

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

AMON JIMA

Criminal Case No. 437

Trial Division of the High Court

Palau District

September 29, 1972

Prosecution for aggravated assault. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, found that defendant was too intoxicated to form the requisite intent and found him guilty of the lesser included offense, not requiring intent, of assault and battery with a dangerous weapon.

1. Criminal Law—Intent—Intoxication

Intoxication is not an excuse for commission of a crime, but is a matter to be considered in connection with criminal intent.

2. Assault and Battery With a Dangerous Weapon—Dangerous Weapon—Automobiles

An automobile is a dangerous weapon, within meaning of statute making assault and battery with a dangerous weapon a criminal offense, when it is deliberately driven at someone. (11 T.T.C. § 204)

3. Assault and Battery With a Dangerous Weapon—Intent

Where it appeared from the evidence that defendant charged with aggravated assault in that he drove at and hit another person was so intoxicated as to be incapable of forming the requisite intent, he would be found guilty of lesser included offense, not requiring intent, of assault and battery with a dangerous weapon.

Assessor:

PABLO RINGANG, *Presiding
Judge of the District Court*

Interpreters:

SINGICHI IKESAKES
ALOYSIUS WASE (for the
Marshallese Language)
KAPRIEL NARRUHN (for the
Trukese Language)

Prosecutor:

BENJAMIN N. OITERONG,
District Prosecutor

Counsel for Accused:

J. LEO MCSHANE, ESQ.,
Public Defender, Palau

TURNER, *Associate Justice*

This criminal case raises the question as to what effect, if any, voluntary intoxication has upon a committed offense. Defendant, a seaman on the Yap Islander, was charged by the District Attorney's Information with the offense of aggravated assault.

Essentially the facts were that defendant drove to Malakal Dock in the Palau District, where the ship was moored, with four companions at approximately 1:00 a.m. The five people got out of the car when it reached the ship. The defendant then proceeded to slap one of the passengers, knocking him down, and then got back into the car and drove it at another passenger. He hit him and fractured his leg.

After further maneuvering the automobile, when he may or may not have been attempting to hit a third passenger, the defendant drove away.

The evidence was convincing that the defendant had been drinking most of that day and at the Peleliu Club until it closed at midnight. Defendant undoubtedly was drunk. He testified he "didn't remember" driving or anything else after he left the Peleliu Club.

[1] At the start of the trial, the defense moved for summary judgment of acquittal on the grounds that because of his intoxication the defendant lacked the capacity to commit a crime. The motion was denied because the law clearly is that drunkenness is not an excuse for commission of a crime.

In *Hopt v. People*, 104 U.S. 631, 26 L.Ed. 873, the United States Supreme Court ruled:

"At common law, indeed as a general rule, voluntary intoxication affords no excuse, justification or extenuation of a crime committed under its influence. But when a statute establishing different degrees of murder requires deliberate premeditation in order to constitute murder in the first degree, the question, whether the

TRUST TERRITORY v. JIMA

accused is in such a condition of mind, by reason of drunkenness or otherwise, as to be capable of deliberate premeditation, necessarily becomes a material subject of consideration by the jury.”

To the same effect, and emphasizing that intoxication is a matter to be considered in connection with the criminal intent attributed to the accused is *People v. Avanzi*, 77 P.2d 237:

“Defendant relies for reversal of the judgment on the following proposition:

Defendant was not guilty of the offense of which he was convicted, because at the time of the alleged offense he was in a state of voluntary intoxication.

This proposition is untenable. . . . Whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute any particular species or degree of crime, the fact the accused was intoxicated at the time may be taken into consideration by the trier of fact in determining the purpose, motive, or intent with which the act was committed.”

As defined in the Trust Territory Code, 11 T.T.C. 202, the offense of aggravated assault requires that the accused have the intent to inflict grievous bodily harm. This intent must be proved beyond a reasonable doubt. *Ngeruangel v. Trust Territory*, 2 T.T.R. 620.

The evidence adduced failed to convince the Court the defendant had the requisite intent, even though he indisputably drove the automobile against the victim and fractured his leg.

[2, 3] A lesser included offense to aggravated assault is assault and battery with a dangerous weapon, defined in the Code at 11 T.T.C. 204. No intent is involved in this offense. The assault and battery must be accomplished with a dangerous weapon. We hold that an automobile, used in the manner disclosed by the evidence in this case is a dangerous weapon. *Trust Territory v. Sokau*, 4 T.T.R. 433; *Paul v. Trust Territory*, 2 T.T.R. 603.

Accordingly, the defendant having been accused of the offense of aggravated assault and it appearing from the evidence that he was too intoxicated to form the requisite intent, the defendant is found guilty of the lesser included offense of assault and battery with a dangerous weapon.