

3. All the above rights are subject to the inherent rights of the Trust Territory Government under Section 32 of the Trust Territory Code.

4. The plaintiff Giltaman has no rights in connection with *zum ey* fishing in any part of Palau Village waters.

5. Neither of the defendants Manggur and Fenam owes either of the plaintiffs Yangruw and Giltaman anything because of the fishing complained about in this action.

6. No costs are assessed against any party.

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ALFANSO UTO (otherwise known as ALFANSO MARA),  
Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 120

Trial Division of the High Court

Truk District

May 1, 1961

Appeal from conviction in Truk District Court of criminal libel in violation of T.T.C., Sec. 425. Appellant claims that prosecution failed to show specific intent to inflict injury or actual damage to reputation and that his comments stating complainant, a magistrate, stole money from municipality, were privileged as fair comment concerning public official. The Trial Division of the High Court, Chief Justice E. P. Furber, held that it is not necessary to show either specific intent or actual damage to prove charge of criminal libel, and that privilege of fair comment does not extend to unfounded charges of crime.

Affirmed.

**1. Criminal Libel—Generally**

Offense of criminal libel under Trust Territory Code is based on common law principles, except that it has been extended to include oral statements. (T.T.C., Sec. 425)

**2. Criminal Libel—Actual Damage**

In complaint for criminal libel, it is not necessary to allege actual damage to complainant. (T.T.C., Sec. 425)

**3. Criminal Libel—Generally**

Criminal libel is crime which affects public peace by publication of defamatory matter concerning another, not because of injury to repu-

tation but because it is calculated to corrupt public morals, incite to violations of criminal law or provoke breach of the peace. (T.T.C., Sec. 425)

**4. Criminal Libel—Malice**

Malice is essential element of criminal libel but it may be implied malice as distinguished from express malice and is inferred from making of libelous statement. (T.T.C., Sec. 425)

**5. Criminal Libel—Malice**

"Legal" malice does not require proof of specific intent to injure individual or group.

**6. Criminal Libel—Malice**

Malice is doing wrongful act intentionally without just cause.

**7. Torts—Defamation**

Accusation of crime, unconnected with any attempt in good faith to aid in criminal prosecution, is sufficient basis for civil action in which damages can be recovered without proof of injury.

**8. Torts—Defamation**

Loss or injury is presumed to result from false accusation of crime which is actionable per se even if not generally believed.

**9. Criminal Libel—Actual Damage**

Intent of statute on criminal libel is to protect people from irritation and provocation to retaliate, regardless of whether reputation of person defamed is impaired. (T.T.C., Sec. 425)

**10. Criminal Libel—Generally**

Trust Territory statute on criminal libel requires only exposure to hatred, contempt or ridicule, as opposed to actual damage by it. (T.T.C., Sec. 425)

**11. Criminal Libel—Generally**

Person may be exposed to hatred, contempt or ridicule by words which naturally tend to create hatred, contempt or ridicule, and in prosecuting crime of criminal libel, it is not necessary to prove hatred, contempt or ridicule has actually been aroused. (T.T.C., Sec. 425)

**12. Criminal Libel—Privilege**

Although fair public criticism of public official is privileged and cannot be slanderous, this privilege does not extend to accusations of crime.

**13. Criminal Libel—Privilege**

Fair comment is that which, whether true or false, expresses real opinion of author, having been formed with reasonable degree of care on reasonable grounds.

**14. Criminal Libel—Privilege**

Accurate and fair criticism of judicial and other public officers is privileged, but unfounded charges of crime and misconduct in office are not.

FURBER, *Chief Justice*

## OPINION

[1, 2] This appeal appears to be based on serious misunderstanding of the nature of criminal libel under Trust Territory Code, Section 425. From the words used, in that section, it is clear that this crime is based upon common law principles, except that it has been extended to include oral statements. Common law precedents, with regard to the nature and essential elements of the crime, are therefore of importance. Counsel for the appellant seems to be under the impression that actual damage to the complainant, and specific intent to inflict such damage are essential elements of the crime. It is noted that the complaint does allege that the complainant's reputation was ruined, and it is clear that was not proved. The court considers, however, that that statement in the complaint was pure surplusage and not a necessary part of the charge.

