

TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff

v.

YUSIM O. MINOR, Defendant

Criminal Case No. 319

TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff

v.

KENGEI YAMASHIRO, Defendant

Criminal Case No. 320

Trial Division of the High Court

Palau District

March 26, 1969

Prosecution on charges of first degree murder. The Trial Division of the High Court, D. Kelly Turner, Associate Justice and Pablo Ringang and Francisco K. Morei, Special Judges, held that there was evidence establishing beyond a reasonable doubt the killing of the victim by the accused and that such killing was unlawful, willful and malicious and that accused were guilty in the second degree.

1. Criminal Law-Burden of Proof-Reasonable Doubt

The fine line between "conclusive" -proof and proof beyond a "reasonable doubt" is not for a trial court to determine; the obligation upon the court or jury is that proof be sufficient to "reasonably" rather than "conclusively" remove doubt of guilt.

2. Criminal Law-Evidence-Witnesses' Statements

It is the obligation of the triers of fact to accept or reject all or parts of a witness' testimony.

3. Homicide-Murder in First Degree-Intent

Without intent to kill or premeditation a homicide cannot be of the first degree with its mandatory sentence of life imprisonment.

4. Homicide-Murder in First Degree-Intent

To be murder in the first degree the killing must be premeditated, except when done in perpetration of certain felonies; that is, the unlawful killing must be accompanied with a deliberate and clear intent to take life. (T.T.C., Sec. 385)

5. Homicide-Murder in Second Degree-Intent

In order to support a conviction of murder in the second degree, it is not necessary to find premeditation but it is essential there be a finding, also necessary for sustaining murder in the first degree, that the killing was malicious as well as unlawful and willful.

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6. Homicid&-Murder in First Degree--Intent

Malice in connection with the crime of killing is but another name for a certain condition of a man's heart or mind; and as no one can look into the heart or mind of another, the only way to decide upon its condition at the time of the killing is to infer it from the surrounding facts, and that inference is one of fact.

7. Homicide--Murder in First Degree--Intent

The presence of absence of the required malice or mental condition marks the boundary which separates the two crimes of murder and manslaughter.

8. Homicide--Corpus Delicti

Proof of the corpus delicti requires a showing beyond a reasonable doubt that the killing was the result of a criminal act and that such act was attributable to the accused.

9. Homicide--Generally

One who inflicts an injury on another is deemed by the law to be guilty of homicide if the injury contributes mediately or immediately to the death of such other and the fact that other causes contribute to the death does not relieve the actor of responsibility.

Interpreter:

SINGICHI IKESAKES

Reporter:

NANCY K. HATTORI

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DOUGLAS F. CUSHNIE, ESQ.,

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E. TERMETEET, District

Prosecutor

Counsel for Defendants:

ROGER ST. PIERRE, ESQ.,

Public Defender, and

WILLIAM O. WALLY, Public

Defender's Representative

TURNER, *Associate Justice*, RINGANG, MOREI, *Special Judges*

RECORD OF HEARING

Held before D. Kelly Turner, Associate Justice, with Pablo Ringang, Presiding District Judge, and Francisco Morei, Associate Judge, serving as Special Judges in accordance with Section 125 of the Trust Territory Code, on March 21 and 24, 1969, at Koror, Palau District.

This was a prosecution on charges of first degree murder. Although separately charged, the two defendants were tried together because they were charged with participating in the same homicide, the killing of Felix Uchol in the early morning hours of November 24, 1968, in the area of T-Dock, Koror Municipality, Palau District.

FINDINGS OF FACT

1. The decedent Felix Uchol, was drunk at the Blue Lagoon Bar the night in question and after an incident at the table of the owner, was taken outside and left with the accused Kengei Yamashiro who said he would take decedent home.

2. Thereafter the accused, Yusim O. Minor, the younger brother of the owner of the Blue Lagoon, was seen fighting with the victim.

3. Thereafter the victim was observed swimming in the ocean alongside of T-Dock and the two accused were throwing rocks at him until he disappeared from view near the end of T-Dock.

4. After the rock throwing, as the two accused started to return from the dock, one of them called out:-

"Come back, you are going to get cold."

5. Two days later, in the early hours of November 26, 1968, the body of the victim identified as Felix Uchol, was discovered floating in the water near the dock. It was in such an advanced state of decomposition the medical officer who conducted an autopsy was unable to reach any medical conclusion as to cause of death. A hematoma between scalp and skull on the right side "could have been caused by a blow" and there was no evidence of disease or other cause of death. The medical examiner was unable to say whether the victim had drowned. There was no water in lungs or stomach but he had no authoritative informa-

tion as to whether, in view of the condition of the body, water would have been retained if death had been from drowning.

6. Later in the morning of November 24, the accused Kengei told a witness about a fight the previous night at T-Dock and that "someone" was thrown in the ocean. The accused then asked the witness if he had heard anything on the radio or otherwise about someone being hurt at T-Dock. This was two days before the victim's body floated to the surface.

7. Both accused participated in stoning the victim when he was in the ocean and their acts resulted in the death either from a rock hitting the victim or from drowning, the precise medical cause of death being immaterial because the proximate legal cause of death resulted from the acts of the accused.

8. The evidence does not warrant a conclusion the accused intended, premeditatedly to kill the victim, but it does establish beyond a reasonable doubt that the acts of the accused, resulting in death of the victim, were malicious, willful and unlawful.

