

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 *Thursday*
the *17th* day of *November*,
1966 at *2.30* o'clock in
the *after* noon.

REGINA

versus

WILSON VAVE

For the Crown: *P. J. Keman*

For the Accused: *In person unrepresented*

Interpreter: *Dr Silas Savo (Tjivan language)*
Savva on Bible.

Charge explained to the accused:

Accused when called upon to plead says:

FIRST COUNT: *Guilty*

SECOND COUNT: *Guilty*

THIRD COUNT: *Guilty*

FOURTH COUNT: *Guilty*

FIFTH COUNT: *Guilty*

SIXTH COUNT: *Guilty*

SEVENTH COUNT: *Guilty*

EIGHTH COUNT: *Guilty*

NINTH COUNT: *Guilty*

TENTH COUNT: *Guilty*

ELEVENTH COUNT: *Guilty*

TWELFTH COUNT: *Guilty*

THIRTEENTH COUNT: *Guilty*

FOURTEENTH COUNT: *Guilty*

FIFTEENTH COUNT: *Guilty*

Court enters a plea of:

FIRST COUNT: *Guilty*

THIRD COUNT: *Guilty*

FIFTH COUNT: *Guilty.*

SEVENTH COUNT: *Guilty.*

NINTH COUNT: *Guilty*

ELEVENTH COUNT: *Guilty.*

THIRTEENTH COUNT: *Guilty.*

FIFTEENTH COUNT: *Guilty.*

SECOND COUNT: *Guilty*

FOURTH COUNT: *Guilty*

SIXTH COUNT: *Guilty.*

EIGHTH COUNT: *Guilty.*

TENTH COUNT: *Guilty.*

TWELFTH COUNT: *Guilty*

FOURTEENTH
COUNT: *Guilty.*

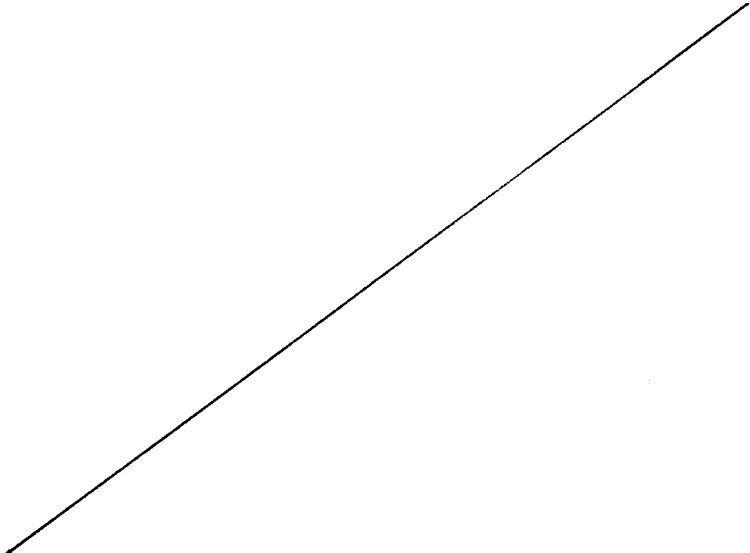
CE: adjourns at 0900 18th November 1966.

Judgment Botilly.

CE reassembles 0900 19th Nov: 1966.

Crown and accused present as before.

Mr Keenan states facts: (Taken by shorthand
writer)



By Ct:-

Wilson Vave

Now Wilson Vave, you have pleaded guilty yesterday to fifteen counts. You had them all read over, they were all in respect of conversion of various sums which had been handed to you by labourers for you to place in safe custody in the Bank. Instead of placing it in the Bank you kept ~~it~~ ^{the money} and converted ~~the~~ ^{it} ~~money~~ to your own use. Mr. Keenan for the Crown is going to tell you how this matter arose and all the facts about it. I want you to listen carefully to what he says and it will be translated to you and I want you to tell me if it is correct and you can clarify anything if you think Mr. Keenan has gone wrong.

Prosecution (Mr Keenan):

My Lord, these are fifteen counts of a similar nature involving a sum of £77 10s. Over the period these offences were committed Vave was employed as a Public Works Department foreman at Yandina. One of his duties as Foreman was to pay the workers their wages. In October 1964 he advised the workers that they should save some of their wages. He suggested that on pay days after he had paid the workers they should return some of the money to him and he would put it in the Bank for them. Many of them agreed to this scheme. In March 1965 he showed the workers their passbooks.

Chief Justice

It was working alright to start with?

Prosecution

Yes, Sir.

