

BENEDICTO S. DECENA, Appellant  
v.  
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee  
Criminal Appeal No. 26  
Appellate Division of the High Court  
November 9, 1966

Appeal from conviction of voluntary manslaughter in violation of T.T.C., Sec. 384. In a Per Curiam opinion, the Appellate Division of the High Court held that more definite evidence was necessary to sustain conviction.

Reversed and remanded.

Criminal Law-New Trial

Where evidence is confused and contradictory concerning actions of accused and victim as related to alleged criminal violation, court may remand for new trial to be held after emotions have subsided and more definite evidence may be obtained.

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*Counsel for Appellant:* ROGERL. ST. PIERRE, *Public Defender*  
*Counsel for Appellee:* RICHARD V. BACKLEY, *District Attorney*

Before FURBER, *Chief Justice*, GOSS, *Associate Justice*,  
SHRIVER, *Temporary Judge*

PER CURIAM

The appellant, Benedicto S. Decena, was convicted of the offense of voluntary manslaughter in violation of Section 384 of the Trust Territory Code.

The appellant and two friends entered Juan Norita's cafe in Saipan about 7:30 p.m., May 9, 1965. The deceased, Kachuo, was seated with a number of friends at a table close to that of the appellant. Antonio Limes, one of the deceased's party, asked the lady who was with the appellant to dance. She refused. An argument ensued. Blows were struck and in some manner the deceased was stabbed in the stomach by the appellant, from which wound he subsequently died.

Our difficulty is that from a totality of the evidence We cannot say that a more exhaustive presentation at a new trial is not indicated in the interest of justice. It appears that members of the deceased's party were drinking. The appellant is from the Philippines and weighed about 130 pounds. The deceased weighed about 180 pounds and Antonio Limes weighed about 175 pounds. The appellant had concealed a knife with a 5" blade in his shoe. This is hardly a precaution which would ordinarily be taken by a person out for a social evening.

The prosecution contends that the deceased was sitting at his table when the appellant, having been knocked or pushed to the floor, stabbed the deceased. The defense contends that the appellant was set upon by a number of men, including the deceased, that as he was being assaulted he used his knife to protect his life. There is evidence that at some point the deceased was choking the appellant but the evidence differs as to whether this was before or after the fatal blow.

We do not propose to discuss the evidence at length but conclude that a new trial held after the emotions have subsided may result in more definitive evidence one way or the other. Reference is made to 5 Am. Jur. 2d, Appeal and Error, § 838, footnote 17 thereof, and § 839.

The finding and sentence are set aside and the case is remanded to the Trial Division for a new trial. The bail heretofore posted will remain in effect until further order of the Trial Division.