ROP v. Kikuo, 1 ROP Intrm. 254 (1985)

REPUBLIC OF PALAU,
Plaintiff-Appellee,

v.

ANATANIO KIKUO,
Defendant-Appellant.

CRIMINAL APPEAL NO. 4-83
Criminal Case No. 365-82

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: August 13, 1985

Counsel for Appellant: Johnson Toribiong
Counsel for Appellee: Eric Basse, AAG

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTON, Associate Justice; ROBERT W. GIBSON, Associate Justice.

SUTTON, Justice:

This is an appeal from a judgment of Murder in the Second Degree rendered against the defendant-appellant after trial to a three judge Court consisting of Associate Justice Lane, Presiding Judge and two Special Judges, the Honorable Ikesakes and Ngirkelau who were appointed pursuant to 5 TTC § 204.

Appellant contends that:

1. The evidence admitted at trial is insufficient as a matter of law to warrant the conviction.

2. The two Special Judges appointed by the Court were without authority to act as neither had been designated or appointed Special Judge at the time of the trial by either the High Commissioner of the Trust Territory as required by 5 TTC § 204, or the President of the Republic of Palau if Secretary of the Interior's Order No. 3039 is construed to have transferred that power to the latter.

⊥255 Appellee answers that:

1. The evidence admitted at trial is sufficient as a matter of law to warrant the conviction.

2. That whether or not the "Special Judges" who sat on this case were appointed "properly" pursuant to 5 TTC § 204, they acted not as "judges" but rather as "fact finders" and therefore the law to be applied to the question should be that law which applies to the selection and seating of a jury panel and the setting aside of a conviction where such process (usually prescribed by statute) is not complied with.

That, assuming a lack of proper appointment, the "Special Judges" who sat hereon were acting in a de facto capacity under color of appointment and that therefore their acts were valid.

We agree with appellee's first contention and not with the second and third.

I

The first issue can be addressed more meaningfully in the context of a summary of the evidence admitted at the trial level in light of the law governing the use and application of circumstantial evidence in a criminal case.

Circumstantial evidence is, in law, necessarily of no greater or lesser import than direct evidence.

Direct evidence is defined as evidence of facts which are proved directly by way of the testimony of an eye witness to an event or a writing which proves a fact on its face or by other means not requiring the drawing of inferences or other mental process save a decision by the fact finder on credibility.

Circumstantial evidence is evidence which proves a fact or facts from which inferences may be drawn which lead to the conclusion in the mind of the fact finder that another fact or facts are necessarily true.

In either case, before a criminal defendant may be convicted of a crime, the finder of fact must determine that each and every element of the crime charged has been established by the evidence, beyond a reasonable doubt.

⊥256 Whereas direct evidence may, if believed by the fact finder, directly establish guilt, circumstantial evidence may only serve to do so, where certain additional rules of evidence are applied. These rules require the fact finder to determine that each and every inference of a fact drawn from the proved facts is a reasonable inference, and if more than one reasonable inference may be drawn from the proved facts, and one points to guilt and the other to innocence, the latter must be accepted.

The direct evidence presented to the Trial Court and found in the record of this case is insufficient to establish guilt.

No witness testified to seeing the defendant stab the victim; no witness testified to any

confession or admission by the defendant[,] and no witness testified to seeing a fight or other physical contact between the defendant and the victim except for a brief incident where the victim threw a beer can at the defendant some time prior to the victim's demise and later after the victim had collapsed with a fatal stab wound on the ground outside the Bai Ra Metal Nightclub.

There was, however, evidence admitted which, if believed by the fact finder, established that: the defendant and victim were having serious problems with each other that night resulting from the defendant's attentions to the victim's wife in his, the defendant's, effort to enlist her aid in pursuit of another female; that the victim threw a beer can at the defendant while engaged in a physical confrontation with his (the victim's) wife, on the steps of the Bai Ra Metal Nightclub; that the victim's wife is defendant's cousin; that the defendant, shortly thereafter, accosted another person with a knife inside the Bai Ra Metal Nightclub who resembled the victim in stature, weight and, on that evening, in dress, and did not cease his pursuit of that person until he was told by still another that the person he was attacking was not "Gustav" (the victim); that the defendant was seen chasing the victim out of the Bai Ra Metal Nightclub and that shortly thereafter the victim fell unconscious to the ground and the defendant ran to him and kicked him twice; that upon being pulled away from the victim's prone body the defendant was observed to be holding a knife in his hand and that the victim died of a fatal stab wound.

The law which governs this Court in deciding the issue of the sufficiency of the evidence follows:

⊥257 An appellate Court's function is limited to determinations of law. *Alik v. Alik*, 7 TTR 395, 398 (App. Div. 1976). An Appellate Court will not reweigh the evidence adduced at trial but will determine only whether there was any reasonable evidence to support the [judgment]. *Ngirumerang v. Watanabe*, 7 TTR 260 (App. Div. 1976); *Lizama v. Trust Territory*, 7 TTR 256 (App. Div. 1975).

If the evidence, in a criminal case, which goes to the finder of fact is sufficient to support a conclusion of guilt beyond a reasonable doubt, taking the view most favorable to the prosecution case, such finding will not be disturbed on appeal. *Lizama v. Trust Territory, Id.; Riggs v. U.S.*, 280 F. 949 (1960).

Where the verdict in a criminal case is based solely upon circumstantial evidence and the finder of fact has, by its judgment, rejected any inferences pointing to innocence, if such exist, and evidence is present pointing to guilt, the Appellate Court is bound by such findings. *Peo v. Newland*, 104 P. 778 (1940).

