

THE HIGH COURT OF THE WESTERN PACIFIC

(CRIMINAL JURISDICTION)

BEFORE: The Honourable Mr. Justice J. Bodilly
exercising jurisdiction under the
provisions of the Western Pacific
(Courts) Order in Council, 1961.

HOLDEN: At Honiara in the British Solomon
Islands Protectorate on Wednesday
the 5th day of October ,
1966 at 1030 o'clock in the
fore noon.

REGINA

versus

MALOE DAGA

For the Crown: *Att. G. Hind Langh*

For the Accused: *In person unrepresented.*

Interpreter: Nil

Charge explained to the accused: by Registrar

Accused when called upon to plead says: Not Guilty

Court enters a plea of: Not Guilty.

Mr. Handhaugh: I will proceed directly with my evidence.

PW1. John Holden Gina

Detective Inspector Police, Honiara.

Sworn on Bible.

On the 1.9.66 I received a complaint ^{from} Philip Kaua at the Honiara Police Station. He works in the G.P.O. He gave me a parcel receipt book. He drew my attention to a duplicate receipt No 4027. It was inside the book. I kept the book. I produce the book (Put in Ex A) That receipt is the only copy I saw (It notes that it is the triplicate copy). On 23.9.66 I interviewed the acc: I charged and cautioned him. He replied " I do ~~not~~ wish to say anything".

No XX by Acc:

John Holden

PW2. Philip Kaua

Honiara.

Sworn on Bible.

I work at the General Post Office, Honiara. I am in the parcels office. I register all overseas parcels and work out the duty payable and enter that in the register. It is called the parcel book. I enter in triplicate. I write the name of the addressee, the contents of the parcel, the rate of duty and value of the goods and the amount of duty payable. I work out the amount. I give one copy to the addressee or send it. The duplicate I attach to the parcel. The third copy remains in the book. The addressee then brings me the original copy; I get the parcel with the duplicate and give it to the addressee. The addressee pays the duty before he gets the parcel. He signs the original receipt when he gives it to me.

(Ex A shown to W:) Ex A is my parcels book. I made out this form. It is the triplicate copy of 4027. I did this on 24.8.66. The contents of the parcel was razor blades. The Addressee was Leong Sui Tong. The value was \$40 Australian. The duty was \$A8. The original I sent to Leong Sui Tong. The duplicate I attached to the parcel. On the 27.8.66 Mr Leong came for his parcel. It was a Saturday morning. I took the original from him and fetched the parcel. I gave him the parcel and he paid me \$A8. He gave me a cheque. I put the original form and the cheque in my cash box. I gave out other parcels that morning also. There was duty payable on some of them. I collected the duty. Some was in cash and there were two or three cheques.

