JOSE NGESKEBEI, Appellant

v.

GOVERNMENT OF THE NORTHERN MARIANA ISLANDS, Appellee

Criminal Appeal No. 76

Appellate Division of the High Court

Mariana Islands District

January 29, 1979

Appeal from assault conviction. The Appellate Division of the High Court, Laureta, Temporary Justice, held that where complaining witness in prosecution for assault by throwing a rock stated that she was in a group of about 25 persons when defendant threw a rock into the group from 20–25 feet away, hitting a person six feet from complainant, it could be found defendant had the intent to commit an assault upon complainant.

1. **Appeal and Error—Evidence—Admission of Evidence**

   Trial court has broad powers of discretion concerning admissibility of evidence on relevancy grounds and admission or rejection may be overturned on appeal only if there has been a clear abuse of discretion.

2. **Criminal Law—Evidence—Acts and Statements Collateral to Offense**

   Evidence of conduct collateral to offense with which an accused is charged, criminal or otherwise, may be inadmissible if it fails to be probative of the charged offense.

3. **Evidence—Relevancy**

   Relevancy of evidence is to be determined by whether the evidence gives rise to reasonable inferences regarding contested issues or throws any light upon them.

4. **Assault—Evidence—Admissible Evidence**

   In prosecution for assault by throwing of a rock, statements of complaining witness that rock was thrown 20–25 feet into area containing about 25 people, including complainant and her child, that the rock hit a woman

about six feet from complainant, and that complainant shouted to defendant that he had almost hit complainant's child, were relevant and material in identifying defendant as the rock-thrower and were admissible; and that the testimony may have tended to connect defendant to an assault upon the woman hit with the rock did not render it inadmissible. (11 TTC § 201)

5. Criminal Law—Evidence—Materiality

Any competent evidence logically tending to prove a defendant's connection with a crime is material and is to be judged not only upon what it shows standing alone, but also on whatever inferences may be drawn when it is viewed in connection with other evidence.

6. Criminal Law—Evidence—Acts and Statements Collateral to Offense

Competent and relevant evidence of guilt of crime charged is not made inadmissible merely because it tends to show the commission of another offense.

7. Assault—Intent—Type

Criminal assault is a general intent crime. (11 TTC § 201)

8. Assault—Intent—Intent Found

Where complaining witness in prosecution for assault by throwing a rock stated that she was in a group of about 25 persons when defendant threw a rock into the group from 20–25 feet away, hitting a person six feet from complainant, it could be found defendant had the intent to commit an assault upon complainant. (11 TTC § 201)

9. Assault—Intent—Type

Simple assault and assault with a deadly weapon have traditionally been referred to as general intent crimes and what is technically referred to as specific intent is not required, and intent may be implied from the act. (11 TTC § 201)

10. Assault—Intent—Type

An assault is a general intent crime under the definition of general intent as an intent merely to do a violent act. (11 TTC § 201)

11. Assault—Intent—Type

Defendant who threw a rock into a group of people voluntarily set in motion an instrumentality which carried a very real probability of causing great bodily harm and it did not matter if he did not intend to strike complainant in criminal proceeding, as assault may be committed despite the absence of an intent to injure a particular person, it being a crime where one intends to assault a certain person and mistakenly or inadvertently assaults another person, the intent being transferred from the party who was intended to be injured to the party who was injured, and it also being a crime if one does not intend to injure any person in particular, a person being presumed to do that which he actually does and to intend the consequences which naturally and probably flow from his voluntary acts. (11 TTC § 201)

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Before BURNETT, *Chief Justice,* GIANOTTI, *Associate Justice,* LAURETA, *Temporary Justice*

LAURETA, *Temporary Justice*

Appellant was charged with three counts of assault upon a five-count Information filed in the Trial Division of the High Court. He entered a plea of not guilty to counts one, two and three of the Information. During the trial held on April 18, 1978, the Government dismissed counts one and two, and proceeded solely on count three of the Information. Count three charged appellant with the crime of assault (by throwing rocks at the complaining witness) in violation of Title 11 of Trust Territory Code, section 201, which reads as follows:

"Every person who shall unlawfully offer or attempt, with force or violence, to strike, beat, wound, or to do bodily harm to another, shall be guilty of assault. . . ."

