

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 the
day of , 1966 at
o'clock in the noon.

REGINA

versus

PHILIP SAUNGA

For the Crown: *P. J. Keenan C.C.*

For the Accused: *In person unrepresented*

Interpreter: *John Sepaiken (Renell + Bellona language)*
Sworn.

Charge explained to the accused: By Registrar.

Accused when called upon to plead says: Not Guilty.

Court enters a plea of: Not Guilty.

Ct adjourns to 0900 18.II.66.

J.B.

0900 18.II.66 Court reassembles. Mr. Keenan and Accused present.

Mr Keenan: I will proceed with my evidence.

PWI: Stephen Kabie,
Belona Island.

Sworn on Bible.

I work in Tenaru Plantation. In 1964 I grew my own copra in Belona. End of April 1964 I had cut 64 bags of copra. I was going to send this copra to Honiara to sell. I did not take it myself to Honiara. I could not take it myself because there was no room in the ship for me as a passenger. The ship was the MV Komaliae. I gave the papers regarding the copra to the Accused as he was travelling in the ship, but I gave charge of the Copra to Pusah who was travelling in another ship. The paper I refer to was only a paper by me to the Accused stating the number of bags which were mine on the ship. I told the accused to take the paper and give it with the copra to Pusah. Pusah was following in another ship. The copra would be unloaded onto the wharf and left there for Pusah to arrive. I never told the accused to sell that copra. I have never received any money for it. I learnt that the copra was sold by a letter I received from the Accused.

(W: shown letter) That is the letter I received.
(Accused admits letter)

Ex A (Letter Ex A put in)

I received before Ex A another letter from Accused. That letter stated that the Accused had used up some of the money for the copra and that he would pay it back. I gave it to a policeman some time last year in Belona. Four times I asked the Accused for my money. I asked him four times at Rove. The accused said each time that he had used up the money and asked me to wait. He asked me not to report the matter, and I gave him time to repay.

(Translation of Ex A read and put in marked A' for identification)

XX by Accused:

My copra was contained in bags and baskets. It is true that I told you to give the copra to Pusah on his arrival at Honiara. I confirm that in your first letter you told me the amount of the money and you asked me to wait. You have not yet given me back any money at all. I deny that that letter said that a man called Topwe had taken £6. Topwe is my brother. I deny that while I have been working at Tanaru I have received money from you. I say again I have received no money.

No Re X:

By Court: When I told Accused to take care of my copra on the voyage, Pusah was not present. He was in his village. I knew Pusah was going to Honiara. I knew he was booked for passage in the Coral Queen. Pusah is not a relative but he is of my line. I only gave the Accused the paper with my name and number of bags for the purpose of discharge of cargo. I entrusted Accused with my copra as I knew him.

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We have worked together for a year. He is not related nor a line man. I confirm that I made it clear that Accused was only to give the copra to Pusah. It was supposed to be sold at the Ports Authority. I was intending that Pusah should sell it. I had given Pusah verbal authority to sell my copra before I made this arrangement with the Accused. I wanted to go myself to Honiara but when the Komaliae was loaded there was no room for me. That was in the morning. I therefore arranged with Pusah and then I was looking out for someone who was travelling in the Komaliae to look after my copra on the voyage. That was how it came about.

Johnathan Pusah

PW2: Heman Raikiu
Belona Island. Sworn on Bible.

I know PW1. I see him in Court. I know the Accused. I see him also.

I remember April 1964. I remember that PW1 sent copra to Honiara. I discussed it with him. We discussed it in Belona. It was in my house. There were only myself and PW1 ~~PRESENT~~ and Accused present. PW1 told Accused that he was not on the ship as a passenger but his copra was loaded. Accused agreed to look after the copra on the voyage. PW1 then gave Accused a paper. I did not see the contents. He told the accused to give the paper to Pusah. I heard nothing more than that.

No XX.

Johnathan Pusah

PW3: Johnathan Pusah
Of Belona Island. ~~Sworn~~ Sworn on Bible.

I work in Lands and Mines Department of Government. Early in 1964 I was on leave in Belona.

I know the Accused and PW1. I see them in court. In April 1964 I was proposing to go back to Honiara on the MV Komaliae. The ship was full and I could not get passage. I therefore went in the Coral Queen. The Komaliae sailed from Belona on 18.4.64 and the Coral Queen on the 19.4.64. PW1 discussed his copra with me. He asked me to sell the copra which he had loaded onto the Komaliae when I arrived in Honiara. ~~XXXXXXXXXXXX~~ I agreed to do this.

