

**BISENTE, Appellant**  
v.  
**TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee**  
**Criminal Case No. 35**  
**Trial Division of the High Court**  
**Yap District**  
**May 15, 1957**

Defendant was convicted in Yap District Court of trespass and malicious mischief, in violation of T.T.C., Secs. 401 and 398, and sentenced to imprisonment for one month and one month suspended sentence. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that evidence was sufficient to sustain finding of malice on basis of defendant's corroborated confession; that admission of certain hearsay evidence was not prejudicial; but that District Court erred in finding that actions of defendant constituted at same time both trespass and malicious mischief.

Modified and remanded.

**1. Malicious Mischief—Malice**

In trial for crime of malicious mischief, wilfulness and malice may be inferred from circumstances just as intent may be inferred in larceny cases.

**2. Criminal Law—Corpus Delicti**

It is not necessary in Trust Territory courts for prosecution in criminal case to prove corpus delicti beyond reasonable doubt independent of accused's confession outside of court.

**3. Confessions—Corroborating Evidence**

Criminal conviction in Trust Territory courts may be based upon confession of accused corroborated by other substantial evidence if court is satisfied beyond reasonable doubt upon all the evidence, including confession, that accused committed the crime.

**4. Confessions—Corroborating Evidence**

It is sufficient for criminal conviction in Trust Territory courts if there is substantial undisputed circumstantial evidence that accused committed crime, which corroborates confession of accused.

**5. Criminal Law—Evidence—Improperly Admitted**

Where hearsay evidence is improperly admitted in criminal proceedings, but there is other uncontradicted testimony covering same statement of accused which was properly considered, accused is not prejudiced by erroneous ruling on evidence.

**6. Appeal and Error—Generally**

Courts considering appeals in Trust Territory are concerned with substantial justice rather than with fine points of law and evidence.

**7. Appeal and Error—Evidentiary Error**

Ordinary effect in Trust Territory of lower court's receiving improper evidence is that on appeal, such evidence will not be considered.

**8. Trespass—Generally**

There may be conviction for trespass only if court finds acts complained of were done without accused committing or attempting to commit any other crime against property under Trust Territory Code. (T.T.C., Sec. 401)

**9. Malicious Mischief—Generally**

Where there is no indication of any break in incident or change of intention by accused during actions constituting crime of malicious mischief, he cannot also properly be found guilty of trespass. (T.T.C., Secs. 398, 401)

**10. Trespass—Generally**

Acts cannot constitute crime of trespass under Trust Territory law unless they are done without accused committing or attempting to commit certain other crimes, of which malicious mischief is one. (T.T.C., Sec. 401)

**11. Trespass—Generally**

If judge in criminal trial finds all elements of malicious mischief are proved, he cannot properly find all elements of trespass are proved. (T.T.C., Secs. 398, 401)

**12. Malicious Mischief—Generally**

It is legal impossibility under Trust Territory law for same act to constitute both trespass and malicious mischief where there is no break in incident or change of intention of accused. (T.T.C., Secs. 398, 401)

**13. Criminal Law—Sentence**

Where trial court erred in finding defendant guilty of both crime of trespass and malicious mischief, and sentence imposed was no greater than he could have reasonably and in his discretion imposed on one of charges alone, defendant is still entitled to new trial if he so desires. (T.T.C., Secs. 398, 401)

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FURBER, *Chief Justice*

This appeal from the decision of the Yap District Court in its Criminal Case No. 111 has been considered by Chief Justice E. P. Furber on briefs. Written waiver of oral argument was filed by both counsel and neither made

any request or motion that this court hear evidence. The appellee in its brief stated certain facts not in the record, but this court has entirely disregarded them in reaching its decision. See Rule 30e of the Rules of Criminal Procedure.

## ISSUES RAISED

The accused was tried for and found guilty of malicious mischief and trespass, both arising out of the same incident. According to the summary of testimony included in the record the trial judge first announced one finding of guilty and one sentence of imprisonment for one month and one month's suspended sentence "for the total of 2 months" —apparently on both charges combined; but he then entered a separate finding of guilty on each of the charges and applied the one month's suspended sentence to the malicious mischief charge and the one month's imprisonment to the trespass.

The appellant in his notice of appeal advanced two grounds, (1) that the evidence did not prove the accused guilty beyond a reasonable doubt, and (2) that all the elements of both charges were not proved.

In his brief his counsel questions specifically (1) whether the accused "willfully and maliciously" damaged the property in question, (2) whether the "corpus delicti" was sufficiently proved to support the accused's confession, (3) whether the court erred in overruling his objection to certain hearsay evidence, and (4) whether the accused trespassed in entering the house in question. (He also questions the denial of his motion for acquittal at the close of the prosecution's evidence, but since the accused introduced no evidence this denial is not considered to raise any separate issue.)

