AMIS, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 158

Trial Division of the High Court

Truk District

December 14, 1962

Appeal from conviction in Truk District Court of assault in violation of T.T.C., Sec. 378. Appellant contends that evidence was insufficient to establish crime of assault and that court erred in failing to look up citation presented by appellant. The Trial Division of the High Court, Chief Justice E. P. Furber, held that evidence was sufficient to sustain conviction, and that judge is under no obligation to look up citations offered by counsel. Affirmed.

1. **Assault—Generally**

   Assault is an attempt or offer to beat another, without touching him. (T.T.C., Sec. 378)

2. **Criminal Law—Appeals—Scope of Review**

   Where appeal in criminal prosecution is based on ground that evidence does not support finding, essential point is whether there was sufficient evidence to justify trial court in making finding which it did, considering primarily evidence most favorable to decision of lower court.

3. **Appeal and Error—Scope of Review**

   Appellate court is expected to make every reasonable presumption in favor of correctness of decision of lower court, burden being on appellant to affirmatively show error.

4. **Appeal and Error—Scope of Review—Witness Credibility**

   Where there is conflict in testimony, trial court is in better position to pass on credibility of witnesses, and appellate court is bound to uphold trial court as long as there is enough evidence to reasonably support it.

5. Courts—Judicial Notice

Judge may use discretion in deciding whether to look up citations of authority presented by counsel.

Assessor:	JUDGE OLAF, W.
Interpreter:	F. SOUKICHI
Counsel for Appellant:	KESKE S. MARAR
Counselfor Appellee:	TAKEUO

FURBER, *Chief Justice*

This is an appeal from a conviction for assault under Trust Territory Code, Section 378. The grounds stated in the notice of appeal are as follows:—

"1. The evidence does not support the finding that direct testimony of prosecutor witnesses established that the appellant was not guilty of Assault.

"2. That court erred when denied to look at the definition of Assault which was cited in the trial court (Black's Law Dictionary)."

Counsel for the appellant argued strongly that merely swearing at a person, while holding a stick in one's hand, did not constitute assault, and claimed that there had been no overt act such as was required to come within a particular portion of the definition of "Assault" in Black's Law Dictionary, which he quoted, and claimed that the trial judge has been unwilling to look at.

Counsel for the appellee argued that the record showed the government had proved all of the necessary elements of assault.

OPINION

[1] This appeal is based on an entire misconception by either the appellant, or his counsel. The court fully agrees with the appellant's claim that merely swearing at a person while holding a stick in one's hand does not in itself constitute assault, but this argument has little relation to

the present case. In this case there was uncontradicted testimony that the accused, while holding a piece of wood about five feet long, not only swore at the victim, but came towards him with hands raised with that piece of wood, that the accused said he was going to strike the victim, and tried to hit him, but did not hit him. It is hard to imagine a case that fits more closely with the definition of assault quoted by counsel for the appellant from Black's Law Dictionary, 3Ed., p. 149, which reads as follows:—

"An attempt or offer to beat another, without touching him; as if one lifts up his cane or his fist in a threatening manner at another; or strikes at him, but misses him."

[2, 3] Counsel for the appellant in his argument seems to have disregarded all the evidence most damaging to the appellant, where as in an appeal based on the ground that the evidence does not support the finding, the essential point is whether there was sufficient evidence to justify the trial court in making the finding which it did. In determining this question it is the evidence most favorable to the decision of the lower court which must be primarily considered. An appellate court is expected to make every reasonable presumption in favor of the correctness of the decision of the lower court. The burden is upon the appellant to affirmatively show that there has been some error. 3 Am. Jur., Appeal and Error, §§ 900, 923 and 925.

[4] In this instance the court holds that there was sufficient evidence to amply justify the decision of the trial court. Even where there is a conflict in the testimony, the trial court is naturally in a better position to pass on the credibility of the witnesses and, so far as sufficiency of evidence is concerned, the appellate court is bound to uphold the trial court's decision as long as there is enough evidence to reasonably support it, even if the trial court

might well have found the opposite way. 3 Am. Jur., Appeal and Error, § 896.

[5] There is nothing in the record to indicate whether the trial judge did or did not look at the definition of "assault" cited by the accused's counsel. As indicated above, the burden is on the appellant to affirmatively show error. This should be done from the record, unless it has been supplemented in one of the manners provided for in Rule 31e of the Rules of Criminal Procedure so far as appeals from District Courts to the Trial Division of the High Court are concerned. Even if the trial judge, however, did refuse to look at the definition cited, there is no merit in this alleged ground of appeal. Citations of authority should be made to assist the judge and warn him of possible difficulties, but not merely to cause delay. If they have any real bearing on the case at hand, counsel should endeavor to explain them sufficiently to make this clear. The judge is then entitled to use his own discretion as to which ones, if any, he will look up.

JUDGMENT

The finding and sentence of the Truk District Court in its Criminal Case No. 1516 are affirmed.