

ORDER

The motion to dismiss the amended information on the ground of lack of jurisdiction and the motion to dismiss on the ground of lack of prosecution are denied.

JESUS NAKAMURA AIICHI, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 201

Trial Division of the High Court

Mariana Islands District

August 17, 1967

Defendant was convicted of assault and battery with a dangerous weapon, in violation of T.T.C., Sec. 377A. On appeal, defendant contended judgment was contrary to great weight of evidence since witness testified he, and not defendant, committed act charged. The Trial Division of the High Court, Chief Justice E. P. Furber, held that there was sufficient evidence to establish guilt and appellate court will not re-weigh conflicting testimony.

Affirmed.

1. Criminal Law-Appeals-Scope of Review

In appeals by accused in criminal case, evidence must be considered in light most favorable to government and on basis of what trial court had right to believe, not on what appellant wishes it believed.

2. Criminal Law-Evidence

Where there is clear and positive testimony that defendant committed act charged and testimony is believed by trial court, evidence is sufficient to establish guilt.

3. Criminal Law-Appeals-Scope of Review

Where there is direct conflict in testimony in criminal proceedings before lower court, appellate court will not re-weigh evidence.

4. Appeal and Error-Scope of Review-Facts

The Trial Division of the High Court on appeals from District Courts may review facts as well as law. (T.T.C., Sec. 200)

5. Appeal and Error-Scope of Review-Witness Credibility

The Trial Division of the High Court is not in as good position as trial court to pass on credibility of witnesses who appeared and testified personally in trial court.

6. Criminal Law-Appeals-Scope of Review

Appellate court on appeal in criminal case should make every reasonable presumption in favor of determinations of trial court.

FURBER, *Chief Justice*

This is an appeal from a conviction for assault and battery with a dangerous weapon in violation of Trust Territory Code, Section 377A. The ground of appeal is stated as follows in the notice of appeal : -

"That the Court's judgment was contrary to the great weight of the evidence, in that the witness MARINO HIROICHI under oath made a Judicial Confession exonerating the accused and assuming the guilt of having committed the act charged the accused."

This action is governed by the principles set forth in the following cases: -

Asako v. Trust Territory, 3 T.T.R. 191.

Sailo v. Trust Territory, 2 T.T.R. 368.

Rdechor Tkoel v. Trust Territory, 2 T.T.R. 513.

Basilus Mesechol v. Trust Territory, 3 T.T.R. 136.

Ngirkebai Timulch v. Trust Territory, 3 T.T.R. 208.

See also *Kirispin and Takauo v. Trust Territory*, 2 T.T.R.628.

[1] As stated in the *Asako* case and quoted with approval in the *Ngirkebai Iimulch* case:-

"This court and the Appellate Division of the High Court have repeatedly held that in appeals by the accused in a criminal case, the evidence must be considered in the light most favorable to the Government and on the basis of what the trial court had a right to believe, not on what the appellant wishes it believed."

[2,3] In the present case, while it is true that the witness, Marino Hiroichi, testified that he threw the rock in question which hit the victim and that the accused did not throw it, there was clear and positive testimony that

the accused was the one who threw the rock in question, which if believed as it obviously was by the trial court, was amply sufficient to establish guilt. 30 Am. Jur. 2d, Evidence, § 1143, Note 9. Where there is such direct conflict in the testimony, the appellate court cannot fairly be expected to try to re-weigh the evidence.

[4-6] As stated in the Soilo case cited above and quoted in the Ngirkebai Timulch case also cited above:-

"While under section 200 of the Trust Territory Code the Trial Division of the High Court on appeals from the District Courts may review the facts as well as the law, it is clearly not in as good a position as the trial court to pass on the credibility of witnesses who appeared and testified personally in the trial court. Furthermore, the appellate court should make every reasonable presumption in favor of the determinations of the trial court."

See 5 Am. Jur. 2d, Appeal and Error, §§ 838-840 inclusive.

Accordingly, judgment was entered affirming the finding and sentence.