

THE HIGH COURT OF THE WESTERN PACIFIC

(CRIMINAL JURISDICTION)

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

HOLDEN: At Gizo in the British Solomon
Islands Protectorate on *Friday* the
Twelfth day of *August*
1966 at ~~Gizo~~ 0900 o'clock in the
fore noon.

REGINA

versus

STANLEY KIKO VATAREBO

For the Crown: Sub Inspector Gordon Beti, Police Gizo.

For the Accused: In person

Interpreter: John Sisiola (Varese language)

Charge explained to the accused: by Judge

Accused when called upon to plead says: Not Guilty

Court enters a plea of: Not Guilty.

Prosecutor states he will proceed directly with the evidence.

PWI. Kipling Gordon Beti (Prosecutor)
 Sub-Inspector of Police , Gizo.
 Sworn on Bible.

On the 27.5.66 at Gizo Police station I interviewed the accused for an alleged offence of conversion in the sum of £1116 entrusted to him by a man called Soda. I cautioned the accused and he made a voluntary statement which I recorded in Roviana language. I read it back to the accused and he agreed that it was correctly recorded and he then signed it. I also signed in the presence of A.S.P. Olucorn O.I.C Police, Gizo. Afterwards I translated the statement into English. The translation I then made has been mislaid. (W. translated from Original) The statement is as follows:

" The money in question I have already spent because I thought that this money belonged to Soda. Now I learned that this does not belong to Soda but his brothers Luka and Amalio. Therefore when we return home I will replace it."

(Original statement put in Marked A).

(Accused objects to statement)

XX by Acc:

Q: Why did you take my statement in Roviana.

A: By your own wish.

Q: I do not understand Roviana, ^{well} so why should I ask for it to be taken in Roviana.

A: ~~Thexxx~~ You asked me to take it that way.

Q: Did we not argue about that statement.

A: None.

Q: I say that ~~the~~ statement is not what I said?

A; I deny that. What the Accused said I wrote down exactly.

~~{xxExxxCourtxxstatementxxadmittedxx}~~

Q: Did you not press me to sign that statement?

A; No.

Ex A.

(By Court- statement will be admitted.)(Ex A)

Q: How many years have I spent in your home village?

A: I do not know.

Frank Rosney

PW2. Raphael Soda

Sironda Village in Choisel.

Cultivator.

Sworn on Bible.

(Varese language)

In 1955 I made a feast on the death of one of my ^{chiefs} ~~children~~ ~~men~~ ~~xxxxxxxxxx~~. The people contributed to the cost of the feast. I contributed £A36. ~~xxxxxxx~~ This was my own money. I know the accused. I have never asked him to lend me money. The food for the feast was all paid for by contributors. In 1960 Luka Kumbebatu and Emilo Atebatu ^{my brothers} gave me between them £100 to keep for them. I kept this until Nov 1961. In 1961 I went to another village. When I left my village I ~~xxxxxxx~~ put the money in a box and left in the house. I locked up the house. I locked up all windows and doors. There was £116 in the box. The £100 belonged to Luka and Emilo and the ~~£~~16 was my own money. In January 1962 I returned to my house. I found that the door of my house was broken and the box was not there. I went the accused and asked him if he knew anything about the box. I started enquiries about the box. The accused happened to be the first person I asked. The reason why I asked the accused first was because he was my next door neighbour. When I asked him he said that he had taken the money. He did not say anything more about the money. I then asked him to ~~return~~ return the money because it was not mine. He repeated that he had taken the money and said that he was keeping it in his box. I told him to give it back to me. He said that he would look after it. I did not agree to this, but he still refused to give me back the box. I did nothing ~~about~~ ~~xxxx~~ it then but went back and told my two brothers. I told them what had happened the same day. My brothers live in another village some distance away. I went straight to them and told them. When I had left my box in my house I had given the key to my brother Emilio. ~~xxxxxxx~~ We did nothing more about the matter because we believed that the accused was keeping the box for us. After a further year I had 10 shillings which I wanted to save so I went to the accused and asked him to put it in my box for me. The accused accepted the 10/-. He did not say anything. I knew that the accused could put the money into the box because there was a slit in the box lid for that purpose. I actually saw ^{him} open a big chest belonging to himself and put the 10/- into it. I did not see inside that big box. I thought that my cash box was inside the big one belonging to the accused. On this occasion also I asked accused to return the cash box to me but he did not do it. I still did nothing about recovering the box because I believed my money was quite safe. About a week after this I had another 10/- to save and I went to the accused and asked him to put it in my box. This time the accused said that he could not do so because the key of ^{his} large box was with his wife who was away from the village.

