

AISEA, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 31
Trial Division of the High Court
Truk District
March 22, 1955

Appeal from conviction in Truk District Court of obtaining divorce without good reason, in violation of Truk customary law (T.T.C., Sec. 434). The Trial Division of the High Court, Associate Justice James R. Nichols, held that divorce does not constitute crime under Truk customary law and is not violation of Trust Territory Code regarding local custom.

Reversed.

1. Domestic Relations—Divorce—Custom

Divorce effected in accordance with local custom is recognized as valid. (T.T.C., Sec. 712)

2. Truk Custom—Divorce—Recording

Under Truk custom, marriage may be dissolved at any time at will without action by court, Magistrate, or official, by either spouse "throwing away" other spouse. (T.T.C., Sec. 714)

3. Truk Custom—Divorce—Recording

Failure to record divorce in municipal office has no effect on validity of divorce under Truk custom. (T.T.C., Sec. 714)

4. Truk Custom—Divorce—Criminal Liability

Under Truk custom, "throwing away" of spouse does not constitute crime and cannot be punished as violation of criminal statute. (T.T.C., Sec. 434)

5. Truk Custom—Divorce—Criminal Liability

Where court transfers land to one spouse after criminal conviction of other spouse for wrongfully obtaining divorce under Truk custom, transfer is void since criminal conviction is void, but parties may stipulate that transfer is settlement of civil damages, or aggrieved spouse may sue for civil damages.

Interpreter:

F. SOUKICHI

Counsel for Appellant:

SMART LAMPSON

Counsel for Appellee:

F. PETER

NICHOLS, *Associate Justice*

In the complaint, the accused was charged with a Violation of Native Custom because he obtained a divorce without good reason (T.T.C., Sec. 434) and Criminal Libel (T.T.C., Sec. 425). The Record of Criminal Trial shows that, on the charge of "Divorce", the accused entered a plea of not guilty, was found guilty, sentenced to 10 days' imprisonment, and was ordered to transfer a piece of land to the complainant, Penina, who was the injured spouse. The Record of Criminal Trial made no mention of the Criminal Libel charge. It has been returned to the Trial Judge with the suggestion that an amended record be submitted.

The appellant advanced the argument that since divorce is a generally respected local custom and is authorized by the Trust Territory Code, the obtaining of a divorce can under no circumstances be considered a criminal offense. For this reason, he argued that the finding and sentence of imprisonment (already served), and the order for the transfer of the piece of land, should be set aside.

The appellee argued that the accused was found guilty of obtaining a divorce without good reason in violation of local custom, and of criminal libel. As punishment for the first named offense, the appellee argued that the offender was ordered to transfer a piece of land to the complainant, and, as punishment for the second named offense, the offender was sentenced to 10 days' imprisonment. The appellee further argued that throughout the Truk District it is considered a criminal offense to obtain a divorce without a good reason, and that the findings and sentences should be affirmed.

CONCLUSIONS OF LAW

[1] Divorce effected in accordance with local custom is specifically recognized in Section 714 of the Trust Territory Code. As the record now stands, the only question before the court is "Was the divorce in question punishable under Section 434 of the Trust Territory Code as a violation of native custom?"

[2-4] The question of whether or not "throwing away" one's spouse is a criminal offense was decided in *Purako v. Efou, Secretary of Moen Municipality*, 1 T.T.R. 236, where this court said:

"A study of Trukese customary law reveals that any marriage may be dissolved by either spouse at any time at will without action by any court, magistrate, or other official. That is, the marriage may be dissolved by either spouse 'throwing away' the other spouse. While the order issued during the Naval Administration of the Trust Territory that divorces be recorded in the Municipal Offices expedited the preparation of statistics and provided a source of evidence that the parties were actually divorced, that order was repealed by High Commissioner's Executive Order No. 32, and the recording or failure to record in the Municipal Office of a divorce effected in accordance with local custom has no effect upon the validity of the divorce. Under Trukese custom the 'throwing away' of a spouse does not constitute a crime. Therefore, it cannot be

punished under Section 434 of the Trust Territory Code regardless of whether it has been recorded or not, and a conviction of such an alleged offense in a community court is void, although, under Trukese customary law, liability for civil damages may result from the 'throwing away' of one's spouse."

[5] Since it is necessary that the finding of the trial court be set aside, the order that the appellant transfer a certain parcel of land to the complainant, Penina, must be set aside as a criminal punishment. However, since the appellant may be civilly liable, the parties may, if they so desire, treat this portion of the judgment as a proper measure of the civil damages which have accrued in behalf of Penina. Or, as an alternative, Penina may elect to file a complaint requesting a judgment awarding civil damages.

JUDGMENT

The facts as stipulated do not constitute a violation of Section 434 of the Trust Territory Code. The judgment entered April 17, 1954, by the District Court for the Truk District in Criminal Case No. M-35 is therefore reversed and the finding and sentence therein is set aside.