

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

HSU DENG SHUNG, et al.

Criminal Case No. 430

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

HSU MING HAVE

Criminal Case No. 431

Trial Division of the High Court

Palau District

August 7, 1972

Attack upon order assessing costs in criminal proceeding. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, held that the accused were not liable for cost of providing police guard.

Criminal Law—Costs—Detention

In the absence of a statute to the contrary, defendants in criminal prosecution could not be held liable for the costs of detaining them, whether before or after their conviction.

BURNETT, *Chief Justice*

ORDER

Defendants in the captioned criminal cases were convicted of charges of unlawful entry and unlawful removal of marine resources; sentences of imprisonment were suspended on specified conditions. The first of these conditions, imposed in Criminal Case No. 430 reads:

“You are to see to it that the government is reimbursed for all its expenses in connection with furnishing food, water, fuel, and other supplies to the fishing vessel and its crew members under your command.”

In Criminal Case No. 431 the condition is essentially the same, with only inconsequential differences in the language employed. There is no reference in either case to a requirement that the defendants reimburse the government for police costs incurred in providing security for the vessels.

Defendants moved on June 15 for an order assessing costs, and excluding the cost of police guards. There does not appear to have been any hearing on the motion, though an order dated June 27 directed all moneys received on behalf of the defendants to be paid into the registry of the court “until such time as the judgments become final”, and further ordered that any amount remaining after satisfaction of the fines be used to repay the government “for its supplies and security furnished”.

From the testimony of the Chief of Police it is clear that he maintained police guard because the defendants were in his custody until their fines were paid, and the ships, by reason of the libels, the first of which, Civil No. 571, was filed on April 27, and the second, Civil No. 573, filed on May 9. Both ships had been rendered inoperable by removal of vital parts.

In the absence of statute I know of no basis for holding an accused liable for the costs of his detention, whether

before or after conviction. Additionally, all defendants were released from custody, on their own recognizance, on May 9.

The necessity for providing vessel security is not for the court to decide. I am satisfied, however, that the law clearly contemplates recovery of the cost thereof out of forfeiture proceedings. 19 T.T.C. 158.

I conclude that the cost of providing police guards is not a proper charge against these defendants. To the extent that the Order of June 27 indicates otherwise, I hereby vacate said Order.