

TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff

v.

MISAEL HOCO GOGO, Defendant

Criminal Case No. 202

Trial Division of the High Court

Mariana Islands District

June 2, 1967

Defendant was indicted for offense pertaining to United States mails and moved for dismissal on grounds of lack of jurisdiction and lack of prosecution. The Trial Division of the High Court, Associate Justice Joseph W. Goss, held that Trust Territory had jurisdiction of offense, and that accused suffered no serious prejudice beyond that which ensued from ordinary and inevitable delay in prosecution of case.

Motions denied.

1. Criminal Law-Double Jeopardy

Same act may constitute offense against two sovereignties and may be punished under laws of each.

2. Criminal Law-Rights of Accused-Speedy Trial

Court has discretion to dismiss information, complaint or citation if there is unnecessary delay in bringing accused to trial. (T.T.C., Sec. 492)

3. Criminal Law-Rights of Accused-Speedy Trial

It is burden of prosecution to take necessary steps to bring criminal matter to trial.

4. Criminal Law-Rights of Accused-Speedy Trial

If delay in prosecution of criminal case is result of deliberate or negligent actions on part of prosecutor and he fails to show accused suffered no serious prejudice beyond that which ensued from ordinary and inevitable delay, defendant's Sixth Amendment rights have been denied.

5. Criminal Law-Rights of Accused-Speedy Trial

Where delays in prosecution of criminal case are due in part to absences of Public Defender, District Attorney and essential witness from Trust Territory, and affidavits stating case would be dismissed enabled defendant to obtain employment, accused suffered no prejudice beyond that which ensued from ordinary and inevitable delay.

<i>Assessor:</i>	HON. IGNACIO V. BENAVENTE
<i>Interpreter:</i>	FELIPE SALAS
<i>Counsel for Plaintiff:</i>	D. KELLY TURNER, ESQ.
<i>Counsel for Defendant:</i>	ROGER ST. PIERRE, ESQ.

GOSS, *Associate Justice*

Arguments were heard on motions of the Defendant that the amended information be dismissed on the grounds of (1) lack of jurisdiction and (2) lack of prosecution. Memoranda of law, replies to motions and affidavits were filed on behalf of the parties.

With regard to the motion to dismiss for lack of jurisdiction "because the offense if any is cognizable only in a United States Federal District Court", Defendant claims that offenses pertaining to the United States mails can only be prosecuted in United States courts.

[1] This position is not in accord with a long series of cases in which it has been held that the same act may constitute an offense against two sovereignties and may be punished accordingly under the laws of each. (See 21 Am. Jur. 2d, Criminal Law, § 394). The case of *United States v. Amy*, 14 Md. 149, Fed. cases Nos. 14,445(1859), 16 A.L.R. 1231, 1243, involved a state prosecution for theft of mail. Other cases in point are *In Re Squires*, 114 Vt. 285, 44 A.2d 133, 161 A.L.R. 349; *United States v. Lanza*, 260 U.S. 377, 43 S.Ct. 141.

[2-4] Defendant's contention that the case should be dismissed because of lack of prosecution in violation of Trust Territory Code, Section 4, is a more difficult problem. Counsel have stipulated that the "offense" occurred from on or about May 3 through May 27, 1965, that the original information herein was filed June 9, 1965, and that the warrant of arrest was served on June 14, 1965. The delays were due in part to absences of the Public Defender, District Attorney and an essential witness from

eTrust Territory. Trust Territory Code, Section 492, grants to the court the discretion to dismiss an information, complaint or citation "if there is unnecessary delay in bringing the accused to trial". Under this section it is the burden of the prosecution to take the necessary steps to bring a criminal matter to trial. The recent case of *United States v. Hanrahan, et al.*, 255 F.Supp. 957 (1966), quoting from *Hanrahan v. United States, etc.*, 348 F.2d 363 (1965), reaffirmed the rule that even

"if . . . the court should find that the prosecution was conducted with such disregard of appellant's interests that it can be said that the delay resulted from deliberate, or at least negligent, actions on the part of the prosecutor and the prosecutor fails to show that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay,' then appellants' Sixth Amendment rights have been denied and the convictions must be vacated and the indictments dismissed."

[5] At the request of the court, counsel submitted affidavits on the matter of prejudice to the accused. When the facts of the case at bar are compared with the facts of the Hanrahan cases, it cannot be held that the accused suffered serious prejudice beyond that which ensued from the ordinary and inevitable delay. The affidavits indicate the then District Attorney did represent that he intended to dismiss the case. However, the Trust Territory is not bound by such a statement of intent and the affidavits do not indicate that Defendant suffered any prejudice therefrom. On the contrary, the affidavits indicate that it was in part the District Attorney's representation of intent to dismiss which enabled the Defendant to obtain his present employment.

The court finds that the prosecution has sustained its burden of showing that the prejudice to the Defendant from the delay was not of such a serious nature as to justify a dismissal under the Hanrahan rule.