

THE HIGH COURT OF THE WESTERN PACIFIC
(CRIMINAL JURISDICTION)

BEFORE: His Lordship 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 *Monday* day
the ~~25th~~ ^{25th} day of April,
1966, at ~~11:15~~ ^{11:15} o'clock in the
fore noon.

REGINA

versus

PETER RIFALEA

For the Crown: *ASP. G. Hindhaugh*

For the Accused: In person unrepresented

Interpreter: *Bartholomew Riolo (To'obiatā language)*

Charge explained to the accused: *V.S.B.* *Sworn on Bible.*

Accused when called upon to plead says:

FIRST COUNT *Not Guilty.*

SECOND COUNT *Not Guilty.*

Court enters a plea of:

FIRST COUNT *Not Guilty.*

SECOND COUNT *Not Guilty.*

In this case the Accused, Peter Rifalea, stands charged under two counts.

Firstly Burglary under Section 292(a) of the Penal Code, and
Secondly Simple Larceny under Section 254 of the Penal Code.

Burglary means breaking into a dwellinghouse at night with the intention of committing a felony, and simple larceny means stealing.

The evidence before the Court regarding the burglary is that of Mrs. Coleman the first witness for the Prosecution and she said that on the 11th of June, 1965 her house at Rove West, Honiara, was broken into at night and certain cutlery and some food were stolen.

Now as regards the breaking into the house she says that when herself and her husband went to bed at about 11 o'clock at night on the 11th of June all of the house was shut up, the doors and the shutters being locked, except one shutter which was closed but could not be locked down. In the morning she found that the kitchen door which led to the outside of the house was open, when the night before it had been shut and locked, and she also found that certain knives and forks and food had disappeared. She reported to the Police and nothing more was heard about the matter until the 14th of March, 1966 when she was called to the Police Station and was asked to identify the contents of the box exhibit 'A'. That is a box exhibited containing knives and forks which was found in the possession of the Accused on that day. Now Mrs. Coleman identified the knives and forks as being identical with those stolen from her house. Knives and forks look very much alike and she was not able, therefore, to identify them positively as being her knives and forks but she does say that they are exactly the same kind and cannot be bought anywhere in Honiara. She says also in her evidence that the accused had been her servant. He had been her servant for about six months in 1964 and again in April and May of 1965. He therefore knew the house and its peculiarities. One of those peculiarities was that the storeroom, in which some of stolen cutlery was kept, was locked each night and the key was hidden under a teapot-stand in the kitchen. She says that that had been the practice for a long time. She says that her servants would have known about that, but I presume that few people outside the household would be likely to have known about it.

The next step in the evidence is the evidence of Detective Corporal Paul Baekalia (PW2). Acting in information received he went to the house where the accused was living on the 14th of March, 1966 and there in the presence of the Accused he searched his belongings and there he found the above mentioned box, Exhibit 'A', and its contents. He asked the Accused where he got these knives and forks as they did not appear to be articles which he would be likely to possess. Accused said to him that he had been given those knives and forks by a lady, unnamed, in Onepusu, Malaita. The Detective Corporal says that he did not believe this so he went all the way over to Malaita to see if he could find out anything more about the matter. He says that he could find nothing relevant there, so he came back from Malaita and after further investigation he charged the Accused.

Under caution, which I have no reason to believe was not properly given, the Accused made a statement (Exhibit B1/B2). I have no reason to believe that that statement was not voluntarily made and properly taken and this is what the Accused said:

"It is true; I was the one who took the knives and forks".

That statement is fully corroborated by the fact that the stolen knives

and forks, or at least some of them, were found in the Accused's possession. The Accused offers no explanation nor does he contradict or retract that cautioned statement. On that evidence, therefore, I have no doubt whatever, and it is the duty of the prosecution to satisfy me of that, that it was the Accused who stole the knives and forks.

There remains the question as to whether the Accused committed a burglary in a legal sense. There are two things which satisfy me of this. There is no doubt, on Mrs. Coleman's evidence, that the offence was committed during the night and that she and her husband had locked up the house. They locked it up all except that one shutter which would not lock but which they had closed. Whoever entered the house that night got in in some way in opposition to the occupants will either by opening a closed and locked door or by opening a shutter which had been shut against intrusion. The evidence of Mrs. Coleman was that this one shutter could be reached only by means of climbing up some wooden louvres. Then entry could be effected. Now, if that is what happened there is no question in law but that it was a house breaking at night. The necessary intent to commit a felony, I infer from the fact of the theft which I have found to be established. The evidence leaves me in no doubt at all that that is how the entry was made because all of the doors were properly locked but in the morning the kitchen door was open and there is no evidence that it had been forced. I have no doubt it was opened from the inside after the intruder had made his entry by way of the louvres and the unlocked shutter. That it was the Accused who made the entry I also have no doubt because he admits in his statement (Exhibit B1/B2) that it was he who took the cutlery and in order to do this it follows that he must have entered the house.

On the evidence, therefore, I am left in no doubt but that it was the Accused who committed both the burglary and the larceny charged in this case, and I convict him on both counts accordingly.

REASONS FOR SENTENCE

I have found you guilty of burglary which is an extremely serious offence and indeed carries a maximum sentence according to the Law of imprisonment for life. Also I have found you guilty of simple larceny.

Now the prosecuting officer has suggested that you seem to be rather dull of mentality. From what I have seen of you in this Court I do not think you are very dull at all and I am quite certain that as a servant of Mrs. Coleman, when you left her service, you knew perfectly well about this window shutter, you knew perfectly well also where she kept her knives and forks; you also knew perfectly well where she kept the key to the storeroom and you quite deliberately went back to the house at night, forced an entry by the means which you knew and stole those things. I have convicted you of doing that. House breaking at night will not be tolerated by this Court and I am going to send you to prison for one year, that will be one year in respect of the house breaking and I shall also sentence you to prison for three months for the larceny of the knives and forks, but I shall order those two sentences to run together so that the total imprisonment will be one year. Those sentences will take effect from the end of the sentence which you are now serving. I am not regarding that sentence as being a previous conviction. Your sentence would be heavier were I to do so.

If you come before this Court again for a similar type of offence you need not expect such a lenient sentence.

Now the sentence is twelve months in respect of the First Count and three months in respect of the second count to run concurrently and there will be an Order to release the knives and forks to Mrs. Coleman.