YINMED, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 92

Trial Division of the High Court

Yap District

November 19, 1963

Defendant was convicted in Yap District Court of drunken and disorderly conduct in violation of T.T.C., Sec. 427. On appeal, defendant maintained evidence was insufficient to establish guilt beyond reasonable doubt, and that he had not had sufficient notice of cause of arrest nor received copy of complaint or receipt for cash bail. The Trial Division of the High Court, Chief Justice E. P. Furber, held that irregularities raised on appeal were not such as to entitle defendant to acquittal.

Affirmed.

1. **Criminal Law—Generally**

   Trust Territory courts and counsel appearing before them should be interested in substantial justice in criminal proceedings rather than technicalities.

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

   Only those errors or omissions resulting in injustice to accused in criminal proceedings are grounds for reversal or invalidation of any court order, finding or sentence. (T.T.C., Sec. 497)

3. **Criminal Law—Pre-Trial Procedure**

   No violation of provisions in Trust Territory Code, Chapter 6, including failure to give notice to accused, will in and of itself entitle accused to acquittal in criminal proceedings in Trust Territory. (T.T.C., Sec. 498)

4. **Criminal Law—Pre-Trial Procedure**

   Where accused is not given copy of complaint or is given copy while drunk, he is only entitled to continuance until he receives copy and has time to prepare for trial. (T.T.C., Sec. 498)

5. **Criminal Law—Pre-Trial Procedure**

   Since purpose of giving bail receipt is to protect against possible loss or misappropriation of bail, failure to do so has no bearing whatever on defendant's guilt. (T.T.C., Sec. 498)

6. **Criminal Law—Pre-Trial Procedure**

   Warning contained in "Notice to Accused" regularly used by constabulary in Trust Territory is only required before suspect in criminal case is questioned about crime of which he is suspected. (Rules and Regulations for the Trust Territory Constabulary, Sec. 15(f)(1))

7. **Criminal Law—Trial Procedure—Motion to Dismiss**
   Where alleged facts on which original motion to dismiss criminal case is based are not properly presented, there can be no argument based on them (unless admitted) until presented either by written statement or statements under oath or by testimony by leave of court. (Rules of Crim. Proc., Rule 18a)

8. **Civil Procedure—Arguments by Counsel**
   During trial in Trust Territory courts, counsel may not argue about alleged facts not properly before court nor substitute their ideas about facts for proper showing of them.

9. **Evidence—Generally**
   Court cannot reasonably be expected to disbelieve uncontradicted sworn testimony unless there is something clearly incredible about it.

10. **Criminal Law—Trial Procedure—Motion to Dismiss**
    If accused in criminal proceeding raises issue which should properly have been offered at hearing on original motion to dismiss, he cannot, having raised issue, fairly claim to be prejudiced by government's submitting evidence on it.

11. **Criminal Law—Burden of Proof—Prima Facie Case**
    Where sole witness for government in criminal case is both complainant and arresting officer, and his uncontradicted testimony covers all elements of crime charged, prima facie case has been made out to support conviction.

12. **Drunken and Disorderly Conduct—Generally**
    Under Trust Territory law, disturbance of particular persons is not essential element of offense of drunken and disorderly conduct. (T.T.C., Sec. 427)

13. **Drunken and Disorderly Conduct—Generally**
    In criminal prosecution for drunken and disorderly conduct, disturbance of particular persons may be element to consider as to seriousness of particular incident. (T.T.C., Sec. 427)

14. **Drunken and Disorderly Conduct—Generally**
    All that is required to be shown in criminal prosecution for drunken and disorderly conduct under Trust Territory law is that accused was drunk and disorderly in any street, road, or other public place from voluntary use of intoxicating liquor. (T.T.C., Sec. 427)

Assessor:	JUDGE LEON
Interpreter:	LAWRENCE J. KEN
Counsel for Appellant:	FRANK FALOUNUG
Counsel for Appellee:	RAPHAEL NAMNEG

FURBER, *Chief Justice*

This is an appeal from a conviction of Drunken and Disorderly Conduct in violation of Section 427 of the Trust Territory Code.

Although the appellant's notice of appeal listed four (4) grounds, these amount essentially to only two:— (1) that the court erred in denying the accused's motion to dismiss the case on the ground that the accused had not received a copy of the complaint, nor the usual "notice to the accused", nor any receipt for the cash bail he deposited, and had further erred in accepting testimony on behalf of the government that a copy of the complaint had been delivered to the accused while in his cell, but that he had crumpled the copy up and thrown it away, and (2) that the evidence was insufficient to establish guilt beyond a reasonable doubt.

Counsel for the appellant in his oral argument also claimed that there had been failure by the constabulary to comply with Section 458 of the Trust Territory Code requiring that an arrested person shall, "as soon as practicable after the arrest, be given clearly to understand for what cause or by what authority the arrest was made". On the question of the insufficiency of the evidence, he pointed out that the government had not shown what individuals, if any, were disturbed by the defendant's conduct, and further that the sole witness for the government was the arresting officer, who was also the complainant.

