

LINCOLN FONTANA, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 13

Appellate Division of the High Court

November 25, 1959

Appeal from criminal conviction in Trial Division of the High Court, Truk District. Appellant contends that his confession was procured in violation of his rights under Trust Territory Code. The Appellate Division of the High Court, Judge Eugene R. Gilmartin, held that manner in which confession was obtained was reprehensible and confession should have been excluded. Reversed.

- 1. Criminal Law—Evidence—Obtained in Violation of Rights of Accused**
Evidence obtained in violation of rights of accused is inadmissible. (T.T.C., Secs. 454, 457(d), 458, 498)
- 2. Statutes—Constabulary Rules and Regulations**
Rules and Regulations of Insular Constabulary have force and effect of law. (T.T.C., Sec. 242)

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3. Criminal Law—Pre-Trial Procedure

Violation of certain sections of Trust Territory Code by constabulary does not mean accused must be acquitted or that any evidence obtained thereafter during detention must be excluded. (T.T.C., Sec. 498)

4. Criminal Law—Pre-Trial Procedure

Public has social interest in seeing that guilty persons do not go free merely because of error on part of constabulary which has no bearing on question of guilt of accused.

5. Criminal Law—Evidence—Obtained in Violation of Rights of Accused

Evidence obtained as a result of violation of Chapter 6 of Trust Territory Code is inadmissible against accused, but no such provision applies to evidence obtained in violation of Chapter 5, and such evidence is admissible provided it is otherwise proper.

6. Confessions—Admissibility

Where there is no evidence to convict accused in criminal prosecution except confession, and method of obtaining confession was reprehensible, court will set aside conviction.

Counsel for Appellant: ROSCOE L. EDWARDS, ESQ., *Public Defender and Counselor*
Counsel for Appellee: ALFRED J. GERGELY, ESQ., *District Attorney*

Before FURBER, *Chief Justice*, GILMARTIN, *Temporary Judge*

GILMARTIN, *Judge*

This is an appeal from the decision of the Trial Division of the High Court, in and for the Truk District, Trust Territory of the Pacific Islands.

[1] In his argument before this Court, counsel for the appellant laid great stress on the contention that the accused's rights were seriously violated by the constabulary—"Any person making an arrest shall, at or before the time of arrest, make every reasonable effort to give the person arrested clearly to understand for what cause and by what authority the arrest is being made, etc. . . . TTC Section 458; In any case of arrest for examination, as provided in Section 457(d) of the Code of Trust Territory

hereof, it shall be unlawful to: (a) Deny to the person so arrested the right to see, at reasonable intervals and for a reasonable time at the place of his detention, counsel, etc. . . . TTC Section 454; No violation of the provisions of the Chapter shall, in and of itself, entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused, etc. . . . TTC 498.”

[2, 3] It is clear from the record that the constabulary did not advise the appellant of his rights as early as the Rules and Regulations for the Insular Constabulary require. These Rules and Regulations are given the force and effect of law in Chapter 5, Section 242 of the Trust Territory Code. It does not follow that a violation of certain sections of the Trust Territory Code by the constabulary necessarily means the accused must be acquitted or that any evidence obtained from the accused thereafter during his detention must be excluded.

[4] We do not condone the disregard of the law by the constabulary and firmly believe that the constabulary should keep within the limit of the law so far as they understand it, but the constabulary are not on trial in this case. It is well known in the Trust Territory—and especially in the courts—that the Insular Constabulary have, as yet, had only limited training and experience in operating under the system of law set forth in the Trust Territory Code and so far are making commendable progress in enforcing the laws of the Trust Territory. Some mistakes must be expected, and the public has an important social interest in seeing that guilty persons do not go free merely because of error on the part of the constabulary, which would have no bearing upon the question of the guilt of the accused. The fact that the appellant in this case was not advised of his rights as early as the law di-

rects may have caused him worry and mental discomfort, to which he should not have been subjected. This fact, in and of itself, has no substantial bearing either on the question of his guilt or the admissibility of statements he made to the constabulary after he was advised of his rights, or that it prejudiced him at the trial in any way.

[5] We fully concur with the rulings and remarks of the Trial Division in *Trust Territory v. Yifith*, Yap District, Criminal Case No. 19, set forth on p. 34 and 35 of the Compilation Rulings and Remarks of the Trial Division, published in mimeographed form February 28, 1956. In that case objection was raised to testimony showing admissions made by the accused to one fellow prisoner and overheard by another whom a constabularyman had asked to watch the accused and see if he said anything about his case, without indicating that warning had been given the accused as to his rights. The Court denied the accused's motion to strike out this testimony. The following extracts from the portions of the record in that case, quoted on p. 35 of the above-mentioned Compilation, states the rule which we hold should prevail in Trust Territory courts in such situations:

"The court called attention to the fact that Section 489 of the Trust Territory Code expressly provides that no evidence obtained as a result of a violation of Chapter 6 of the Code shall be admissible against the accused, but that there is no such provision in the Code with regard to evidence obtained in violation of Chapter 5, which is the one containing the provisions concerning the Rules and Regulations for the Insular Constabulary. The court stated that it did not feel that the Trust Territory had yet reached the stage of development where it would be proper to apply a flat rule by judicial decision that all illegally obtained evidence is inadmissible. The court held that under all the circumstances Trust Territory courts should observe the distinction implied by the Code, that in accordance with Section 489 they should exclude evidence obtained in violation of Chapter 6, but that in the case of

evidence obtained in violation of other provisions of law, they should follow the more generally accepted rule and admit the evidence, provided it was otherwise proper. 20 American Jurisprudence, Evidence, Sections 393 and 489 to 505, including particularly the additions to Section 499, in the 1954 Cumulative Supplement, pages 61 to 63."

[6] Whether the confession involved in the present case was shown to be truly voluntary and therefore admissible in evidence, however, depends, in our opinion, on other considerations. There appears to be no evidence to convict the accused except the confession. It is the opinion of this Court that the method of obtaining the confession was most reprehensible.

The judgment of the court below is set aside and the appellant is acquitted.