

**NGIRBOKETERENG, Appellant**

**v.**

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

**Criminal Case No. 67**

**Trial Division of the High Court**

**Palau District**

**August 27, 1954**

Defendant was convicted in Palau District Court of affray and drunken and disorderly conduct, in violation of T.T.C., Secs. 424 and 427. On appeal, defendant contends his acts were not performed in public place. The Trial Division of the High Court, Associate Justice James R. Nichols, held that since no evidence was introduced to show building in which alleged offenses occurred was public place, prosecution failed to prove one of the elements of each of offenses charged.

Reversed.

**1. Affray—"Public Place"**

One of the elements to be proved in a prosecution for a violation of section 424 of the Trust Territory Code relating to affray is that the offense occurred in a "public place".

**2. Drunken and Disorderly Conduct "Public Place"**

One of the elements to be proved in a prosecution for a violation of section 427 of the Trust Territory Code regarding drunken and disorderly conduct is that the offense occurred in a "public place".

<i>Assessor:</i>	R. FRITZ
<i>Interpreter:</i>	FRANCISCO K. MOREI
<i>Reporter:</i>	ZELLA L. MOORE
<i>Counsel for Appellant:</i>	ROMAN TMETUHL
<i>Counsel for Appellee:</i>	SGT. ULENGCHONG

NICHOLS, *Associate Justice*

The appellant advances as his ground for appeal from sentences in punishment for the offenses of Affray and Drunken and Disorderly Conduct that acts, upon which the charges were based, were not performed in a public place, as mentioned in Sections 424 and 427 of the Trust Territory Code.

As a result of an altercation with one Tem on December 30 31, 1953, the appellant was charged with the following offenses: (1) Trespass, (2) Assault and Battery, (3) Affray, and (4) Drunken and Disorderly Conduct. He was found guilty on all four charges, each being handled as a separate case, and was sentenced as follows:

Trespass	3 months suspended
Assault and Battery	10 days
Affray	\$5.00 fine
Drunken and Disorderly Conduct	3 months suspended

He now appeals from the findings and sentences on the charge of Affray in Case No. 193, and on the charge of Drunken and Disorderly Conduct in Case No. 194 in the District Court.

The fight upon which the charges were based began in the boys' dormitory at the Cacao Project and was resumed in the girls' dormitory at the Cacao Project. In spite of the fact that Section 424 and Section 427 provide that the offense must be committed in a public place, there is no showing in the summaries of the testimony that such was the case. The appellant argues that these dormitories

were not public places, and cites Bouvier's Law Dictionary, page 2765, in support of his contention.

The appellee argues that, on the night of December 30, 1953, the appellant drank an alcoholic beverage and had a fight with one Tem in the dormitories at the Cacao Project. Stanley L. Darby, the Project Manager, attempted to stop the fight. There was loud talking in the Palauan language and Mrs. Darby became frightened. There were ten people living in the house in which the fighting occurred. Because of this evidence, which was presented in the trial court, it is argued that the findings and sentence should be affirmed.

#### CONCLUSIONS OF LAW

[1, 2] In view of the fact that no evidence was introduced to show that the building in which the alleged offenses occurred was a "public place" within the meaning of Sections 424 and 427 of the Trust Territory Code, the prosecution failed to prove one of the elements of each of the offenses charged.

#### JUDGMENT

The findings and sentences of the District Court for the Palau District in Criminal Cases Nos. 193 and 194, as they pertain to the appellant Ngirboketereng are hereby set aside, a finding of not guilty entered as to Ngirboketereng in each case, and it is ordered that the \$5.00 fine in Criminal Case No. 193 be refunded to the appellant.