Here, the record reveals circumstantial evidence pointing to an inference of guilt and is barren of evidence pointing to innocence. If inferences pointing to innocence were in fact considered by the finder of fact the verdict demonstrates that such inferences were rejected.

Accordingly, applying the principles of law cited above, we hold that the evidence is sufficient as a matter of law to sustain the verdict and we affirm the same.

The question of whether or not the Trial Court was properly constituted requires consideration of Article X of the Palau Constitution, Republic of Palau Public Law No. 1-17, as amended, 5 TTC § 204, and Secretary of the Interior Order No. 3039.

5 TTC § 204 was enacted in 1966 by the Congress of Micronesia and included in the Code revision of 1970 essentially in its original form. This section requires that two or more Special Judges be appointed by the High Commissioner of the Trust Territory and that they, in turn, shall be appointed by the High Court of the Trust Territory to sit as triers of fact on any murder case coming before the Court. It was upon this statute that the Presiding Judge of the Trial Court relied in appointing the two Special Judges who sat on the instant case.

⊥258 The question presented is: given the transfer of powers to the Palau Government by Secretarial Order No. 3039, provisions contained in the Palau Constitution and Republic of Palau Public Law No. 1-17, as amended, does there still exist a requirement in law in the Republic of Palau, that all murder cases be tried before a panel of judges pursuant to 5 TTC § 204. The dispositive question is whether, if no such requirement is found to exist, was the trial of the defendant-appellant lacking in due process.

The Palau Constitution, Article X, provides for the establishment of a Unified Judiciary System in Palau which is competent to hear all cases arising within its jurisdiction at both the trial and appellate levels. The Supreme Court of Palau is the highest court of the land and all decisions made by the Court are final and subject only to appeal by way of Writ of Certiorari to the High Court of the Trust Territory.

The Constitution became effective on January 1, 1981 and the transfer of powers from the Trust Territory High Court to the Supreme Court, Republic of Palau in December, 1981.

Article X, § 2 of the Palau Constitution, provides for the trial of [all] ". . . matters before the trial division . . ." by one justice.

This provision necessarily includes murder cases. Nowhere in the Constitution, is there any mention of a three judge panel at the trial level or of "Special Judges".

While there is no direct reference in Section 2 of Article X, to 5 TTC § 204, it is clear to this Court that, given the mandatory language in the latter ("shall") and the permissive word ". . . may . . ." contained in the former the Constitution governing and being paramount to the Trust Territory statute under the authority of Secretarial Order 3039, there exists in Palau no requirement that Special Judges sit on murder cases. We so hold.

RPPL No. 1-17, as amended, provides concurrence for this view in Section 19 where it is set forth that no justice may sit on the appeal of a case heard at the trial level by ". . . him . . ." (singular).

There is no reference or requirement in RPPL No. 1-17 that Special Judges sit on murder cases and the use of the word "him" in the singular as noted above, where all cases at the trial level are included, is supportive of the position that no Special Judge provision was contemplated for the trial of murder cases by the Olbiil Era Kelulau (National Congress) when ⊥259 RPPL No. 1-17 was enacted.

Secretarial Order No. 3039, which transferred authority from the High Court, Trust Territory, to the Supreme Court of Palau, among other things, contains no provisions limiting the power and authority of the Palau National Judiciary or of the Olbiil Era Kelulau to regulate the Court's process excepting that no provision may become effective while the Trust Territory remains in existence that is in conflict with, or limited by, any treaty, law or regulation of the United States or the Trusteeship Agreement or which allows for violation of rights accorded a citizen of the Trust Territory by the Trust Territory Bill of Rights 1 TTC §§ 1-14. We find that neither the Palau Constitution or RPPL No. 1-17 requires the presence of Special Judges on murder cases and that the absence of such a requirement does not conflict with and is not limited by, any treaty, law or regulation of the United States or the Trusteeship Agreement nor does it allow for the violation of any right accorded a citizen of the Trust Territory by the Trust Territory Bill of Rights (1 TTC §§ 1-14).

Accordingly, we hold that there was not at the time of trial, nor is there now, any requirement in law or statute applicable in the Republic of Palau that three judges sit on a murder case. Such cases may be and should be presided over by one judge as are all other cases which come before the Trial Division of the Supreme Court of the Republic of Palau.

The record is bare of any information regarding the nature and manner of deliberations which occurred between the Presiding Judge and Special Judges in this case or of the numerical vote on guilt or innocence and on sentence.

It follows that any decision made in full or partial reliance upon same is/was violative of the defendant's right to due process.

Having held that 5 TTC § 204 is not applicable in Palau since supplanted by the Palau Constitution and Republic of Palau Public Law No. 1-17 it is not necessary for the Court to determine whether or not the judges sitting as "Special Judges" at the trial of this matter had been properly appointed and if not whether that deficiency effects the validity of the verdict herein. Suffice it to say that were this question one of necessary determination 5 TTC § 204 is read by the Court to require an official appointment by the High Commissioner (now read President of the Republic of Palau) of any persons who may sit as "Special Judges" on a case where murder is charged. Lacking such official appointment any act of judicial authority ⊥260 would necessarily be considered void and would lead this Court to the same result.

The Judgment below is reversed and the case remanded for proceedings consistent with the Opinion and holdings herein.

Further, we declare our opinion and holdings herein to be applicable only to the facts here

and to cases presently on appeal which may encompass the same issue and is to not be retroactive to any case in which the time for appeal has passed.