GOVERNMENT OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee

v.

GUILLERMO M. BENAVENTE, Defendant-Appellant

Criminal Appeal No. 77

Appellate Division of the High Court

Mariana Islands District

November 18, 1980

Appeal from conviction of two counts of cheating, false pretenses, raising numerous grounds. The Appellate Division of the High Court, Gianotti, Associate Justice, held that no reversible error was committed by the Trial Court, and the conviction was affirmed.

1. **Criminal Law—Evidence—Accomplice Testimony**

   At criminal trial, testimony of an accomplice need not be supported by independent corroborating evidence.

2. **Criminal Law—Evidence—Accomplice Testimony**

   At criminal trial, testimony of an accomplice did not need to be supported by independent corroborating evidence, since the trier of fact could make a determination on what credibility should be given such testimony, and since in any event admission into evidence of relevant documentary evidence tended to corroborate the accomplice testimony and therefore negated any such requirement.

3. **Criminal Law—Information—Election of Counts**

   Under Rules of Criminal Procedure, where defendant was charged with four counts of a crime as follows: count 1, grand larceny; count 2, cheating, false pretenses; count 3, grand larceny; and count 4, cheating, false pretenses, it was not necessary for the prosecution to make an election of the counts it wished to proceed on. (Rules Crim. Procedure, Rule 6F)

4. **Constitutional Law—Jury Trial**

   Where defendant was charged with counts of grand larceny and cheating, false pretenses, defendant was not entitled to trial by jury, since he was not accused of committing a felony punishable by more than five years imprisonment or by more than a two thousand dollar fine, or both. (5 TTC § 501(1))

5. **Criminal Law—Information**

   Information charging defendant with two counts of cheating, false pretenses, was sufficient, where the counts were stated in the same language as the applicable criminal statute. (11 TTC § 853)

6. **Criminal Law—Appeals—Findings**

   A finding is not clearly erroneous if there is substantial evidence to support it.

7. Appeal and Error—Evidence—Sufficiency

A finding of guilt in a criminal case by the Trial Court was upheld where there was very substantial evidence to support such a finding.

8. Criminal Law—Jurisdiction—Particular Cases

Trust Territory High Court had original jurisdiction to try Northern Marianas criminal case which occurred prior to the date the transition of the Northern Marianas took place. (5 TTC § 53)

9. Criminal Law—Discovery

Where prosecution did not respond to a motion for discovery and failed to provide certain documents to the defendant, but did provide them on order of the court prior to trial, a continuance granted by the Trial Court to allow defendant to examine the documents was a sufficient remedy.

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Before BURNETT, *Chief Justice,* NAKAMURA, *Associate Justice,* and GIANOTTI, *Associate Justice*

GIANOTTI, *Associate Justice*

In 1978, appellant was convicted of two counts of a violation of 11 TTC § 853, cheating, false pretenses, arising from events occurring in 1974. Two counts of a violation of 11 TTC § 852, grand larceny, had been dismissed at the conclusion of the Government's case in chief. From the conviction, an appeal was filed raising numerous grounds.

The first question raised in the appeal is in regards to the Government's failure to provide independent corroborating evidence to support certain admissions allegedly made by the defendant.

At the time of the initial charges against appellant, another party by the name of Francisco Sablan was charged

with larceny and embezzlement arising out of the same incident. It seems there was an agreement made between said Sablan and the Government in return for Sablan's testimony. Sablan gave very damaging testimony relating to appellant, and appellant contends that this testimony was testimony of an accomplice and therefore corroboration was necessary. The Trust Territory statutes contain no statute relating to corroborating testimony to support the testimony of an alleged accomplice. With no statute and no prior decisions, the Court must look to supporting authority.

> . . . at common law it is well settled that the testimony of an accomplice, although entirely without corroboration, will support a verdict of conviction of one accused of a crime unless the testimony of the accomplice appears on its face to be bald perjury, preposterous, or self contradictory. 30 Am. Jur. 2d Evidence § 1151.

