ASAKO, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 185

Trial Division of the High Court

Truk District

June 20, 1966

Appeal from conviction in Truk District Court of assault and battery with a dangerous weapon, in violation of T.T.C., Sec. 377-A. The Trial Division of the High Court, Chief Justice E. P. Furber, held that one who provokes fight cannot claim self-defense in use of deadly weapon in countering reprisal. Affirmed.

1. Criminal Law-Appeals-Scope of Review

On appeal in criminal prosecution, appellate court will consider evidence in light most favorable to government.

2. Criminal Law-Self-Defense

One who provokes fight runs risk of suffering normal results of such provocation and cannot claim self-defense as excuse for using dangerous weapon to resist such results. (T.T.C., Sec. 377-A)

Assessor: JUDGE F. SOUKICHI
Counsel for Appellant: ANDON L. AMARAICH
Counsel for Appellee: FUJITA PETER

FURBER, *Chief Justice*

This is an appeal from decision of the Truk District Courtin its Criminal Case No. 1956, in which the appellant was convicted on Count 1 of Assault and Battery, and on Count 2 of Assault and Battery with a Dangerous Weapon. Both sides waived oral argument and submitted the appeal on the record in the trial court and written briefs.

The original Notice of Appeal indicated the appeal was from the whole judgment and an order entered at that time that the accused, in addition to other punishment, pay the hospital bill of the victim in Count 2. An Amended

Notice of Appeal was filed later, however, in which the appellant stated that she appealed "from the judgment and finding as it relates to Count 2".

From the Amended Notice of Appeal and the appellant's brief, it appears that the appellant no longer presses her appeal from the conviction on Count 1. The sole issue raised in the appellant's brief is that the accused should have been acquitted on Count 2 on the ground of self-defense.

OPINION

[1] This court and the Appellate Division of the High Court have repeatedly held that in appeals by the accused in a criminal case, the evidence must be considered in the light most favorable to the Government and on the basis of what the trial court had a right to believe, not on what the appellant wishes it believed. *Fattun v. Trust Territory,* 3 T.T.R. 571; and cases there cited. *Figir v. Trust Territory,* 3 T.T.R. 127, and cases there cited. *Bernardo Opispo v. Trust Territory,* 2 T.T.R. 565. *Basilius Mesechol v. Trust Territory,* 3 T.T.R. 84.

Apparently, however, the court has failed to make the implications of this sufficiently clear to counsel. Since the evidence is to be considered in such an appeal in the light most favorable to the Government, the appellant's counsel in his argument, whether oral or written, should "face the facts" fairly and frankly as disclosed by the evidence most favorable to the finding of the trial court, which that court was entitled to believe. Only in that way can counsel hope to make an effective appeal to the judgment of the appellate court. It is disappointing to have one of our ablest and most experienced trial assistants present such a brief as the appellant's in this case.

The appellant's brief, taken alone, presents a most compelling picture. If the trial court had believed that the facts set forth in the appellant's statement of facts were

what the evidence showed, 'and all it showed, that court would undoubtedly have acquitted the accused on Count 2. The appellant's argument, however, loses its force when compared with the evidence" for it immediately becomes apparent that the appellant has completely ignored all the testimony tending to show aggression on the part of the appellant. Much of this testimony 'was uncontradicted and some of it was corroborated by her own testimony.

, **[2]** The, evidence of the, aggressive condllct, of the accused after being led away from the scene of her assault and battery on the victim in Count 1, in arming herself with a straight knife with a blade four and three-quarter inches long (admitted as Exhibit 1), and then returning in search of her former victim, and her indications of anger toward that victim's sister, had a very important bearing on her plea of self-derense even though the one she used the knife on was the sister of the first victim rather than the one the 'appellant was particularly looking for at the moment. In fairness to all concerned, this evidence must be given due weight. One who' provokes a fight runs the risks of suffering the normal results of such provocationandcannotproperly claim self-defense as an excuse for using a dangerous weapon to resist such results. 6Arn, Jur. 2d, Assault and Battery, §§ 69 and 77.

, After careful consideration of all the evidence, including that which the appellant apparently wishes overlooked, this court is of the opinion that the evidence is sufficient'to support the finding 'of the trial court on' both counts.

JUDGMENT

The findings, sentences, and order with regard to payment of the hospital bill, of the Truk District Court in its Criminal Case No. 1956 are affirmed.