MARBOU, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 82

Trial Division of the High Court

Palau District

June 16, 1955

Defendant was convicted in Palau District Court of petit larceny in violation of T.T.C., Sec. 397. On appeal, defendant contends there was no larceny as no intent to steal was shown, and that allegedly stolen property was not produced or clearly shown. The Trial Division of the High Court, Chief Justice E. P. Furber, held that intent to commit larceny can be inferred from circumstances and that additional facts considered on appeal corroborate defendant's confession.

Affirmed.

1. **Larceny—Intent**

   Intent in trial for larceny is matter that must often be inferred from the circumstances.

2. **Criminal Law—Intent**

   Court in criminal case is not required to believe accused's statement of his intent but is entitled to draw fair inference as to intent from all the testimony.

3. **Criminal Law—Intent**

   Where inference most favorable to accused in criminal case is that he did not expect to be prosecuted and that others who had taken property under similar circumstances had not been prosecuted, inference is not sufficient to put accused in position of one who takes property in good faith with consent of employee of owner, honestly and reasonably believing employee is authorized to give such consent.

4. **Larceny—Intent**

   Mere impression that taker had claim or property in goods will not negative felonious intent in criminal prosecution for larceny.

5. **Larceny—Intent**

   Although custom and usage in community may bear upon intent in criminal prosecution for larceny, no custom or usage to take another's property and convert it to one's own use without consent or giving of an equivalent can find support in law.

6. **Criminal Law—Appeals—Scope of Review**

   When additional facts as to criminal trial are clearly established on appeal, court will consider these facts just as if they were properly included in record, in order to do substantial justice and avoid unnecessary delays and inconvenience.

7. Criminal Law—Corpus Delicti

It is not necessary for prosecution in criminal case to prove corpus delicti (or "body of crime") beyond reasonable doubt independent of accused's confession made outside of court.

8. Confessions—Corroborating Evidence

It is sufficient if, in criminal prosecution, accused's confession is corroborated by other substantial evidence and court is satisfied beyond reasonable doubt upon all the evidence, including confession, that accused committed crime charged.

Assessor:	R. FRITZ
Interpreter:	FRANCISCO K. MOREI
Counsel for Appellant:	FUMIO, N. R.
Counsel for Appellee:	SGT. ULENGCHONG

FURBER, *Chief Justice*

This is an appeal from a conviction of petit larceny of lumber belonging to the Trust Territory Government.

Both appellant and appellee were represented at the hearing on appeal by the counsel who had represented them at the trial in the District Court.

No witnesses appeared for either the appellant or the appellee at the hearing on the appeal. It was agreed by both counsel, however, that although the record fails to show it, the trial in the District Court was adjourned from the courthouse to the Police Station, and the prosecution's witness, Misao, there testified that a certain pile of lumber pointed out by him was taken by him from Marbou's house.

The appellant advanced two grounds for his appeal:— First, that there was no evidence of larceny because no intent to steal had been shown; and second, that the lumber alleged to have been stolen was not produced or clearly shown. He argued that the lumber in question was given him by Toshio Sasaki, the government employee who had charge of it, and further that it was waste lum-

ber. He also argued that the corpus delicti had not been sufficiently shown, aside from the accused's voluntary admission; citing Underhill's Criminal Evidence, Fourth Edition, Section 36.

The appellee argued that Sasaki's testimony, plus Misao's identification of the lumber, in conjunction with the admissions of the accused, sufficiently establish the crime.

The record includes a written statement by the accused, which was introduced in evidence by the prosecution, alleging that lumber was given to him by Sasaki, and there was evidence that Sasaki had given away waste boards and that he had stated to the accused that "we do not need the slabs". Sasaki himself was the complaining witness and testified at the trial. He denied having made the gift, although he admitted that he had told a third person to take some thin boards and hide them, and that he had therefore not filed a complaint against that person. His testimony also tended to show that the lumber in question was a part of that which had been under his charge and had been taken from the government.

CONCLUSIONS OF LAW

[1–5] 1. Intent in a trial for larceny is a matter that must often be inferred from the circumstances. The court is not required to believe the accused's statement of his intent, or his theory of the facts, but is entitled to draw a fair inference as to intent from all the testimony. From the record as supplemented by the agreement of counsel at the hearing on appeal, the inference which this court can draw that is most favorable to the accused is simply that he did not expect to be prosecuted for taking the lumber, and that some people who had taken lumber under somewhat similar circumstances had not been prosecuted. This is not sufficient to put the accused

in the position of a person who takes property in good faith with the consent of an employee of the owner, honestly and reasonably believing the employee is authorized to give such consent.

"A mere impression that the taker had a claim or property in the goods will not, however, negative a felonious intent. Also, although a custom or usage may become pertinent and material as bearing upon the intent with which one takes property, no custom, usage, or belief prevalent in the locality to take another man's property and convert it to one's own use without consent or giving an equivalent can find support in law. There can be no legal custom to justify one in stealing another's property." 32 American Jurisprudence, Larceny, Section 41, at page 938.

See also Miller on Criminal Law, Paragraph 114(a), page 367, note 39.

[6] 2. The desire of the court to ordinarily consider appeals such as this on the basis of the record in the District Court, in accordance with Rule 30(e) of the Rules of Criminal Procedure, is based upon the expectation that the record will disclose all of the important facts and that counsel will make a reasonable effort in accordance with sub-paragraph (1) of that Rule, to see that all necessary corrections are made before the hearing on appeal. However, when additional facts as to the trial are clearly established, as they were in this case by agreement of counsel in open court at the hearing on appeal, the court will consider those facts just as if they were properly included in the record, in order to do substantial justice and avoid unnecessary delays and inconvenience. This additional matter removes the basis for the appellant's second ground of appeal and any reasonable objection that the accused's admissions had not been sufficiently corroborated.

[7, 8] 3. The court holds that it is not necessary for the prosecution to prove the corpus delicti or "body of the crime" beyond a reasonable doubt independent of an ac-

cused's confession outside of court, but that it is sufficient if the confession is corroborated by other substantial evidence and the court is satisfied beyond a reasonable doubt upon all the evidence, including the confession, that the accused committed the crime. See 20 American Jurisprudence, Evidence, Section 1234.

JUDGMENT

The finding and sentence of the District Court for the Palau District in its Criminal Case No. 331 are affirmed.