At close of business that day I did not check my books. I left it for Monday morning. I put the cash box and book into a locked place. I put it in the P.O. strong room. I go in myself to do that. The Postmaster and other persons handling cash can also go in there. The strong room is open during working hours. My cash was in a locked cash box. I kept the key to it. There is only the one key and I keep it. First thing Monday morning I got my cash box out of the strong room. There is a man who is in charge of the strong room key. I waited for him to open the door. The cash box was still locked and had not been moved from where I had put it. I then went to my office and began to make up my cash. I entered all the receipt numbers into a journal book and also I entered the money paid me in duty. I do that to balance cash against receipts. I then take the money and the receipts and ~~the~~ made up journal to the accounts department. This accounts for all the money I have received. The only money I was handling on Monday was the takings for Saturday. While I was making up the journal the cash was on a table in front of me. I had the money sorted in front of me and the receipts were on the table also. They were piled up one on top of the other. I separated the dutiable receipts from those which were not. I made a pile of each. There ^{were} no other piles of receipts. As I enter each receipt I place it down making a pile. One pile ^{contained} ~~becomes~~ non dutiable and the other pile ^{contained} ~~are~~ are dutiable. While I was doing this the Acc came in and came to my desk. He stood beside me on my right hand at the end of the table. Acc: works in the accounts section but that week he was ordered to help me because I was short handed. He picked up receipt no 4027. He took it from the pile of ~~mix~~ receipts which I had not yet sorted. The Acc: looked through the pile and picked out that receipt. I cannot remember if 4027 was the biggest duty that day. When the acc: picked out this receipt he also counted out \$A8 in cash from my table. He took it in notes. He took the receipt first. He said " don't touch this money or enter it up today. There is a query from Mr Leong Sui Tong ." He said he would fix it up and give me the money back. He said Mr. Leong had complained of being over charged. The blades had come from Australia. He put the receipt and the money on the shelf behind me and said he would return it the following day. I went into the back room. Before I went to the back room I finished writing up my journal. I did not enter receipt 4027. I did not enter this because acc had told me not to. I then took my cash box and books and receipts up to the accounts section. But before I did that I went ^{into} ~~into~~ the back room. The cash etc was made up and placed in an envelope and left on the table till I came back. Acc: was still in the room when I went out. When I went out acc: was standing talking to someone in the doorway. The Acc: walked away from the table to the door when the other man appeared. This man was another p.O. worker . He was a new boy and I do not know his name. I was only in the back room for a few seconds. When I came back ~~xxxx~~ the other man had gone but the acc: was still in the room. He was just wandering around. I looked at the shelf and noticed that the receipt and the \$A8 were not there. The things on my table were still there. ~~That~~ had not been moved. I then took my receipt and the cash to the accounts section. Between 8 a.m. and 9a.m. that morning no one but Acc: and myself were in that room. I do not think anyone could have entered the room while I was away except acc: who was there. The following day Acc: did not come to the office. The post master came to the parcels office at about 4.15 p.m. and as Acc: had not come I reported the matter. He looked through my books and I showed him the triplicate of 4027.

I also did not ^{an} the acc: the following ^{day} Wednesday. On that day I received a phone call from the acc: I recognised the voice as his. He ~~xxxx~~ gave his name over the phone also. He asked how every thing was going in the office. I said it was all right but that him and myself were in trouble. I said the trouble was about the \$8 which he had not brought back. He said "How did they know" I said they knew it because of the triplicate slip. He went on to say "your cash was balanced on monday was it not?". I said "Yes, but only because I did not enter the money and you took the slip." He then rang off. There was an enquiry in the Post office after this. On 1.9.66 I went to the police station and gave my statement and delivered Ex A to Inspector Gina.

By Court:

I allowed the acc: to do that because he was more senior than myself. If a complaint is made by a parcel addressee I can correct an error in duty myself at the time. If the complainant is written in to the postmaster. He will come and ask me. I was not surprised about acc: saying he would deal with the complaint because he works in the accounts section and could do so. If a complaint comes in after I have turned in my cash for the day the accounts section deal with it because they have to refund the overcharge. I was not suspicious only because the Acc: was a senior man in the accounts section. I was expecting the acc: to take the money and the receipt away from the shelf. I was not surprised when I saw the money no longer on the shelf.

After I had handed in my cash, Acc: was still in the room. Acc: worked with me until noon. After lunch we returned to the office and then the acc: stopped helping me. ~~and~~ I did not see him again. I understood he had left the building.

This has never been done before while I have been in the parcels office. I am the person in charge of the parcels office. The parcels office opens to the public at 8 a.m. The public can enter as far as a counter. No one is allowed to come through the other way. Only post office officials can get into the parcels office by the back way.

XX by Acc:

On Saturday I was satisfied with my cash and receipts. I deny that the acc: is the person responsible for checking my cash books. On the Saturday acc: did not examine my cash and receipts. The money was still on the shelf when the acc: spoke to the man who came to the door. When I noticed the money was not on the shelf I assumed the acc: had it. I did not ask him. I did see the acc: take the money and receipt from the table and put it on the shelf. I did not see acc: take the money away from the shelf. I had been into the back room. The cash and the slips ~~were~~ placed separately on the table when I made up my books. I can swear that the person who came to the door never entered the room. He was the only man who came except the acc: It only took me about 10 minutes to enter up the books.

The checking of my cash was finished by 8.30. a.m. While the money was still there neither public nor anyone else came to the office. ~~When~~ I keep all my papers on the shelf on which acc: had put the money. When I came in from the back room I just happened to glance at the shelf and I noticed the money was not there.

