

REGINA -V- WILSON ONO**High Court of Solomon Islands****(Muria, CJ.)**

Criminal Case No. 33 of 1993

Hearing: 27th October 1995

Judgement: 6th November 1995

*J. Faga for DPP**J. Corrin for the Accused*

MURIA, CJ: This accused has been charged with larceny by servant, contrary to section 266(a)(i) of the Penal Code. The accused has pleaded Not Guilty to the charge.

The prosecution alleges that between 2 October 1992 and 31 December 1993 in Honiara the accused, an employee of ANZ Banking Corporation, stole a cheque Book belonging to the Bank. The facts alleged by the prosecution are generally not disputed. The only question in dispute is whether the accused stole the Cheque Book.

The facts which the Court found not be in dispute are as follows. In October 1992 the accused was employed by the Bank as an Inquiry Clerk and then as a Bank Teller. In that capacity he had access to the strong room where money and valuable documents are kept. Cheque Books are also kept in this strong room.

On a Friday in 1992, at about 3.30pm the accused, then worked as a bank teller, balanced his books and then was asked by his supervisor to prepare customer statements. To do this the accused went into the bank's strong room. He was in the strong when PW2 and another bank officer entered and carried two cases of cheque books out and took them to the bank's stationery office downstairs in the bank.

A cheque book was later found missing by the bank. The accused was suspected. The police were alerted and subsequent search by the police of accused's room at the Bank's Mess, found the missing blank cheque in the possession of the accused. It is not disputed by the accused that he took the cheque book and kept it in his drawer where the police found it.

The evidence for the prosecution came from Police constable Florence Toifei (PW1) who confirmed the search and discovery of the cheque book in the possession of the accused. Constable Toifei also conducted an interview with the accused on 8 June 1993 during which the accused admitted taking the cheque book but gave his explanation for doing so. That record of interview was not objected to by the defence and it is now part of the evidence against the accused.

Anthony Langston (PW2) confirmed the cheque book had been missing and that he accused was the prime suspect regarding the missing cheque book. He further stated that at the time, the accused was the person responsible for issuing cheque books and as such he had access to the banks cheque books.

The accused gave evidence and his story in court is basically a repetition of what he gave in his statement to the police. His evidence is that he found the blank cheque book at the place where PW2 and the other bank officer took the boxes of cheque books from in the strong room. He said he tried to catch up with the two officers at the bank's stationery office but he was unable to do so since, he said, the place was closed. He then left the cheque book above a place outside the toilet in the bank. He forgot the cheque book there and went home after work. The accused further stated that on the Sunday the same weekend he and other bank workers went to watch video in the bank. He again went to the toilet in the bank and on coming out from the toilet he remembered the cheque book and took it with him. He then kept the cheque book in his drawer in his room at the Mess and thereafter, he said forgot all about it.

However, the accused stated, on the following weekend some of his colleague bank workers wanted to have some drinks but they had no money. The accused then told them that he had the cheque book with him. He tore one of the leaves in the cheque book and gave it to one of the boys to use. He returned the cheque book into his drawer. He said he intended to return it but he forgot all about it until the police discovered it from his drawer.

When ask by the court if he knew he had not right to use the cheque leaves from the cheque book, the accused said he knew that.

Mr. Tevagota's contention on behalf of the accused centre on the question whether the accused intended to steal the cheque book. His client, he argued, did not intend to steal the cheque book but only to hold it for safe-keeping.

Section 266(a)(i) P.C. under which the accused has been charged provides as follows:

"266 Any person who -

(a) *being a clerk or servant or person employed in the capacity of a clerk or servant -*

(i) *steals any chattel, money or valuable security belonging to or in the possession of his master or employer; or*

.....
is guilty of a felony, and shall be liable to imprisonment for fourteen years."

The question really then turns on whether the accused stole the cheque book belonging to the bank. "Stealing" is defined under section 251 (Definition of theft) in the following terms:

"251. (1) *A person steals, who without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything*

capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof:

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner"

The element of "taking and carrying away" the cheque book in this case is not disputed by the accused. There is also no suggestion that the bank consented to the removal of the said cheque book from its possession, otherwise the accused would have raised it as a defence. Further, there is no claim of right here since the accused has clearly admitted that in answer to the question put to him in Court. What the accused asserts in this case is that he took the cheque book without consent of the bank and without any claim of right but that he only took it for safe-keeping with the intention of returning it to the bank later. The suggestion is that there was no intention to deprive the bank of its property and that in those circumstances it is not a larceny.

To ascertain whether the accused had no intention of depriving the owner of the property taken regard will be had as to the manner in which the property is dealt with by the accused. This is a question of fact. The accused intending to return the property taken and having the ability to do so may be able to successfully raise this element in a larceny charge. On the other hand such person may have failed to fulfil the intention between the date of the commission of the offence and trial. Such a conduct on the part of the accused runs counter to the suggestion that he intends to return the property.

In the present case the accused took the cheque book and kept in his drawer in his house. He was throughout that time working in the bank and as such had the ability to return the cheque book to the bank on the Monday which was next working day if his intention was not to deprive the bank of its property. Yet he continued to keep the cheque book and a week later used one of the cheque leaves in the cheque book by giving it to one of his friends to use in order to obtain money or goods (drinks). Thereafter he continued to keep the cheque book locked in the drawer in his room in the Bank's Mess. It was not until 3 December 1992, some more than two months later, before the cheque book had to be recovered from him by the police. He clearly did not forget the existence of the cheque book in his drawer, for he resorted to it when one of his friends was in need of money for drinks. Those facts are evidence of his conduct which is clearly contrary to his assertion that he kept the cheque book only as safe-keeping and that he intended to return it to the bank.

The inevitable conclusion is that he intended to keep the cheque book and thereby permanently depriving the bank of its property. The taking of a property without a claim of right, as admitted in this case, together with intent to permanently deprive the owner thereof is clearly fraudulent. This is what happened in this case.

The prosecution has therefore made me satisfied beyond a reasonable doubt of the guilt of the accused in this case and I find him guilty as charged.

Verdict: Guilty.

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Sir John Muria
CHIEF JUSTICE