When I arrived at Honiara I did not see the copra. I went to Leong's Store in China Town to hear the news about copra. When I got there, I saw the bags and learnt that they were already sold. I knew the bags because PWI's name was on them. When I found the bags I spoke to Accused who was there and he said that he had already sold them. He said that he had not yet received the price. ~~THE~~ Mr. Leong was calling out the names of the owners of the copra. Then he called Stephen Kabie. The Accused went forward. I saw Leong hand the money to the Accused. The amount was £72. The accused came out of the store and counted the money and said it was £72. I asked the Accused to give me the money but Accused refused. He said that he was going to put it in the bank. He said he would deposit it as PWI's money. I said to Accused that PWI had instructed me to get the money. Accused still would not give it to me. We then parted. About three months later I saw Accused and asked about the money. He said it was in the bank but that he had taken off £2. I went to seek Accused at that time because I heard that a ship was going to Belona again.

XX by Accused.

I was not present when the copra^{was} weighed. I was present when you were paid the money. I was inside the store. You counted the money on the verandah outside the store. There was a man called Soaba also present. I do not know if there were two lots of copra. I only know that the amount in total was £72. I did not take it then, but I asked you twice and you did not give it. I say that PWI instructed me to take the copra, sell it and keep the money. I did not take the money from you because you were holding on to it. When I saw you about the money again it was in July. The exact date I do not remember. I cannot say if you gave any money to anyone else.

No Re X:

By Court:

When I asked for the money outside the store, the Accused said that he would bank it because if he gave it to me I would spoil (lose) it. He said he did not trust me with it I did not write to PWI about this but I told someone who was returning to Belona to tell him. This message would not have reached Belona for three months as there was no ship sailing there. I have not taken any part in this since I asked finally for the money three months after the sale when Komaliae was going back to Belona again.

July 13 1951

PW4: Andrew Tasra
Det: Constable I85, Honiara Police.

Sworn on Bible.

On 5.9.1966 PWI made a report. I investigated the case. I took PWI's statement. I received from him a letter. It purported to have been signed by the Accused.
(Ex A put to Acc and identified) I kept the letter. I arrested the Accused and charged him with conversion. I cautioned him and he voluntarily made a statement.
(Accused does not object to statement)
(Statement read) (Put in ExB and BI).
When the accused made this statement constable Kiere was there.

No XX.

July-Bobley

PW5: James Tapuke
Of Honiara . Ports Authority employee.

Sworn on Bible.

I live in Rennel Islands on Belona. I speak Belona language. On 11.9.1966 I was asked to translate a letter into English from Belona language. I identify Ex A as the letter I translated and Ex A as the translation which I made.

Ex A!

No XX.

July-Bobley

PW6. Leslie Leong
Of Honiara. Merchant.

Sworn on Bible.

I am manager of a store in Honiara. I buy copra. I remember in 1964 buying copra but I cannot recall whether I bought any from Stephen Kabie. I keep books but not a record of the sellers or the weights. Only what I pay, and total quantities. I do not recognise the accused.

XX by Accused.

I confirm that I do not keep detailed records. When people sell me copra I do not give receipts for the bags unless especially asked for one. I do not remember any particulars about this case.

No ReX.

July-Bobley

PW7 Allen Lewis Lindley.
Acting Chief Police, Solomons.

Sworn on Bible.

I know the accused. He is corporal in the Police force. I keep all personal files of members of the force. There is no record in my files of the Accused ever having applied to the force for an advance of salary. The only application I have ever had for advances is to buy a bicycle. The accused did apply for such a loan. The accused is still in the police force.

No XX.

By Court. I can say of my own knowledge that the accused acquired the bicylce for which he got his loan.

Lucy Boring

Mr Keenan : That closes my evidence.

Defence.

Rights of defence explained . Accused elects to give his evidence on oath.

Accused:

Sworn on Bible.

My name is Philip Saunga. I live in Police Headquarters. I am a corporal, in the mobile unit. In 1964 I was on leave at home. It ended in April 64. I returned on the 27th April from Rennell Islands. On the 27th I was in Belona in the MV Komaliae. In Belona PW2 invited me to his home. When I went to his house he was alone. After a while PW1 came. PW1 Told me about his copra. There was no one to take it to Honiara. He asked me if I would take it. I agreed to do so. On the 28th we sailed from Belona. We arrived in Honiara on the 29th a.m. The same morning the copra was discharged. I showed the copra to the Ports Authority but it was rejected. It was rejected because it was not bagged. I was with another man from Belona called Saoba. We decided to ring up Leslie Leong. Leslie sent a van and collected all the copra. Then Saoba and I went to China Town to Leslie's shop. There Leslie weighted the copra. After that Leslie told us to come back at 2 p.m. for the price. At 2 p.m. both of us returned to the store.