And from time to time the workers would ask him for some of their money back out of the Bank. The demands at any one time were never great and Vave was therefore able to pay them quite easily. However in February 1966 the job which the workers were doing at Yandina was completed. They asked Vave for their passbooks. He said that he did not have them

but that they would get them from a Mr. Clark at the Public Works Department in Honiara. When they discovered that Mr. Clark did not have the books they reported the matter to the Police.

Chief Justice

Where are the passbooks now. Where were they?

Prosecution

I am not sure.

~~Clark~~ Register.

They are all in Court as exhibits.

Chief Justice

They have all been accounted for?

Chief Justice

They have all been accounted for?

Prosecution

There are four of them here.

On the various occasions listed in the information Vave failed to bank the sums entrusted to him and converted the money to his own use.

Chief Justice

The first occasion seems to be June.

Prosecution

Yes, My Lord.

He has no previous convictions. When cautioned and charged he made the following voluntary statement. "The money I kept, I used to keep to give to the boys when they wanted it."

My Lord, he was born in 1920, which makes him 46, in Fiji. He is married. He has two small boys the first of which is three years old and the second eighteen months.

Chief Justice

Where is his home, here in Honiara or some other Islands?

Prosecution

I think he has been here since 1947. He has a small girl aged five months.

Chief Justice

He has got three children. What was his salary scale?

Prosecution

\$144 a month. He attended the Methodist Technical School in Fiji from 1936 to 1940 and attained standard 7.

Chief Justice (*addressing Accused*)

Now, is what Mr. Keenan has said correct?

Vave

All correct.

Chief Justice

Now have you anything to say in mitigation as to why you did this?

Vave

Yes.

At the beginning of this scheme it ran quite smoothly then later on I found out that from time to time they used to come and ask for some money back.

Chief Justice

You mean they came and asked you to withdraw money and let them have it back from their passbooks?

Vave

They did not want to draw money from the Bank but they

would like to borrow money from me.

Chief Justice

They came to borrow money from you?

Vave

Yes.

Having regard to that I decided to keep some of their money in order to give them it when they asked.

Chief Justice

Yes, you kept the money so you could pay it back.

Vave

That was why I did not put the money into the Bank.

Chief Justice

Yes.

Vave

So that continued to happen. In the same way I kept on holding back some of their money. I cannot do anything else, they kept on borrowing money from me.

Chief Justice

Did it not occur to you in that case that it would be a good thing to stop the scheme rather than keep the money?

Vave

It did not occur to me. Sometimes people came back to pay for the money they borrow^{ed} from me and I ~~told~~ them it was alright.

Chief Justice

Why did you say it was alright?

Vave

Because I thought that ^{from} the money I received from them

I can give this money back to them and the money I received and the money I gave back cancelled me out.

Chief Justice

I see, you reimbursed yourself out of the money they ^{had supplied} reimbursed you with.

Yes.

Vave

That is all.

Chief Justice

What did you do with the money while you were keeping it in your hand?

Vave

I used to keep it in my small box.

Chief Justice (To Pros:)

What he is saying now is inconsistent with the original statement ^{and plea.}

Prosecution

Chief Justice (To Acc:)

Did you never use any of this money yourself and pay them back out of your own pocket?

Vave

I did not keep a proper record of all this money.

Chief Justice

But my question was this. Did you put all of that money in the box and leave it there or did you spend it and when money was wanted by the boys did you pay them out of your own money? ^{for yourself} or did you use that money ^{for yourself} or keep it locked up in the box?

Vave

I used to use the money they gave me. I used to pay the boys out of the money out of the box. I did not use my own money.

Chief Justice

Did you yourself use any money out of the box?

Vave

Well I am not quite sure whether I used some of their money or not because whenever I opened the box to pay the boys I brought some of the money out of the box and it used to get mixed with my own money and it is possible I might have used some of the money.

Chief Justice (To Pros.?)

I think Mr. Keenan that this story is inconsistent with the original statement and despositions. It is up to this Court to see that he does not plead "guilty" when he should ^{really} ~~not~~ plead ^{"not} guilty."

He has paid worker A with worker B's money.

Prosecution

Yes, I agree, My Lord.

Chief Justice

So that the money is short in those cases, if he has done that of course. But perhaps not fraudulently.

I think that really I should ^{give the Accused} ~~take~~ the opportunity to revise his pleas if he wishes to.

(To Interpreter) Now will you translate this to him.