The United States 5th Circuit Court of Appeals, in the case of *Lyles v. United States*, 249 F.2d 744, 745 (1957) held that:

> . . . while received with caution and weighed with great care, uncorroborated testimony of an accomplice is to be accorded whatever credibility the trier of fact may think it deserves.
>
> Whether the error is reversible error depends on the circumstance of each case and the conduct of the trial as a whole. *Phelps v. United States*, 252 F.2d 49, 53 (1958).

[1, 2] In the instant case, the Court was the trier of fact. The Court could make its sole determination on what credibility to be given to the testimony of Sablan. Additionally, we have the factor of the admission of the payroll records and checks in question. The exhibits tend to corroborate the testimony of Sablan, thereby negating a requirement of additional corroborating testimony.

The second question raised by appellant has to do with the failure of the Government to make an election of counts.

Appellant was charged with four counts of a crime as follows: Count 1, Grand Larceny; Count 2, Cheating, false pretenses; Count 3, Grand Larceny; and Count 4, Cheating, false pretenses. Appellant was subsequently convicted of Count 2 and Count 4. Appellant argues that appellee should have made an election of the counts it wished to proceed on in order to permit appellant an opportunity to prepare appropriate cross-examination and affirmative defenses.

Joinder of offenses. Two or more offenses may be charged in the same information, complaint or other statement of the charges in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts of transactions connected together or constituting parts of a common scheme or plan. Trust Territory Rules of Criminal Procedure, Rule 6F.

If the indictment contains several counts setting forth the same offense committed in a different manner or by different means, or if the facts alleged in each of the several counts constitute different grades of the same crime calling for different punishments, or constitute different crimes but related to and forming part of the same transaction, *it is discretionary with the court* whether to compel the prosecution to elect upon which count to rely, and it is not error to refuse. The exercise of its discretion by the court in this respect will not be disturbed upon appeal in the absence of clear abuse of discretion to the manifest prejudice of the defendant. (Emphasis added.) *Wharton's Criminal Law and Procedure*, Vol. 5, 42.

The subject of election is now considered to be a matter within the sound discretion of the court . . . *Wharton's Criminal Law and Procedure*, Vol. 5, 48, citing *Pointer v. United States*, 151 U.S. 396, 38 L. Ed 208, 14 S. Ct. 410.

The same authority goes on at page 49:

When, however, the several counts have been inserted in good faith to meet the evidence as it may be produced, the court, exercising an enlightened and humane discretion, should refuse to compel the prosecution to elect . . . .

. . . It is the general rule, . . . , that two or more offenses committed by the same person may be joined in the same indictment or information, to meet the exigencies of the evidence, where they are of the same general nature or class of crimes, and where the mode of trial and nature of the punishments are the same or similar, and where all the offenses grow out of the same transaction or series of transactions or connected transactions . . . 41 Am. Jur. 2d Indictments and Informations § 223.

[3] The election of counts by the prosecution, as argued by appellant, would therefore not be necessary.

Appellant next raises the following issue: "The defendant is entitled to trial by jury."

5 TTC § 501(1) states:

Any person accused by information of committing a felony punishable by more than five years imprisonment or by more than two thousand dollars fine, or both, shall be entitled to a trial by jury of six persons and the Federal Rules of Criminal Procedure heretofore or hereafter promulgated shall be applicable . . . .

However, this section is subject to 5 TTC § 513.

Application of Chapter—Adoption by District Legislature. This chapter shall have no force and effect in any district whose district legislature has not adopted it, but the same may be adopted as to any district of the Trust Territory by an act of the district legislature thereof having the force and effect of law. After the effective date of such an act, all trials in that district subject to the terms hereof shall be governed by this chapter.

. . . In determining whether the length of the authorized prison term or the seriousness of other punishment is enough in itself to require a jury trial, the Supreme Court of the United States refers to objective criteria, chiefly the existing laws and practices in the nation; *the critical factor is the length of the sentence authorized and not the length of the penalty actually imposed.* (Emphasis added.) 47 Am. Jur. 2d Jury § 52.

[4] The punishment provided for in the charge of Grand Larceny, i.e. Counts 1 and 3, provide upon conviction thereof imprisonment for a period of not more than five years and or fine of not more than $1,000.00. The charges

relating to Counts 2 and 4, i.e. Cheating, false pretenses, 11 TTC § 853, provide for a penalty, if the value of the property be worth $50.00 or more, of imprisonment for a period of not more than five years. These counts by themselves provide only for a penalty of five years imprisonment on each count. This does not conform to the requirements of jury trial under 5 TTC § 501. Defendant was not accused of committing a felony punishable by more than five years imprisonment or by more than a two thousand dollar fine, or both.

