack of arguments of accused.

6. Criminal Law—Evidence

Where accused pleads not guilty in criminal prosecution, finding of guilt must be based upon evidence or upon express admissions made voluntarily.

Assessor:

JUDGE UPULI

Interpreter:

F. SOUKICHI

Counsel for Appellants:

ANDON L. AMARAICH

Counsel for Appellee:

MITARO S. DANIS

FURBER, *Chief Justice*

These appeals are from convictions (both in the same case) originally by the Community Court of Lukunor in its Criminal Case No. 61, in which both accused were found guilty of drinking yeast in violation of Lukunor Municipal Ordinance No. 1-51. Both convictions and sentences were affirmed on appeal by the District Court sitting in the Mortlock Islands.

Counsel for the appellants, in oral argument, raised two grounds of appeal, namely, (1) that there was insufficient evidence to show that either accused was guilty beyond a reasonable doubt, and (2) that no signed copy of Lukunor Municipal Ordinance No. 1-51 had been filed with the Clerk of Courts nor was it shown anyone had signed it and that it should therefore be declared invalid.

Counsel for the appellee complained that these grounds were different from the ones advanced in the District Court and that he was prepared to argue only the grounds advanced in the District Court. A brief recess was granted

at the request of counsel for the appellee to permit him to study the records further with regard to the grounds now alleged by the appellants. After this recess, counsel for the appellee argued that the evidence of the smell of liquor on Timas and the lack of any argument in the original trial court that the accused were not guilty, showed that they were just relying on technicalities and were, in fact, guilty.

In rebuttal, counsel for the appellants pointed out that there was no evidence at all that either of the appellants had been drinking within the geographical limits of Lukunor Municipality.

OPINION

[1, 2] 1. The fact that no signed copy of Lukunor Municipal Ordinance No. 1-51 is on file with the Clerk of Courts for the Truk District is immaterial. This ordinance was allegedly passed in accordance with its numbering in 1951, long before the issuance of Executive Order No. 60 on October 10, 1956, which added to the Code Section 31, entitled "Municipal Ordinances". This new Section 31 imposed for the first time specific requirements as to how municipal ordinances should be made public, including provisions for posting of a copy signed by the magistrate or a secretary of the municipality, except in the case of those municipalities where the District Administrator determines that posting would be an undue burden. It further provided that each municipality required to make its ordinances public by posting should send a copy of each ordinance as posted to its District Administrator and Clerk of Courts as soon as practicable with a statement of the date of posting. This new section, however, had an express provision in it that nothing contained in that section (or in Section 20), should of itself affect the validity of any existing municipal ordinance. Lukunor Municipal Ordi-

nance No. 1-51 appears to have been made public and notice of it collected by the Clerk of Courts in the informal manner which was usual at that time in the Truk District. The Community Court of Lukunor was accordingly entitled to take judicial notice of it and presume that it was duly enacted in the absence of evidence to the contrary. The District Court and this court, on appeal, are entitled to do likewise. 20 Am. Jur., Evidence, §§ 37 and 38. 37 Am. Jur., Municipal Corporations, § 154.

[3] 2. On the other hand, proof beyond a reasonable doubt of all the essential elements of a crime is fundamental to the Trust Territory system of justice. The record in this case shows not the slightest evidence that the accused Wanter had been drinking any alcoholic beverage, and the testimony of the complaining witness clearly indicates that she had no knowledge that would show that he had been. His inclusion in the complaint appears to have been based solely on the fact he was accompanying Timas. There is some evidence indicating that Timas may have drunk some alcoholic beverage, but there is no indication at all as to whether he drank this within the geographical limits of Lukunor Municipality to which the ordinance applies.

[4-6] 3. For the guidance of all concerned at the new trial ordered for Timas, attention is invited to the fact that there is no merit, as a matter of law, in the two points argued by the accused by way of defense in both the Community Court and the District Court, namely, (1) that the offense alleged to have occurred "on or about April 9, 1959" actually occurred on the 8th, and (2) that the complainant really didn't want the matter brought to court. For a discussion of the law concerning the first of these points, see opinion of our Appellate Division in the case of *Koro Paul, Appellant, v. Trust Territory of the Pacific Is-*

lands, Appellee, 2 T.T.R. 603. In that opinion, the Appellate Division stated: "Though time and place should be stated in the charge, it is generally sufficient, so far as these matters are concerned, if it is proved that the crime was committed prior to the bringing of the charge, within the period of limitations, and within the jurisdiction of the court; provided the accused has not been misled to his prejudice." It should also be borne in mind, however, that no finding of "guilty" can properly be based on any inference drawn merely from the arguments or lack of arguments presented by the accused. In cases where the accused pleads "not guilty" any finding of "guilty" must be based either on evidence or express admissions of the accused made voluntarily and with a good understanding of their effect.

JUDGMENT

1. The finding and sentence of the Community Court of Lukunor as to the accused Wanter, in its Criminal Case No. 61, and the decision of the District Court for the Truk District in its Criminal Case No. M-87, affirming that finding and sentence, are hereby set aside, a finding of "not guilty" is hereby entered as to the accused Wanter, and he is hereby acquitted, and any part of the fine which he may have already paid is ordered returned to him.

2. The finding and sentence of the Community Court of Lukunor as to the accused Timas, in its Criminal Case No. 61, and the decision of the District Court for the Truk District in its Criminal Case No. M-87, affirming that finding and sentence, are hereby set aside and the case remanded to the Community Court of Lukunor for a new trial as to the accused Timas. Any part of the fine which he may have already paid is to be retained pending the outcome of his new trial and then applied in payment of or toward the payment of any fine that may be imposed as a result of the new trial. Any excess already paid above

the fine finally imposed or the total already paid if the case is disposed of without the imposition of any fine upon new trial, is then to be returned to the accused Timas.

LORNIS and ROFINA, Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 117

Trial Division of the High Court

Truk District

December 23, 1959

Appeal from conviction in Truk District Court of adultery in violation of local custom under T.T.C., Sec. 434. Appellant claims that complaint did not properly charge crime, that sole witness for prosecution served as assessor, and that evidence was insufficient to support conviction. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defects in complaint must be objected to by motion before trial, that witness for prosecution could not serve as assessor, and that evidence was insufficient to prove adultery beyond a reasonable doubt.

Reversed and remanded.

1. Criminal Law—Complaint—Defect

Objection that complaint in criminal proceeding is improperly drawn must be raised by motion before trial. (Rules of Crim. Proc., Rule 9)

2. Criminal Law—Complaint

Where complaint sufficiently charges persons accused with having committed adultery with each other, in violation of local custom and at place within jurisdiction of court and on date within statute of limitations, and complaint cites Code section violated, accused could not have been misled to their prejudice. (T.T.C., Sec. 434)

3. Criminal Law—Complaint—Defect

Failure to present defense or objection to defect in complaint, information or citation by motion before trial constitutes waiver of such defense. (Rules of Crim. Proc., Rule 9)

4. Criminal Law—Complaint—Defect

Criminal complaint must refer to provision of law which accused is alleged to have violated, but error or omission may be corrected by leave of court any time prior to sentence, and is not ground for reversal if not misleading to accused's prejudice. (T.T.C., Sec. 445a)