

ROPON, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 151
Trial Division of the High Court
Truk District
April 5, 1962

Appeal from conviction in Truk District Court, in which accused was held to be accessory before the fact in dynamiting of fish in violation of T.T.C., Secs. 130 and 780. Appellant contends that he was not accessory, that the explosive used failed to explode, and that no fish were caught. The Trial Division of the High Court, Chief Justice E. P. Furber, held that in criminal prosecution, difference between accessory before the fact and principal is a technical matter, and that accused did not suffer any injustice from error on this point. The Court further held that it is immaterial to crime of dynamiting fish whether explosive actually exploded or whether fish were actually caught.

Affirmed.

1. Criminal Law—Appeals—Prejudicial Error

Criminal proceedings before trial court will not be invalidated by appellate court for error or omission occurring in such proceedings unless error or omission results in injustice to accused. (T.T.C., Sec. 497)

2. Criminal Law—Appeals—Prejudicial Error

Court hearing criminal appeal is concerned with whether justice is done rather than with technicalities.

3. Criminal Law—Principal and Accessory

Distinction between principal and accessory before the fact is technical one and of little practical significance. (T.T.C., Sec. 430)

4. Criminal Law—Principal and Accessory

Accessory to criminal offense is equally guilty with person who committed crime, and he receives same punishment as principal. (T.T.C., Sec. 430)

5. Criminal Law—Principal and Accessory

Where person is convicted as accessory before the fact when he should have been convicted as principal, he has not suffered injustice of which he can complain. (T.T.C., Sec. 430)

6. Dynamiting Fish—Generally

Crime of dynamiting fish consists of fishing with dynamite, hand grenades or any other form of explosive, or any form of poison, with exception of fishing for scientific purposes under certain circumstances. (T.T.C., Sec. 780)

7. Dynamiting Fish—Attempt

Crime of dynamiting fish includes attempt to catch fish by use of dynamite, regardless or whether attempt is successful. (T.T.C., Sec. 780)

8. Dynamiting Fish—Attempt

Under statutory crime of dynamiting fish, use of appliance within meaning of prohibition includes situation where appliance was ready and intended for use although not actually put into operation. (T.T.C., Sec. 780)

9. Dynamiting Fish—Attempt

In criminal prosecution for dynamiting fish, it is immaterial that explosive failed to explode and that no fish were caught. (T.T.C., Sec. 780)

Assessor:

OLAF, W.

Interpreter:

SABASTIAN FRANK

Counsel for Appellant:

KESKE S. MARAR

Counsel for Appellee:

ANDON INEK

FURBER, *Chief Justice*

This is an appeal from a conviction of being an accessory before the fact to "dynamiting fish" under Sections 430 and 780 of the Trust Territory Code.

Counsel for the appellant argued that the appellant could not properly be convicted as an accessory before the fact because he was present at the throwing of the dynamite and that there was no dynamiting of fish involved since the dynamite failed to explode so that at most there was only attempted dynamiting of fish.

Counsel for the appellee argued that the evidence introduced was sufficient to support the charge.

OPINION

[1, 2] The grounds on which this appeal is based are too technical to have any merit under the Trust Territory Code. Section 497 of the Code provides expressly as follows:—

"*Sec. 497. Effect of irregularities.* The proceedings before a court or an official authorized to issue a warrant shall not be invalidated, nor any finding, order, or sentence set aside for any error or omission, technical or otherwise, occurring in such proceedings, unless in the opinion of the reviewing authority or a court hearing the case on appeal or otherwise it shall appear that the error or omission has resulted in injustice to the accused."

A Trust Territory court hearing a criminal appeal therefore should be concerned with the question of whether justice has been done, rather than with technicalities.

[3] The distinction between a principal and an accessory before the fact is a very technical one and of so little practical significance that it has been abolished in many states and in the case of crimes under the United States Code. Miller on Criminal Law, Sec. 73, p. 226. Title 18, U.S. Code, Sec. 2.

[4, 5] Under Trust Territory Code Section 430 an accessory is equally guilty with the person who has committed the crime and shall receive the same punishment as if he were a principal. Consequently if a person has been convicted as an accessory before the fact when, as a technical matter, he should have been convicted as a principal, he has not suffered any injustice of which he can properly complain.

[6-8] Although the crime here involved is often referred to as "dynamiting fish", it should be noted that the crime in question, which is set out in Section 780 of the Code, actually consists of "fishing with dynamite, hand grenades, or any other form of explosive, or any form of poison", with the exception of fishing for scientific purposes under certain circumstances, not material to this case. The act of "fishing", from its very nature consists of an attempt to catch fish, regardless of whether the attempt is successful. Webster's Collegiate Dictionary, 5th

Ed., gives as its first definition of the verb "fish", "To attempt to catch fish, as by angling or drawing a net." Thus it has been regularly held that an appliance is "used" within the meaning of the prohibition in fish and game laws where it appears that while the appliance was not actually put into operation by the defendant at the time specified, he was seeking fish or game, and had the appliance ready and intended to use it when the occasion presented itself. From both English and American decisions on the matter, there seems to be no doubt that an instrument may be "used" within the meaning of such a law although no fish were taken. 22 Am. Jur., Fish and Fisheries, § 53, notes 15 and 16, *Moses v. Raywood* (1911), 2 K.B. (Eng.) 271, Ann. Cas. 1912 A 311; and the note following that case in Ann. Cas. 1912 A p. 312.

[9] The evidence in this case clearly shows that the accused knowingly assisted in making an explosive for use in attempting to catch fish and that the explosive was actually used in such an attempt. The court therefore holds that it is immaterial that the explosive failed to explode and that no fish were caught.

JUDGMENT

The finding and sentence of the Truk District Court in its Criminal Case No. 1402 are affirmed.