A

NGOROFIAMAE

v.

B

REGINAM

[COURT OF APPEAL, 1967 (Mills-Owens P., Gould J.A., Marsack J.A.), 3rd, 18th July]

Criminal Jurisdiction

C *Criminal law—evidence and proof—burglary—proof of by application of doctrine of recent possession—Penal Code Ordinance 1963 (B. S. I. P.) ss.254(1), 292(a).*

The complainant's house was broken and entered by night and property stolen therefrom was found in the possession of the appellant the following morning. The appellant offered a messenger money to keep silent about the matter and later made a statement in which he admitted taking the property.

D

Held: Though, by reason of the additional evidence available, the situation did not arise, it is not the law that a conviction for burglary can never be supported solely by evidence of recent and unexplained possession of the property stolen.

E Cases referred to: *R. v. Exall* (1866) 4 F. & F. 922; 176 E.R. 850; *R. v. Loughlin* (1951) 35 Cr.App.R. 69; [1951] W.N. 325: *R. v. David Kio* [1967] 13 F.L.R.21: *R. v. Andrea Chonyo* [1962] E.A. 542.

Apeal against conviction and sentence by the High Court of the Western Pacific.

R. I. Kapadia for the appellant.

F *T. U. Tuivaga* for the respondent.

The Court, having dismissed the appeal at the conclusion of the hearing, the reasons for its judgment were read by Gould J.A.: [18th July, 1967]—

The appellant was convicted by the Chief Justice of the Western Pacific at Auki on two counts, the first of which was burglary contrary to section 292 (a) of the Penal Code of the British Solomon Islands Protectorate G (No. 12 of 1963) and the second larceny, contrary to section 254 (1) of that Code. He was sentenced on each count to 18 months imprisonment, to be served concurrently. At the conclusion of the hearing of his appeal to this Court against conviction and sentence on each count, we dismissed the appeal in both its aspects and now give our reasons for that decision.

H We deal first with the appeal against conviction. The only ground argued was that the conviction was unreasonable and could not be supported having regard to the evidence. There was in fact ample and uncontested evidence of the breaking and entry of the complainant's house by night on the relevant date and of the theft therefrom on the same

night of the subject matter of the charge; this was Australian money and native money described in the Judgment as "custom shell money" all contained in a string basket. Early the following morning the appellant was found at his village, by a messenger sent by the Assistant Headman of the district, in possesssion of the basket, the native money, (which according to the evidence is identifiable) and some Australian money. He offered A$3 to the messenger to keep silent about the matter. Furthermore the appellant, in a cautioned statement found by the learned Chief Justice to have been voluntarily made, admitted taking the money.

In the face of this evidence, which being accepted, constituted a strong case against the appellant, counsel's submission that the conviction could not be supported having regard to the evidence, was a hopeless one. He argued however, that the possession of the stolen articles soon after the theft might support a conviction of receiving stolen goods but not one for breaking and entering. We have two comments upon this submission. The first is that the learned Chief Justice did not have to decide whether the recent possession alone and unexplained, would have been sufficient to justify a conviction of larceny and breaking and entering. As we have just pointed out, there was the appellant's confession that he had committed the larceny, from which the only possible conclusion is that he was at least a party to the breaking and entering. As the learned Chief Justice put it, his Judgment was based on all the evidence "and relating the recent possession of the goods by the accused to his statement made to the police that it was he who took the money".

Our second observation is that, if counsel's proposition was that, as a matter of law, a conviction for burglary can never be supported solely by evidence of recent and unexplained possession, his submission is contrary to authority, though we repeat that situation did not arise in the present case, and there is no need to consider the cases in detail. The headnote in *Regina v. Exall* (1866) 4 F. & F. 922; 176 E.R. 850 reads:—

> "On a charge of burglary, possession by the prisoners of part of the stolen property very soon after the burglary, with an account given of it not reasonable or credible, is sufficient prima facie evidence, without express evidence to falsify it. It is so, however, only if upon all the circumstances in the case the account given is not reasonably credible."

There is the following statement by the Court of Criminal Appeal in *R. v. Loughlin* (1951) 35 Cr.App. R 69 at 71—

> "If it is proved that premises have been broken into, and that certain property has been stolen from those premises, and that very shortly afterwards a man is found in possession of that property, that is certainly evidence from which the jury can infer that he is the housebreaker or shopbreaker and, if he is, it is inconsistent to find him guilty of receiving, because a man cannot receive from himself. That is what is often done. It is perfectly good evidence of the prisoner being the housebreaker that he is found in possession of property stolen from a house quite soon after the breaking."

R. v. Loughlin was applied by this court in *Regina v. David Kio* (1967) 13 F.L.R. 21, and was referred to in the East African case of *R. v. Andrea Chonyo* [1962] E.A. 542, in which the doctrine of recent possession in relation to proof of crimes other than receiving and larceny is considered in some detail.

In the present case, of course, the evidence that the appellant was guilty of the theft was not a matter entirely of inference from his possession A of the stolen property, but had the substantial support of his own confession. For the reasons given we dismissed the appeal against conviction.

We could find no merit in the submission that a sentence of eighteen months' imprisonment was manifestly excessive for the crimes of burglary and larceny. The maximum sentence which may be imposed for an offence under section 292(a) of the Penal Code is life imprisonment, which B indicates that housebreaking by night is not an offence lightly regarded. Counsel did make a suggestion from material in the record that the motive for the crime may have had its origin in a family dispute. It is clear from the record that the learned Chief Justice had this possibility in mind during the trial and there is no reason whatever to suppose that in passing sentence he did not give the matter such weight as, in his estimation, it may have merited. We found no basis at all for any variation of the sentence by this Court.