On that same day when I wanted to deposite the second ten shillings the accused said that he would get the key from his wife and would then give me my box. He never did get the key or give me my box. Several times I asked him if he had ~~yet~~ got the key. Each time he said "No". Eventually I took Emilio with me and again went to the accused and asked him to ~~open~~ open the box. He again said he had no key. He said he had lost it. I then asked him to break open his box and give me my box from inside. He agreed to break it open. He broke it open. The big box contained nothing but sand and my small box. Inside my small box there was nothing. I then accused the accused of stealing the money. The accused made no reply. This took place in 1965. I cannot say which month it was. I then reported the matter to the headman of the district. I do not know what took place between the headman and the accused. After I had reported to the headman I myself reported to the Police.

XX by Accused:

Q: Do you usually keep sand in a box?

A: The accused put the sand in the box. There was none in mine.

Q: How did I get the money?

A: I do not know.

Q: Do you know when I took the money?

A: I do not know.

Q: How do you know I broke into your house and took the money.

A: Accused was my next door neighbour.

Q: Why did you not report the matter at once when you ~~tought~~ thought I had taken the money?

A: The reason was that you said my money was safe in your house.

Q: Did you report the same day to ^{your} ~~brothers~~ brothers as you found your house broken?

A: It was not the same day but the following day.

Q: How many years is it since you say this ~~happened~~ ^{happened?}

A: six.

Q: Do you remember borrowing money from me when you wanted to make a feast?

A: I never borrowed from you.

Q: Do you remember what you told me on the day you made the feast?

A: No.

Q: I say you asked me to lend you money?

A: ~~Yes~~ I did not. I have never borrowed from you.

Re X by Eros:

~~Q~~ X I confirm that the accused told me that he had the money when I returned to my village in 1962.

I confirm that I did not report because he said that he was keeping it safe for me. I confirm that I reported to my ~~brothers~~ brothers. It was not till I discovered my cash box empty that I reported.

X. By Court:

When I returned to my village and found my house broken open I accused the accused of doing it. He said that he

had broken open the door to take my money. I asked him why he had done that. He said that he tried to get into the house but could not and that was why he broke the door. He did not say that he wanted to get into the house to get my money. He said he wanted to get a spade. There was a spade in my house. The accused knew that I had the spade. ~~He used to come to my house sometimes. He must have seen the spade. I had never lent it to him before. We used to be friends before this incident. If he had then asked me for the loan of my spade I would have let him have it. When I returned to my village the spade was in my house. Everything was in order except that the money box was not there. The accused said that the money was with him and was safe. Before I went away I had fastened the door with a piece of wood for a lock. Only I knew how it was done and the accused could not get in without breaking a piece of the door. I found a piece of the door broken.~~ He used to come to my house sometimes. He must have seen the spade. I had never lent it to him before. We used to be friends before this incident. If he had then asked me for the loan of my spade I would have let him have it. When I returned to my village the spade was in my house. Everything was in order except that the money box was not there. The accused said that the money was with him and was safe. Before I went away I had fastened the door with a piece of wood for a lock. Only I knew how it was done and the accused could not get in without breaking a piece of the door. I found a piece of the door broken.

Re X by Accused on above.

Q: Did I not have a spade in my own house?

A: You had no spade.

Q: Did you not buy your spade from my store?

A: I did not buy it from your store.

Q: Did I not have spades for sale in ^{my} store?

A: Not at that time.

Q: I put it to you that I had a dozen spades and that you bought your spade from me?

A: I deny it.

Q: Where did you buy your spade?

