

Clan without action by the plaintiff Kerekeriil Techekii in view of her condition.

2. The sale to the Western Carolines Trading Company of this land which the defendant has arranged with such consent is lawful.

3. In view of the plaintiff's condition no costs are assessed against either party in this action.

FIRETAMAG, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 87

Trial Division of the High Court

Yap District

March 25, 1963

Defendant was convicted in Yap District Court of malicious mischief in violation of T.T.C., Sec. 398. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant's acknowledgment that he had committed crime, made outside of court in presence of prosecutor and defense counsel, did not alone constitute sufficient evidence on which to base conviction when defendant pleaded not guilty at trial.

Reversed and remanded.

1. Constitutional Law—Due Process

No person in Trust Territory may be deprived of life, liberty or property without due process of law. (T.T.C., Sec. 4)

2. Constitutional Law—Self-Incrimination

No person in Trust Territory may be compelled in any criminal case to be witness against himself. (T.T.C., Sec. 4)

3. Constitutional Law—Public Trial and Confrontation of Witnesses

In all criminal prosecutions in Trust Territory, accused has right to public trial, and to be confronted with witnesses against him. (T.T.C., Sec. 4)

4. Criminal Law—Rights of Accused—Confrontation

Accused in criminal proceedings in Trust Territory may only be convicted after trial before impartial court, on basis of information presented as provided by law before court and in presence of interested members of public, subject to certain exceptions involving minors and scandalous matter. (T.T.C., Sec. 4)

5. Criminal Law—Evidence

All facts necessary to show guilt in particular criminal case should be shown either by legal evidence or by stipulations or admissions which judge is authorized to accept in place of evidence.

6. Evidence—Stipulations and Admissions

Any stipulation or admission, in order to be accepted in place of evidence, must be made or presented publicly in open court just as evidence is.

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

Purpose of public trial is to protect rights of person accused of crime so that public may see he is fairly dealt with, and to keep judge aware of his responsibility, importance of his work, and fact public has right to know about it. (T.T.C., Sec. 4)

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

Purpose of public trial in criminal case is defeated if court is allowed to consider as evidence information passed to it privately or indirectly and not in regular course of judicial proceedings. (T.T.C., Sec. 4)

9. Confessions—Generally

If accused in criminal case acknowledges outside of court that he committed crime charged, or admits all things which government would have to show to prove him guilty are true, this constitutes a confession.

10. Confessions—Corroborating Evidence

Voluntary confession made outside of court may be shown in evidence against accused at trial, provided there is other substantial evidence showing crime charged has actually been committed.

11. Confessions—Admissibility—Trial Procedure

If accused in criminal case objects to admission of confession on ground it was not voluntary or was improperly obtained, court should give both sides opportunity to present evidence on how confession was obtained before evidence of confession is admitted.

12. Confessions—Admissibility

Court should refuse to admit confession in criminal case unless satisfied it was voluntarily made.

13. Criminal Law—Generally

In Trust Territory, courts are expected to promote substantial justice in criminal proceedings and to take equal care to see that those who are guilty beyond reasonable doubt are punished and that those who are not guilty beyond reasonable doubt are not punished.

14. Criminal Law—Burden of Proof—Reasonable Doubt

Trust Territory courts are expected to give accused in criminal proceedings benefit of any reasonable doubt there may be as to his guilt.

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15. Confessions—Corroborating Evidence

No one should be convicted in criminal case on basis of confession alone.

16. Confessions—Corroborating Evidence

In order to convict accused in criminal case in Trust Territory, there must be enough other evidence besides confession so that court is satisfied by confession and other evidence that accused has committed crime charged beyond reasonable doubt.

