A

ROY NAPUNI

v.

B

REGINAM

[COURT OF APPEAL, 1969 (Knox-Mawer P., Marsack J.A., Spring J.A.) 28th February, 4th March]

Criminal Jurisdiction

C *Criminal law—evidence and proof—stealing in dwelling house—theft of bank notes—unusual amount in notes in possession of accused on following morning—false explanation—doctrine of recent possession—Penal Code Ordinance 1963 (British Solomon Islands Protectorate) s.262(a).*

The appellant was convicted of stealing the sum of $63 in a dwelling house. It was proved (a) that the appellant on a particular day had been in the house of the complainant and had seen the latter take money
D from his wooden box (b) that on the following morning the box was found forced open and the sum of $63 was missing from it (c) that on that same morning the appellant, while waiting to be searched by a police constable, was seen to scrape a hole in soft sand with his foot and to bury notes amounting to $53 — he had one further dollar note in his shirt, and (d) he lied both as to the amount he had buried and in
E his explanation of how he came to be possessed of the amount he admitted having.

Held: 1. On the facts it was a reasonable inference that the appellant was a man of meagre means.

2. The evidence was sufficient to establish that the notes were those
F owned by the complainant, and the trial judge was entitled to take into account, in determining the guilt of the appellant, the false explanation given by him of his possession of them.

Cases referred to:

R. v. Young & Spiers (1952) 36 Cr.App.R. 200; [1953] 1 All E.R. 21: *R. v. Loughlin* (1951) 35 Cr.App.R. 69; [1951] W.N. 325: *H. v. Seymour*
G (1954) 38 Cr.App.R. 68; [1954] 1 All E.R. 1006: *R. v. Garth* [1949] 1 All E.R. 773; 33 Cr.App.R. 100.

Appeal from a conviction by the High Court of the Western Pacific at Kira Kira.

H *H. A. L. Marquardt-Gray* for the appellant.

G. N. Mishra for the respondent.

The facts sufficiently appear from the judgment of the Court.

Judgment of the Court (read by SPRING J.A.): [4th March 1969]—

This is an appeal against the conviction by the High Court of the Western Pacific sitting at Kira Kira in the British Solomon Islands Protectorate of the offence of stealing in the dwelling house of one James Noni the sum of $63 contrary to the provisions of section 262 (a) of the Penal Code Ordinance 1963 of the British Solomon Islands Protectorate. The trial took place before the Chief Justice sitting alone. The notice of appeal originally filed was against sentence only. At the hearing of the appeal before this Court leave was granted to appeal against conviction and the appeal against sentence was abandoned.

The facts may be stated briefly. The theft with which appellant is charged is alleged to have taken place at Otabe in the Reef Islands on the night of the 22nd May, 1968, from the dwelling house of James Noni who kept his money in a wooden box fitted with an insert lock in his house. During the day of the 22nd May, 1968, the appellant came with another man, Naipala, to the dwelling house where Naipala requested Noni to change $2 into silver. Noni did so, taking the money from his wooden box in the presence of the appellant. On the following morning Noni found that his wooden box had been forced open, and the sum of $63 was missing therefrom. The police, who were visiting the Reef Islands, investigated the theft and went to a village where four men were found drinking in a house. The Constable lined the four men up outside the house. While interviewing one man he saw the appellant put his hand into his trouser pocket, pull out some notes, scrape a hole in the soft sand with his foot and bury the notes. The Constable in the presence of the appellant picked the notes out of the sand. They amounted to $52. He then searched the appellant and found a further $1 in his shirt pocket, making $53 in all. The appellant stated at the trial that he had buried only $26, of which $20 he claimed had been given to him by his father in February, 1968. His father, who gave evidence for the prosecution, stated that he had given his son only $2 in May, 1968. The $20 had been given him over two years previously.

The grounds of appeal are as follows :—

"(a) That the learned trial Judge erred in law in convicting the appellant when the prosecution failed to establish the ownership of the alleged stolen property.

(b) That the learned trial Judge erred in law in that he reversed the onus of proof in requiring the appellant to give an explanation of how he came into possession of a sum of money instead of requiring the prosecution to prove that the money in possession of the appellant was the property of the complainant.

(c) That the verdict is unreasonable or cannot be supported having regard to the evidence adduced at the trial."

Turning to the first ground of appeal learned counsel for the appellant argued that the notes found in the sand and on the person of the appellant had not been identified as the stolen property. He argued further that on the night of the theft the appellant had not been seen breaking into, or in the vicinity of the dwelling house. This latter contention has little if any weight when the accused is found, shortly after the theft, in possession of the stolen property. It is stated in *Halsbury's Laws of England* 3rd Edn. Vol. 10 at p.784 :—

"Evidence that the defendant was seen to take the goods in question is not essential; it is sufficient if he was found in possession of

stolen property shortly after the theft; in such a case the Jury are generally warranted in concluding that he stole the goods or "came by them dishonestly unless he give a satisfactory explanation to show how he came by the goods. The weight of such a presumption depends upon the nature of things stolen and the length of time which has elapsed since the stealing."