A: I bought it from a store of a white man.

Q: Did you not give me £1.10 to buy a spade?

A: No.

Q: Have I not got a store?

A: You had none at that time. You had a store before 1955 but gave it up.

Q: Is it not true that I had a store from 1951 to 1957 and I now have a hawkers licence?

A: I say you had no store from 1955 till 1962.

Isak Botley

0830 13th August.

Prosecutor and accused as before.

Pw2 recalled by court.

X by Court. I did not owe the accused any money for goods purchased in his store. As far as I know none of my family owed anything either. I confirm that I never gave the accused my money box or tell him to take it. He took it in my absence from my house.

XX by Accused:

Q: Don't you remember when I got married you owed me £3 on your account?

A: No. I did not owe it.

Q: Are there two men by your name?

A: No.

Isak Botley

Court substitutes the following charge for that preferred:

" That you Stanley Kiko Vaterabo did on a day unknown between the 1.11. 1961 and the 6.1.1962 at Mondo Mondo, Choiseul in the Western District of the Protectorate steal £A 116 in cash the property of Rapheal Soda, Luka Kumbebatu and Emilio Atabatu contrary to section 254 of the Penal Code."

Charge is explained to the accused.

Accused Pleads: Not Guilty.

Case proceeds on the above charge.

Accused offered adjournment to consider defence states content to proceed.

PW3. Amilio Atabatu
of Kokoinago Village, Choiseul.
Cultivator.

Sworn on Bible.

In 1960 I gave some money to my brother Soda (PW1) to keep for me. I gave £100. It was £50 for me and £50 for my other brother Luka. It was all in silver. In 1962, I do not remember the month, I asked Soda if I could have my money. As a result of a conversation with my brother Soda I went the same day and asked the accused about the money. The accused said that he had got my money and that it was in his box and was quite safe. He said no one could steal it as the box had two locks on it and the key was not available. The accused ^{showed} me his box. It was in his house where I had gone to see him. I asked him then to give me my money but he replied that he had not got the key at that time. He said it was in a different place. I asked him where it was and he said in Sarukesa. I then told him to go and get the key and he said that he would. I then went back home and three days later I again asked him if he had the key. This time he said that he had not got the key but that his wife had it and she was in still another place. He said that she was in Siuoka. Siuoka is some distance away. I asked why he had given the key to his wife when I had asked him to get for me. He replied that he did not realise that his wife had had the key in her bag. I again went back home. About a month later I again asked him for the key. This time he said " it does not matter if I keep your money. It is quite safe". I then said " Very well, keep it for me". I then again went back home. I was alone when I last asked for the money. I left the matter as it was.

I have not yet had my money returned to me.

XX by Accused:

Q: Did you see me steal money in your house?

A: No

Q: For how many years have I kept the money?

A: Three.

Q: Why did you not report to the police at once when I did not give you ~~my~~ back your money?

A: Because I thought the money was safe as ~~he~~^{you} told me ~~he~~^{you} had it secure.

By Court:

When my brother Soda went away from his village he gave me the key of his cash box to keep. In fact the box was my box and not Soda's and I had the key all the time. I knew where Soda used to keep the box. I used to see it in his house. I was not present when Soda left his village and locked up his house. I knew he was going away.

No Re X.

Luka Kumbebatu

PW4. Luka Kumbebatu
of Kokoinega, Choiseul.
Cultivator.

Sworn on Bible.

In 1960 I and my brother Emilio (PW3) gave our money to our brother Soda to keep. We gave £100, £50 as to each. About a year later we wanted our money back and approached our brother. As a result of what Soda said I went to the accused and asked him for the money. Soda's wife went with me. The accused replied that he had the money and that it was quite safe. I said that I did not agree to his keeping it. Again he said the money was safe and added that his box in which it was was a locked box. I again pressed for the money and then he said that the key was not with him. He said that the key was at Sarukesa. I told him to get the key and let me have my money back. He said he would. I then went home. I did nothing more for about a year when I again approached accused for my money. This time he said again that he had not got the key but that it was in Siuko. Again I asked him to go and get it. No one was with me when I asked for my money this time. It is true I said Polo was the place when I gave evidence in the Magistrates Court. Polo was the place he said. I made a mistake just now. Some time later I again went to ask for my money and this time he also said the money was safe and said that if I would come another time he would give me the money. I went home again. Finally in 1965 I went with my brother Soda again to the accused and demanded our money. We told him finally to open the box and give us the money. He then said " all right". We talked about opening