I am sure that the receipt 4027 is correct as to amount of duty. When the acc: said there was a complaint I thought it possible that I might have made an ^{error} over assessment. I did not check the slip with acc: then to see if a mistake had been made because I thought acc: was senior to me. I did not know that there was a rule that the person who assesses the duty must ^{check} it. I have only been working for seven months in the post office.

No Re X.

Leong Sui Tong

PW3: Leong Sui Tong.
~~XXXXXXXXXX~~ Electrician. Honiara.

Affirmed.

I work for Mendana Enterprises Ltd of Honiara. On 27.8.66 I received a parcel. I took the receipt to the parcels office. I gave it to PW2. He brought me the parcel and I gave him a cheque for \$A8 duty payable. I signed the receipt and took the parcel. I had no query about this transaction. The 8 dollars was import duty. I had no complaint about the amount. I thought the 8 dollars was correct. It was what I was expecting to pay. That was the only parcel. I never contacted anyone in the post office about this parcel after receiving it. I do not know the acc; I have never made any complaint to him.

On 29.8.66 the post master contacted me about the parcel. He asked me for my copy of the receipt. It was the copy attached to the parcel. (W: shown duplicate of receipt 4027) That is the copy I gave to the post master. (Put in Ex B)

Ex B.

No XX by Acc:

By Court: If we pay short duty the customs will chase us. We never chase the customs for overcharges.

Leong Sui Tong

PW4: Zakia Mazini
Postmaster, Honiara. Sworn on Bible.

I know the acc: He works in the post office in the accounts section. He is a clerical officer assistant to accountant. He is a civil servant.

As post master I am responsible for the post office generally which includes the parcels office. PW2 is ~~is~~ in charge of the parcels office under my supervision.

At the end of August Acc: was detailed to assist PW2. PW2 is junior to acc: PW2 would not be able to give orders to acc: even though acc: was assisting him.

30.8.66 p.m. I went to the parcels office. PW2 made a report to me. He showed me Ex A (W: identifies Ex A). He showed me receipt 4027. He also showed me his journal. I saw that Ex A had not been entered in the journal. That means that the money entered on it has not been paid in. I saw the addressee. It was Leong Sui Tong. I went the same evening to Leong Sui Tong. I ~~xxxxx~~ spoke with him and he gave me Ex B. (W: identifies Ex B) I took it with me and I kept it till I handed it to the court below.

Leong Sui Tong had received the parcel. His possession of Ex B means that. I have searched for the original and as far as I can find it is not in the post office.

I am the person who deals with complaints including complaints about duty. I have received no complaints about parcel 4027. I think that receipt 4027 is correct.

If the matter had not been reported I would not have been in a position to discover the error. It would only be the auditors who would discover it later on.

XX by Acc:

On 29.8.66 I saw the acc: working in the parcels section. PW2 did not report to me anything that day.

No Re X.

By Court:

If an overcharge of duty is made and the money received and a complaint comes in, the money must be paid into the accounts section notwithstanding the complaint and the accounts section will then raise a G form and refund the over charge.

If the complaint is made at the time when the addressee collects his parcel, the parcel clerk can amend the receipt and collect only the correct amount. In that case the accounts section would not be involved.

Truly Truly

Mr. Hindhaugh: That closes my evidence.

Ct adjourns to 0900 6.10.66.

0900 6.10.66 ^{cc} reassembles. Accused and Prosecutor present as before.

PW4 recalled by court.

PW4 on same oath.

The accused was away from the post office from 3.p.m. on the Monday until about 10 a.m. on the Wednesday. He asked my leave to go and I gave it. Reason why he wanted it I do not know.

XX by Acc:

I agree that you gave me the key to the safe but you did not mention that your wife was sick.

XX by Handhaugh:

When acc: came back to work on the Wednesday I saw the acc:. I thought that he was not looking normal when he came back. He seemed upset. I did not speak to him. On the Monday before he went away he was in the parcels office helping PW2. I did not particularly see what he was doing.

By Court:

Robinson

I did not speak to the acc: because Mr. ~~Wilkinson~~ was dealing with the matter of the \$8. It had been reported to him. I knew about it but left the matter to him.