The Court, sitting without a jury, entered a judgment of conviction on count three, from which appellant takes this appeal.

The facts in this case are based on a rock-throwing incident that took place during the evening of November 18, 1977, at the Democratic Campaign Headquarters in San Antonio, Saipan. The Government introduced one witness, the complainant in this case. The witness testified that the appellant had thrown a rock from a distance of approxi-

mately twenty to twenty-five feet into an area containing a crowd of approximately twenty-five people, including the complaining witness and her son. She further testified that the rock struck another woman who was standing approximately six feet away from her, and that after the rock was thrown, the witness shouted to the appellant, "Jose, you almost hit my son when you threw the rock."

Appellant first complains that the Trial Court committed reversible error when it admitted over objection certain testimony of the witness which appellant asserts was not relevant to the assault charged in count three of the Information. Particularly, appellant claims that the testimony of the witness that she observed the rock thrown by the appellant hit another woman, is "evidence of an unrelated and collateral fact . . . incapable of affording any reasonable presumption or inference as to the matter in dispute." Appellant also argues that testimony concerning the number of people in the area at the time of the incident, and the statements of the witness to the appellant after the rock was thrown, did not relate to the assault on the witness.

[1] It is the general rule that the Trial Court has broad powers of discretion concerning the admissibility of evidence insofar as its relevancy is concerned. *State v. Whalon*, 464 P.2d 730 (Wash. 1970). Admission or rejection of evidence is left to the discretion of the Trial Court and may be overturned on appeal only if there has been a clear abuse of discretion at the trial level. *United States v. Carranco*, 551 F.2d 1197, 1199–1200 (10th Cir. 1977).

[2] It is equally the rule that an accused must be tried for the offense with which he has been charged. Evidence of collateral conduct, whether criminal or otherwise, may be inadmissible if it fails to be probative of the offense. *State v. Bloomstrom*, 529 P.2d 1124, 1127 (Wash. 1974).

[3–6] In determining what evidence is relevant, the question is whether the evidence "gives rise to reasonable inferences regarding contested issues or throws any light upon them." *State v. Whalon*, supra at 735. In this regard the witness' testimony as to what occurred on the night in issue was relevant and material in identifying the appellant as the person accused of throwing the rock. The witness' declaration regarding the rock striking another, the distance involved, the number of people in the vicinity, and the statements of the witness to the appellant after the rock was thrown, were all probative of appellant's connection with the assault and were therefore admissible. "Any competent evidence which tends logically to prove a defendant's connection with a crime is material, and is to be judged not only upon what the evidence shows standing alone, but also on whatever inferences may be drawn when it is viewed in connection with other evidence." *Id.* at 735. The fact that the testimony of the rock striking another person may have tended to connect the appellant to an assault upon that other person does not render the testimony inadmissible. Competent and relevant evidence of guilt is not made inadmissible merely because it tends to show the commission of another offense, in this case an assault upon another person or other persons in the vicinity. *Chase v. Crisp*, 523 F.2d 595, 600 (10th Cir. 1975), cert. denied 96 S. Ct. 1418, 424 U.S. 947 (1976).

We hold, therefore, that the Trial Court did not abuse its discretion in admitting the testimony of the complaining witness.

Appellant's remaining contentions are that (1) the government's evidence failed to include an essential element of the crime of assault, namely the intent to commit a battery on the complainant's person, and (2) the Trial Court erred in ruling that the crime of assault as set forth in 11 TTC, sec. 201, is a general intent crime.

Since both assignments of error put into issue the requisite mens rea for criminal assault, we discuss both arguments together in the context of the facts established at trial.

