

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Appellee**

v.

RATER RISA, Defendant-Appellant

Civil Appeal No. 279

Appellate Division of the High Court

Truk District

November 4, 1980

Appeal from a judgment of forfeiture. The Appellate Division of the High Court, per curiam, held that forfeiture proceeding filed by Government, after defendant's conviction for dynamiting fish, for forfeiture of motor boat and equipment used in the dynamiting offense, did not constitute double jeopardy, and defendant's argument that no weight could be given conviction for violation of Trust Territory law in District Court under Truk District law where forfeiture proceedings were held, ignored the fact the Trial Court specifically found that defendant's boat had been used in commission of the offense, and therefore the judgment was affirmed.

1. Appeal and Error—Findings and Conclusions—Clearly Erroneous

Findings of fact of the Trial Court will not be set aside unless clearly erroneous. (6 TTC § 355(2))

2. Courts—District Court—Jurisdiction

In forfeiture proceeding in District Court, filed by Government after defendant's conviction for dynamiting fish, for forfeiture of motor boat and equipment used in the dynamiting offense, argument of defendant that no weight could be given the conviction in the District Court since it was for a violation of Trust Territory law, rather than Truk District law under which the forfeiture proceedings were brought, was without merit, since it ignored the specific finding of the Trial Court in the forfeiture proceeding that defendant's boat had been used in the commission of the offense.

3. Constitutional Law—Double Jeopardy

Forfeiture proceeding in District Court, filed by Government after defendant's conviction for dynamiting fish, for forfeiture of motor boat and equipment used in the dynamiting offense, was not barred by double jeopardy.

Counsel for Appellant:

JAMES RAWLEY, *Public Defender's
Office, Moen, Truk*

Counsel for Appellee:

PHIL JOHNSON, *District Attorney,
Moen, Truk*

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

PER CURIAM

Appellant was convicted in the Truk District Court of the offense of dynamiting fish, and, on appeal to the Trial Division of the High Court, the conviction was affirmed. His further appeal to this Court was dismissed for lack of jurisdiction, pursuant to 5 TTC Sec. 54(1)(b).

Following conviction, the Government filed a complaint for forfeiture of the motor boat and equipment used in the dynamiting offense, such forfeiture being provided for by Truk District law. Initially filed in the District Court, these proceedings were transferred to the High Court as Civil Action No. 75-78.

The Trial Court held for the Government, finding specifically that there were reasonable grounds for seizure of appellant's boat and that the evidence, together with the District Court conviction fully supported a judgment of forfeiture. This appeal followed.

[1] Two of the claims of error set out in the Notice of Appeal challenge only the sufficiency of the evidence. Findings of fact by the Trial Court will not be set aside unless clearly erroneous. 6 TTC Sec. 355(2). We have searched the record and find no such clear error.

Appellant further suggests error in that the "forfeiture proceeding [was] barred by the statutory scheme both by double jeopardy and by construction of the statutes of the Trust Territory and Truk District relating to dynamited fish which appellant alleges the Court misconstrued as a matter of law." It is not at all clear what this assignment of error means, and, appellant has filed no brief to assist us to understand it for purposes of review.

[2] The suggestion of double jeopardy was not raised. Court appeared to be that no weight could be given the

conviction in the District Court since it was for a violation of Trust Territory law, rather than Truk District law under which the forfeiture proceedings were brought. This ignores, of course, the specific finding of the Trial Court, in these proceedings, that appellant's boat had been used in commission of the offense.

[3] The suggestion of double jeopardy was not raised in the Trial Court and clearly has no application.

As noted, appellant did not brief the questions which he raised in this appeal. (Apparently he chose to rely on his claims of error in the criminal proceeding, and filed an extensive brief in that matter, which has been decided adversely to him.) We have nevertheless searched the entire record, and find nothing to warrant disturbing the findings of the Trial Court.

Accordingly, the judgment is **AFFIRMED**.

TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Appellee

v.

DANIS CANTERO, Defendant-Appellant

Criminal Appeal No. 78

Appellate Division of the High Court

Ponape District

November 4, 1980

Appeal from criminal conviction. The Appellate Division of the High Court, per curiam, held that where no transcript of the trial record was available for review on appeal, the conviction would be set aside and remanded to the Trial Division for a new trial.

Appeal and Error—Record on Review—Lost Records and Files

Where a timely notice of appeal from a criminal conviction was filed, and transcript of trial record was unavailable for review, there was no choice but to set aside the conviction and remand for a new trial.