Truly Yours

Defence:

Rights of defence explained. Acc: elects to give evidence.

Accused:

Maloe Daga.

Sworn on Bible.

On Monday morning at 8 a.m. I arrived at my office. at 8.15 PW2 asked me to help him to assess duty on parcels and to show him how to maintain the receipts and books. I went to the parcels section. When I got there I discovered all the receipts which he had received on Saturday had been put on top of the shelf and on top of the pile was a piece of wood to hold them down. His cash box was on his desk. It was locked. I told him to enter the receipts into his journal and to balance the cash. After I told him to do this I left him at the table. I went to the front table in the same office and started myself to assess the duty on further parcels awaiting assessment. Five or six minutes later a man came to me, called Rahmond Albert Sore, with a message ^{from} that someone on the ^{tele. case} station. ~~xxxxx~~ ~~xxxxx~~ He stayed with me for about five minutes talking. Then he went away. After he left I did not go back to PW2

I stayed at my desk. I went on assessing parcels. After PW2 had finished balancing the cash he took both cash and receipts to the accounts section. PW2 never told me anything concerning his cash and receipts or whether they balanced or did not. So I did not check his cash that morning. It was not the practice to double check unless something did not balance. After this work went on until noon. At two p.m. I came back again to the office. At 3 p.m. I went back to the parcel office and there I found PW2 and PW3 and some other persons from the technical section. I went to the postmaster and gave him the key to the strong room and told him that my wife was sick and that I was going home. I did not come to work again that day or until Wednesday when the post office motor bike picked me up at my house. The motor bike was sent for me because Mr. Robinson wanted to see me. On the Tuesday night Pastor Dala came to my house and told me about the missing \$8. I was not surprised when Mr. Robinson sent the message that he wanted me. After seeing Mr. Robinson ~~xxx~~, PW2 told me about the receipt and the \$8. I had no talk about the \$8 with PW2 until after Mr Robinson had already interviewed me about it. I deny that I ever took up the receipt and the money as PW2 states and put it on the shelf. I deny that I took the receipt or the money at all.

XX by Mr. Hindhaugh:

I had only been helping PW2 on the Friday, Saturday and the Monday. PW2 was not in charge of the parcels office. ~~He~~ was there as a trainee and worked under my and the post masters supervision. PW2 normally writes up his own cash book and balance. He had done this himself every day since he joined the post office. On the Friday he had done it also and he had asked me to show him how to do it. ~~PW2~~ I showed PW2 how to write up the parcel bill numbers in the receipt book (Ex A). I gave him no help over his journal. ~~or book~~. The reason why I showed PW2 how to enter the Bill number was because the previous week I had discovered that he was not putting the Bill numbers on his receipts. I discovered this because of a query. PW2 would not be surprised if I came ^{and} said that there was a query. I was entitled to deal with queries and I used to do so, as occasion arose. On the Monday I saw the receipts and the cash box. I merely told him to enter up his ~~books~~ journal. That morning I showed him nothing. I say the cash box was shut. I cannot say if it was actually locked. I did not check it to see.

Albert Sore came right into the office to my table which was near the doorway. He came because someone from the wireless station had telephoned. I told him that I would ring back later. This was about 0820. Before that I had told Sore to do an errand for me and I told him again when he came about the telephone to go and finish the errand. He was by my desk for three or four minutes.

About half an hour or so later he came back again. He brought me a bottle of gin wrapped up in paper. I had sent him out to get it. I deny I or any one else drank it in the office. I did not entertain anyone in the office that morning after nine a.m.. At this time my wife was not in employment. I deny that my wife was not sick and that there was any other reason for my going away from the office. I did not tell anyone in the office that I would not be back. Mr Kahl is my immediate superior. I did not ask Mr. Kahl's permission. He was not in the office. I admit that I did not come back to work because I got drunk. A relation from Tulagi was visiting and we went down to the club and got drunk. That was on the Tuesday night. I drank the bottle of gin on the Monday night. Not all of it. Alasasa paid for that bottle. He owed me one.

