

TEMENGIL v. TRUST TERRITORY

2. If within thirty days after the entry of this judgment the plaintiff Ililau, in District Court for the Palau District Civil Action No. 189, has not filed in that court a written waiver of right to a new trial, the judgment of that court entered July 1, 1958, is set aside, and the case referred back to that court for a new trial, subject to the following directions:—

(a) The judge who originally heard the case is to reopen it and take any additional proper testimony either side wishes to offer, but he is also to consider the testimony already in the record without its being reintroduced.

(b) After taking such additional testimony, he shall finish the trial as if no previous judgment had been entered; shall allow the usual opportunity for argument; and shall enter a new judgment consistent with the opinion herein.

TEMENGIL, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 163

CHARLEY EDUARDO, (otherwise known as SALII), Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 164

Trial Division of the High Court

Palau District

February 26, 1959

Appeals from convictions in Palau District Court of illegal sale and distribution of liquor, in which authorities erred in referring to Palau municipal law allegedly violated. The Trial Division of the High Court, Chief Justice E. P. Furber, held that first defendant was not misled to his prejudice by error; as to second defendant, if he did not violate terms of license or limitations on it communicated to him or of which he had reasonable notice, he should be acquitted on remand.

Affirmed in part and remanded in part.

1. Criminal Law—Appeals—Prejudicial Error

In criminal prosecution, where there is error in reference to law allegedly violated, such error is not grounds for reversal of conviction if error did not mislead accused to his prejudice. (T.T.C., Sec. 445)

2. Statutes—Construction

Where district order containing prohibitions and restrictions with regard to use of liquor is approved, and subsequent congress resolution provides for licensing of liquor distributors without making reference to previous district order, prohibitions and restrictions of district order still control except as to actions covered by licenses issued in compliance with resolution, and any actions not so covered may still be prosecuted under district order.

3. Criminal Law—Appeals—Prejudicial Error

Where accused in criminal prosecution was fully conscious of fact he was being tried for liquor violation, only question of injustice depends on whether he was misled to his prejudice by error in reference to law violated.

4. Criminal Law—Complaint—Defect

Where there is error in criminal prosecution in making reference to law violated, only possible prejudice to accused arises from fact penalties under one law are much heavier than under the other.

5. Criminal Law—Complaint—Defect

Where there is error in criminal prosecution in making reference to law violated, and penalties under one law are heavier than penalties under the other, court will eliminate provisions with regard to imprisonment to avoid possible prejudice and in interests of substantial justice.

6. Liquor Control—Licenses

In criminal prosecution for violation of liquor licensing law, if accused's liquor distributor's license was not issued in strict accordance with applicable law, but was issued and accepted by him from government in good faith without any fault on his part, and sale or transfer complained of was in fact within terms of license or any limits on it communicated to him or of which he is shown to have notice, he should be acquitted.

7. Liquor Control—Licenses

In prosecution for violation of liquor licensing law, if sale or transfer of liquor by accused is clearly shown by evidence to be outside limits of his license or at place not covered by license, he should be convicted.

FURBER, *Chief Justice*

OPINION

These are two appeals which were heard together from decisions of the District Court for the Palau District in two cases tried together in which the accused were found guilty of illegal sale of liquor in the first case, and illegal distribution in the second case, alleged in the complaints to have been in violation of Palau Congress Resolution No. 10-55, Sections 2 and 3, respectively.

[1] Section 2, referred to, is purely permissive, and Section 3 has no relation to the facts shown or argued. It is therefore obvious that there was an error in the reference to the law alleged to have been violated. Trust Territory Code, Section 445, however, expressly provides that such error "shall not be ground for reversal of a conviction if the error . . . did not mislead the accused to his prejudice".

Both the testimony and arguments in these cases show great confusion in the minds of those concerned as to the exact requirements of the liquor control laws in effect in the Palau District at the time of the incidents involved, namely, June 1958. Much but not all of this confusion has since been cleared up by Liquor Control Board Regulation No. 3, approved July 21, 1958, but it does not help so far as these cases are concerned. The basic prohibitions and restrictions with regard to the use of liquor in the Palau District are set forth in Palau District Order No. 1-50. Palau Congress Resolution 10-55 then provided for a system of licensing of liquor distributors by the "Olbiil era Kelulau" (Palau Congress) without making any express reference to District Order No. 1-50, and District Order No. 7-56 created a Liquor Control Board with power to make, with the approval of the District Administrator, regulations having the force and effect of law concerning

conditions governing the granting of permits and licenses to import and sell liquor under the terms of Resolution 10-55.

[2] From the information presented in connection with these cases and their appeals, it appears doubtful whether any of the liquor distributor licenses in the Palau District have been issued in strict accordance with Palau Congress Resolution 10-55. Under these circumstances the court holds that the prohibitions and restrictions of District Order 1-50 still control, except as to actions which are covered by licenses issued by the Government in purported compliance with Resolution 10-55, and that any actions not covered by such licenses may still be prosecuted and punished under District Order 1-50.

[3-5] In the case of Charley Edwardo, otherwise known as Salii, the license which he claimed to have admittedly did not even purport to cover the sale and serving of beer in opened cans or bottles, which the court was fully justified from the evidence in finding he had done through his agents, beyond a reasonable doubt. The record of trial clearly indicates that he was fully conscious of the fact that he was being tried for a liquor violation, and the only question of any injustice depends on whether he was misled to his prejudice by the error in the reference to the law violated. The only possible prejudice this court can see arises from the fact that penalties under Resolution 10-55 are limited to a fine of not more than \$100.00 or imprisonment of not more than six months, with no authorization for imposition of both fine and imprisonment, while under Palau District Order No. 1-50 much heavier imprisonment and fine, or both, were authorized. To avoid any possible claim of such prejudice and in the interests of substantial justice, this court is therefore eliminating the provisions of his sentence with regard to imprisonment.

[6, 7] The evidence as to what liquor distributing license, if any, the defendant Temengil had, what the limitations upon it, if any, were, and where the alleged sale took place, is very vague and confusing. He claims, however, that he was a properly licensed retailer in Koror who had been granted a liquor distributor's license as such, which authorized him to sell or give away beer at his place of business in Koror in closed containers, without any limitation as to the amount of any one sale or gift, and he claims that the transfer of the cases of beer complained about in Count 2 of the complaint against him was made under the terms of those two licenses and at his place of business in Koror. Counsel for the Government states that it is his understanding that a licensed retailer, who also has a liquor distributor's license, is limited to sales of not more than one case of liquor at a time, but he admits frankly that he does not know where that is expressly stated. Even if his liquor distributor's license or licenses were not issued in strict accordance with Resolution 10-55, but were issued and accepted by him from the Government in good faith, without any fault on his part, and the sale or transfer complained of was in fact within the terms of the license, any limitations on it which were communicated to him, or of which he is shown to have had reasonable notice, he should be acquitted. On the other hand, if the sale or transfer is clearly shown by the evidence to be outside the limits of his license, or at a place not covered by the license, then he should be convicted.

The court is therefore remanding his case to the District Court for a new trial at which the District Court is to be governed by the terms of this opinion.