

evidence obtained in violation of other provisions of law, they should follow the more generally accepted rule and admit the evidence, provided it was otherwise proper. 20 American Jurisprudence, Evidence, Sections 393 and 489 to 505, including particularly the additions to Section 499, in the 1954 Cumulative Supplement, pages 61 to 63."

[6] Whether the confession involved in the present case was shown to be truly voluntary and therefore admissible in evidence, however, depends, in our opinion, on other considerations. There appears to be no evidence to convict the accused except the confession. It is the opinion of this Court that the method of obtaining the confession was most reprehensible.

The judgment of the court below is set aside and the appellant is acquitted.

YONA NGERUANGEL, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 16

Appellate Division of the High Court

January 15, 1960

Appeal from conviction of aggravated assault in violation of T.T.C., Sec. 377, in the Trial Division of the High Court, Palau District. Appellant contends that trial court erred in admitting physical object into evidence and in denying motion for acquittal on ground of self-defense. The Appellate Division of the High Court, Chief Justice E. P. Furber, held that prosecution failed to establish specified intent as necessary element of aggravated assault. Court modified conviction to assault and battery with a dangerous weapon under T.T.C., Sec. 377-A.

Affirmed as modified.

1. Criminal Law—Evidence—Physical Evidence

In criminal proceedings, admission into evidence of physical objects to which testimony relates is matter resting in discretion of trial court, and admission of them as exhibits will constitute grounds for reversal only when clear prejudicial abuse of discretion is shown.

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2. Criminal Law—Intent

Where specific intent is not element of crime, general criminal intent may be inferred or implied from commission of act prohibited as crime.

3. Criminal Law—Intent—Specific Intent

Where specific intent is element of crime, it must be proved as independent fact and cannot be inferred merely from commission of unlawful act.

4. Aggravated Assault—Felonious Intent

Aggravated assault is crime in which specific intent is element, and acts constituting crime must be done with intent to kill, rape, rob, inflict grievous bodily harm or to commit another felony. (T.T.C., Sec. 377)

5. Aggravated Assault—Generally

Where victim of assault and battery was intoxicated and persistently pursued appellant without success, appellant was not justified in using dangerous weapon because there was no reasonable basis for his being in fear of his life or grievous bodily harm. (T.T.C., Sec. 377)

6. Assault—Generally

Use of curses or threats by one who is irritated may be made without slightest intention of actually inflicting injury.

7. Criminal Law—Intent—Specific Intent

In criminal prosecution, question of whether specific intent exists must be determined not only from act itself, but also from defendant's testimony and all surrounding circumstances.

8. Criminal Law—Burden of Proof—Reasonable Doubt

In order for prosecution in criminal proceedings to prove fact by circumstantial evidence, circumstances relied upon must be inconsistent with any other rational conclusion and exclude every other reasonable theory or supposition other than that which prosecution seeks to have inferred.

9. Aggravated Assault—Lesser Included Offense

Where prosecution in criminal proceedings fails to show specific intent necessary to constitute aggravated assault, appellate court may modify conviction to assault and battery with a dangerous weapon. (T.T.C., Sec. 377-A, as amended by Executive Order No. 49)

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Counsel for Appellee: ALFRED J. GERGELY, ESQ., *District Attorney*

Before FURBER, *Chief Justice*, GILMARTIN, *Temporary
Judge*

FURBER, *Chief Justice*

This is an appeal from the Trial Division of the High Court sitting in the Palau District. The appellant was convicted of the crime of aggravated assault. The alleged assault was committed by throwing a large stone from 20 or more feet away which hit the victim, Ngrirangeboi, in the face, putting out his right eye and breaking his nasal bone and the nasal side of the orbital bone.

