

"Yatman was lying down. I woke him up and told him about the beer.

"He took a knife and I ran away."

The defendant's counsel urged the court to find that the defendant threw the rocks, if he threw them, as a matter of self-defense. The foregoing testimony demonstrates that the theory of self-defense is not applicable.

[23] Under Yapese custom, the accused, being from Woneyan Village was without any privilege or justification in entering the complainant's village, Gachapar, and the complainant's enclosed yard. His conduct while there being without legal justification, the Court has no alternative but to find him guilty of assault and battery with a dangerous weapon.

It is ordered, decreed, and adjudged:—

1. That Benemang is guilty as charged of the crime of assault and battery with a dangerous weapon.
2. That the charge of attempted assault and battery with a dangerous weapon is quashed and vacated.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff

v.

BENEMANG, Defendant

Criminal Case No. 123

Trial Division of the High Court

Yap District

March 16, 1970

See, also, 5 T.T.R. 22, 32

Motion to reopen trial for purpose of specifically denying commission of crime charged. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that motion for reopening trial would be granted where an element of defense was overlooked through inadvertence or misunderstanding and it was probable there was no great dispute about the facts involved,

TRUST TERRITORY v. BENEMANG

however, such motion would not be granted where the evidence would not be sufficiently convincing in the light of the entire record to change the judgment rendered.

Motion denied.

1. Criminal Law—Trial Procedure—Reopening Trial

A criminal defendant should be given an opportunity in the interests of fairness and justice, to present testimony on a reopened trial when it appears an element of defense was overlooked through inadvertence or misunderstanding and it is probable there is no great dispute about the facts involved.

2. Criminal Law—Trial Procedure—Reopening Trial

A motion to reopen for further testimony is in a limited sense the same as a motion for a new trial because of newly discovered evidence.

3. Criminal Law—New Trial

To obtain a new trial on the ground of newly discovered evidence, such new evidence must be of such a character as, on being considered with all the rest of the testimony, to leave a reasonable doubt as to the defendant's guilt.

4. Criminal Law—New Trial

Newly discovered evidence which tends only to impeach another witness is not sufficient to warrant a new trial unless the impeaching evidence is so strong and convincing a different result must necessarily follow.

5. Criminal Law—Trial Procedure—Reopening Trial

Motion to reopen trial will not be granted where evidence sought to be introduced would not change the judgment previously entered.

TURNER, *Associate Justice*

Defendant Benemang, through his counsel, the Assistant Public Defender, filed his motion to reopen the trial for the purpose of taking testimony specifically denying commission of the crime of assault and battery with a dangerous weapon by means of throwing rocks at and hitting the complaining witness.

The judgment opinion pointed out that the defendant took the witness stand but failed to specifically deny that he threw the rocks which struck the complaining witness. The motion rested upon a contention that the denial had not been made because of inadvertence or misunderstanding.

Without putting too fine a technical point on the issue, it could be said that the plea of not guilty to the charge was all the specific denial required. However, the defendant asked for an opportunity to specifically deny the act of rock throwing upon which the charge was based.

Justification for this motion, as a proper procedural maneuver, is asserted by the defendant from what this Court said in *Ngirmidol v. Trust Territory*, 1 T.T.R. 274, at 278, with regard to reopening a trial for additional testimony.

The Court said, referring to an unreported criminal decision, that: “. . . when the prosecution rests without having covered an essential point on which it appears probable that evidence is available. . . . ‘In such cases, the court believes it should reopen the prosecution and take testimony on the point not previously covered, when it appears this point has been overlooked through inadvertence or misunderstanding and it is probable there is no great dispute about the facts involved.’”

[1] The Public Defender urges similar application of the foregoing rule to the criminal defendant. The Court agrees. The criminal defendant should be given an opportunity in the interests of fairness and justice, to present testimony on a reopened trial when it appears an element of defense “was overlooked through inadvertence or misunderstanding and it is probable there is no great dispute about the facts involved.”

Although the Court agrees the rule as to reopening is applicable, it does not agree that this is a proper case for consideration of further testimony. The most the defendant could do in his own behalf is to categorically deny that he threw rocks. Such denial, in the face of all the testimony, would be insufficient to create a reasonable doubt as to the defendant's guilt.

TRUST TERRITORY v. BENEMANG

The opportunity for categorical denial was given the defendant during the trial. In answer he indirectly denied he threw rocks at the complaining witness. To reopen this case for the purpose of entering a more direct denial would serve no purpose. The Court was and is convinced from the record the defendant threw stones at Yatman during the afternoon and that he hit him twice and that the throwing was not justified as a matter of self-defense.

[2, 3] The motion to reopen for further testimony is in a limited sense the same as a motion for new trial because of newly discovered evidence. The rule as to when new evidence justifies granting a new trial is given in 139 Am. Jur., New Trial, § 166:—

“. . . to obtain a new trial on the ground of newly discovered evidence, such new evidence must be of such a character as, on being considered with all the rest of the testimony, to leave a reasonable doubt as to the defendant's guilt. . . .”

[4, 5] Newly discovered evidence which tends only to impeach another witness is not sufficient to warrant a new trial unless the impeaching evidence is so strong and convincing a different result must necessarily follow. Assuming the defendant, if given an opportunity to further testify, categorically denied throwing rocks, such denial in the opinion of the Court is not sufficiently convincing in the light of the entire record to change the judgment of guilty heretofore entered.

Accordingly, the motion to reopen is denied.