Appellant raises the issue that the Government failed to properly charge the offense of Cheating, false pretenses. This argument is not valid. The information charging appellant with Cheating, false pretenses, stated as follows:

Count 2. CHEATING, FALSE PRETENSES:

On or about December 6, 1974, at Saipan, Mariana Islands, GUILLERMO M. BENAVENTE, did willfully, unlawfully and feloniously obtain a check for the value of $878.54 belonging to the Trust Territory Government by false pretenses, and knowing the pretenses to be false, and with the intent thereby to permanently defraud the Trust Territory of the Pacific Islands thereof in violation of Section 853, Title 11 of the Trust Territory Code.

Count 4 was in the same language with only the date and amount being different.

[5] These counts were stated in the language of the statute. See: 11 TTC § 853. This is sufficient under the law.

. . . ordinarily an information charging a crime in the language of a valid statute is sufficient . . . . *State v. Hill*, 369 P.2d 365 (1962).

An offense need not be charged in the exact language of the statute; other words conveying the same meaning as the statutory terms may be used as long as every essential allegation of the offense is charged with sufficient certainty to advise the accused of the nature of the charge. *Wasy v. State*, 234 Ind. 52, 123 N.E.2d 462.

An indictment or information sufficiently charges a statutory offense where the charge is made in the words of the statute and

the statutory words themselves, according to their import, fully, directly and explicitly, without any uncertainty or ambiguity, set forth every essential ingredient and element necessary to constitute the offense denounced by the statute . . . . 41 Am. Jur. Indictments and Informations § 89.

[6] Appellant also raised the question of the failure to prove beyond a reasonable doubt all the elements of the offense. This problem has been dealt with rather completely in the case of *Rasa v. Trust Territory,* 6 T.T.R. 535, 542 (App. Div. 1973), having to do with the powers of courts on appeal or review. And as stated in the *Rasa* case:

A finding is not clearly erroneous if there is substantial evidence to support it.

[7] In the case before us, there was very substantial evidence to support the findings of the Trial Court.

Appellant then argues the Trust Territory High Court lacks jurisdiction to try the action herein.

5 TTC § 53 states:

Original jurisdiction of Trial Division. The Trial Division of the High Court shall have original jurisdiction to try all causes, civil and criminal, including probate, admiralty, and maritime matters and the adjudication of title to land or any interest therein.

It was not the intention of Secretarial Order 2989 to deprive the High Court of the Trust Territory of this original jurisdiction until the transition of the Northern Marianas took complete effect on January 9, 1978.

[8] This Court agrees that the Trial Court had jurisdiction to try the matter.

Finally, appellant contends appellee violated the discovery order entered by the Court.

It would appear appellant filed a motion for discovery on October 26, 1977. Certain evidence was not furnished to appellant prior to the trial period, however, an objection was made by appellant at trial time, and as a result thereof,

the Court ordered appellee to furnish said materials for examination to appellant. The Court then granted a continuance of trial for a period of time to allow the examination of the documents. Appellant now contends:

> By the failure to provide this material pursuant to the original Court Order, the defendant was thereby unable to conduct any examination with respect to the alleged alterations of this document, and examination which defendant contends will have established his innocence.

The Trust Territory Rules of Criminal Procedure, Rule 7(a) provides:

> *Discovery and inspection.* Subject to the provisions of subsection (b) of this Rule, upon motion of the accused at any time after the filing of the information, complaint, copy of citation, or other statement of charges, the court may order the prosecutor to permit the accused to inspect and copy or photograph designated books, papers, documents, or tangible objects obtained from others by seizure or by process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable.

Rule 7(b)(3) holds:

> . . . Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

[9] This was done by the Trial Court. Appellant has not shown any abuse of his rights by the failure of appellee to provide the documents prior to trial time. The Trial Court granted appellant time to examine the documents in question, and although this Court does not condone appellee's failure to produce the documents when first requested, an extension to examine is all that is required of the Trial