

JOINT COURT OF THE NEW HEBRIDES

PUBLIC PROSECUTOR

-v-

KALTALIU GIGIRU  
NOEL KALTAL  
HATY CIEL

J U D G M E N T

The first accused, KALTALIU GIGIRU, a New Hebridean of Pango Village, Efate aged 23 years and the second accused NOEL KALTAL, a New Hebridean of Pango Village also, aged 24 years, were jointly charged that on the 30th June, 1976 at Pango on the Island of Efate they stole 5,000FNH, \$A2.00 and a coloured pink towel, the property of Mrs. Magee. The third accused, HATY CIEL, a New Hebridean of Pango Village aged 21 years, was charged that on the 30th June 1976 at Pango, he received property, namely 1100FNH from the first accused knowing the same to have been stolen. The first accused and second accused pleaded guilty and the Court proceeded to deal with the charge against them.

The facts as outlined by the prosecution were that on 30th June, 1976 the complainant, Mrs. Magee, parked her car and went for a swim with her children at Pango Beach. On returning to the car she discovered that a pink towel, 5,000FNH and \$A2.00 had been removed from her purse which had been inside a handbag. She complained to the police. The police investigated and interviewed the first accused who admitted the theft. 530FNH was at first recovered from him, then later a further 2000FNH. The accused made a cautioned statement admitting the offence. The second accused was also interviewed, he made a cautioned statement admitting the offence and from him there was recovered 500FNH and the towel. From other sources the police made a further recovery of 1100FNH.

The Native Advocate conceded that the facts were not substantially in dispute and submitted that the accused were on their way to go crabbing, having no prior intention to steal. While they were together with a third party, a motor car arrived and on the spur of the moment the offence was committed. Both accused co-operated with the police and were prepared to repay the balance money involved. The Native Advocate further submitted that both the first accused and the second accused were in some measure supporting relatives and hardship would be caused to such relatives if gaol sentences were imposed. The first accused admitted the following previous convictions:

- 20.6.74 Drunkenness and assault, damage to property and trespass
- 23.10.74 Assault
- Nov. 74 Escape from custody

The second accused admitted previous convictions as follows:

- 2.8.74 Malicious damage (2 counts)
- 20.11.74 Escape from custody
- 12.5.75 Drunkenness, assault and damage to property
- 22.5.75 Drunkenness and damage to property

The Court considered the submissions of Counsel but pointed out that the theft, even if not premeditated, was quite deliberate. Account was taken of the fact that neither accused had previous convictions for theft, but at the same time, they certainly had police records and could not be considered as first offenders. Each accused was fined FNH.3000 to be paid on or before 30th September 1976 or, alternatively, one month's imprisonment. An Order was made under section 127D of the Criminal Procedure Code that 535FNH out of the fine in each case be paid to the complainant.

The third accused pleaded not guilty and the hearing proceeded against him.

The prosecution called the first accused who gave evidence that when he and the second accused went to the car and stole the money and towel, the third accused had not gone with them. When the third accused joined them afterwards, he told them to put the money back because he was frightened. The second accused said that the money should be shared, whereupon they gave 1100 francs to the third accused who took the money. The second accused gave evidence substantially corroborating the evidence of the first accused. He confirmed that he and the first accused were within clear vision of the third accused when they stole the money and towel from the car.

Constable No.60 Seule Takal then gave evidence that he investigated the theft, interviewed the third accused and took a cautioned statement from him. The third accused said that he was frightened of the money, knew it was stolen and handed the money to Chief Andy Reiman of Pango Village. The witness went to see Chief Andy Reiman with the third accused and recovered the money, 1100FNH from the Chief.

The third prosecution witness was Chief Andy Reiman who corroborated the foregoing evidence, that when the police came he called for the third accused who admitted he had 1100 francs and went and took the money out of a box and brought it to the Chief. The third accused had not spoken to him before the police came. The third accused told the witness that he was frightened of the money and forced to take it so he did not spend it, just kept it.

The third accused gave evidence on his own behalf which was not substantially at variance with the prosecution case. When the first accused told him he had some money from the car the third accused was afraid and said to return the money. On the evidence of the third accused it was not until they were back at Pango Village that the first accused gave the money to him. This is not inconsistent with the prosecution evidence. The third accused testified that he was expecting the police to come and was intending to tell the police what they had done and to give the money to the police. He agreed that the money had remained in his box for a full day before it was handed over.

The Court found that it was common ground that the intention to deprive the owner of property is an element of the offence of receiving as of theft. Such intention could be proved objectively, such as by evidence showing that the retention of the money was under circumstances in which restoration could easily have been made, or subjectively, namely evidence of what the accused says his intention to have been. In the present case the subjective evidence was clear; the accused said he had no intention to keep the money and deprive the owner, the objective evidence was equivocal, there was the possibility that the retention of 1100FNH by the accused for one day was innocent. The accused being entitled to the benefit of the doubt

was acquitted.

GIVEN at Vila the third day of September, one thousand nine hundred and seventy-six.

*L. Cazendres*

L. CAZENDRES  
French Judge

*R. M. Hampson*

R. M. HAMPSON  
Acting British Judge

*P. de Gaillande*

P. de GAILLANDE  
Acting Registrar