

and trees planted by the Plaintiff. The Plaintiff shall exercise due care not to injure any such plant or tree beyond that which customarily occurs in harvesting. All rights of Plaintiff shall expire on March 1, 1968.

2. This judgment shall not affect any rights of way there may be over any of the land in question.

3. No costs are assessed against any party.

BASILIOUS MESECHOL, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 278

Trial Division of the High Court

Palau District

March 31, 1966

Defendant was convicted in Palau District Court of reckless driving, in violation of T.T.C., Sec. 815(b), as amended. On appeal, defendant claims that no one was injured and that speed alone is not sufficient to constitute the offense. The Trial Division of the High Court, Chief Justice E. P. Furber, held that actual injury or accident is not necessary element in offense of reckless driving.

Affirmed.

I. Criminal Law-Appeals-Scope of Review

On criminal appeal, appellate court must consider evidence in light most favorable to government.

2. Reckless Driving-Actual Injury

No actual injury to persons or property is necessary in order to constitute offense of reckless driving within meaning of Trust Territory Code. (T.T.C., Sec. 815(b))

3. Reckless Driving-"Likely to Endanger"

Trust Territory law defining reckless driving is intended to cover situations where driver causes undue risk of injury to persons who either actually are or who it should reasonably be expected may properly be in position where they are likely to be injured, or where property similarly situated is likely to be injured. (T.T.C., Sec. 815(b)»

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4. Reckless Driving-Speed

Driving slightly in excess of speed limit does not necessarily, taken all alone, constitute reckless driving. (T.T.C., Sec. 815(b))

5. Reckless Driving-Speed

Driving at excessive speed under circumstances showing danger to persons or property may constitute reckless driving even though speed is within fixed limit for particular place. (T.T.C., Sec. 815(b))

6. Highways and Streets-Pedestrians

Where there are no sidewalks provided, pedestrians have right to be on highway if they are using it properly.

7. Motor Vehicles-Generally

Motorist must exercise diligence and caution to avoid collision with pedestrians particularly in view of powerful instrument he is controlling and seriousness of injury it may inflict.

8. Criminal Law-Sentence

In criminal prosecution for reckless driving, relatively light sentence which was within limits specified by law is matter resting in discretion of court and to which accused cannot fairly object. (T.T.C., Sec. 815(h))

<i>Assessor:</i>	JUDGE FRANCISCO MOREI
<i>Interpreter:</i>	SYLVESTER F. ALONZ
<i>Counsel for Appellant:</i>	WILLIAM O. WALLY
<i>Counsel for Appellee:</i>	BENJAMIN N. OITERONG

FURBER, Chief Justice

This is an appeal from a conviction of Reckless Driving under Trust Territory Code, Section 815(b), as amended by Executive Order No. 93 of March 4, 1963.

Counsel for the appellant argued that the sentence in this case being lighter than usual for the offense involved indicated that the trial court was in doubt, pointed out that no one was injured, and claimed that speed alone was not sufficient to constitute reckless driving. He relied particularly on the opinion of this court in the case of *Skilang Haruo v. Trust Territory*, 3 T.T.R. 39. Counsel for the appellee pointed out that the trial judge was the one who saw the witnesses and heard the evi-

dence, that on a criminal appeal, the court must consider the evidence in the light most favorable to the government, and that there was ample evidence in the combination of speed and the number of persons and vehicles on the road at the time to constitute driving in such a manner as to be likely to endanger persons or property within the meaning of the final clause of Section 815(b) as amended.

OPINION

There was evidence from which the trial court was justified in finding that the accused drove a motorcycle at around 35 to 40 miles per hour, passed an automobile going in the same direction along a crowded street where there were many pedestrians and several other vehicles. It is true, as pointed out by counsel for the appellant, that no one was actually injured by the accused.

[1] This court and the Appellate Division have repeatedly held in accordance with general principles of appellate jurisdiction that on a criminal appeal, the appellate court must consider the evidence in the light most favorable to the government. *Fattun v. Trust Territory*, 3 T.T.R. 571, and cases there cited.

[2,3] In the case of *Skilang Haruo v. Trust Territory*, 3 T.T.R. 39, relied on by the appellant, this court held that the mere fact a motorist was involved in an accident without any showing of how the accident happened was insufficient to establish reckless driving within the meaning of the Code provision now in question, but the court can find nothing in that opinion which would reasonably infer that some kind of injury or accident is necessary in order to establish reckless driving within the meaning of this Code provision. In view of the danger which this legislation is clearly designed to protect against and in view of American precedents on the subject, the court considers that no actual injury to persons or prop-

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erty is necessary in order to constitute the offense, and that driving "in such a manner as to be likely to endanger" persons or property is intended to cover situations where the driver causes undue risk of injury to persons who either actually are or who it should reasonably be expected may properly be in a position where they are likely to be injured, or where property similarly situated is likely to be injured. 7 Am. Jur. 2d, Automobiles and Highway Traffic, § 264, note 13.

[4,5] The court also considers that while driving slightly in excess of the speed limit would not necessarily, taken all alone, constitute reckless driving, still driving at an excessive speed under circumstances showing danger to persons or property may constitute reckless driving even though the speed is within the fixed limit for that particular place. 7 Am. Jur. 2d, Automobiles and Highway Traffic, § 268, notes 1, 2, and 4.

[6,7] It should be particularly noted that where there are no sidewalks provided, pedestrians have a right to be on the highway if they are using it properly, and that a motorist must exercise diligence and caution to avoid collision with pedestrians in view particularly of the powerful instrument which he is controlling and the seriousness of the injury that it may inflict. 7 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 400 and 401.

[8] Although the sentence in the case was relatively light, it was within the limits specified by the Code and was a matter resting in the discretion of the court to which the accused cannot fairly object.

JUDGMENT

The finding and sentence of the Palau District Court in its Criminal Case No. 4450 are affirmed.