

PADERESIO RODRIGUEZ, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 81
Trial Division of the High Court
Ponape District
May 27, 1966

Defendant was convicted in Ponape District Court of assault and battery in violation of T.T.C., Sec. 379. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that trial judge may not accept plea of guilty by counsel for accused unless he has interrogated accused personally so that there can be no question as to whether accused authorized plea, that he is voluntarily making plea, and that he understands nature of charge and general effect of plea.

Reversed and remanded.

1. Criminal Law-Trial Procedure--Plea of Guilty

Where plea of guilty is offered by counsel for accused in criminal case, court should, before making determination that plea is voluntary and is made with understanding nature of charge, interrogate accused personally so that there is no question that accused authorized plea and understands its effect. (Rules of Crim. Proc., Rule 10b(1) (b)»

2. Criminal Law-Trial Procedure--Plea of Guilty

Where accused in criminal case submits plea of guilty through counsel and court does not interrogate accused personally, plea of guilty will be disregarded. (Rules of Crim. Proc., Rule 10b(1)(b)»

3. Criminal Law-Trial Procedure--Plea of Guilty

Where accused pleads guilty in criminal case, court must ascertain from accused's own statements personally in open court that he is voluntarily making plea of guilty and understands nature of charge and general effect of plea, before plea is accepted. (Rules of Crim. Proc., Rule 10b(1) (b)»

4. Criminal Law-Trial Procedure--Plea of Guilty

Court in criminal case may refuse to accept plea of guilty and enter plea of not guilty even though accused purports to plead guilty. (Rules of Crim. Proc., Rule 10b(1) (b)»

5. Criminal Law-Trial Procedure--Plea of Guilty

If there is any doubt in trial court's mind about accused in criminal case making plea of guilty voluntarily, court should refuse to accept plea. (Rules of Crim. Proc., Rule 10b(1) (b))

6. Criminal Law-Trial Procedure-Change of Plea

When accused in criminal case indicates he wishes to change plea from not guilty to guilty he should be arraigned over again and same procedures followed in questioning him as if he were offering plea in first instance. (Rules of Crim. Proc., Rule 10b (a) (b))

<i>Assessor:</i>	JUDGE ANDREAS WEILBACHER
<i>Interpreter:</i>	JUDAH C. JOHNNY
<i>Counsel for Appellant:</i>	IAKOPUS OLMOS
<i>Counsel for Appellee:</i>	SUNGIWO HADLEY

FURBER, *Chief Justice*

This is an appeal from a conviction of Assault and Battery.

Both counsel waived written argument and in view of the fact that the Clerks who acted as reporters in the District Court had prepared a transcript of the evidence there presented and counsel for the appellant stated he had no objection to either that or the record of criminal trial, and had difficulty in understanding what was wanted in the way of a report, the court waived the requirement for a report.

This appeal is based on the sole ground that the accused's change of plea from not guilty to guilty after two witnesses had testified for the prosecution, had been submitted by his then counsel without the accused's authority and was accepted without the accused taking any part in the submission of the plea, which he alleges took him by surprise as he did not feel that he was guilty.

Counsel for the appellee admitted that the plea of guilty had been submitted by the accused's counsel and had been accepted by the court without the accused saying anything, but argued that the accused's counsel must have been authorized to submit the plea.

OPINION

[1,2] While the court recognizes that a thoroughly educated accused may be presumed to consent to a plea of guilty offered in his presence by his counsel, the court believes that in the case of Micronesian accused such as the one involved here, a trial court, before making its determination that such a plea is voluntarily made with an understanding of the nature of the charge as is required by Rule of Criminal Procedure IOb(1) (b), should, in the exercise of reasonable caution, interrogate the accused personally so that there can be no possible question such as that raised in this instance as to whether the accused has authorized the plea and understands its effect. This court therefore, in the exercise of its discretion under Rule of Criminal Procedure 3Ib and to clarify the practice on this point and avoid such dangers in the future, has decided that the accused's plea of guilty submitted through his counsel in this case should be disregarded, without going into evidence on the question of what the accused may have said or done that led his then counsel to submit the plea of guilty.

[3-6] In the future, it is strongly urged that, except under most extraordinary circumstances when a trial court feels it is satisfied beyond any possible doubt that a plea submitted by counsel has been authorized by the accused, the trial court ascertain from the accused's own statements personally in open court that he is voluntarily making a plea of guilty and understands the nature of the charge and the general effect of the plea, before such a plea is accepted. It should be noted that under Rules of Criminal Procedure IOb(1) (b) and IOb(2), a court may refuse to accept a plea of guilty and enter a plea of not guilty even though the accused purports to plead guilty. If there is any doubt in the trial court's mind

about the accused's making a plea of guilty voluntarily, with understanding of the nature of the charge and the general effect of the plea (i.e. that the plea, if accepted, will enable the court to find the accused guilty without any evidence being presented against him), the court should refuse to accept the plea. To be on the safe side, when an accused indicates he wishes to change a plea from not guilty to guilty, it is recommended that he be arraigned over again and the same procedures followed in questioning him as if he were offering a plea of guilty in the first instance.

The appellant's motion for leave to present additional evidence in this court is denied, but his motion for new trial is granted to the extent indicated in the following judgment.

JUDGMENT

The finding and sentence of the Ponape District Court in its Criminal Case No. 1129 are set aside together with the accused's plea of guilty therein and the case referred back to that court for a new trial subject to the following directions : -

a. The judge who originally heard the case is to reopen it and take any additional, proper testimony either side wishes to offer, but he is also to consider the testimony already in the record without its being reintroduced, and the case is to proceed as if the trial had merely been suspended immediately before the accused's counsel submitted the plea of guilty and as if that plea had never been submitted or accepted.

b. After taking such additional testimony, the judge shall finish the trial as if there had been no plea of guilty and no previous finding and sentence; shall allow the usual opportunity for argument, make a new finding based on all the evidence; and if the finding is guilty, allow

the usual opportunity for hearing on the question of sentence, and then impose such new lawful sentence as he deems just.

WILLIAM NET, Plaintiff

v.

KAPELE, Defendant

Civil Action No. 269

Trial Division of the High Court

Ponape District

May 27, 1966

Action to determine ownership of land on Pingelap Atoll, in which plaintiff claims land was given to her as individual land by head of family who later attempted to rearrange rights in land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that head of family does not have authority to rearrange rights in land given a long time prior thereto to individual member of family.

Ponape Land Law-Pingelap-Family Ownership

Under Pingelap custom, regardless of rights of head of family over land owned by group of which he is leader, he cannot properly rearrange rights in land which have been given long prior thereto to individual member of family as individual property, nor can he exchange rows of taro without consent of owners of rows to be exchanged.

Assessor:

JUDGE ANTONIO RAITONG

Interpreter:

IOANES EDMUND

Counsel for Plaintiff:

CARLES PHILIP

Counsel for Defendant:

KAPUS DIOFILOS

FURBER, *Chief Justice*

This action came on to be heard before me at Kolonia, Ponape, upon the Master's Report. Neither party presented any evidence other than the Master's Report and the transcript of evidence taken and depositions presented before him.