

BESEBES NGIRAIBAI, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 251

Trial Division of the High Court

Palau District

January 14, 1964

Defendant was convicted in Palau District Court of assault and battery with a dangerous weapon, in violation of T.T.C., Sec. 377-A. On appeal, defendant contends bottle and stick used in assault do not constitute dangerous weapons. The Trial Division of the High Court, Chief Justice E. P. Furber, held that likelihood of great bodily harm to victim justified trial court's finding that bottle and stick as used were dangerous weapons.

Affirmed.

1. **Assault and Battery With a Dangerous Weapon—"Dangerous Weapon"**
Dangerous weapon, within meaning of statute defining assault and battery with a dangerous weapon, is weapon likely, in natural course of

NGIRAIBAI v. TRUST TERRITORY

things, to produce death or great bodily harm, when used in manner in which it was used in particular case. (T.T.C., Sec. 377-A)

2. **Assault and Battery With a Dangerous Weapon—"Dangerous Weapon"**
Wide variety of articles may constitute dangerous weapons within definition used in connection with assaults. (T.T.C., Sec. 377-A)
3. **Assault and Battery With a Dangerous Weapon—"Dangerous Weapon"**
Test of what constitutes dangerous weapon is not dependent upon how serious or permanent injuries actually inflicted are, but upon likelihood or danger in natural course of things of death or great bodily harm. (T.T.C., Sec. 377-A)
4. **Assault and Battery With a Dangerous Weapon—"Dangerous Weapon"**
District Court is justified in considering bottle and stick to be dangerous weapons when bottle struck victim with such force it broke over his head, and stick broke arm of victim with which he was trying to protect himself. (T.T.C., Sec. 377-A)

Assessor:	JUDGE RUBASCH FRITZ
Interpreter:	HARUO I. REMELIHK
Counsel for Appellant:	F. ARMALUUK
Counsel for Appellee:	B. N. OITERONG

FURBER, *Chief Justice*

This is an appeal from a conviction of Assault and Battery with a Dangerous Weapon in violation of Trust Territory Code Section 377-A.

No witness appeared for either the appellant or the appellee at the hearing on the appeal, but the wooden stick alleged to constitute one of the dangerous weapons involved and which had been admitted as an exhibit in the District Court was presented in this court. It measured 47 1/2 inches long; its cross section was roughly square, measuring 1 1/4 inches on each side, with each edge slightly beveled. After weighing by counsel and the Clerk of Courts, it was agreed that it weighed one and two-thirds pounds.

Counsel for the appellant argued that the two instruments used, namely, a beer bottle and the stick described

above, did not constitute dangerous weapons and that the finding should have been only guilty of simple assault and battery. He pointed out that, while the Medical Officer's first report would indicate that the injuries inflicted were somewhat serious, the second one clearly indicated that they were so minor they wouldn't need treatment and that it was clear no permanent injury was caused. He laid stress upon the fact that, according to the demonstration in the District Court, the accused in beating the victim with the stick had held it with his two hands near the middle and had not swung it its full length.

Counsel for the appellee argued that any instrument may be dangerous if used in a way making it dangerous, and that a bottle may be such an instrument, citing Black's Law Dictionary, p. 471, and pointed out that if the bottle had hit the victim's temple it might have killed him. Counsel also cited 4 Am. Jur., Assault and Battery, § 34, and pointed out that, while injury is not an element of the offense involved here, it was clear that the victim had had his arm broken and his head injured and had been saved from further injury only because the appellant was stopped by a third person from continuing the beating.

The evidence was very clear that the appellant had thrown a beer bottle at the victim's head from a few feet away with such force that the bottle broke on the victim's head while he was sitting with one side toward the appellant, that the appellant had then struck the victim twice over the head with the stick described above with such force that it broke the victim's arm with which he was trying to protect himself, that the appellant was stopped from continuing the beating by a third person, and that the appellant had used both his hands in inflicting at least one of the blows with the stick.

OPINION

[1] The Appellate Division of the High Court has already held that “a dangerous weapon”, within the meaning of Section 377-A of the Trust Territory Code, is “a weapon which is likely, in the natural course of things, to produce death or great bodily harm, when used in the manner in which it was in the particular case in question.” *Koro Paul v. Trust Territory*, 2 T.T.R. 603.

[2] The wide variety of articles which have been held to constitute a “dangerous” or “deadly weapon”, within the above or a similar definition in connection with assaults, is shown in:—

Miller on Criminal Law, p. 309, note 32.

Bouvier’s Law Dictionary, 3rd Revision, Vol. 1, p. 754, “Dangerous Weapon”.

56 Am. Jur., Weapons and Firearms, § 3.

[3] It should be noted that the test is not dependent on how serious or permanent the injuries actually inflicted are, but depends upon the likelihood or danger “in the natural course of things” of death or great bodily harm. See 6 Am. Jur. 2d, Assault and Battery, § 53, note 6.

It seems to this court most obvious that there was imminent danger of the bottle in this instance hitting and breaking on the side of the victim’s face, that if that had happened there was serious likelihood of great bodily harm; furthermore that, if the appellant, having broken the victim’s arm with the stick, had been allowed to continue his beating with the stick there was grave danger of the victim’s head being seriously injured, and that this might even have happened from one of the two blows inflicted with the stick if the victim had not succeeded in partially protecting himself. In fact it would seem it was extremely lucky for both individuals involved that the victim was not much more seriously injured.

[4] The court accordingly holds that the District Court was justified in considering the bottle and stick, as used in this instance, to be dangerous weapons.

JUDGMENT

The finding and sentence of the Palau District Court in its Criminal Case No. 2486 are affirmed.