

KERADO SALONS, Plaintiff-Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS
and RAMON ROSARIO, Defendants-Appellees

Civil Appeal No. 311

Appellate Division of the High Court

Ponape District

November 3, 1980

Appeal from granting of a motion for dismissal entered as to the Government, in a complaint alleging that plaintiff was shot by a police officer. The Appellate Division of the High Court, per curiam, held that since plaintiff's claim clearly arose from an assault and battery, it was within one of the statutory exceptions to claims allowed against the government, and therefore the granting of the motion to dismiss was affirmed.

Trust Territory—Suits Against—Sovereign Immunity

In a complaint alleging injury to the plaintiff through his having been shot by defendant policeman, motion to dismiss the Government as a defendant was properly granted where plaintiff's claim clearly arose from an assault and battery. (6 TTC § 252(5))

Before BURNETT, *Chief Justice*, and NAKAMURA,
Associate Justice

PER CURIAM

The complaint in the action giving rise to this appeal alleges injury to the plaintiff-appellant through his having been shot by defendant Rosario, an on-duty policeman employed by defendant Trust Territory Government.

After answer, claiming immunity from suit among other things, the Government moved to dismiss on grounds that injury resulted from an assault and battery, and that the Court had no jurisdiction by reason of 6 TTC Sec. 252(5). The motion was granted, dismissal entered as to the Government, and this appeal followed.

Notice of Appeal was timely filed, but clearly does not comply with our rules which require “. . . a concise statement of the questions presented by the appeal” Instead, it notes only the order appealed from, and does nothing to identify any claim of error. Subsequently, citing Rule 16 of our Rules of Appellate Procedure, and Rule 10(b) Federal Rules of Appellate Procedure which have no application here, appellant designated the record on appeal, and gave notice of “issues on appeal.” He has filed no brief.

The sole issue before us, which we answer notwithstanding appellant’s failure to argue it, is whether the complaint alleges a course of action for assault and battery. If it does, then the Government was properly dismissed.

Actions against the Trust Territory are provided for by 6 TTC Sec. 251–253. This legislation has its source in the Federal Tort Claims Act which authorizes suits against the Government of the United States. It follows that decisions of the courts of the United States, while not necessarily binding on us, are helpful in construing this legislation.

6 TTC Sec. 252 lists specific types of cases in which the Court has no jurisdiction. Section 252(5) includes claims arising out of assault and battery. This exception to the general authorization for suits against the government is the same as 28 U.S.C. 2680(h).

In *Santa v. Johnston*, 7 T.T.R. 133 (Tr. Div. 1974), the Court said:

The core or roots of plaintiffs’ claim is an intentional, deliberate tort committed by the police officers. Assault and battery is intentional tort. Intention is the very essence of the tortious act.

The claim for damages against the Government was dismissed.

The complaint here alleges only that plaintiff was shot by defendant Rosario, a police officer who was then on duty. Assuming that the shooting was deliberate, intentional, and

without justification, it constitutes nothing more, in terms of civil liability, than assault and battery.

We approve the rule established by *Santa*, supra. That *Santa* did not involve the use of firearms is a distinction without a difference; the nature of the acts complained of is the same. In *Smith v. United States*, 330 F. Supp. 867 (D.C. Mich. 1971), plaintiff was shot by a National Guardsman while on federal duty. As against the United States, the claim was held barred by the exception as one arising out of assault and battery.

To the same effect, see *Pennington v. United States*, 406 F. Supp. 850 (D.C.N.Y. 1976), where plaintiff's husband had been shot by a deputy U.S. Marshal, and *Ballew v. United States*, 389 F. Supp. 47 (D.C. Md. 1975), 539 F.2d 705, in which plaintiff was shot by a federal officer.

We conclude that plaintiff's claim clearly arises from assault and battery, is within the exception contained in 6 TTC Sec. 252(5), and that the Trial Court correctly concluded that it had no jurisdiction as to the Trust Territory. The Order of Dismissal is, therefore, AFFIRMED.

We note that there has been no disposition of the claim against the individual defendant Rosario. The matter is accordingly remanded to the Trial Court for further proceedings as to him.