

ISSUED
23/07/21
3



REGINA v IAN PIAS WALELABUA

Case Number : Criminal Case No. 845 of 2020
Judgment date : July 23, 2021
Court : Central Magistrate's Court – Honiara
Coram : Deputy Chief Magistrate Ricky Iomea
Counsel Name(s) : Nickson Tonowane (ODPP) for the Prosecution
: George Gray and with him Donation Houa for the accused.

SENTENCE

- 1) The Accused, Ian Pias Walelabua has been charged with one count of Burglary contrary to section 299 (b) (ii) of the Penal Code. He was found guilty by the Court after trial and was convicted on the charge.
- 2) The particulars of the amended charge filed on 25th January 2021 which the Prosecution proceeded with at trial are;

“That Ian Pias Walelabua at Henderson area on 28th August 2020 at night, did break out of the dwelling-house of a person namely Keith Morgan, having committed a felony therein to wit larceny (stealing) in the said dwelling-house”.

- 3) The facts established at trial are that the accused, on 28th August 2020 at night between 10:00pm and 1:00 am, entered the dwelling house of the Complainant, Keith Morgan on the night 28th August 2020 and removed the Safe or Cash box and a CCTV Camera recorder. The Court found that he was the one who manually opened the gate and manually closed the gate as the Safe or Cash box was wheeled out of the said property. The Court also found that the accused was not acting alone that night when he broke out of the house of Keith Morgan that night.

The Safe or cash box contained substantial amounts of money in Solomon Islands dollars, British pounds and Australian dollars. There were about SBD\$300,000.00, AUD\$20,000.00, approximately GBP£5,000.00 pounds and some loose coins believed to be in the Safe box.

- 4) The Court also found that prior to the commission of the offence, the Accused had called a Prosecution witness namely Joe Rafanimae on the phone between 8 pm and 9 pm that night and asked him to check whether Keith Morgan and his wife had already left their home or not. The accused made further calls to ask Joe Rafanimae to go outside at the main road and check on the couple whether they left the property already or not. These phone conversations occurred between 8 pm and 9 pm that night. Those are the relevant facts.

- 5) This is a serious offence as reflected in the maximum penalty of life imprisonment. In the case of *Bade v Reginam*¹, Ward CJ as he then was stated;

"Burglary is an extremely serious offence. Anyone who breaks into a private house at night, however careful he may be to try and do it when the house is empty, runs the risk that there is someone inside. The effect on anyone who has been in a house when it is burgled can be extreme and may frequently have the same effect as an offence of violence. Even where the house was unoccupied at the time of the burglary, the sense of violation felt by the owners when they return can have very long term effects..."

- 6) The offending by the accused had resulted in a financial loss of approximately SBD\$300,000.00, AUD\$20,000.00, approximately GBPE5,000.00 pounds and some loose coins to the Complainant. These are substantial amounts of money. When I look at the circumstances of this offending, it is apparent that the accused, clearly targeted the Safe box. The other property of value which was stolen was the CCTV Recorder. It appears that the properties were never recovered.
- 7) The dismantling and removal of the CCTV camera had also put the complainant and his property in an unsecure position thereafter until a replacement is secured and installed.
- 8) The offending was clearly pre-planned as demonstrated by the phone calls he made to one of the Prosecution's witnesses to check on the Couple. The removal of the CCTV Camera recorder is without doubt, part of the plan to ensure that no clues are left behind after the offending.
- 9) Further, the offence was committed at night. He decided to commit the offence under the cover of darkness to avoid being detected.
- 10) Another factor that aggravates the offending is that fact that the accused was not acting alone in the commission of the offence. The Court found that as he broke out of the property that night, he was with another when they wheeled the Safe box away from the property of the Complainant.
- 11) Those are factors that makes this offending serious.
- 12) In terms of sentencing principles, the applicable principle in this case is deterrence. The sentence that will be imposed should send the message clear to those who are intending or on the course to burgle homes and other premises of innocent people within the community that the courts will not be lenient to offenders who commit such offence and will impose sentences that are intended to fulfil the purpose of punishment and deterrence.

¹ [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988)

13) In terms of mitigation, the Accused was born in 1983 and so he is now 37 years old. For 37 years and until he was convicted for this offence, the accused was a man of previous good character. He is a first time offender.

14) The Accused's personal circumstances are that; he is married with four children. His wife has no formal employment and relies entirely on the accused for money and support for the family. The Court understands that any custodial sentence will certainly be felt by his dependants. However, the blame for any collateral impact of any sentence on those who depend on him is squarely at the feet of the accused. He should have thought about the consequences of his action before he was on his journey to commit the offence. In the case of *R v Tauriken*², a case also cited by the Crown in their submission, Justice Faulkona remarked as follows;

"... such personal features must have less effect on the sentence. If the accused is concerned about his family the best he can do is place them as first priority in life... He may now regret for what he had done, but that has come too late. He had set his priorities wrong..."

15) I have been referred to a number of comparative cases. These are useful sentencing guidelines and I am also guided by what was stated in the English case of *R v Millberry*³, where the Court of Appeal commented on Sentencing Guidelines in England. It stated;

"We would emphasise that guidelines can produce sentences which are inappropriately high or inappropriately low if sentencers merely adopt a mechanistic approach to the guidelines. It is essential that having taken the guidelines into account, sentencers stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances".

16) Now having considered the facts of the case, the aggravating features present and the need for deterrence, the appropriate sentence in my view is 4 ½ years imprisonment. I will deduct six (6) months from the head sentence to allow for the previous good character of the accused.

17) I impose a sentence of four years against the accused. This is backdated to commence on when he was first remanded in custody. He was first remanded on 3rd September 2020.



² [2012] SBHC 31; HCSI-CRC 151 of 2011 (29 March 2012)

³ 2003 1 Cr App R 142