Counsel for the appellee argued that the government had put on a witness whose testimony covered all of the

essential elements of the crime involved and that he did not think the constabulary had made any mistake in handling the matter.

OPINION

This appeal is based on a series of misconceptions and misunderstandings and shows an undue desire on the part of counsel for the accused to "catch", as he puts it, the constabulary in some irregularity rather than to see that his client receives justice.

[1–3] In the first place, even if the facts on which counsel for the accused's original motion to dismiss was based, are as he contends, they do not constitute ground for either dismissal or acquittal. Trust Territory courts and counsel appearing before them should be interested in substantial justice rather than technicalities. This is made very clear by Section 497 of the Code, which reads as follows:—

"*Effect of irregularities.* The proceedings before a court or an official authorized to issue a warrant shall not be invalidated, nor any finding, order, or sentence set aside for any error or omission, technical or otherwise, occurring in such proceedings, unless in the opinion of the reviewing authority or a court hearing the case on appeal or otherwise it shall appear that the error or omission has resulted in injustice to the accused."

Section 498 provides that no violation of the provisions contained in Chapter 6, which includes Section 458 cited by counsel for the appellant, shall in and of itself entitle an accused to an acquittal.

[4–6] Even if the accused was not given a copy of the complaint or was given one when he was so drunk he didn't know what it was, that would only be ground for a continuance until he was given a copy and had any time he reasonably needed to prepare for trial. He didn't ask for any continuance, however, and probably didn't want one as

the complaint had been on file open to inspection by him or his counsel or any one else for over two months before the trial. He should, of course, have been given a receipt for his bail but this is primarily to protect against possible loss or misapplication of the bail and has no bearing whatever on his guilt. Fortunately, in this instance the bail still stands duly recorded in the Clerk's records so there should be no difficulty about recovering it. The warning contained in the "notice to the accused" regularly used by the constabulary in the Trust Territory, is only required before a suspect is questioned about the crime of which he is suspected. Rules and Regulations for the Trust Territory Constabulary, Sec. 15f(1). Here, however, no questioning of the accused by the constabulary has been shown or alleged.

[7] In the second place, the alleged facts on which the original motion to dismiss was based were not properly presented, and there should have been no argument based on them (unless they were admitted) until they had been so presented either by a written statement or statements under oath or by testimony by leave of court in accordance with Rule 18a of the Rules of Criminal Procedure, which provides in part as follows:—

"When a motion is based on facts not appearing of record, the court may hear the matter on written statements under oath, or the court may direct that the matter be heard wholly or partly on oral testimony or depositions."

(A similar provision with regard to motions in civil actions will be found in Rule 8b(2) of the Rules of Civil Procedure.)

[8] This illustrates another aspect of the bad tendency in Yap to argue about alleged facts which are not properly before the court, and to try to substitute counsel's ideas about the facts for a proper showing of them. This

court issued a sharp warning on this matter in the next to the last paragraph of its opinion in the case of *Firetamag v. Trust Territory*, 2 T.T.R. 413. That case had to do specifically with trying to substitute argument for evidence on the merits of a case, but the principle is just the same with regard to any facts on which motions are based and which do not already appear in the record.

[9, 10] On the question of whether the accused had been given a copy of the complaint, his counsel is asking this court to accept his idea of the facts in the face of uncontradicted sworn testimony to the contrary. A court cannot reasonably be expected to disbelieve such testimony unless there is something clearly incredible about it. This testimony did not bear on the merits of the case and should more properly have been offered at the hearing on the original motion to dismiss, but the accused, having raised the issue, cannot fairly claim to have been prejudiced by the government's submitting evidence on it.

[11] Thirdly, there is no merit at all in the objection that the sole witness for the government was also both the complainant and the arresting officer. In many instances of minor crimes committed right in the presence of a policeman, the arresting officer would naturally be the complainant and at least the principal witness, if not the only one, that the government would have occasion to call. If his testimony satisfactorily covers all the elements of a crime charged, that is ordinarily sufficient to make out a prima facie case and to support a conviction if no evidence to contradict it is introduced on behalf of the accused. In this instance the arresting officer's testimony was very brief, but it included a demonstration of the accused's conduct that apparently was most convincing to the trial judge. If there was anything wrong or exaggerated about that testimony, the accused had an oppor-

tunity to call witnesses to contradict it, but this the accused failed to do.

[12–14] Fourthly, the disturbing of particular persons is not an essential element of the offense of drunken and disorderly conduct set out in Section 427 of the Code. Such disturbance might be an element to consider as to the seriousness of the particular incident, but all that is required is to show that a person is drunk and disorderly in any street, road, or other public place from the voluntary use of intoxicating liquor. While the arresting officer might well have gone into more details in his testimony, counsel for the accused could easily have brought these details out in cross-examination if he thought they would be helpful to the accused. The uncontradicted testimony of this officer clearly convinced the trial judge and this court considers it was sufficient to justify the trial judge's finding of guilty. The very moderate fine imposed indicates that the trial judge did not consider the offense to be particularly aggravated.

JUDGMENT

The finding and sentence of the Yap District Court in its Criminal Case No. 394 are affirmed.