

DAVID P. POTOCKI, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 84
Trial Division of the High Court
Marshall Islands District

July 14, 1972

Appeal from negligent driving conviction. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that determination of trial court that facts conformed to statute was not for redetermination on appeal.

1. Criminal Law—Negligence—Degree

When a statute penalizes negligence as a criminal offense, the degree of negligence that is slight, ordinary or gross does not enter into the elements of the offense.

2. Criminal Law—Negligence—Fact Question

Whether accused was negligent, as defined by negligent driving criminal statute, was a question of fact for the trial court. (83 T.T.C. § 551(1))

3. Criminal Law—Appeals—Scope of Review

Trial court's determination that the facts conformed to provisions of criminal statute was not for redetermination by appellate court.

TURNER, Associate Justice

This is an appeal from the conviction of the appellant in the Kwajalein Community Court, Kwajalein Missile Range, Marshall Islands, of the offense of negligent driving which is defined by 83 Trust Territory Code, Section 551(1) as driving "a vehicle upon a highway in such a manner as to constitute a substantial deviation from the standard of care which a reasonable person would exercise in the situation."

The statute defines the criminal offense in substantially the same words courts employ in civil actions for damages for negligent conduct.

It is defined variously in 57 Am. Jur. 2d, Negligence, Section 1 and 65 C.J.S., Negligence, Section 1(2). The definition employed in the Federal Courts, found in *Anderson v. Hudspeth Pine, Inc.*, 299 F.2d 874, 879, is almost identical to the Code section:

“Negligence is the failure to exercise that degree of care which an ordinary prudent person would exercise under like facts and circumstances.”

Some courts and statutes apply degrees of negligence in civil cases. That is that “slight” negligence does not create civil liability, that civil liability is based on “ordinary” negligence and that “gross” negligence may justify punitive or exemplary damages. The criminal rule is different.

[1, 2] When a statute penalizes negligence as a criminal offense without reference to any degree, the degree of negligence that is slight, ordinary or gross, does not enter into the elements of the offense. All the statute requires is that the court find the accused “negligent” as defined by the statute. The question is one of fact for decision of the trial court. This applies both to the conduct in question and also the standard of care against which that conduct is measured. *People v. Pociask*, 96 P.2d 788; 57 Am. Jur. 2d, Negligence, Sec. 96.

In this case, the trial court decided, by its verdict of guilt, that the appellant’s driving was (1) a substantial deviation from the standard of care which (2) a reasonable person would exercise in the situation.

[3] The record on appeal shows there was little, if any, conflict in the evidence. The determination by the trial court that the facts conformed to the statutory provision is not one the appellate or reviewing court should redetermine on appeal.

In a decision on subsection 2 of 83 T.T.C. 551, this court said in *Joseph v. Trust Territory*, 4 T.T.R. 412:

“A criminal conviction on appeal must turn on whether there is sufficient evidence to support the charge”

Also compare the facts in *Nedlec v. Trust Territory*, 4 T.T.R. 22, with the facts in this case in which the accused drove across a road and struck a vehicle which had come to an almost complete stop off the side of the road, because, according to accused, his hand slipped from the wheel and his foot slipped from the brake while he was trying to close the window against a rain shower. In the *Nedlec* case, the court found there was no act of negligence whereas the trial court here found the necessary elements of negligence under the statutes.

The judgment of conviction in Kwajalein Community Court Criminal Case No. 8-72 is affirmed.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

HSU DENG SHUNG, et al.

Criminal Case No. 430

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

HSU MING HAVE

Criminal Case No. 431

Trial Division of the High Court

Palau District

August 7, 1972

Attack upon order assessing costs in criminal proceeding. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, held that the accused were not liable for cost of providing police guard.

Criminal Law—Costs—Detention

In the absence of a statute to the contrary, defendants in criminal prosecution could not be held liable for the costs of detaining them, whether before or after their conviction.