17. Criminal Law—Prosecutor's Error or Omission

Decisions of other courts which hold that accused in criminal case is entitled to acquittal at close of prosecution's case where it has failed to prove essential element of crime, and that if this is not granted he should be acquitted on appeal, have no application in Trust Territory. (T.T.C., Sec. 200)

18. Criminal Law—Prosecutor's Error or Omission

In criminal proceedings in Trust Territory, where essential point of prosecution's case is omitted through inadvertance or misunderstanding, and it is probable there is sufficient evidence available on it, appellate court will remand case with such directions for new trial as may be just, instead of merely reversing judgment. (T.T.C., Sec. 200)

19. Civil Procedure—Arguments by Counsel

In Trust Territory, argument addressed to judge hearing case as to fact in that case should come after evidence has been taken and should be based on evidence and on stipulations and admissions which have been properly accepted in place of evidence.

20. Civil Procedure—Arguments by Counsel

No new facts should be brought up in argument to judge trying case that have not been covered by evidence and stipulations and admissions properly accepted in place of evidence.

21. Malicious Mischief—Malice

Where express reference to "malice" has been eliminated from statute covering malicious mischief, previous remarks of court regarding meaning of statute as it stood before amendment, and similar remarks of text writers and other courts, are not directly applicable to amended section so far as malice is concerned. (T.T.C., Sec. 398)

<i>Assessor:</i>	JUDGE FALYOOR
<i>Interpreter:</i>	LAWRENCE J. KEN
<i>Counsel for Appellant:</i>	FRANK FLOUNUG
<i>Counsel for Appellee:</i>	RAPHAEL NAMNEG

FURBER, *Chief Justice*

This is an appeal from a conviction of malicious mischief in violation of Section 398 of the Trust Territory Code as amended by Executive Order No. 84. The malicious mischief was alleged to involve the cutting down of four coconut trees and the pulling out of another.

Counsel for the appellant argued orally that there was no evidence at all that the accused had caused the damage complained of, that there was only hearsay evidence that he was even present at or about the time the damage was caused. Counsel for the appellant further argued that there was no evidence of malice, citing Miller on Criminal Law, Sec. 128, p. 401, and 14 Am. Jur., Criminal Law, § 28, p. 787. He therefore asked that the appellant be acquitted.

Counsel for the appellee replied, with what from a legal point of view is a most surprising argument, that it wasn't necessary for the prosecution to prove that the accused had caused the damage complained of because, when the prosecutor and defense counsel had gone, at the request of the court before the trial, to view the alleged damage, the accused had acknowledged that he committed the crime. Counsel for the appellee admitted, however, that this fact was not presented in court at the trial.

OPINION

This appeal discloses a regrettable misunderstanding as to what is required of the prosecution in a criminal trial under our Trust Territory law when the accused pleads "not guilty".

[1-6] Section 4 of the Trust Territory bill of rights, provides, among other things, that no person shall be deprived of life, liberty, or property, without due process of law, nor shall any person be compelled in any criminal case to be a witness against himself, and that in all criminal prosecutions the accused shall enjoy the right to a public trial, and to be confronted with the witnesses against him. These are all common and well-accepted requirements in the United States. Taken together, they mean that an accused person should only be convicted after trial before an impartial court and on the basis of information presented as provided by law before the court and in the presence of any interested members of the public who can reasonably be accommodated within the courtroom—with certain exceptions in cases involving children under 18 years of age or scandalous matter, which do not apply to this case or to most criminal cases. All of the facts necessary to show guilt in a particular case should be so shown, either by legal evidence or by stipulations or admissions which a judge is authorized to accept in place of evidence, but any such stipulation or admission used should be made or presented publicly in open court just as evidence is. As to what constitutes evidence, or a stipulation, or admission, see "Handbook for District Court and Community Court Judges, Clerks of Courts, and Trial Assistants", p. 12-14.

[7] The purpose of the requirement of a public trial is to protect the rights of a person accused of a crime so that the public may see he is fairly dealt with, and the presence of spectators may keep the judge trying a case keenly alive to a sense of his responsibility, the importance of his work, and the fact that this work is something the public has a right to know about. 14 Am. Jur., Criminal Law, § 139.