On Wednesday when I was sent for I admit I refused to give any explanation and said that I would give a written one later. Mr Robinson told me to go away and write it and bring it back. I admit that I did not write any explanation. I admit that the following day Mr. Robinson called me again and asked for my explanation. I admit I still gave no explanation. I admit I never gave any explanation. I have never given any explanation at all. I admit I was several times asked for a statement. The Pastor told me on the Tuesday that I was being accused of taking the money and that was why I refused to say anything. The Pastor is my brother and he knew about the matter before it was reported to the police. I did not go back to the office at once. I was not worried. I deny I was afraid to go back. I was not worried because I knew that I had not taken it.

I deny that I made any telephone call to PW1 or to anyone else at the post office at all. I deny that I stole the money. I deny I did not come to the office because I knew I had been found out.

I deny that I knew that if the original of Ex A was missing and no entry was made in the journal the money would never be missed until audit. I deny that the error would be unlikely to be picked up until audit. I admit it would not be picked up by a normal balance check. I admit that I do not know how it could be found out except by full audit.

By Court:

PW2 took about 15 minutes to make up his journal on the Monday morning. ~~Whitexhewxxxxxmai~~ Before he took his cash to the accounts section PW2 went into the back. He was away only a short while. Albert Sore and myself were in the room while PW2 was absent in the back room. PW2 left the room after he had finished making up his cash. There was no cash lying about on the desk. I did not see exactly where the receipts were when he left the room. Neither I nor Sore went near the shelf behind PW2's table. I never saw him or anyone else put a receipt or money on that shelf.

DWI ~~Alxxxx~~ Raymond Albert Sore

Honiara. Post Office Clerk.

Sworn on Bible.

I remember Monday the 29.8.66. I saw the accused. I saw him about 8.20 a.m. He was at a table near the door of the parcels office. I went to see him because there was a telephone message for him. I gave him the message. PW2 was also in the same room. He was at his table. When I came in Acc: was assessing parcels. I was with him for four or five minutes. While I was there P W2 went out of the room and came back again. He was not away very long. I was with the Acc: the whole of the time that PW2 was absent from the room. Before PW2 went out of the room he was balancing cash. I saw him finish balancing and put the cash in a big envelope. He then put the envelope inside the cash book (Journal). When PW2 came back he sat down again at his table. I do not know what he did then for I went out of the parcels office.

XX by ~~xxxx~~ Mr. Hindhaugh:

On 1.9.66 I was interviewed and made a statement to the police. It was true. The first time I saw Acc on the Monday was at 8.20. in the parcels office. I admit that I first saw the Acc in the accounts office and he gave me a note to take to Alasasa. I came back from delivering the note and found the acc: in the parcels office. I took the note at about 0930. I work in the accounts section. I went to work about 7.45. I went first to the accounts section. Acc:, Mr Kalh all work in the same room and others. It is a big room. I deny that I saw Acc in the accounts section before I saw him in the parcels office. The first time I took the note to Alasasa I got no reply. I then came back to Acc: and found him in the parcels office and then acc: sent me away again to go back to Alasasa and fetch a parcel. I went and got it. I went to Alasasa for the second time after I had given the ~~message~~ telephone message to acc: I do not know if the time was exactly 8.20. I only think it was about then. I stood beside acc:'s table. I was with my back to PW2. I only talked to Acc: I did not speak to PW2.

(At this stage W: says he speaks Roviana better than English)

(Interpreter in Roviana fetched.

Esau Hele- Sworn on Bible.)

On 29.8.66 the first time I saw Acc was at 0820. I saw the acc: at 0820 and it was after that that he sent me to Alasasa. Before I went out of the parcels office PW2 came back to his desk. That was at 0820. I spoke only with acc: and I spoke in Roviana. I was not watching PW2 but I noticed him balancing cash. I was about 12 paces from PW2's table (Indicates distance) He appeared to be balancing his cash. I saw him put the money in an envelope and put the envelope inside the book. I was not watching PW2 all the time.

I have not discussed this case with the acc: at all.

No Re X.

By Court:

The acc: was sitting down all the time I was with him.

Indubitably.

Acc: That closes my defence.