Leslie called out the names of the copra owners. There were a number of plots of copra with different names. When he called Stephen Kabie I went up. He gave me £45.10.0. When Leslie called the name Joseph I went up and received £22.0.0. After receiving the £22 I went outside the store and there I met Pusah (PW3). He asked me where was PWI's copra. I told him that I had sold it already. He asked me the price paid. As there were two lots of copra I told him the two separate amounts. That is all PW3 asked me. I then went to the PWD Shipping office and paid the freight. The freight was £2.10.0. Then I met Topwe and I gave him £3. I gave this to Topwa because he asked for it and it was his brothers copra. After a while another man by name of Takusea came and asked for £3 because he said ~~me~~ that PWI was the father of his wife. I gave him £3. This £3 I paid from Josephs copra money not PWI's. This man was the father of the wife of Joseph. I kept the rest of the money. When the Komaliae returned to Belona I wrote to PWI. I told him that some of the money had been taken by his brother and brother in law. I also asked PWI to let me use the money and I would repay later. He replied that it was all right but that I must let him have it back some time. In 1965 PWI came to Tanaru. He came to see me. He asked if I could return ^{of} his money. Next day Steika, another brother of PWI, asked me for some money and I gave him £3. And then I wrote the letter Ex A. I said that I was going to ask the Chief of Police for an advance, but that he might not approve. If the C.P. approved then I said I could return the money. I wrote out my application but did not send it in because I thought that the C.P. would not approve. Then I received orders to go down to Rove Police station and I made a statement. That is all I have to say.

XX by Keenan:

I admit I made statement Ex B. In that statement I refer to both lots of copra- PWI and Joseph's. I deny I am now inventing this story about Joseph. Joseph is PWI's father. The copra which PWI gave me included his ~~father~~ fathers bags. All of the money was to be given to PWI. I did not say it in statant Ex B but PWI told me that if PW3 did not arrive in time I was to sell it. PWI said to give the piece of paper to Pusah if he arrived in time. I deny that I thought this was an easy way of getting some money. I sold it because I say the PWI told me to. If PWI has told me to send him the money I would have collected the money taken by the relatives and then sent it all. The rest of the money I kept in my own custody. I could have sent it back. I had given £6 to relatives and £2.10.0. for the freight. I kept back the rest of the money because the relatives said I should do so until they repaid me. I had £59 in my pssession and then I wrote a letter asking permission to use the money. I received an answer. The answer was that I could use the money but must

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repay it some time. I deny that PWI did not give me permission to use the money. I did not keep PWI's letter. I did not keep the letter. It gave me permission. I meant to obtain an advance from the Police to repay. I admit I did not in fact apply for the advance. I only told PWI that I would try to get the advance. I deny I was only trying to fool PWI.

By Court: I sent that letter asking permission to use the money by the Komaliae three months after I had sold the copra. I got the reply on the return of the ship to Honiara. I did not send the £59 in my possession at that time because I asked if I might borrow it. I confirm that I still had the money then.

When I refer in ^{letter} statement Ex A to the £20 owing to Haikiu, I mean that that was another debt and I was telling PWI that I would postpone that debt till I had paid PWI's debt.

My defence is that I never converted this money. I borrowed with permission. I admit that I owe it back but I did not convert it. I had it in my possession except the £6 which I gave to the relatives until after I had received the permission. As soon as I had permission I used it for myself because I was then unemployed. I joined the police force in January 1965. Until then I was still unemployed and I used the money to live on. For the first six months in the Police I earned £7 per month and ~~xxxx~~ I now get £23 less £4.10.0 for rations.

Joseph B. Sui

Accused: I have no defence witnesses to call.

Accused states: My defence is that I borrowed the money and did not convert it. I am at all times willing to repay the loan when I have the means.

Adduces

Mr. Keenan. I rely on the evidence of PWI and PW2. They both say what instructions were given to the Acc: The Accused XX PWI as to permission to sell the copra. PWI denied any such permission. PW2 supported PWI on this. I submit that all that Acc was told to do was to accompany the copra to Honiara. Contrary to instructions acc: sold the copra and refused to hand the money to PW3. As regards the suggestion of the loan. Acc has no evidence but his own for that. We have on the contrary evidence that PWI was pressing for the money. I submit the evidence adequate for conviction.

