

FRED, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Appeal No. 9
Appellate Division of the High Court
April 22, 1957

Appeal from conviction of assault and battery in violation of T.T.C., Sec. 379 and of violation of local custom in Truk District. In a Per Curiam opinion, the Appellate Division of the High Court held that right to fair and impartial trial requires that accused be properly charged with crime. Court also held that where violation of local custom constitutes criminal charge, government must state which custom is violated.

Reversed and remanded.

1. Criminal Law—Complaint

Right to fair and impartial trial requires reversal where accused is found guilty of violation of offense for which he has not been charged and concerning which no evidence is introduced.

2. Criminal Law—Custom

Right to fair trial requires reversal where violation of local custom is stated as charge in criminal prosecution but government fails to state which custom was violated.

Counsel for Appellant: ROSCOE L. EDWARDS, *Public Defender*
Counsel for Appellee: ROBERT M. ROBSON, *District Attorney*

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

PER CURIAM

[1] This is an appeal for the Truk District, Trust Territory of the Pacific Islands. The appellant, Fred, was found guilty of assault and battery as defined in Section 379, Trust Territory Code and also the violation of local custom, an offense with which he had not been charged and concerning which no evidence was introduced.

[2] At the conclusion of the government's evidence, the trial court ostensibly made such a charge but did not

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state which, if any, local custom was violated. Notwithstanding the appellant was found guilty and sentenced concurrently for such violation.

The government has confessed error. We do not hold that a confession of error requires reversal in all cases, but in the instant case, it is clear that the fair and impartial trial to which any accused is entitled does not permit these convictions to stand.

Reversed and remanded for a new trial.
