

MICHAEL EYOUL, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Appeal No. 86
Appellate Division of the High Court
Palau District
April 12, 1982

Appeal from a conviction of felony mayhem and assault and battery with a dangerous weapon. The Appellate Division of the High Court, Gianotti, Associate Justice, held that the notice of appeal did not show the particulars of any error complained of, and the finding of guilt could not be set aside on basis of general allegations of error, and conviction was affirmed.

1. Appeal and Error—Generally

On appeal, the Appellate Division will make every reasonable presumption in favor of correctness of the decision of the lower court and the burden is on the appellant to affirmatively show error.

2. Criminal Law—Appeals—Scope of Review

Appellate Division has an obligation, in a criminal appeal, to consider the evidence in the light most favorable to the government.

3. Criminal Law—Appeals—Scope of Review

It is not the province of the Appellate Division to substitute its belief as to what the trier of fact should have found and must sustain the verdict if there is sufficient competent evidence in the record to support the lower court's finding.

4. Appeal and Error—Affirmance—Grounds

Conviction was upheld on appeal, where the notice of appeal did not allege particulars of any error committed by the trial court, but only alleged that the findings of the trial court were contrary to the manifest weight of the evidence.

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

GIANOTTI, *Associate Justice*

Appellant has appealed from a conviction of felony mayhem and assault and battery with a dangerous weapon arising out of an occurrence in Palau on or about January 3, 1979.

Appellant's grounds for appeal are :

Defendant makes the following assignments of error in support of this Notice of Appeal:

(1) The trial court's findings are clearly erroneous and contrary to the manifest weight of the evidence; and

(2) Any and all such other errors of law as the same may be hereafter specified after examination of the trial transcript herein after the same has been certified to defendant pursuant to Rules of Appellate Procedure.

Rule 3, T.T. Rules App., states, among other things:

The Notice of Appeal shall . . . contain a concise statement of the questions presented by the appeal

Only questions set forth in the notice of appeal or fairly comprised therein will be considered by the Court.

And the case law is quite clear on this point :

Assigning as error "abuse of judicial discretion" without showing the particulars of the error complained of is not sufficient to meet the rule of this court set forth in *Takeo Yamashiro v. Trust Territory*, 2 T.T.R. 638. *Debesol v. Trust Territory*, 4 T.T.R. 556, 562.

The notice of appeal filed in this case is hardly sufficient to conform to Rule 3, and counsel should be careful in the future to adequately advise the Appellate Court of just what his grounds of appeal are. However,

The paramount interest of this court is to assure that all efforts are made to consider any basis upon which the appellant in a crimi-

nal case may have a valid claim to reverse his conviction. *Edwards v. Trust Territory*, 7 T.T.R. 507, 509.

[1] In an effort to determine whether defendant's rights to a fair trial have been violated, this court has examined the transcript of the record and carefully considered the same. However, an examination of the transcript does not furnish even the slightest reason to overturn the presumption in favor of the Trial Court decision.

On appeal, the Appellate Division shall make every reasonable presumption in favor of correctness of the decision of the lower court and the burden is on the appellant to affirmatively show error. *In re Estate of Wisly*, 5 T.T.R. 81. *Jabwe v. Henos*, 7 T.T.R. 227, 229.

[2] In the case of *Debesol v. Trust Territory*, supra, at 563, the court held:

In *Fattun v. Trust Territory*, 3 T.T.R. 571, and quoted in *Ongalibang Uchel v. Trust Territory*, 3 T.T.R. 578, it is said:—

“This court has repeatedly recognized that it has an obligation under Section 200 of the Trust Territory Code and under the general principles of law, on a criminal appeal, to consider the evidence in the light most favorable to the government.”

It was said in *Takeo Yamashiro v. Trust Territory*, supra:—

“It is the function of the trial court, and not the appellate court, to make determinations of fact which are dependent upon conflicting evidence. The appellate court must test the sufficiency of proof on the basis of what the trial court had the right to believe, not on what the defendant wishes it believed.”

[3, 4] The trial court had the opportunity to observe not only the witnesses but the parties herein and the demeanor of these parties on the stand. The trial court obviously felt there was sufficient competent evidence to convict this defendant and it found appellant guilty beyond a reasonable doubt. It is not the province of the appellate court to set aside such a finding without any further reasons than given in the Notice of Appeal or brief.

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As this court has consistently held, it is not the province of the Appellate Division to substitute its belief as to what the trier of fact should have found, and must sustain the verdict if there is sufficient competent evidence in the record to support the lower court's finding. *Fattun v. Trust Territory of the Pacific Islands*, 3 T.T.R. 571. *Uchel v. Trust Territory of the Pacific Islands*, 3 T.T.R. 578. 4 T.T.R. 534.

Judgment is hereby AFFIRMED.