JOAQUIN A. FLORES, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 144

Trial Division of the High Court

Palau District

February 14, 1958

Defendant appeals from conviction in Palau District Court of illegally selling locally manufactured liquor, in violation of Palau Congress Resolution No. 11-55. On appeal, defendant contends that finding is not supported by evidence. The Trial Division of the High Court, Chief Justice E. P. Furber, held that evidence was sufficient to support charge and that government sustained its burden of proof of guilt beyond reasonable doubt.

Modified and affirmed.

1. **Criminal Law—Appeals—Prejudicial Error**

   It is duty of court on appeal not to set aside any finding, order or sentence for any error or omission unless error or omission has resulted in injustice to accused. (T.T.C., Sec. 497)

2. **Criminal Law—Complaint**

   Person charged with violation of law in connection with one incident cannot be convicted on that charge by showing violation in connection with entirely different incident, without any charge covering latter incident being preferred.

3. **Criminal Law—Complaint**

   Court in criminal prosecution may direct new or additional charges be prepared against accused if evidence introduced by prosecution tends to support them, but accused should then be given opportunity to plead and defend against new or additional charges. (Rules of Crim. Proc., Rule 13(h)(2))

4. **Criminal Law—Burden of Proof—Prima Facie Case**

   Once government has established prima facie case in criminal prosecution, burden is on accused to answer or rebut it, but overall burden is on government to establish accused guilty beyond reasonable doubt on all the evidence.

5. **Criminal Law—Sentence**

   Sentence imposed by District Court is clearly illegal where it purports to impose both imprisonment and fine and resolution under which penalties are provided only authorizes imprisonment or fine. (Palau Cong. Res. No. 11-55)

Assessor:	JUDGE R. FRITZ
Interpreter:	FRANCISCO K. MOREI
Counsel for Appellant:	ROSCOE L. EDWARDS, ESQ., *Public Defender* and *Counselor*
Counsel for Appellee:	BENJAMIN NGIRAINGAS

FURBER, *Chief Justice*

This is an appeal from a conviction of illegally selling locally manufactured liquor in violation of Section 2 of Palau Congress Resolution No. 11-55, Second Session, approved by the High Commissioner's Serial 1231 of March 28, 1956.

The appellant, through counsel, complains that the finding appealed from is not supported by the evidence and rather shows bias against the appellant because he is a Guamanian, and that there is confusion in the record. The appellant personally also argues that he did not know the facts at the time of either the original trial or the new trial, but fails to state what new evidence, if any, he has to offer, or show why he could not have discovered before the trial, and his counsel does not press this point at all.

The appellee argues that there is more than sufficient evidence in the record to support the finding, and goes at considerable length into discussion of two violations of this same resolution, one of them through an alleged agent, both of which were separate from the incident charged in the complaint.

There is unfortunate confusion in the record, particularly as to the time of trial and the orders in connection with the granting of the new trial and the result thereof. From a reading of the entire record, however, it is apparent that there is a clerical error in the month of the trial as shown on the District Court's sheet entitled "Record of Criminal Trial", and that the trial was actually a month earlier as shown in the notes attached to this sheet.

It is also apparent that in substance the court only granted the appellant's motion for new trial to the extent of vacating the original judgment, taking additional testimony, and then entering a new judgment, as expressly authorized under Rule 14d of our Rules of Criminal Procedure, and as is approved for U.S. District Courts in trials without a jury by Rule 33 of the Federal Rules of Criminal Procedure.

Some at least of any confusion there may be about the trial appears to arise from the fact that the accused was acting for himself until shortly before the hearing on this appeal and is obviously not very familiar with our court procedure. He has not alleged how he was prejudiced by any confusion there may be in the record. If he felt he was in any way misled or prejudiced by the state of the record, he should have taken the matter up with the District Court in accordance with Rule 30e(1) of the Rules of Criminal Procedure and could presumably have straightened the matter out very quickly. The Government has not alleged that his notice of appeal was premature; nor does the appellant allege that he was not given a full opportunity to present all the evidence he desired at the new trial.

CONCLUSIONS OF LAW

[1] 1. In accordance with Section 497 of the Trust Territory Code, it is the duty of the court not to set aside any finding, order, or sentence "for any error or omission, technical or otherwise", unless "it shall appear that the error or omission has resulted in injustice to the accused". Upon the entire record, the Trial Court was fully justified in finding the accused guilty in connection with the incident charged. Two witnesses testified clearly and definitely to it. The accused was given an opportunity to present evidence at great length with regard to his alleged alibi. Some

of this testimony was conflicting and, taken as a whole, is most unconvincing.

[2, 3] 2. Much of the argument has been devoted to the matter of evidence which was introduced, without objection, at the new trial concerning two alleged sales in violation of the resolution in question, which were separate from the incident alleged in the complaint. One of these alleged additional sales was through a supposed agent. The court fully concurs with the appellant's argument that the evidence was insufficient to prove the agency, but this is immaterial in the present case, as the court strongly repudiates the Government's implied argument that a person charged with violation of a law in connection with one incident can be convicted on that charge by showing a violation in connection with an entirely different incident without any charge covering the latter incident being preferred. Rule 13h(2) of our Rules of Criminal Procedure provides that the court may direct that new or additional charges be prepared against the accused, if the evidence introduced by the prosecution tends to support new or additional charges. But if that is done, the accused should be given an opportunity to plead to and defend against the new and additional charge or charges. In the present case this court holds that the evidence is amply sufficient to support the charge as to the sale set out in the complaint without any regard to the other two sales indicated by the evidence.

[4] 3. This court also repudiates any intimation that the overall burden of proof was ever on the accused to prove his innocence. Once the Government had established a prima facie case, the burden was on the accused to proceed to answer or rebut it, but the overall burden was on the Government to establish that the accused was guilty beyond a reasonable doubt on all the evidence—consider-

ing both that originally presented and that presented after the original judgment had been vacated. This court holds, however, that the trial court was fully justified in finding that the Government had sustained this burden.

[5] 4. The sentence imposed by the District Court, however, is clearly illegal since it purports to impose both imprisonment and a fine, while the resolution in question only authorized imprisonment "*or*" a fine and does not contain the words "or both", which are found in many of the criminal provisions of our Trust Territory Code.

JUDGMENT

The finding of the District Court for its Palau District in its Criminal Case No. 870 is affirmed; the sentence is amended by striking out the words "and $5.00 fine", but the part of the sentence imposing two weeks' imprisonment is affirmed.