

KALISTUS NGIRAILENGELANG, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 20

Appellate Division of the High Court

May 24, 1963

Appeal from conviction of aggravated assault in violation of T.T.C., Sec. 377, in the Trial Division of the High Court, Palau District. In a Per Curiam opinion, the Appellate Division of the High Court held that trial court was correct in finding excessive force was used in subduing victim and that accused was not prejudiced by alleged perjured testimony since trial judge stated he did not consider such testimony.

Affirmed.

1. Aggravated Assault—Generally

Where accused in criminal prosecution used more force than was necessary to subdue disorderly and intoxicated victim, he may be convicted of aggravated assault. (T.T.C., Sec. 377)

2. Criminal Law—Witnesses

Accused in criminal prosecution is not prejudiced by testimony of witness who is liable for prosecution for perjury where trial court does not consider such testimony.

Before FURBER, *Chief Justice*, PEREZ, *Chief Judge*,
SHRIVER, *Judge*

[1] We have treated this case as an appeal, although no briefs were filed and no oral arguments were had. The appellant was charged with and convicted of the crime of aggravated assault at Palau District, Koror Municipality, in the Trust Territory of the Pacific Islands. The facts are relatively simple. The appellant occupied a home shared by his wife, his daughter and his son-in-law, Benito Obak. Benito got drunk and caused a disturbance in the house. His actions were extreme. He struck the side of the house, threw clothing around, threatened his wife and, in general, conducted himself in a very bad manner. The appellant's wife attempted to calm him down and was shoved

around for her pains. The appellant had been lying down, but arose, obtained a machete, struck Benito with it so severely that Benito's intestines were exposed, and subsequently followed Benito outside and struck him again, causing an additional cut. There was evidence that the appellant threatened to finish him off. We are concerned primarily with the first blow with the knife. It is clear that Benito was intoxicated and acting in an extreme manner. It is equally clear that his conduct was not such as to necessitate a possible death blow in order to subdue him. The appellant testified that Benito was just making too much noise. The conviction was warranted.

[2] Benito had a drinking companion who was present at all material times. When he was examined as a prosecution witness, he was reluctant to testify as to the aggravations after Benito had fled the house. After the defense testimony had been presented, he was recalled by the prosecution and testified adversely to the appellant. From this, the defense contended at the time that the appellant had been prejudiced. The trial court made it perfectly clear that it did not consider the testimony of this witness for any given purpose, either for or against the appellant; that while the trial court was permitting the witness to purge himself of contempt, that the witness was still liable for prosecution for perjury. No possible injury to the appellant resulted from this testimony. The contrary would appear to be true as the witness testified that he was reluctant to say anything detrimental to the appellant because the appellant was an older man for whom he had the greatest respect. We have examined the transcript with the utmost care and find no error. The conviction is affirmed.