

ing 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 enter a new sentence.

3. Any time already served, or fine already paid, under the original sentence in any one of these cases shall, however, be applied against any new sentence in the same case, and the fine already paid in Case No. 330 shall be retained, unless and until there is either a finding of not guilty in the case or a sentence imposed involving either no fine or a lesser fine, in which case any excess of the fine paid over any fine imposed by the new sentence shall be returned to the accused.

JOSE BORJA, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 90

Trial Division of the High Court

Palau District

June 16, 1955

Appeal from conviction in Palau District Court of petit larceny in violation of T.T.C., Sec. 397. On appeal, appellant objects to admission of hearsay evidence by which allegedly stolen property was identified. The Trial Division of the High Court, Chief Justice E. P. Furber, held that allowing identification of allegedly stolen property by reported statements of unnamed persons not made in court constitutes substantial injustice.

Reversed.

1. Appeal and Error—Generally

Courts considering appeals in Trust Territory are not concerned with fine points of evidence.

2. Appeal and Error—Evidentiary Error

Appellate courts in Trust Territory are not expected to disturb judgment for error in admission or exclusion of evidence, or any other error,

BORJA v. TRUST TERRITORY

unless refusal to take such action appears inconsistent with substantial justice. (T.T.C., Sec. 337)

3. Criminal Law—Appeals—Scope of Review

Since all trials in Trust Territory are without juries, ordinary effect of lower court's receiving improper evidence is that on appeal evidence will be rejected and not considered.

4. Constitutional Law—Public Trial and Confrontation of Witnesses

Trust Territory courts are expected to accord accused in criminal prosecution all rights guaranteed him by Trust Territory Code, including right to be confronted with witnesses against him. (T.T.C., Sec. 4)

5. Criminal Law—Witnesses

Allowing prosecution in criminal trial to identify allegedly stolen property by reported statements of unnamed persons not made in court, deprives judge of opportunity to consider their behavior on witness stand in determining how fully and exactly they should be believed.

6. Criminal Law—Evidence—Improperly Admitted

Where it is extremely doubtful whether trial court would have found accused guilty without improperly received evidence which covers vital point in case, finding of guilt will be reversed on appeal.

7. Criminal Law—Rights of Accused—Confrontation of Witnesses

Where accused in criminal prosecution is denied right to be confronted with witnesses against him, there has been substantial injustice. (T.T.C., Sec. 4)

<i>Assessor:</i>	R. FRITZ
<i>Interpreter:</i>	FRANCISCO K. MOREI
<i>Counsel for Appellant:</i>	ROMAN T. METUCHL
<i>Counsel for Appellee:</i>	BENJAMIN NGIRAINGAS

FURBER, *Chief Justice*

The appellant advanced two grounds for his appeal:—First, that the court erred in admitting hearsay evidence as to the theft of the lights introduced in evidence; and second, that there was no proof of the corpus delicti and that a confession alone is not enough to justify a conviction. He argued that, except for the hearsay evidence objected to, there was nothing but the confession to show that the lights traced to the defendant had been stolen.

The appellee argued that on the whole record no substantial right of the accused had been prejudiced, and that

the admission of the hearsay evidence objected to was permissible because the witness who gave it was the policeman who investigated the case, and that as a government employee he was entitled to testify to anything bearing on the case which any other government employee told him. The appellee also offered argument as to the propriety of the trial court's admitting the accused's confession, to which objection had been raised at the trial but which the appellant did not advance as a ground for appeal. This ground is, however, considered to have been waived, in the absence of any plain error with regard to it shown by the record.

The only evidence identifying the lights offered in evidence as stolen was a statement by a policeman that he took them to the garage and "They said these are same ones." The defendant promptly objected to the admission of this statement, but his objection was overruled by the trial court.

CONCLUSIONS OF LAW

[1-3] 1. Courts considering appeals in the Trust Territory are not concerned with fine points of law of evidence. Under Section 337 of the Trust Territory Code they are not expected to disturb a judgment for any error in admission or exclusion of evidence (or any other error) "unless refusal to take such action appears to the court inconsistent with substantial justice". Furthermore, it should be noted that all trials in the Trust Territory are without jury, and that therefore ordinarily the effect of a lower court's receiving improper evidence is simply that on appeal the improper evidence will be rejected and not considered. 53 American Jurisprudence, Trial, Section 1125.

[4, 5] 2. The Trust Territory courts are expected, however, to accord an accused all of the rights guaranteed

him by the Trust Territory Code. One of these is the right under Section 4 of the Code "to be confronted with the witnesses against him". Allowing the prosecution to identify the allegedly stolen property by reported statements of unnamed persons not made in court, not only prevented cross-examination of the persons who made the identification, but also deprived the judge of any opportunity to consider their behavior on the witness stand in determining how fully and exactly they should be believed. It therefore defeated the purposes of the right. The circumstances of this case do not even come close to any of the exceptions to the right. See 14 American Jurisprudence, Criminal Law, Sections 176 to 188. The evidence objected to should therefore have been excluded, and must now be disregarded.

[6, 7] 3. Without the evidence which should have been excluded (or other evidence on the same point), it is extremely doubtful whether the trial court would have found the accused guilty. The evidence objected to covered a vital point in the case. To have denied the accused the right to be confronted with the witnesses against him on such an important matter is considered to constitute a substantial injustice. See, however, paragraphs 2 and 4 of the conclusions of law by this court in *Ngirmidol v. Trust Territory*, 1 T.T.R. 273, and paragraph 3 of the conclusions of law in *Marbou v. Trust Territory*, 1 T.T.R. 269.

JUDGMENT

The finding and sentence of the District Court for the Palau District in its Criminal Case No. 373 are set aside 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, without

its being re-introduced, the testimony already on the record, with the exception of the statement by the witness Termeteet, "They said these are same ones", which is hereby excluded from consideration.

(b) After taking such additional testimony, the judge shall finish the trial as if there had been no previous finding and sentence; shall allow the usual opportunity for argument; make a new finding based on all the evidence, except that excluded as indicated above; and, if the finding is guilty, allow the usual opportunity for hearing on the question of sentence, and enter a new sentence.

BASEHELAI BAAB, Plaintiff

v.

KLERANG and RUDIMCH, Defendants

Civil Action No. 23

Trial Division of the High Court

Palau District

June 21, 1955

Action to determine ownership of land in Airai Municipality, in which plaintiff claims on behalf of clan that land in question is clan land, and defendant contends land was individual land of defendant's grantor. The Trial Division of the High Court, Chief Justice E. P. Furber, held that presumption arising from listing of land in Japanese survey as individual land is controlling.

1. Palau Land Law—Japanese Survey—Presumptions

Presumption that determinations made in Japanese land survey of 1941 were correct is strong in case of issues which were matter of controversy at that time.

2. Palau Land Law—Japanese Survey—Presumptions

In order to overcome presumption that determinations made in Japanese land survey are correct, there must be clear showing that determination in question is wrong, especially where listing in survey was not in individual name of one who was head of group which he would ordinarily represent in dealing with outsiders and which now claims interest in the land.