

ROMBER, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Appeal No. 6
Appellate Division of the High Court
August 10, 1954

Appeal from conviction of mayhem in violation of T.T.C., Sec. 382, in the Trial Division of the High Court, Marshall Islands District. In a *Per Curiam* opinion, the Appellate Division of the High Court held that question of whether injury constituted disfigurement, which is required element of crime of mayhem, was one of fact for trial judge to determine.

Affirmed with modification of sentence.

1. Mayhem—Generally

Question of whether injury to victim is noticeable enough to constitute permanent disfigurement within meaning of statute defining mayhem is question of fact which trial judge is in best position to determine. (T.T.C., Sec. 382)

2. Criminal Law—Sentence—Modification

Where appellate court feels sentence in criminal prosecution is severe, it may reduce sentence even though finding no error in proceedings of trial court.

Counsel for Appellant:

JOHN R. MURPHY

Counsel for Appellee:

HORACE G. MARSHALL

Before FURBER, *Chief Justice*, SHRIVER, MANIBUSAN, *Temporary Judges*

OPINION OF THE COURT

PER CURIAM

This is an appeal from a conviction and sentence by the Trial Division of the High Court, sitting in the Marshall Islands District. The appellant was convicted of the lesser included offense of assault and battery upon a count alleging aggravated assault, and of mayhem under a count alleging mayhem by stabbing him in the head with a knife, fracturing the skull, thereby causing the victim to become permanently disfigured. The appellant was sentenced to

six months imprisonment for the assault and battery and to eighteen months imprisonment for the mayhem, both sentences to run concurrently beginning October 16, 1953. The appeal is only from the conviction and sentence for mayhem.

The appellant has summarized the facts as follows:—

“On July 17, 1953 appellant Romber and one Kirain, both Trukese, engaged in an altercation at the Labor Camp located on Uliga Island, Majuro Atoll, Marshall Islands District. During the course of the altercation appellant Romber struck Kirain upon the head with a knife. Kirain fell to the ground with a fractured skull. Shortly thereafter Kirain was taken to the District Hospital and appellant Romber was arrested.”

After Kirain had completed the medical treatment necessitated, there was a permanent depression in his skull. Romber and Kirain were both members of the crew of the M/V Torry. They call themselves “brothers”, but are actually first cousins. They had been drinking together before the incident and were decidedly drunk at the time. Romber had been trying to get Kirain back to their ship when the altercation arose.

[1] The question is whether the depression in Kirain’s skull was noticeable enough to constitute permanent disfigurement within the meaning of Section 382 of the Trust Territory Code. The appellant asks us to hold that it did not matter as a matter of law. There was clearly some disfigurement. How noticeable it was, is primarily a question of fact. The trial judge had the advantage of personally viewing Kirain’s condition, and we are not prepared to say from the record that he was wrong as a matter of law.

[2] Under all of the circumstances, however, we feel the sentence is rather severe.

The finding of guilty is affirmed, but the sentence is reduced to the time already served.