

KIRISPIN and TAKAUO, Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 17

Appellate Division of the High Court

April 20, 1960

Appeal from conviction of voluntary manslaughter in violation of T.T.C., Sec. 384, in the Trial Division of the High Court, Truk District. Appellants contend they were not proven guilty beyond reasonable doubt since evidence indicated there were other possible causes of victim's death. The Appellate Division of the High Court, Judge Eugene R. Gilmartin, held that it is not function of appellate court to weigh evidence anew.

Affirmed.

1. Appeal and Error—Scope of Review—Witness Credibility

It is not function of appellate court to weigh evidence anew or pass on reliability of witnesses.

2. Homicide—Generally

One who inflicts injury on another is deemed by law to be guilty of homicide if injury contributes mediately or immediately to death of another.

3. Criminal Law—Appeals—Scope of Review

On appeal in criminal case, court must review evidence in light most favorable to government.

Before GILMARTIN, *Temporary Judge*, and McCORMIC,
Associate Justice

GILMARTIN, *Judge*

The Appellants were charged with murder in the second degree and were tried on said charge June 4, 5, 8, and 12, 1959 in the Trial Division of the High Court, Truk District, Trust Territory of the Pacific Islands, before Chief Judge E. P. Furber, presiding, and Special Judges Ichiro Moses and Olaf, W., and found guilty of voluntary manslaughter.

The Appellants contend on appeal that they were not proven guilty beyond a reasonable doubt and that the

evidence showed three possible causes of death; that, therefore, the Court erred in denying Appellants' motion for acquittal.

The evidence, which the Trial Court was entitled to believe, showed that the deceased, Aka, first met Lofes on the evening of May 15, 1959 and subsequently met and had words with the Appellants. After the exchange of words with the Appellants, Aka started to run away and was followed by the Appellants. "Kirispin got on him and Takauo held his arms. . . . Kirispin sat on him and both of them were beating him and at the same time Kirispin choked Aka's throat. . . . They hit on Aka's face and also on his chest and also were choking him. . . . Question: You mentioned that Kirispin was choking Aka. Can you tell us how long he was choking Aka? Answer: About ten minutes." Transcript, page 5. "He told me that when I go up I will not say anything to anybody because he thinks the person will die. . . . Kirispin told Takauo to stop beating Aka, Takauo refused and just kept on beating Aka and held up his head and beat right here (Pointing to chest)." Transcript, page 6.

The Truk Hospital Autopsy Report, Summary, finds as follows:

1. Multiple contusions and swellings about the face, particularly lower lip and right eye.
2. Lower anterior teeth loosened and torn at the roots.
3. Cominuted fracture of the nasal bone.
4. Multiple superficial punched-out abrasions on the anterior surface of the neck.
5. Venous engorgement of the neck and face.
6. Pleural adhesions posterior upper lung fields bilaterally.
7. Grossly dilated stomach filled with gray frothy liquid material smelling like fermented yeast.

(Transcript, page 29-30)

The Truk Hospital Autopsy Report, Cause of Death, finds as follows:

1. Possible strangulation.
2. Possible asphyxiation due to aspiration of stomach contents.

(Transcript, page 30).

[1] As to the first point raised by the Appellants, we feel that the Trial Court had the opportunity to hear the witnesses and to judge of their credibility. It is not the function of an appellate court to weigh evidence anew or to pass on the credibility of witnesses. *McFarland v. United States*, 273 F.2d 417.

As to the second point raised by the Appellants, we feel that the Trial Court did not err in finding that the Appellants administered a severe physical beating upon the deceased which contributed mediately or immediately to his death.

[2] 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 26 Am. Jur. 191, Homicide, § 48.

[3] On an appeal in a criminal case, the Court must review evidence in light most favorable to the government *United States v. Nelson*, 273 F.2d 459.

The judgment of guilty is affirmed.