

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

**v.**

**TOLIE ENNGEL, Defendant-Appellant**

**Criminal Appeal No. 49**

**Appellate Division of the High Court**

**Yap District**

**September 2, 1975**

Appeal from voluntary manslaughter conviction. The Appellate Division of the High Court, Williams, Associate Justice, held that appellant's request for

oral argument would be denied where he had failed to timely file a brief and had been previously notified of the court's intent to proceed to review the matters on the record.

**1. Appeal and Error—Oral Argument**

Request for oral argument by appellant would be denied where he failed to file a timely brief and had previously been notified of the court's intent to proceed to review the matters on the record.

**2. Appeal and Error—Briefs—Unbriefed Errors**

Assignments of error not briefed by person appealing conviction of voluntary manslaughter were waived.

**3. Appeal and Error—Reviewability of Issues—Issues Not Briefed**

Grounds for appeal not raised at the trial of criminal case, neither of which, even if there were error, was so prejudicial as to result in a denial of due process, would not be considered on appeal.

*Counsel for Appellee:*

PHILLIP JOHNSON, *District Attorney, Yap*

*Counsel for Appellant:*

BENJAMIN M. ABRAMS; LEO MC-SHANE, *Public Defender's Office*

Before BURNETT, *Chief Justice*, HEFNER, *Associate Justice*, WILLIAMS, *Associate Justice*

WILLIAMS, *Associate Justice*

This is an appeal from a conviction of voluntary manslaughter by the Trial Division of the High Court sitting in the Yap District. Defendant-appellant was charged with first degree murder; however, after trial he was found guilty of voluntary manslaughter as a lesser included offense and sentenced to a term of eight (8) years with the last four (4) years suspended. Appellant filed a notice of appeal enumerating the following six (6) grounds for appeal:

1. Evidence received at trial was insufficient to justify the finding of guilty and this judgment based thereon.

2. Errors of law occurring at the trial.

3. Failure of prosecution to establish beyond a reasonable doubt that the death of Barbara Gomtin was proximately caused by any

act or admission (sic) of defendant, acting alone or in concert with others or another.

4. Information and belief that a majority of the Court was influenced by matters that occurred outside of court and not properly brought before it.

5. The only purported eyewitness to the alleged crime, Chonmon, whose capacity to testify was questioned by the defendant at the time of trial, was permitted to testify without:

a. His capacity to relate the truth and to understand the question asked of him being first determined professionally by an examination by one who is qualify (sic) to make such examination and report upon it.

6. Other grounds as may be set forth after a study of the transcript of evidence, the same being unavailable at this time.

The record was certified on November 13, 1974 and appellant applied for and was granted an extension of time to file a brief until February 12, 1975. On May 20, 1975 appellee filed a motion to dismiss the appeal. By order of this Court, the motion to dismiss was denied on May 22, 1975 and the parties were notified of the Court's intent to review the record in accordance with Rule 32(i), Rules of Criminal Procedure of the High Court. Subsequently, some three (3) months after the time for filing had expired, appellant filed a brief on June 24, 1975 alleging two (2) new bases for the appeal and a request for oral argument.

[1] The appellant's request for oral argument is denied since the appellant failed to timely file a brief and has previously been notified of the Court's intent to proceed to review the matters on the record.

The appellant has filed no brief relating to the grounds for appeal as specified in the notice of appeal, and relies solely upon the allegations of error in the notice of appeal.

[2] In *Debesol v. Trust Territory*, 4 T.T.R. 556 (1969), the Court expressed its dissatisfaction with the marked tendency of appellants to inadequately present assignments of error. Although the Court in the *Debesol* case held that

assignments of error, neither briefed nor argued are waived, the Court did examine the record in search of some merit in the assignments of error. We feel no such compulsion to review the assignments of error set forth in the notice of appeal. Appellant is represented by an attorney and he has failed to brief the assignments of error, therefore they are deemed to be waived. *Debesol v. Trust Territory*, 4 T.T.R. 556 (1969).

Since this case involves the taking of a human life and a substantial sentence was imposed against the defendant, we have reviewed the record and we find the evidence is clearly sufficient to support the findings of the court and we find no prejudicial error in the record.

[3] Although the brief filed by appellant did not cover any of the six (6) allegations of error in the notice of appeal, appellant did raise two (2) additional grounds as a basis for his appeal. However, neither of these grounds was raised by objection or otherwise at the trial, and neither, even if considered error, is so prejudicial as to result in a denial of due process, therefore they should not be considered further. *Debesol v. Trust Territory*, 4 T.T.R. 556 (1969).

The judgment of the trial court is hereby affirmed.