

**TRUST TERRITORY**

v.

**CHRISTINA TARKONG****Criminal Case No. 128****Trial Division of the High Court****Yap District****July 22, 1970**

Information charging defendant with having unlawfully caused the miscarriage or premature delivery of a fetus from herself. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that Section 405 of the Trust Territory Code relating to abortion was so vague and indefinite its attempted enforcement in case constituted a denial of due process and was invalid.

**1. Abortion—Intent**

The only certainty contained in the abortion statute is that the intent to cause the abortion must be present and this simply precludes abortion by accident. (T.T.C., Sec. 405)

**2. Abortion—Persons Liable**

Abortion statutes by their terms are applicable to the person causing the abortion and do not apply, without specific provision to the pregnant woman who is the victim of the act. (T.T.C., Sec. 405)

**3. Abortion—Persons Liable**

As far as the woman herself is concerned, unless the abortion statute expressly makes her responsible, it is generally held, although the statute reads any "person", that she is not liable to any criminal prosecution, whether she solicits the act or performs it upon herself. (T.T.C., Sec. 405)

**4. Abortion—Constitutionality**

Under the abortion section of the Code the persons liable are determinable by inference only and such indefiniteness and vagueness constitutes a denial of due process. (T.T.C., Sec. 405)

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5. Constitutional Law—Due Process

Although the United States Constitution is not directly applicable to the Trust Territory, the constitutional provision as to due process is carried into the Code by Section 4. (T.T.C., Sec. 4)

6. Constitutional Law—Due Process

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. (T.T.C., Sec. 4)

7. Abortion—Constitutionality

Section 405, Trust Territory Code, relating to abortion, was so vague and indefinite its attempted enforcement in case in question constituted a denial of due process and it was, therefore, invalid. (T.T.C., Sec. 405)

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TURNER, *Associate Justice*

This case came on for arraignment and trial upon an information charging the defendant with having unlawfully caused the miscarriage or premature delivery of a fetus from herself. The charge was brought under Section 405, Trust Territory Code.

Prior to arraignment the Public Defender moved that the information be quashed on the grounds the statute was so vague and indefinite it was not enforceable and that it constituted a denial of due process guaranteed by Section 4, Trust Territory Code.

The first objection to Section 405 of the Code is that it is unlimited in effect, that is to say, abortion is unlawful whenever and by whomever performed including a physician intending to preserve the life of a pregnant woman. If that is the interpretation the statutory language requires it goes far beyond the bounds of reasonable validity. We know of no other meaning to be attributed to the provision "whosoever shall unlawfully" cause the abortion. When is the act unlawful or when is it lawful? The statute does not supply the answer.

[1] The only certainty contained in the statute is that the intent to cause the abortion must be present. This sim

ply precludes abortion by accident. Intent may not be extended to diminish the extent of "unlawfully".

[2] Abortion statutes by their terms are applicable to the person causing the abortion and do not apply, without specific provision to the pregnant woman who is the victim of the act. Here the government seeks to prosecute the victim for her own act and to do so necessarily relies upon the vague indefiniteness of the statute.

[3] In Burdick's "Law of Crime," Section 870, "Persons Liable", is found the statement:—

"As far as the woman herself is concerned, unless the statute expressly makes her responsible, it is generally held, although the statute reads any 'person', that she is not liable to any criminal prosecution, whether she solicits the act or performs it upon herself." (Citing.)

[4] The Trust Territory statute does not expressly make the woman responsible. Under the Code the persons liable are determinable by inference only. Such indefiniteness and vagueness constitutes a denial of due process.

[5, 6] Although the U.S. Constitution is not directly applicable to the Trust Territory, the constitutional provision as to due process is carried into our Code by Section 4. The constitutional text writer in 16 Am. Jur. 2d, Constitutional Law, § 532, states the rule applicable to this case:—

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." (Citing.)

[7] Section 405, Trust Territory Code, is so vague and indefinite its attempted enforcement in this case constitutes a denial of due process and it is, therefore, invalid. It is therefore,

Ordered that the information charging Christina Tarkong with the crime of abortion be and the same hereby

is dismissed, the defendant is discharged from custody and the bail posted in the sum of \$50 is exonerated and released.