Addresses:

Acc: states: My defence is a denial.. I did not take the money. I say that PW2 is lying when he says ~~he~~ I took the money and receipt from his table and put it on the shelf. I say PW2 must be covering up a loss of cash by suggesting that I have taken it.

Mr. Hindhaugh:

The facts are largely agreed. \$8 is revenue and is missing. The issue is whether PW2 or acc: are telling the truth. PW2 is a junior official, not very experienced and subject to Acc's supervision and orders. The loss of the money would not easily have been found out. If PW2 had lost the money he had little to fear immediately and by the time another audit came round several persons would have handled parcels. He goes however immediately and reports it. He says he only waited till next day for the money to be returned. He says he only ^{waited} ~~waited~~ this because Acc did not come back to the office. I submit he is a witness to truth. The story he tells rings true. I submit he is to be believed. On the other hand I submit that the acc: is not being open about this. His demeanour I submit was poor and he has never explained anything, or even denied it. An honest man would surely say ^{aloud} "I deny it". I submit the prosecution PW2 is to be believed.

J.B.

Judgement reserved. Acc to remain on bail.

0900 10.10.1966. Court reassembles as before.

Judgement delivered as follows (over)

JUDGEMENT

The accused is charged under section 266 of the Penal Code, that being a clerical officer in the public service he stole \$8 the property of her Majesty.

It is not in dispute that the accused is a public servant nor that the \$8 in question was revenue. It is also not in dispute that the sum of \$8 is missing. The sole issue is, was it the Accused in this case who took it or has it gone missing in some other way.

The principal witness, apart from the accused himself who elected to give evidence on oath, is Mr. Phillip Kaua (P.W.2). He stated that the accused was detailed to assist him temporarily in the parcels office. The accused normally worked in the accounts section of the post office and was senior in rank to Kaua. On the morning of Monday the 22nd August 1966, shortly after 8 a.m., Kaua was busy at his table in the parcels office making up his accounts in respect of parcels collected by addressees on the previous Saturday. The accused joined him and sat at another table. There is no dispute as to this. Making up the account only took a matter of some fifteen minutes and when it was complete Kaua put the money he had counted into an envelope and left the envelope and his account book on his table while he went into a back room of the post office for a few minutes and returned again. While he did this the accused remained in the parcels office. There is no dispute about that. Shortly after returning to the parcels office from this fleeting absence Kaua took his cash and account book to the accounts section and handed it in. When he did this the accused still remained in the parcels office. There is also no dispute about that. There is also no dispute about the fact that when Kaua paid his fleeting visit to the back room before taking his cash and accounts to the accounts section, the defence witness Albert Sore came to the door of the parcels office and spoke with the accused. He was there when Kaua left the office. That much of the evidence is in complete agreement.

I now come to the matter in dispute. Mr. Phillip Kaua says that when the accused first joined him in the parcels office that morning, he came to his table and fingered through the parcel receipts which Kaua was entering into his account book, or journal as it has been called, and picked out a certain receipt No. 4027 in respect of a parcel of razorblades upon which import duty of \$8 had been paid by cheque on the previous Saturday by

an addressee by name Leong Sui Tong. That receipt had not yet been entered in the journal. Kaua says that at the same time the accused picked up from the table in cash the sum of \$8 and said that a complaint had been received in respect of the duty paid on that parcel and that he would deal with it. And he instructed Kaua not to enter up that receipt or that amount of money in his account book until the complaint was dealt with. Kaua then says that the accused placed the receipt and the money on a shelf behind Kaua's table and himself sat down at another table and began to assess duty on parcels still awaiting delivery. Kaua says that he obeyed this instruction and did not enter particulars of that receipt in his account book. It is not in dispute that if a complaint is dealt with before the accounts are made up for the day it is quite in order for the parcels clerk to deal with the complaint, amend the relevant receipt and adjust the amount of duty accordingly. If this is done the accounts section of the post office does not become involved in the matter at all. If therefore a complainant were, for example, expected to call shortly at the office there would be no reason why a receipt and the appropriate amount of duty paid should not temporarily be set aside and entered up after the complaint was dealt with. The only dispute about all this is that the accused denies having taken the receipt 4027 and the corresponding sum of \$8 and placed it on the shelf at all or having had any such conversation with Kaua as he describes. There is only the evidence of Kaua standing against that of the accused as to this.