OPINION

[1] The findings of fact and verdict in this case largely turns on circumstantial evidence and as is customary when there is little or no direct evidence the defense argued that such evidence was insufficient to prove the essentials of a criminal case beyond a reasonable doubt. The fine line between "conclusive" proof and proof beyond a "reasonable doubt" is not for a trial court to determine. The obligation upon the court or jury is that proof be sufficient to "reasonably" rather than "conclusively" remove doubt of guilt.

For a discussion of reliance upon circumstantial evidence very comparable to the evidence in this case and held

to be sufficient to sustain a conviction, see *United States v. Slaughter*, 366 F.2d 833 at 842:-

"Thus, although circumstantial and not conclusive of whether appellant murdered the deceased that night and buried his body, we think the evidence sufficiently relevant to be considered by the jury and given such weight as the jury thought it deserved."

The Public Defender based his case in an attempt to discredit the principal government witness who admitted he had made prior statements inconsistent with his testimony. In addition, his past criminal record and his general reputation for truth and veracity, said to be bad, was shown.

[2] It is the obligation of a jury, or as in the present case the three judges who are triers of fact, to accept or reject all or parts of a witness' testimony. The Appellate Division of the High Court has said in *Yamashiro v. Trust Territory*, 2 T.T.R. 638:-

"The trial court in considering this, as well as other evidence, was entitled to use its best judgment on the basis of all the evidence as to what part or parts of the statement should be believed and what part or parts not believed."

The witness' testimony was sufficient to sustain both convictions if accepted without question as to credibility. Had testimony only been elicited from this single witness it may well have been a much more difficult question. There was sufficient corroboration, however, from two other witnesses to warrant acceptance of the principal witness' account of the events.

One of these corroborating witnesses, who witnessed the events without being able to identify the participants, was largely instrumental in reducing the crime from first degree to second degree murder. His testimony that he heard one of the accused call out to the victim to return to the dock or he would get cold was one of the indications to the

court the intent to kill was absent from the minds of the accused.

[3,4] Without such intent or premeditation, the homicide cannot be of the first degree with its mandatory sentence of life imprisonment. Premeditation, as an essential to first degree murder is discussed in *People v. Howard*, (Cal.) 295 Pac. 333, 71 A.L.R. 1385:-

"To be murder in the first degree, under our statute, (and Sec. 385, Trust Territory Code, as well) the killing must be premeditated, except when done in perpetration of certain felonies; that is to say, the unlawful killing must be accompanied with a deliberate and clear intent to take life." (Parenthetical material added.)

The evidence of this killing was not sufficient to warrant a conclusion that "the unlawful killing (was) accompanied with a deliberate and clear intent to take life."

[5] In order to support a conviction of murder in the second degree, it is not necessary to find premeditation but it is essential there be a finding (also necessary for sustaining murder in the first degree) that the killing was malicious as well as unlawful and willful.

[6,7] The United States Supreme Court in *Stevenson v. United States*, 162 U.S. 313, 16 S.Ct. 839, defines malice as follows:-

"Malice in connection with the crime of killing is but another name for a certain condition of a man's heart or mind; and as no one can look into the heart or mind of another, the only way to decide upon its condition at the time of a killing is to infer it from the surrounding facts, and that inference is one of fact The presence or absence of this malice or mental condition marks the boundary which separates the two crimes of murder and manslaughter." (Citing Cases.) *Government of the Virgin Islands v. Lake*, 5 V.I. 594, 362 F.2d 770.

Having considered the distinctions in degrees of murder and manslaughter, we may not reach our conclusion without an examination of the evidence relating to establish-

ment of the corpus delicti. The defense, of course, based upon the equivocal nature of the medical testimony, suggested proof of the corpus delicti had not been made in that cause of death was not established.

[8] Proof of the corpus delicti requires a showing beyond a reasonable doubt that the killing was the result of a criminal act and that such act was attributable to the accused. Here, the defense urged, the death may have been the result of accident or other cause and not from the criminal act of the accused in throwing stones at the victim after he had been "thrown into the ocean."

[9] The familiar rule of law is **that:-**

"One who inflicts an injury on another is deemed by the law to be guilty of homicide if the injury contributes mediately or immediately to the death of such other. The fact that other causes contribute to the death does not relieve the actor of responsibility." *State v. Francis*, 149 S.E. 348, 70 A.L.R. 1133, 1156. 40 Am. Jur. 2d, Homicide, §§ 15 and 284.

Finding Number 7 above rejects the defense suggestion that death was caused by means other than the criminal act of the accused. The stoning caused the injury from which death resulted whether or not the blow or drowning was the ultimate cause of death.

Since the government's evidence was substantially uncontradicted by the defense, which sought only to discredit the government's testimony, the court concludes that there was evidence establishing beyond a reasonable doubt the killing of the victim by the two accused and that such killing was unlawful, willful and malicious. It must be concluded each of the accused are equally guilty of murder in the second degree.

JUDGMENT

Yusim O. Minor is hereby adjudged guilty of murder in the second degree and shall be punished therefor by

sentence of imprisonment for a period *of* twenty-five (25) years from this date except that the last eighteen (18) years of said sentence shall be suspended on conditions.

Kengei Yamashiro is hereby adjudged guilty of murder in the second degree and shall be punished therefor by sentence of imprisonment for a period of fifteen (15) years from this date except the last ten (10) years of said sentence shall be suspended on conditions.