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the box. The accused said that he had lost the key and then we said he should break it open. He agreed. Soda and the accused together unscrewed the locks. There were two locks. When the box was open it contained nothing but sand and Soda's cash box. The cash box was broken open. The lock had been forced. It was empty. I then accused the accused of stealing the ~~money~~ money. He made no reply. I then went home. I did not report ~~it~~ the matter, I left that to Soda.

XX by Accused:

Q: When did I tell you that the key was at Polo?

A: I do not remember the exact date.

Q: When Corporal Bindiri came to us did you show him the small cash box?

A: Yes we did. We showed the Corporal the big box and the small box which we had left with the accused.

Q: Did you see me steal the money?

A: No.

Q: How many years is it since I took the money?

A: Six.

Q: Why did you not report the matter at once when I did not give back the money?

~~XX~~ (Accused withdraws Q:)

Q: Were there any Police at Gizo at that time?

A: Yes.

Q: Why did you not report the matter at once?

A: Because you told us ~~that~~ the money was quite safe.

No Re- X.

Foully Binding

Pros: That concludes ~~my~~ case .

Defence.

Accused informed of his rights.

Accused elects to make statement from his place only.

Accused states:

In Jan 1954 one of Soda Chiefs died. Soda wanted to make a customary feast and he came to me and asked for money. I did not give him any money He came a second time and asked again. That was in the presente of my brother Dereveke. Soda told us "will you give ~~me~~ some money for a feast and I will return it later on." We agreed and gave him

and gave him £100; fifty from me and fifty from my brother. This was in cash. In addition we gave from my store £90 worth of goods. The total amount was £190. After the feast Soda never returned the money. I asked him several times to return the money but he would not. Until 1959 I asked Soda to return the money. He only returned £12. He owed me still £178. In 1961 I called the headmen of the village and Soda together to talk about the matter. Soda assured the Committee that he would return the money but he did not return it. Three months later Soda went to a hospital. He told me "I am going to the hospital and I am giving you this money for safe keeping". I told him to count it and check the amount. He did so and it was £116. After we counted the money I took it and said "Do you remember that you owe me £190. This money is now mine". Soda then went away. When Soda came back from the hospital, I told Soda and his wife that I still had the ~~xxx~~ money but that I would not return it, because he owed me money. They agreed with me that I could keep the money as mine. When they agreed this I distributed the money to the members of my store. ~~(xxxxxx)xxxxxx~~ I mean my brothers who helped me run my store. After this I asked Soda for the remaining £62 but Soda did not return me this. Soda and his brothers were not concerned about returning my money but were arguing among themselves who would succeed to the property of the dead chief. The £116, Soda and his wife agreed it was mine. It is now five years later. It is a Choiseul custom if a man cannot afford to ~~return~~ pay an account his property becomes the creditor's. If Soda does not pay me the £62 I shall take his property. Everything that the Prosecution witnesses have ^{said} is all lies.

That is all I have to say.

I wish to call a witness:

D.W.I. Scott Dereveke
of Mondo Mondo, Choiseul.
Agricultural Dept Labourer.

Sworn on Bible.

I know the accused. I am his brother.

After the death of Soda's chief, his relatives would not touch any of his property so they could not plant coconuts or make gardens. ~~xx~~ On Jan 28, 1954 I was the store keeper for the accused. Soda came to me and asked for the accused. I called the accused. He came. Soda asked the accused to lend him money to buy food for a feast. Accused agreed and asked me to put up £50 and he would put up £50 making £100. We gave it to Soda. Then Soda asked for some more. Accused then told me to take £90 from the funds of the store, and give it to Soda. I did this. It was cash. ~~They~~ Soda told us that after the feast they would repay. On June 1959- the second June- Soda brought £12 and gave it to the accused. Soda did not to my knowledge return any more so the accused called a meeting of the village elders in 1961. On 12th August 1961 Soda wanted to leave his village,

(neighbouring huts?).

