

JOSEPH SANTIAGO, Appellant

v•

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 22

Appellate Division of the High Court

May 14, 1965

Appeal from conviction of voluntary manslaughter in violation of T.T.C., Sec. 384, in the Trial Division of the High Court, Ponape District. Appellant contends that trial court failed to recognize his right of self-defense. In a Per Curiam opinion, the Appellate Division of the High Court held that provocator of dispute cannot claim right of self-defense.

**Affirmed.**

1. Criminal Law-Self-Defense

Where accused in criminal prosecution was aggressor in struggle, having to move fifteen feet in order to stab victim who was on ground, accused cannot claim right of self-defense.

2. Criminal Law-Self-Defense

In order that accused in homicide prosecution may claim right of self-defense, he must be free from blame in provoking difficulty.

3. Criminal Law-Self-Defense

Aggressor who provokes attack upon himself, brings on quarrel with victim, or produces occasion which makes it necessary to take victim's life, cannot assert that he acted in self-defense and thus excuse or justify homicide which he has committed.

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*Counsel for Appellant:* ROGER L. ST. PIERRE, *Public Defender*  
*Counsel for Appellee:* RICHARD V. BACKLEY, *District Attorney*

Before FURBER, *Chief Justice*, SHRIVER, *Judge*,  
PEREZ, *Chief Judge*

PER CURIAM

This is an appeal from the Ponape District of the Trust Territory. The Trial Division of the High Court convicted the appellant of the offense of voluntary manslaughter, in violation of Section 384 of the Trust Territory Code;

We have appellate jurisdiction under Section 124 of such Code and Judges Shriver and Perez sit as temporary Judges, appointed under Section 122 of the Code. Oral argument has been waived. The appellant contends the trial court was in error in failing to recognize his right of self-defense and by requiring him to retreat to the wall before he could repel an attack. The appellant further contends that the evidence is undisputed that he had been attacked by the deceased before the appellant struck the blow which resulted in death. We reject both of these contentions.

The evidence, which the trial court was entitled to accept, was that on the morning of September 9, 1962, the appellant was proceeding with his family on a public path. He was on the way to church when he was accosted by the deceased, Ihper Imanuel. Ihper engaged him in a loud argument, which attracted the attention of Lorens and others. Lorens was in the process of leading Ihper away from the scene of the argument but Ihper apparently continued to call insults at the appellant. According to one of the appellant's witnesses (Tr. p. 25) the appellant said "Bring your knife because I am not afraid of you". The appellant testified (Tr. p. 33) "I said to him 'Bring your knife because I am not afraid of you' " and on cross-examination (Tr. p. 34) "It is a customary practice in Pan. ape, especially men, when another man tells another man 'You stink and I am not afraid of you,' when such words are said, it is very shameful for the other not to resist."

Ihper broke loose from Lorens and started toward the appellant. Isabela, the mother of Lorens, grabbed Ihper and, in the struggle, they both fell to the ground. Ihper fell face up but Isabela fell face down. At this point, when Ihper was on the ground, the appellant was 15 feet away (Tr. p. 4 & 11). Although he was in no immediate danger at that time, the appellant went to Ihper and at-

tempted to stab him in the chest. Ipper put up a leg, which diverted the knife from the chest to the lower part of the abdomen, inflicting the wound from which Ipper subsequently died. The appellant was stabbed in the back by Ipper at some stage, fell down and was knocked unconscious by a rock thrown by another witness. Ipper was then led away.

[1] Under this version of what happened, it is unnecessary for us to consider what rights of self-defense the appellant had since it is clear that he was the aggressor and had to move 15 feet in order to stab Ipper. He was in no immediate danger when he was 15 feet away and the probability existed that Ipper would be restrained by onlookers before he could arise and pursue the appellant.

[2, 3] But even if we accept the appellant's version that Ipper, after escaping from Lorens, came directly to him with a knife, for the possession of which they struggled, the appellant would have had only a limited right of self-defense. As stated in 26 Am. Jur. under Homicide, § 130:-

In order that the accused in a homicide prosecution may set up self-defense, it must appear that he is free from blame in bringing on or provoking the difficulty. The general, if not the universal, rule is that one who slays another, to be justified or excused on the ground of self-defense, must be without fault in provoking the difficulty; one who, as an aggressor, provokes an attack upon himself, brings on or encourages a difficulty or quarrel with the deceased, or produces the occasion which makes it necessary for him to take life, cannot assert that he acted in self-defense and thus excuse or justify the homicide which he has committed. In other words, the accused cannot set up in his own defense a necessity which he brought upon himself. In such cases, the nature of the extremity to which he is reduced in the combat, which makes it necessary for him to kill to save his own life, does not give him a perfect right of self-defense. The mere fact that the deceased struck the first blow, fired the first shot, or suddenly reached for his pocket as if to use a

deadly weapon will not affect the position of the accused if the latter was the actual provocator.

The uncontradicted evidence shows that after the initial argument Ihper was being led away, with the probability that no further difficulty would have resulted if the appellant had not invited him to return with his knife. We believe that the sentence imposed upon the appellant was quite moderate, and finding no error, we affirm the conviction.

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ONGALIBANG UCHEL, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 23

Appellate Division of the High Court

September 3, 1965

Appeal from conviction of maiming, in violation of T.T.C., Sec. 382, in the Trial Division of the High Court, Palau District. Appellant contends that judge's calling of witness after prosecution and defense had rested demonstrated reasonable doubt as to sufficiency of evidence, and since witness contributed nothing to alleviate doubt, court should have found accused not guilty. In a Per Curiam opinion, the Appellate Division of the High Court held that calling of witness after both sides have rested case does not necessarily indicate doubt of judge but is merely exercise of caution. The Court further held that written notice of appeal is required and that record on appeal should contain statement that notice of right of allocution has been given.

Affirmed.

1. Criminal Law-Burden of Proof-Reasonable Doubt

To warrant conviction in criminal case, government must prove accused guilty beyond reasonable doubt.

2. Criminal Law-Witnesses

Where court calls witness in criminal trial which neither prosecutor nor defense has called, appellate court will construe action as exercise of caution endeavoring to make situation as clear as possible, and not as admission of doubt of sufficiency of evidence of prosecution.