Yesterday you had all of these charges read out to you and the substance of the charges ^{are} ~~is~~ this, that on each occasion one of the men entrusted you with a certain sum of money in

order to pay it into a Bank to keep it safe and that instead of putting it into the Bank to keep it safe you converted it to your own use that is to say you ^{dishonestly} used the money yourself. Now to that you pleaded guilty; you said "yes" that is what you had done. Do you mean that that is what you did?

Vave

Why I pleaded ^{was} guilty because some monies were entrusted to me and I did not pay them back.

Chief Justice

But you say that you have not used any of that money for your own purposes.

Vave

I am not quite certain about using their money, it is possible that I used some of it.

Chief Justice

But the money has disappeared.

Vave

That is why I say I might have used some.

Chief Justice (To the Pres:)

Mr. Keenan, strictly speaking this sort of thing is quite consistant with a plea of innocence.

Prosecution

But he cannot account for it.

Chief Justice

If that is all the evidence ^{there is} ~~that shows~~ on the respective cases, ~~that is all the evidence~~ it may not be sufficient to establish fraud.

Chief Justice (To Accused)

Do you wish to withdraw your pleas and plead "not guilty" and then I will hear all the evidence on ^{both} ~~your~~ sides, ^{do you} or not?

Vave

I still plead guilty.

Chief Justice

Yes, I see. Now have you anything else you wish to tell me?

Vave

No.

Chief Justice

Have you any witnesses to character you would like to call?

Vave

No other witnesses.

Chief Justice

Well now Mr. Vave, I have absolutely no doubt at all in this case that originally you may, out of interest for your workers, ^{have} you suggested that instead of going and drinking up their salary at the end of the month they ^{should} go and bank some;

but on the other hand I have no doubt whatever that after the first two or three lodgments in the Bank ~~I have no doubt~~ you put that money in your own pocket and used it and when the boys came back and aksed you for some ^{of their money} you paid them out of your own pocket.

And then came the difficulty. You had spent their money. You could not give it to them when they asked for their passbooks; and that is fraudulent conversion and I accept your pleas of guilty.

Now this is a very serious matter because your own workers you have defrauded. You are on a considerable salary, very much higher than a labourers salary. They earn very much less. They trusted you as their foreman to look after their interests and when they fell in with your suggestion that they might save money they trusted you and you failed ^{them} in a ^{breach} of trust. The serious part of this case is that ^{you} ~~you~~ ^{were} defrauding ^{your} ~~his~~ own workers. They trusted ^{you} ~~him~~ to put their money honestly into the Bank. They have not got big salaries, ^{thought} when they ~~think~~ each month they ^{were} ~~are~~ going to save a few dollars they trusted you to save it for them. Instead of doing that you spent it yourself.

Now fraudulent conversion under this section carries a sentence of seven years imprisonment. I am not going to ^{pass} ~~do~~ that but you were in an official ~~position~~, responsible to these men and you broke that trust. You broke it not only once but on a series of occasions over nearly a whole year. I appreciate that ^{these are} ~~this is a~~ first offence but I am going to send you to Prison for twelve months; that will be in respect of each count but each sentence will run concurrently. ~~and~~ You know your rights of appeal against sentence if you are not satisfied.

(To Interpreter) Has he understood that? - Yes.

Vave

I have one more question to ask. I want to say that I am a married man, I have a wife and three children and no one to look after them.

Chief Justice

I am aware of that. You should have thought of that at the time when you committed this offence. That is one of the unfortunate things when a man falls into crime. His dependants have to suffer. I cannot help that. That is all.

Justice Brandeis

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(Judge's personal notes of mitigation & sentence)

Accused admits facts as related correct.

Mitigation:

Accused states:

At the beginning of the scheme it worked well but then the men started to come and ask for some money. They did not want to draw money but to borrow from me. So I decided to keep some of the money in order to have a fund to pay out of. That was why I did not pay all of the money to the bank at once. They kept borrowing money from me. It did not occur to me to stop the scheme. Sometimes when they came to repay me the loans I would say that it was all right. I said that because I could reimburse myself from the scheme. I kept the money in a small box. I did not keep records of this money. I used to pay the loans to the boys from the money in the box. I used to mix my own money with the money from the box. I pleaded guilty because I admit that I did not put the money in the bank and now the money is missing and I might have used some.

Court offers Accused opportunity to change his plea in view of his above statement.

Accused states : I still plead guilty.

[A: cont) I have nothing else to say.
I have no witnesses to character.

Sentence: Twelve months imprisonment on each count to run concurrently.

Accused informed of his right to appeal against sentence.

Tom L. Bodilly . C.V.
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