The important question involved in the first ground of appeal is thus the identification of the notes found in appellant's possession with those stolen from James Noni. In *R. v. Young & Spiers* (1952) 36 Cr.App.R. 200 it was suggested that there was no evidence against the appellants on two charges of larceny because the stolen property, metal, was not identified. The metal was new, untarnished and recently milled and there was a considerable quantity of it. In those circumstances the Jury found that it was stolen and the Court of Criminal Appeal refused to interfere with the conviction. Lord Goddard L.C.J. at p.201 said :—

"It has been laid down over and over again that the circumstances of the case may justify a jury in coming to the conclusion that there has been a larceny or a receiving of the property."

See also *R. v. Loughlin* (1951) 35 Cr.App.R. 69 at p.71 where Lord Goddard L.C.J. said :—

"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 house breaker or shop breaker."

In this case there was evidence of the breaking and entering of the dwelling house and the theft of $63. Further there was evidence that on the following morning the appellant, when about to be searched by a police constable, was seen to take some dollar notes from his trouser pocket and bury them in soft sand alongside him. The explanation given at the trial by the appellant as to his possession of the $53 not only lacked the ring of truth but also included the fantastic claim that he had buried only $26 in the sand and that the constable had added other moneys to bring the sum up to $53. Further the appellant was contradicted on oath by his father when asserting that the money found in his possession was a gift from his father. Noni gave evidence as to the denomination of the notes stolen, and the constable who obtained the $53 in the manner described produced them to the Court. They were seen by the learned trial Judge, who listed them as Exhibit P.4 according to the record.

There is the further circumstance in the present case that on the facts it was a reasonable inference that the appellant was a man of meagre means, yet the morning following the theft he was found to be in possession of a comparatively large sum of money. Whilst it may have been desirable for the learned trial Judge to require Noni to identify the notes produced as his, we are nevertheless of the opinion that there was ample evidence before the learned trial Judge to justify his finding that the notes buried by appellant in the sand and found in his possession were the notes stolen from the dwelling house of Noni. As the learned authors of *Wills' Principles of Circumstantial Evidence* 7th Edn. state at p.240 :—

> "It is not, however, necessary that the identity of the stolen property should be invariably established by positive evidence . . . . . The circumstances may render it impossible to doubt the identity of the property or to account for the possession of it by the party accused upon any reasonable hypothesis consistent with his innocence."

In our view the ownership of the property found in the possession of the appellant was established by the evidence, and therefore this ground of appeal fails.

As regards the second ground of appeal counsel for the appellant argued that the learned trial Judge had placed the onus of proof upon the appellant to explain how he came into possession of the money and referred to the following passage in the judgment :—

> "The accused has given no explanation as to how he came into possession of the money or why he had to hide it."

The appellant elected to give evidence and in the course thereof gave a most unsatisfactory explanation as to his possession of the dollar notes. Possession of stolen property shortly after it has been stolen is one of the commonest forms of circumstantial evidence indicating that the possessor thereof is the thief or the receiver. It is, of course, not for the accused person to prove his innocence; but should he give an unsatisfactory explanation to account for his possession of stolen goods a jury would, depending on the circumstances, be entitled to infer that he either stole the property or received it knowing that it had been dishonestly obtained. As Lord Goddard said in *R. v. Seymour* (1954) 38 Cr.App.R. 68 at p.70 :—

> "Where it is proved that property has been stolen and that very soon after the stealing the prisoner has been found in possession of the property it is open to the jury to find the prisoner guilty of stealing and the jury should be so directed."

See also *R. v. Garth* [1949] 1 All E.R. 773.

In this case we are satisfied that the learned trial Judge did not reverse the onus of proof. The appellant elected to give evidence; and the explanation put forward as to his possession of the stolen property having been rejected by the learned trial Judge, rightly so in our view, there was a strong presumption that the appellant was the thief. The learned trial Judge was entitled to take this into account in determining the guilt of the appellant.

Accordingly we dismiss the second ground of appeal.

The third and last ground of appeal has to be determined purely as a matter of fact. We have examined the evidence and the findings of fact by the learned trial Judge to ascertain if he drew the correct inferences from that evidence. In our opinion the cumulative effect of the facts as found by the learned trial Judge together with the appellant's account of the whole matter points inescapably to the guilt of the appellant and we are unable to find any substance in this ground of appeal which therefore fails. As we can find no merit in any of the grounds the appeal is accordingly dismissed.

Appeal dismissed.