[7, 8] We note first that the Trial Court believed the witness' account of what occurred. We believe from her testimony that the Court, in correctly ruling that criminal assault is a general intent crime, did properly infer from the conduct of the appellant that he possessed that intent necessary to commit an assault upon the person of the witness.

A discussion of the requisite intent for criminal assault is appropriate here.

[9, 10] Traditionally, simple assault as well as assault with a deadly weapon have been referred to as "general intent" crimes. *People v. Rocha*, 479 P.2d 372 (Cal. 1971), *United States v. Harvey*, 428 F.2d 782 (9th Cir. 1970), *People v. Parks*, 485 P.2d 257 (Cal. 1971), *People v. Hood*, 462 P.2d 370 (Cal. 1969). "What is technically referred to as specific intent is not required to support a charge of criminal assault generally. . . ." 6 Am. Jur. 2d (*Assault and Battery*) § 19. In assault cases, "intent need not be specific . . . to cause any particular injury . . . and may be implied from the act." *People v. Carmen*, 228 P.2d 281, 286 (Cal. 1951). An assault "is ordinarily held to be committed merely by putting another in apprehension of harm whether or not the actor actually intends to inflict or is capable of inflicting harm." *Lardner v. United States*, 358 U.S. 169, 79 S. Ct. 209, 213 (1958). An assault "is . . . a general intent crime under the definition of general intent as an intent merely to do a violent act." *People v. Hood*, supra at 738.

Appellant, relying on *Ngeruangel v. Trust Territory*, 2 T.T.R. 620 (1960), argues that intent in the present case

"must be proved as an independent fact and cannot be presumed or inferred merely from the commission of the unlawful act or its results."

We find that the appellant misapplies the principles discussed in *Ngeruangel* to the present case. In *Ngeruangel*, the defendant was originally charged with *aggravated* assault, which in all jurisdictions requires the finding of specific intent. On appeal the Court ruled that where the prosecution failed to prove the specific intent necessary to constitute aggravated assault, the appellate court could modify the conviction to assault and battery with a deadly weapon, "for which a general criminal intent is sufficient. . . ." *Ngeruangel v. Trust Territory*, supra at 627.

[11] Finally, we are not persuaded by appellant's argument that "there is nothing in the record from which an inference of intent to commit a battery upon Ada (the witness) can be drawn. . . ." It has been widely held that a person is criminally liable for the natural and probable consequences of his unlawful acts, as well as for unlawful forces set in motion during the commission of an unlawful act. *State v. Hokenson*, 527 P.2d 487 (Idaho 1974). By the act of throwing the rock into a crowd of people, the appellant voluntarily set in motion an instrumentality which carried a very real probability of causing great bodily harm. It does not matter if he did not intend to strike the complaining witness. The offense of assault may be committed despite the absence of an intent to injure a particular person, and mistake or inadvertence on the part of the accused is no defense. "Where one intends to assault . . . a certain person and by mistake or inadvertence assaults another . . . it is nevertheless a crime, and the intent is transferred from the party who was intended to the other." *People v. Neal*, 218 P.2d 556, 559 (Cal. 1950), citing *People v. Wells*, 78 P. 470, 471 (Cal. 1904). Nor would it make any difference if the appellant did not intend to strike *any* particular per-

son with the rock. *State v. Cancelmo*, 168 P. 721 (Ore. 1917). "A man is presumed to do that which he actually does and to intend the consequences which naturally and probably flow from his voluntary acts." *State v. LeVier*, 451 P.2d 142, 146–47 (Kan. 1969), see also *United States v. Harvey*, supra at 783.

Taking all circumstances, including our reading of the statute in issue, all evidence and testimony produced at trial, and the Trial Court's ruling thereupon, we hold that the Trial Court did not err in finding that the appellant committed an assault as set forth in 11 TTC, sec. 201, upon the person of the complaining witness.

Accordingly, the judgment of conviction is AFFIRMED.