[8] This purpose will be utterly defeated if the court is allowed to consider as evidence information passed to

it privately or indirectly and not in the regular course of judicial proceedings.

[9-12] If an accused acknowledges, outside of court, that he committed the crime charged, or admits that all the things which the government would have to show to prove him guilty are true, that constitutes what is called a "confession". Such a confession, if voluntarily made, may be shown in evidence against an accused at a trial, provided there is other substantial evidence showing that the crime charged has actually been committed. If the accused objects to the admission of evidence of this confession on the ground that it was not voluntary or was improperly obtained, the court should give both sides an opportunity to present evidence on how the confession was obtained before it admits the evidence of the confession and should refuse to admit this unless the court is satisfied that the confession was really voluntary. This matter of confessions is explained in detail in 20 Am. Jur., Evidence, §§ 477-541 inclusive. See also the opinion of the Appellate Division of the High Court in *Belewai Haruo v. Trust Territory*, 1 T.T.R. 565.

[13-16] Trust Territory courts are expected to be interested in promoting substantial justice and to take equal care to see that those who are guilty beyond a reasonable doubt are punished and that those who are not guilty beyond a reasonable doubt are not punished. They are definitely expected to give the accused the benefit of any reasonable doubt there may be as to his guilt. Therefore no one should be convicted on the basis of a confession alone. There must be at least enough other evidence so that the court is satisfied by it and the confession that the accused has actually committed the crime charged beyond a reasonable doubt. *Marbou v. Trust Territory*, 1 T.T.R. 269. 20 Am. Jur., Evidence, §§ 1230-1234.

[17, 18] On the other hand they are not expected to let an accused go free simply because of some error of the prosecution which it appears can easily be corrected. Thus this court has already held in the cases of *Ngirmidol, Simer, and Moses v. Trust Territory*, 1 T.T.R. 273, that decisions by courts outside the Trust Territory holding that an accused is entitled, as a matter of right, to an acquittal at the close of the prosecution's case where the prosecution has failed to prove an essential element of the crime, and that, if this is not granted, he should be acquitted on appeal, have no application in the Trust Territory. In such a situation, where it appears that an essential point has been omitted through inadvertance or misunderstanding and it is probable there is evidence available on it, this court has adopted the practice of remanding the case with such directions for a new trial as may be just in accordance with the powers granted it by Section 200 of the Trust Territory Code, instead of merely reversing the judgment.

[19, 20] This case and others that have come to the attention of this court seem to indicate that there is a bad tendency in Yap to try to have the courts accept argument in place of evidence and that in a number of instances there has been an unnecessary and very undesirable amount of argument about the facts before the taking of evidence. All trial assistants in the Yap District are warned that any such practice should stop. Any argument addressed to a judge hearing a case, as to what the facts of that particular case are, should come after the evidence has been taken and should be based on the evidence and such stipulations or admissions as have been properly and publicly accepted in place of evidence. No new facts of that particular case should be brought up in argument that have not been covered by the evidence and such stipulations or admissions.

[21] For the benefit of those concerned with the new trial in this case, attention is invited to the fact that Executive Order 84 has eliminated all express reference to malice in Section 398 of the Code, except for retaining the words "malicious mischief" as the name of the crime which it describes. Consequently the remarks of this court concerning the meaning of this section as it stood before the amendment, and the remarks of text writers and other court dealing with a crime of this name but under laws containing an express requirement of malice, are not directly applicable to the amended section involved here, so far as malice is concerned.

JUDGMENT

The finding and the sentence of the Yap District Court in its Criminal Case No. 357 are set aside and the case remanded to that court for a new trial subject to the following directions:—

a. The judge who originally heard the case is to re-open it and take any additional proper testimony either side wishes to offer, but he is also to consider the evidence already in the record without its being re-introduced.

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 of the evidence; and, if the finding is guilty, allow the usual opportunity for hearing on the question of sentence, and then impose such new lawful sentence as he deems just.