## CONCLUSIONS OF LAW

[1, 2] 1. Willfulness and malice in a trial for malicious mischief must often be inferred from the circumstances—just as intent often must be in larceny cases. See the first paragraph of Conclusions of Law in *Marbou v. Trust Territory*, 1 T.T.R. 269, and 34 Am. Jur., Malicious Mischief, § 24. While the circumstances tending to show malice—particularly the amount and nature of the damage done—might well have been inquired into in more detail in the present case, the circumstantial evidence, combined with the admissible evidence of the accused's own statements, was sufficient to justify the trial judge in finding the accused acted both wilfully and with malice toward those whose property he damaged.

[3] 2. This court has already held that it is not necessary in Trust Territory courts for the prosecution to prove the corpus delicti or "body of the crime" beyond a reasonable doubt independent of an accused'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 third paragraph of Conclusions of Law in *Marbou v. Trust Territory*, cited above. In other words, this court adopts what is referred to as "the general rule now" in 20 Am. Jur. Evidence, 1233, and follows what is referred to as "the weight of authority" in § 1234 of that same article. In the present case substantial undisputed circumstantial evidence corroborated the confession.

[4-6] 3. The trial court clearly erred, as a technical matter, in overruling the accused's objection to Magamay's testimony as to what Ganangmed had told him the accused told her. On the other hand, the basic idea expressed by

the court in its ruling that what the accused had said could be considered when testified to by Ganangmed was right. Ganangmed did testify to it and her testimony was not contradicted in any way. While Magamay's testimony on this point should have been excluded, Ganangmed's testimony covering the same statements of the accused was properly considered. The accused therefore was not prejudiced in this instance by the erroneous ruling. Courts considering appeals in the Trust Territory are concerned with substantial justice rather than with fine points of the law of evidence and ordinarily the effect of a lower court's receiving improper evidence is simply that on appeal such evidence will not be considered. See first paragraph of Conclusions of Law in *Jose Borja v. Trust Territory*, 1 T.T.R. 280. Disregarding the improper evidence objected to, there was still sufficient evidence to justify a conviction for either malicious mischief or trespass depending on what the trial court found as to malice.

[7-12] 4. Implied permission or willingness for a person to enter a house for peaceful and usual social purposes does not by any means necessarily carry with it permission to enter to do willful damage to property there. There was clearly a civil trespass here and the admissible evidence was sufficient to justify a conviction for the crime of trespass, if the court found that the acts complained of were done without committing or attempting to commit any other crime against property under the Trust Territory Code. The trespass or interference with use and possession here, however, was essential to the alleged malicious mischief. There was no indication of any break in the incident or change of intention by the accused during it. Under Section 401 of the Trust Territory Code acts cannot constitute the crime of trespass unless they are done "without committing or attempting to commit any of the before mentioned crimes",

of which malicious mischief is one. If the trial judge found all the elements of malicious mischief were proved, he could not properly find that all the elements of trespass were. Under the circumstances disclosed here, it is a legal impossibility for the acts involved to constitute both of these crimes at the same time.

[13] 5. From the way in which the trial judge announced sentence it seems probable that he considered the total sentences imposed as the proper punishment for the incident involved and that this total is no greater than he would have imposed on one of these charges alone if he had correctly understood the limitation on the crime of trespass under our code. Such a sentence would have been entirely reasonable and well within the judge's discretion for either crime charged. The appellant is entitled to a new trial (subject to directions) if he wants it, but as there seems to be no doubt about the basic facts other than the one question of malice, which would determine on which charge he should be convicted, the appellant may prefer to serve the whole sentence originally announced by the trial judge rather than proceed with a new trial.

#### JUDGMENT

1. If within seven days after entry of this judgment, the accused in Yap District Court Criminal Case No. 111 files a written waiver of right to a new trial, the finding of guilty on the charge of malicious mischief in that case shall stand, the sentence shall be modified by applying to that charge the whole sentence first announced by the District Court, that is, 2 months imprisonment with the second month suspended on condition of good behavior, the finding of guilty on the charge of trespass shall be set aside and a finding of not guilty entered on that charge. Subject to the filing of such a waiver, the finding on the

malicious mischief charge is affirmed, the sentence for that is modified as specified above and affirmed as so modified, the finding on the charge of trespass is set aside, a finding of not guilty is entered on that charge and the defendant acquitted thereof.

2. If within seven days after entry of this judgment, the accused in Yap District Court Criminal Case No. 111 has not filed in that court a written waiver of right to a new trial, the findings and sentences in that case are set aside and the case referred back to that court for a new trial, subject to the following directions:—

(a) The judge who originally heard the case is to reopen it and take any additional proper testimony either side wishes to offer, but he is also to consider the testimony already in the record without its being reintroduced, except that the part of the testimony of Magamay to which the accused objected as hearsay shall not be considered (but Ganangmed's testimony as to the same statements of the accused shall be considered.)

(b) After taking such additional testimony, if any, he shall finish the trial as if there had been no previous findings and sentences; shall allow the usual opportunity for argument; make new findings based on all the admissible evidence and in accordance with the Conclusions of Law on this appeal; and if the finding is guilty on either charge, allow the usual opportunity for hearing on the question of sentence and enter such new lawful sentence as he then thinks just—regardless of whether it is more or less than, or equal to, either of the previous sentences or the total of them.