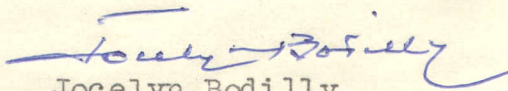
The next point which is in dispute is this. Kaua says that when he returned from his fleeting visit to the back room he found that the accused was alone and was wandering about the parcels office and that he noticed the money and the receipt had disappeared from the shelf. He says he thought nothing about it because he was expecting the accused to take away the money and deal with the alleged complaint in any event. On this point the accused has called the defence witness Albert Sore. Albert Sore supports the accused to the extent that he says that when Kaua returned from his visit to the back room, he, Sore, was still with the accused and the accused was still seated at his desk. Immediately after Kaua returned to the parcels office, the witness Sore left. Sore is a young lad and was rather confused in the giving of his evidence but nevertheless I think that he was endeavouring to tell the truth about that and I am prepared to accept that he may be right, and Kaua possibly

mistaken in respect of that detail. However, this does not really take the matter far enough because it is not disputed that very shortly after this Kaua again left the room for a short time while he took his cash and account to the accounts section, and if it were that it was on the return from this second absence from the parcels office and not the first that Kaua in fact noticed that the money had been removed from the shelf, I would not regard this error of detail sufficient to discredit him as to the whole.

Now I must be satisfied beyond any reasonable doubt that the evidence of Phillip Kaua is in its main essentials, namely the extraction of the receipt and money from the Saturdays takings by the accused and the conversation regarding the complaint as to duty correct. There was in fact no complaint made at all regarding receipt 4027. For that we have the evidence of Leong Sui Tong, an entirely independent witness whose word I do not doubt. The accused denies both of these essentials, and the surrounding evidence in the case does not really touch the matter except to the extent that the incident occurred towards the end of the month when it might be that an official could be short of money (though there is no evidence that the accused was short of money) and the behaviour of the accused in failing to return to the office and in refusing, when sent for, either to deny or explain, might appear a little strange in the circumstances. However that may be, I have seen and heard both Phillip Kaua and the accused, and I am left in absolutely no doubt whatever as to which of them is telling the truth. It is Phillip Kaua. He impressed me as a straight forward man who at once reported the taking of the money, as it was his duty to do, when the receipt and the correct amount of duty paid was not returned to him for entry in the accounts. The demeanour of the accused in the witness box did not impress me at all. I have no doubt but that the accused did as Kaua said and failed to return the money. There having been no complaint regarding the duty payable, I find that the accused took that money for himself. It may be that he hoped to return it, perhaps on pay day or in some other circumstance but that does not alter the fact that he stole the cash by a trick.

I therefore convict the accused as charged.

Delivered: 10:10:66


Jocelyn Bodilly.

C.J.

~~0900 10.10.66 Court reassembled as before.~~

Mitigation:

Accused: I still say I did not take the money.
I am married. I have one child of three months.

J.B.

Mr. Hindhaugh:

The~~at~~ accused has three p.c.s none of which involve dishonesty.
(List read to accused and each p.c. admitted)

Acc^{is} late twenties. He comes from Western District.
He has had four years education in the Methodist Mission School
in the west. Since 1954 he has been employed in 1954 P.O.
Acc's senior officer is in court and would like an opportunity
to speak for acc: He wishes to do this of his own motion.

J.B.

Donald Badman Henry Kahl:

P& T department. Sworn on Bible.

Acc is number two to me in the accounts section of
P&T department. He has been under me for six months.
I have found him an efficient worker. I have never had
reason to doubt his honesty. He has a reasonable bank
balance. He is paid about 800 dollars ^{per} annum. I can only
assume this matter arose from his predilection to drink.
I would suggest that he has been a fool rather than a
criminal over this.

No X by Accused or Pros:.

Sentence: Fine of \$50 or in default two months
imprisonment.

Order: Two weeks in which to pay fine.

John B. Bailey
Chief Justice
10.10.66

Acc: informed of his right of appeal.