Soda and the accused were sharing the same house. It was the accused's house. So when Soda wanted to go away he asked the accused to keep his money. I was lying down in my bed at the time. The accused asked to come over. I went over. In my presence the accused and Soda counted the money. When the accused took the money he said to Soda "this is the money which is now mine. You say you cannot afford to repay". Soda agreed. That money the accused kept and after a while he distributed it to ~~myself and the other~~ the members of the store (shareholders). I was the store keeper when this was done, so I know it. That was five years ago.

I then joined the Agricultural Department and left Mondo Mondo. I returned on 1.10.1965. Myself and my wife were short of food. On the 2.10.1965 I asked Soda and the accused together to return me my £50 to buy food with. Soda said I have given the accused £116. Have you not received your share. The accused was present when Soda said this. I said that I had not received anything from the accused but that that money was shared with the shareholders. Accused said that this was true and that he had not given me anything. He said that to Soda in my presence. So I asked Soda to give me my £50 because I wanted to buy food. Soda said he had no money. I then said to the accused that ~~he~~ he was the one who had asked me to give the money and as he could not pay me by custom I would take one acre of his coconuts. I did take this ground. I have built my house on it and that is where I am now living. Then I turned to Soda and said ~~XXXXXXXXXXXXXXXXXXXX~~ "I am now settled". I then said to the accused if you want your money back you must get it ~~from Soda~~ from Soda. Then the accused said to Soda that as he ~~he~~ still owed money he claimed his (Soda's) property in settlement for the balance. Soda then said that he had given £116 to the accused and the accused said that there was still a balance of £62 owing. Soda complained that ~~this~~ was not fair to take any more of his property. I said this was between them. I was now settled. What I say is true.

XX by Prosecutor:

Q: Are you sure you were present when the £100 was borrowed? and not Teburukana?

A: I was present. I was the store keeper. ~~It was not~~ It was not Teburukana.

Q: How much was distributed to each shareholder?

A: I cannot remember because each had different shares.

Q: How many members were there?

A: I cannot now remember exactly but there were over fifty.

Q: Are you sure that it was in August ^{and not November} that Soda left for another village?

A: I am sure it was August and not November.

Q: Are you sure about the loan of £100 and the £90 from the store?

A: I am sure of this. It was all in cash.

Q: Do you know if Soda's line is ^a big line?

A: It is not ~~not~~ a big line.

Q: If they clubbed together could they find the money for the feast themselves?

A: Probably not because by custom they are not able to touch the dead chief's property.

Q: Have you seen the property in their houses?

A: No.

Q: When the £II6 was given to the accused by Soda what was it contained in?

A: A calico bag.

Q: Have you ever seen a small cash box ?

A: No.

Q: Were you ever present when Soda came to demand his money from the accused?

A: I did not know about this because they live in the same house.

Re X by accused:

Q: Who gave me the £II6?

A: Soda did.

Loalya Botley

I call no other witnesses.

Defence case: Summing up.

Accused: I say that Soda gave me the money to keep for him but when I told him he owed me the money he agreed that I was to keep it, in settlement of the debt. I deny I stole it or converted it.

Prosecutor: Summing up.

I rely on the evidence of PW1 and his two brothers. They say how the accused kept trying to put them off regarding the money. If this were so, I say he was guilty. ~~PW1~~
There is also the evidence of the damaged cash box. This was supported by PW2. All the PWs say how they tried to get accused to open the box. I rely on that.

J.P.

JUDGEMENT

This is an unusual case. The stories of the Prosecution and defence are diametrically opposed. The three material witnesses for the Prosecution are brothers and the defendant and his witness are also brothers.