The appellant, in his notice of appeal, advanced the following grounds of appeal:—

1. The court erred in admitting a stone into evidence which had not been sufficiently identified as the one used.

2. The court erred in not granting defendant's motion for acquittal on grounds of self-defense.

[1] We find no merit in the appellant's first ground of appeal. The stone in question was positively identified by one witness and its possession traced in the evidence from hand to hand from the scene to the hands of the police. Another witness testified the stone offered in evidence was just like the one used. Admission of physical objects to which the testimony relates or which may enable the court to reach more accurate conclusions as to the issues in the case, is largely a matter resting in the discretion of the trial court. It is usually highly desirable to admit such objects. Admission of them as exhibits will constitute ground for reversal on appeal only when a clear and prejudicial abuse of discretion is shown. In this instance, we hold the admission of the stone in question was fully justi-

fied. 20 Am. Jur., Evidence, §§ 717 and 718. McKelvey on Evidence, Sec. 337, p. 598, and Sec. 339, p. 600.

The second ground of appeal, however, namely that of self-defense, which was the one principally argued by counsel for the appellant, raises some very nice questions as to the inferences to be drawn from the facts proved. It is clear that the appellant inflicted grievous bodily harm on Ngirangeboi. The appellant argues, however, that he did this in self-defense under reasonable fear of grievous bodily harm to himself, while the appellee argues that the appellant intentionally inflicted this grievous bodily harm using greater force than was justified by any need for self-defense.

The incident out of which this assault arose, started toward the close of a party held at the Ngerchelung Municipal Office on Babelthuap Island to celebrate the completion of a dispensary. By this time, many of those at the party had become drunk, including both Ngirangeboi and the appellant—the former being much the drunker of the two. Ngirangeboi, as the elected leader of the young men, was responsible, under local custom, for keeping order among them. The appellant, one of these young men, 19 years of age, got into an argument with an older man. Ngirangeboi was afraid there was going to be a fight and tried to stop the argument. In doing this, he got into a scuffle with the appellant, in which the appellant pushed or threw Ngirangeboi down, kicked him and bit his finger. As they were more or less wrestling, one of the others at the party separated them. The appellant ran to the house where he was living, some 250 to 300 feet away. Ngirangeboi followed him to the house and then back to the municipal office, jumped on the appellant there, then followed him to the appellant's home again and engaged in wrestling or scuffling with him just outside the house. The appellant again succeeded in getting Ngirangeboi down

and getting away from him a short distance, when Ngirangeboi got up and, according to the great weight of the evidence, started toward the appellant again.

When they were some 20 or more feet apart, the appellant picked up the large stone referred to above, said in Palauan words meaning literally "you will die now" and threw the stone in Ngirangeboi's direction. According to Ngirangeboi's own testimony, he was so drunk he doesn't remember much about his own actions and didn't see the stone at all before it hit him. The appellant took the stand in his own behalf and testified that his intention in throwing the stone was to scare Ngirangeboi so that the appellant could get away and hide. He also testified that the words he used were the same that a Palauan mother would use when she spansks her child and the child runs away. This latter testimony was not contradicted or rebutted in any way.

[2, 3] We cannot agree fully with either side as to the inferences to be drawn from these facts. As a general rule, where a specific intent is not an element of the crime, the only intent which is required to be shown in a criminal case is a general criminal or evil intent, and this may regularly be inferred, implied, or presumed from the commission of the act prohibited as a crime, or as it is sometimes stated, "intention to commit the act constitutes criminal intent". Miller on Criminal Law, Sec. 16, p. 57 and 58. 20 Am. Jur., Evidence, § 232. 14 Am. Jur., Criminal Law, §§ 23 (first par.) and 24. *United States v. Randolph*, 261 F.2d 234 at p. 237 (1958). There is a clear exception to this general rule, however, where a specific intent is an element of a crime. In such case, the specific intent must be proved as an independent fact and cannot be presumed or inferred merely from the commission of the unlawful act or its results. 20 Am. Jur., Evidence, § 233. 14 Am. Jur., Criminal Law, § 23 (second par.). Miller on Criminal

Law, Sec. 17, p. 59-61. *Morissette v. United States*, 342 U.S. 246, 72 S.Ct. 240 (1952). *Wardlaw v. United States*, 203 F.2d 884 (1953). *Bloch v. United States*, 221 F.2d 786 (1955).