Accused reply:

I repeat that I am not guilty because PWI gave me permission. I said I would repay the loan when I had the money. I deny that PWI did not say that I was not to sell the copra at all. His instructions were subject to

the timely arrival of Pusah. Pusah did not appear till I had already sold the copra. I had received the money from the sale already before I saw Pusah at all. I did not know he had arrived at that time. I did not meet Pusah till I had already paid the freight and the £6 to the relatives. I say that ~~it~~ Pusah is not correct when he says that He was with me when I counted the money on the verandah. I also do not admit that Pusah asked me to hand over the money. All he asked was how much it was. I had no intention to defraud anyone. I admit I owe the debt to PWI. It is a civil debt.

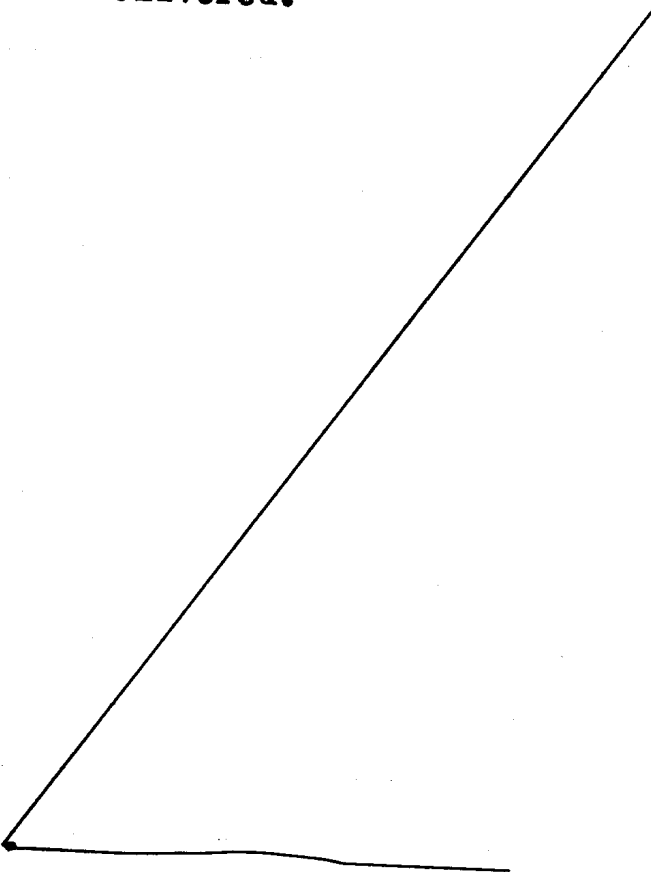
July - Bobing

Ct adjourns to 0900 19th November, 1966.

J.B.

Ct reassembles 0900 20th November, 1966.
Crown and accused present as before.

Judgement delivered.



Chief Justice

I shall deliver judgement in this case.

I have given anxious thought overnight to this case and I am not satisfied that the Accused when he sold the copra in Honiara and subsequently retained the money had the necessary fraudulent intent which is required to constitute an offence of fraudulent conversion.

*He has a list
of instructions.*

~~I am not satisfied that the Accused when he sold the copra had the necessary fraudulent intent which is required to constitute the crime of conversion.~~ That he did not at the time when he sold the copra intend to cheat his friend Stephen. The facts are substantially agreed in this case, there is little dispute. It is not disputed that the Accused was asked to take care of this copra. There is some dispute as to the exact instructions which were given but it must be remembered that the conversations which took place at the time took place a long time ago and I am not at all sure that the summary of what was said, that we have heard in Court, was necessarily all that was said. It is not disputed that when the Accused reached Honiara he did not wait for the Coral Queen to arrive but he sold the copra, he admits that. He then also gave away certain small sums of money to relatives of Stephen. He admits that and he admits that he kept and subsequently used the rest of the money for his own purposes. Now what I am not sure about and if I am to convict the Accused I must be sure that when he did this he did it with a dishonest intention, an intention to defraud. He does not dispute the fact that he still owes the money to Stephen and is willing to repay it as soon as he can but the mere taking and using of the money without a fraudulent intent does not constitute a crime. I am therefore going to acquit the accused and it will be for Stephen Kabei to recover his money by a Civil Action in the Magistrate's Court.

John B. King Esq.
29.11.66

(To Prosecutor: Now I think Kabei is in the Court now and perhaps
you might explain to him afterwards what I mean.)

To Accused: You are released now, acquitted.

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F. L. B. S. S.