The Prosecution say that between November 1961 and January 1962, the accused stole from the house of the P.W. 1 a cash box containing £116 during the absence from his village of that witness. They say that that money was the property as to £50 of P.W. 2 and £50 of P. W. 3 and £16 of P.W. 1. When P.W. 1 returned to his village he found that his house door had been broken open and his cash box was missing. He says that he went immediately to the accused and asked him about it. The accused replied that he had the money and that it was quite safe with him. The Prosecution witnesses say that at various times thereafter over the next three years they approached the accused to give back the cash box but each time he evaded the issue saying that he had not got the key of a box in which he had placed the cash box for safe keeping. Finally in 1965 they said that they persuaded the accused to break open the outer box and when this was done the box contained only sand and the broken cash box which was empty.

On the other hand the accused says that this is all untrue. He says that in 1960 the P.W. 1 organised a feast on the death of one of his chiefs and that he borrowed a total of £190 for the feast, being £100 from him and £90 which he gave him from the funds of his store. He says that P.W. 1 had promised to return this money after the feast but that he had not done so. He says that in 1961 when the P.W. 1 went away from his village for a while he gave the £116 in cash to the accused to keep for him, but that as soon as he handed it over the accused reminded him of his debt which he always had

said he could not afford to repay and told him that he would keep the money against the debt. He says the accused agreed to his keeping it against settlement of the debt. The P.W. 1 denies this. The accused denies stealing the money or breaking the house and says that the P.W.'s are inventing all this. He also says that when P.W. 1 gave him the money ~~he did not know that it was not all P.W. 1's property.~~

Between those two stories I must decide. It is the burden of the prosecution of course to satisfy me beyond reasonable doubt that the tale of the Prosecution is the true one.

Apart from minor discrepancies in the P.W.'s evidence I find three significant matters which leave me far from happy. Why, as the accused has put to each one of ^{the P.W.s} ~~them~~, when P.W. 1 found his house broken into and his cash box gone did they not report the matter at once. They say that they allowed themselves to be put off by the accused for 3 whole years. Another thing which is significant is the fact that throughout the evidence of P.W. 1 there was no mention as to why the accused had wanted to enter the house and safeguard the money. Under examination by the court as to what explanation was given by the accused when allegedly he admitted directly having taken the money box, P.W. 1, and my impression was that this explanation was given on the spur of the moment and it in no way convinced me, said that the accused had told him he had wanted to borrow a spade from the house.

The second thing which I found unconvincing if the story of P. W. 1 is true, was the fact that he started off his evidence with detail as to the holding of the feast on the death of the chief the year before, in 1960. If in fact, as he says, no money was borrowed for that feast, the whole of that story is irrevelant. Perhaps I stretch judicial knowledge somewhat in commenting that these tribal feasts

are expensive affairs and it is ^{quite} usual for considerable sums to be borrowed in order that a seemly spread may be provided in honour of the dead. It seems to me much more likely that money was in fact borrowed for this purpose than that it was not.

And finally, what has happened to the two boxes so much in evidence in this case? It is alleged that only so recently as October 1965 the accused's outer box was broken open and in it was found only the small cash box and sand. The P. W. 's state that they left the cash box in the possession of the accused after they found it empty although it belonged to them. Neither of the boxes, which clearly would have been strong evidence in support of the P.W.'s case, has been produced and no independent evidence has been given regarding them.

Turning now to the defence, though it is not for the accused to satisfy me of his innocence, ^{he} did not go into the witness box himself. He told his story from his place, but he called a defence witness. This witness was his brother, but notwithstanding that, he impressed me very favourably as a witness to truth. He said how the P.W. 1 had borrowed the money as the accused stated. He was present at the time and gave particulars. He was also present, so he says, when the P.W. 1 handed the sum of £116 to the accused and the accused had claimed it in settlement of his debt.

On the evidence as a whole I am left with the impression that the truth of this matter really rests in a long drawn out wrangle between the parties regarding the settlement of the costs of the feast given on the death of the chief in 1960. And on the evidence as a whole I find myself by no means satisfied beyond reasonable doubt that the accused either stole the money in issue or, as originally charged,

converted it to his own use.

For the above reasons I acquit the accused.

Leahy B. Riley

Chief Justice.

13:8:1966

Judgement delivered.