[4] Aggravated assault is very definitely a crime in which specific intent is an element. To meet the requirements of Section 377 of the Trust Territory Code defining this crime, the acts involved must be done "with intent to kill, rape, rob, inflict grievous bodily harm, or to commit any other felony against the person of another". Miller on Criminal Law, Sec. 100, p. 309-312. 4 Am. Jur., Assault and Battery, § 29.

[5] Consider the situation of the two men involved in this assault. Ngirangeboi had persistently pursued the appellant long after the original argument, which Ngirangeboi was trying to stop, had been effectively broken up. On the other hand, in each of the scuffles or attacks which led up to the throwing of the stone, the appellant appears to have come out without any injuries and in general to have had the best of the physical contest. Ngirangeboi was admittedly unarmed and very drunk. Under these circumstances, we feel that the appellant was fully justified in using reasonable force to repel further assault by Ngirangeboi, but that in using such a dangerous weapon, he employed excessive force. He had certainly retreated as far, if not farther, than could be reasonably expected, but we can see no reasonable basis for his being in fear of his life or any grievous bodily harm. 4 Am. Jur., Assault and Battery, §§ 47-51 inclusive.

[6] On the other hand, the appellant's resentment at Ngirangeboi's conduct was so natural and the chance of hitting Ngirangeboi in any particularly vulnerable spot with a large stone at such a distance was so uncertain, that the appellant's explanation of his intent appears to

us at least a plausible one. His exclamation in Palauan meaning literally "You will die now" just before he threw the stone, is the principal thing to throw doubt upon his explanation. It is well known, however, that people, especially when they are irritated, often use rather extreme curses or threats which are not meant in their literal sense, just as an American as a sign of great irritation may sometimes say to a person, "Drop dead", without the slightest intention that the person should actually die. These words, meaning literally "You will die now", are the only thing which we can find in the record that aids, from the prosecution's point of view, any inference or presumption of intent which may be drawn from the appellant's acts and the injuries inflicted thereby.

[7] In the Morissette case cited above, the Supreme Court of the United States reversed a conviction of knowingly converting to one's own use property of the United States. The court held that this was a crime in which specific intent was an element and made the following statements concerning presumption as to intent, at page 256 of its opinion in 72 Supreme Court Reporter :

"We think presumptive intent has no place in this case. . . .

"Moreover, the conclusion supplied by the presumption in this instance was one of intent to steal the casings, and it was based on the mere fact that defendant took them. The court thought the only question was, 'Did he intend to take the property?' That the removal of them was a conscious and intentional act was admitted. But that isolated fact is not an adequate basis on which the jury should find the criminal intent to steal or knowingly convert, that is, wrongfully to deprive another of possession of property. Whether that intent existed, the jury must determine, not only from the act of taking, but from that together with defendant's testimony and all of the surrounding circumstances."

[8] For the prosecution to prove a fact by circumstantial evidence in a criminal case, the circumstances relied upon must be inconsistent with any other rational conclu-

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sion and exclude every other reasonable theory or supposition than that which the prosecution seeks to have inferred. 20 Am. Jur., Evidence, §§ 1189 (last par.) and 1217.

[9] Applying the above principles to the evidence in this case, we hold that intent to inflict grievous bodily harm was not proved beyond a reasonable doubt and that the accused was only proved guilty of the lesser included offense of assault and battery with a dangerous weapon under Section 377-A of the Trust Territory Code as amended by Executive Order No. 49, for which a general criminal intent is sufficient and no specific intent need be proved.

The finding of the Trial Division is accordingly changed from guilty of aggravated assault to "guilty of the lesser included offense of assault and battery with a dangerous weapon". The sentence, being well within the limits for that lesser included offense, is applied thereto and as so applied is affirmed.