[3] The gist of the offense of criminal libel is well described in Miller on Criminal Law, p. 492, 493, in part as follows:—

“The crime is regarded as one which affects the public peace. The law punishes publication of defamatory matter concerning another, not because of the injury to the reputation, but because it is calculated to corrupt the public morals, incite to violations of the criminal law, or to provoke a breach of the peace.”\*\*\*\*

[4-6] While malice is undoubtedly an essential element of criminal libel, the malice required is simply general, or what is sometimes called, “implied”, or “legal” malice, as distinguished from “express malice”, and is ordinarily to be presumed or inferred from the making of the libelous or defamatory statement. This general, or “legal malice”, does not require proof of any specific intent to injure a particular individual or group of individ-

uals. It is defined in part in Bouvier's Law Dictionary, Third Revision, Vol. II, p. 2,067, under "Malice", as follows:—

"In Criminal Law. The doing a wrongful act intentionally without just cause or excuse.\*\*\*\*\*"

"In a legal sense malice is never understood to denote general malevolence or unkindness of heart, or enmity toward a particular individual, but it signifies rather the intent from which flows any unlawful and injurious act committed without legal justification.\*\*\*\*\*"

See also: 34 Am. Jur., Malice, §§ 2 and 3. Miller on Criminal Law, p. 497, 498. 33 Am. Jur., Libel and Slander, §§ 312 and 332.

[7, 8] The evidence in this case clearly justified a finding that the defendant had, beyond a reasonable doubt, stated before a group of at least five people, that the complainant, who was the Magistrate of his municipality, stole money of the municipality. This clearly imputed to the complainant the crimes of either larceny or embezzlement, and misconduct in public office, and exposed him to the danger of hatred, contempt, or ridicule if the statement should be believed. Such an accusation of crime, unconnected with any attempt in good faith to aid in a criminal prosecution, is in and of itself so damaging that it is regularly considered sufficient basis for a civil action in which general damages can be recovered without proof of any particular loss or injury. Some loss or injury is conclusively presumed to result from such an accusation, even if it merely starts to create doubts in a few people's minds, and is not generally believed. Defamation of this kind is said in legal terms to be "actionable per se". 33 Am. Jur., Libel and Slander, §§ 11, 25, 31, 79, and 282.

[9, 10] From the history of the development of this crime in the United States, and the usual meaning of the

words used, it is believed clear that the intent of Section 425 of the Trust Territory Code is to protect people from the irritation and provocation to retaliate which such an accusation as that here involved provides, regardless of whether the reputation of the person defamed is good enough so that it is not seriously impaired by the actual arousing of hatred, contempt, or ridicule. It should be noted that the section involved refers to material "which *exposes* another person to hatred, contempt, or ridicule". (Emphasis supplied.) Webster's New International Dictionary, Second Edition, defines "expose" in part as follows:—

"1. To lay open, as to attack, danger, trial, test; to render assessable to something that may prove detrimental; to deprive of shelter, protection, or care: as, to expose one to the weather; to expose troops needlessly; a coast exposed to severe gales; hence, to submit or subject to any action or influence; as to expose iron to a magnet."

Thus, a person may be "exposed" to a certain thing, such as attack, gunfire, or bad weather, without necessarily encountering it or being struck or damaged by it.

[11] The court, therefore, holds that a person may be exposed to hatred, contempt, or ridicule within the meaning of Section 425 of the Code by words which naturally tend to create hatred, contempt, or ridicule, regardless of whether they succeed in doing so or not, and that it is not necessary in prosecutions under that section to prove that hatred, contempt, or ridicule has actually been aroused. 33 Am. Jur., Libel and Slander, § 310, notes 17 and 5, p. 293. Miller on Criminal Law, p. 493, 494, note 72.

[12-14] In the District Court, counsel for the defendant cited 33 Am. Jur., Libel and Slander, § 163, apparently trying to justify the defendant's statement under the limited or qualified privilege accorded comments on matters of public interest. The complainant, as a public official, had

undoubtedly submitted himself to fair public criticism. It should be noted, however, that this privilege is limited to comment which is fair and goes no further than the occasion or the acts commented upon warrant. It is generally held that it does not extend to accusations of crime. 33 Am. Jur., Libel and Slander, §§ 162 and 169, note 14. The following quotations concerning this matter state the situation very clearly:—

“A fair comment is a comment which is true, or which, if false, expresses the real opinion of its author; such opinion having been formed with a reasonable degree of care and on reasonable grounds.” Miller on Criminal Law, p. 496.

“Accurate and fair criticism of judicial and other public officers is privileged, but unfounded charges of crimes and misconduct in office are not.” Miller on Criminal Law, p. 497.

There is nothing in the record to show any reasonable basis for the defendant's charge in this case.

#### JUDGMENT

The finding and sentence of the District Court for the Truk District Court in its Criminal Case No. 992 are affirmed.