

HIGH COURT. Apia. 1954. 16, 18, November. MARSACK C.J.

Forgery - evidence against accused raised grave suspicions - not sufficient proof to convict.

Evidence which establishes very grave suspicion only against an accused person is not sufficient proof to convict him of a criminal offence.

Information dismissed.

Phillips, for accused.

Cur. adv. vult.

MARSACK C.J.: The evidence establishes clearly that a cheque No. 551299, drawn on the account of J.B. Fonoti for £50, and cashed by the Bank of New Zealand, Apia on the 13th May 1954, was forged. The case for the prosecution is that accused, who was employed as a general clerk in the office of J.B. Fonoti from the 1st to 28th April 1954, entered the private office of Fonoti by night on two occasions, namely, the 12th and 17th May 1954. On the first of these occasions it is alleged that he stole cheque No. 551299; on the second of these occasions that he stole cheque No. 551298, and filled in the butts of both the cheques which he had stolen. The prosecution further contends that it was the accused who forged cheque No. 551299 and by presenting it obtained a sum of £50 from the Bank of New Zealand by means of the forged document.

The evidence against the accused may be shortly summarised as follows:

1. He was seen, in the company of others, during the evening of both the 12th and 17th May sitting on the steps on the outside of Fonoti's premises. I accept this evidence and reject the evidence of an alibi tendered on behalf of the accused.
2. Cheque No. 551299 was made out in the name of Samu Peleti, who is well known to the accused and who has been in New Zealand for over three years.
3. In the opinion of Mr N.O. Maitland, Manager of the Bank of New Zealand, Apia, the handwriting on the cheque is that of the same person as wrote other documents produced, admittedly written by the accused.

This evidence raises very grave suspicion against the accused. If his presence in the vicinity of Fonoti's premises on the 12th and 17th May was innocent there was no need for him to lie about it. The evidence of Mr Maitland as to similarity in the specimens of handwriting is impressive. The fact that the accused knew Samu Peleti well and presumably was aware of his absence in New Zealand permits the inference that accused - in common possibly with others - would think of Samu Peleti's name as a suitable one to show as payee on a cheque which he himself proposed to cash.

At the same time I do not think the evidence is strong enough to support a conviction for forgery. The only really telling evidence against the accused is that of Mr Maitland, and that is admittedly evidence of opinion only. Although I am satisfied that Mr Maitland has very good grounds for his opinion, yet I would hesitate to enter a conviction, involving in all probability a term of imprisonment, unless that opinion were supported by some substantial factual evidence. If it had been shown for example that after the 13th May the accused had suddenly shown signs of affluence, that would have made the case against the accused much stronger; but no evidence of that sort was brought forward. It must be remembered too that Fonoti's store is situated in a busy thoroughfare, and if accused had twice climbed up to the verandah by night - on the second occasion staying long enough and using enough light to fill in two cheque butts - then he must have been extraordinarily fortunate to escape detection on both occasions. Evidence

of any illegal entry, or an attempt at illegal entry, on the premises would have been substantial factual collaboration of the evidence given by Mr Maitland. Here again no such evidence was brought before the Court.

For these reasons I am of the opinion that the evidence produced by the prosecution falls somewhat short of the standard of proof necessary to sustain a conviction on a criminal charge, and the information will be dismissed.