

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Appellee**

v.

**KASPAR MONU, SANCHIRO and ARAKUCHY S.,
Defendants-Appellants**

Criminal Appeal No. 56

Appellate Division of the High Court

Truk District

September 13, 1978

Appeal by three persons convicted of fishing with explosives. The Appellate Division of the High Court, Hefner, Associate Justice, held that where witness with failing eyesight, who knew three persons charged with fishing with explosives, testified at length as to their involvement, his observation of the crime, and his reservations against testifying against the defendants, and he was only able to make an in-court identification of one of the defendants, and his testimony was corroborated by another witness, the conclusion that the three persons in court were the same three that witness saw while observing the crime was adequately supported.

TRUST TERRITORY v. MONU

1. Confessions—Admissibility—Waiver of Right

Statement which person taken to police station directly after his arrest made after being advised of his rights was properly admitted in evidence at his trial.

2. Arrest—Detention Prior to Charge—Time

Statute providing that an arrested person must be charged within 24 hours or released did not apply where complaint had been filed before arrest. (12 TTC § 68)

3. Arrest—Advice of Rights—Particular Cases

Where it was not certain how appellant came to conclusion that wording of advice of arrested person's rights form did not make it clear the person was advised of right to counsel before answering questions, finding that appellant had been advised of his rights and understood them would not be overturned on appeal. (12 TTC § 68)

4. Dynamiting Fish—Evidence—Particular Cases

Where witness with failing eyesight, who knew three persons charged with fishing with explosives, testified at length as to their involvement, his observation of the crime, and his reservations against testifying against the defendants, and he was only able to make an in-court identification of one of the defendants, and his testimony was corroborated by another witness, the conclusion that the three persons in court were the same three that witness saw while observing the crime was adequately supported.

5. Evidence—Identification of Persons—Supportive Evidence

Evidence of identification of a person may be inferred from all the facts and circumstances in evidence.

6. Dynamiting Fish—Complaint—Amendment

In prosecution for fishing with explosives, it was not error for court to allow an amendment to the complaint at the beginning of the trial, changing the place of the incident from Moen Island to Ruo Island, both being in the Truk Lagoon, for no new offense was charged and there was no showing of prejudice. (TT Rules Crim. Proc., R. 6i)

Counsel for Plaintiff-Appellee:

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Counsel for Defendants-Appellants:

BENJAMIN ABRAMS

Before BURNETT, *Chief Justice*, and HEFNER, *Associate Justice*

HEFNER, *Associate Justice*

The three defendants were convicted of fishing with explosives in the Truk District. They appeal on various

grounds, some of which apply only to certain of the defendants.

The defendant Arakuchy first asserts that the Trial Court erred in not suppressing his statement made to the police.

[1] The Trial Court found that Arakuchy was arrested early in the morning at about 5:00 a.m. and was brought directly to the police station, and after he was advised of his rights, made the statement at issue on this appeal. A review of the transcript, particularly the testimony of Arakuchy himself, supports this finding of the Trial Court. His statement is dated April 11, 1975, at 9:20 a.m. To what extent there was any delay thereafter before bringing him before a Court pursuant to 12 TTC 67 is not clear. However, there is nothing in the record which indicates the statement of the defendant was improperly admitted into evidence.

[2] Secondly, Arakuchy argues that the failure of the police to advise him of his right to be released within 24 hours constitutes reversible error.

The defendant misreads and misapplies 12 TTC 68. Here a complaint had already been filed before Arakuchy was arrested. It was not a matter of arresting him, questioning him, and retaining him in custody for more than 24 hours without a charge. Any sanctions for a violation of 12 TTC 68 are set forth in 12 TTC 70. A reversal of a conviction is not included. If the statement of the defendant was obtained as a result of a violation of 12 TTC 68, then the statement is suppressed. The Trial Court found that the interrogating police officer did not advise Arakuchy of his right to be released or charged within 24 hours. However, the Court found that Arakuchy knew the reasons for his arrest and the record supports the finding.

Therefore, it cannot be said or held that the statement of Arakuchy was obtained as a result of the failure of the police officer to advise Arakuchy of his right to be charged

in 24 hours when the defendant knew what he was arrested for at the time he made the statement.

[3] The next point raised by the defendant Arakuchy is that the wording of the Notice to Accused is defective. It is asserted that it does not make it clear that the defendant is advised that he is entitled to counsel before he answers questions. Exactly how the appellant comes to the conclusion that the form is defective is not certain. In any event, the Trial Court found that Arakuchy was advised of his rights and that he understood them. Once again the record supports this finding.

The last two points raised on appeal apply to all three defendants.

At the trial, the prosecution called one Senguma who was asked to make an in-court identification of the three defendants. The Trial Court found that he did identify defendant Kaspar Monu. A question remained as to the other two defendants. Initially, the Court struck the testimony as it related to Sanchiro and Arakuchy. Subsequently, the Court reversed its ruling and allowed the testimony to stand.

[4] The witness Senguma testified at length as to the three defendants' involvement in the dynamiting of the fish. It was only when the witness was asked to identify the three defendants in court that the problem arose. Of crucial importance here is the fact that Senguma had failing eyesight since he observed the crime and the basic reason that he could not identify the remaining two defendants at trial was his physical, not mental or memory, impairment. He, Senguma, stated he knew the three defendants and, in fact, regarded the defendant Arakuchy as his son.

[5] Evidence of identification may be inferred from all the facts and circumstances in evidence. 30 Am.Jur.2d, *Evidence*, sec. 1143.

Certainly, in this case, the totality of the witness Senguma's testimony along with his in-court identification of one of the defendants and his own reservations about testifying against the defendants more than supports the conclusion that the three defendants in court were the same three persons the witness saw with the dynamite and the fish after the explosions. In addition, the testimony of Senguma was corroborated by another witness, Eriden.

[6] Finally, the defendants argue that the Court committed error when it allowed a second amended complaint to be filed at the beginning of the trial. The amendment changed the place of the charged incident from Moen Island to Ruo Island, both of which are in the Truk Lagoon.

At the time of trial, TT Rules Crim. Proc., R. 6g was in effect, which would allow the amendment. Since then, that rule has been amended to provide that an amendment to an information will be allowed at any time before the verdict if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. TT Rules Crim. Proc., R. 6i.

The latter rule, of course, is the better rule and even applying it to the amendment in question, it cannot be said that the Court committed error in allowing the amendment. It did not charge a new offense and there is no showing that the defendants were prejudiced by the amendment. The Court offered to continue the trial but the defendants refused.

The convictions of the defendants are hereby AFFIRMED.