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**IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY**

CR 132 of 2021

BETWEEN : REX

- Prosecution

AND : PONI 'AHOHAKO

- Accused

BEFORE HON. JUSTICE NIU

Counsel : Mr T. Aho for the Crown.

Mr. Poni 'Ahoako, the accused, for himself.

Trial : 22, 23, and 25 November 2021.

Submissions : 1 December 2021.

Verdict : 15 December 2021.

VERDICT

Charges

[1] The accused is charged with 2 offences:

- (a) Serious housebreaking contrary to S,173(1)(b) and (5) of the Criminal Offences Act, in that, he on 9 February 2021 at Ha'ateiho entered Ramsey Dalgety's residence as trespasser and committed a crime there, and
- (b) Serious causing bodily harm contrary to S.107 (1), (2)(c) and (4) of the Criminal Offences Act, in that, he on 9 February 2021 at Ha'ateiho,

willfully and without lawful justification caused harm to Ramsay Dalgety when he hit his head with a teapot causing injury to this head.

Defence of Alibi

- [2] When this trial was set down on 9 November 2021 to be held on 22 November 2021, Crown counsel informed me, in the presence of the accused in Court, that the accused had just informed him that his defence was that he did not commit the offences because he was elsewhere at the time, and that the accused needed to give notice of his defence of alibi to the Crown at least 14 days before the trial, stating the names and addresses of his proposed witnesses.
- [3] I asked the accused whether that was his defence and he said yes. I then directed him to give to Mr. 'Aho straightaway that morning the names and addresses of his witnesses before he would be taken back to prison where he was being remanded in custody in respect of another matter.

Prosecution Evidence

- [4] The complainant Ramsay Dalgety gave evidence that he lived at his home at Ha'ateiho with his son, Neil, and that he returned home that day at about 2 in the afternoon while his son was still at work. He said that after entering his house he looked out the window and saw someone inside his property and that he shouted at the person and the person disappeared round to the front of the house and as he went along the hallway to the front, the front door burst open from outside and a male person in long sleeve black hood top and dark or black trousers attacked him and he kept the person away from him with his straight arm, his hand holding the person round the throat and fended off the blows from the hands of the person.
- [5] He said the person had shoes or work boots on and was kicking at his feet and thigh.
- [6] He said that they struggled like that up to a set of shelves and the person grabbed a china teapot that was on one of the shelves and smashed it against the left side of his head and that he fell down on the floor and the person kicked him on his back before he ran off.

- [7] He said nothing was missing from the house.
- [8] He said he rang his son's secretary and the police came over and he was taken soon afterwards to hospital where a doctor attended to him and he went home afterwards. He said he was in pain from his head and his back and had to stay home for a week. He said he later identified the accused from a set of photographs that he was shown by the police as the person who had entered and attacked him.
- [9] He was **cross-examined** by the accused and he said that he could not recall if the hood that the person had on had any picture on it and he said that he was only concentrating on the eyes of the person. He said the person was of the same height as himself more or less and that he was strong enough to push him (Dalgety) back.
- [10] He was asked whether there was any tattoo on the person's face and he said that he did not see any because he was only concentrating in his eyes and that was why he remembered his eyes afterward.
- [11] I was curious to know if the accused had any tattoo on his face and I got the accused to show me if he had any tattoo on his face and he showed me his face but I could not see any. He then came up close to the bench and I leaned over and looked and saw a small tattoo on the side of the left cheek of the cheek bone to the back of the cheek bone.
- [12] **Mr. Aho asked him** and he said that the hood did cover his head and that only his face was exposed but could not recall whether it was tied tight or loose around his face.
- [13] **I asked him** and he said that it had been raining and that there was a pool of water on the verandah as was shown in one of the photograph which the police took. He could also identify the muddy shoe print of the person on the floor of the hallway to the front door.
- [14] He identified the accused in an arrangement of 7 photographs of different male persons of about the same age as the person who broke into his house and

attacked him that day. He said that the police officer showed him the photographs at first and he could not identify the accused, and then the officer had a piece of paper with an oval shaped hole cut in the middle of it and placed it over each photograph showing only the person's face each time. This time he said he had no difficulty identifying the accused as the person who broke into his house and attacked him that day. The photographs were differently arranged on 3 separated sheets of paper and the complainant always identified the accused in each of those arrangements.

- [15] **Dr. Eliesa Ma'u** said that he saw the complainant in hospital at 3:50pm on 8 February 2021 and that he was complaining of pain on the left side of his head. He said he used an othoscope and looked into his right ear and saw a small injury in his right ear canal. He described it in his report as "minor haemorrhages on the right ear canal but not actively bleeding". He said there were small specks of blood on his right thigh and that there were "muddy skid boot marks on the left foot and on the legs".
- [16] He was shown the 4 descriptions (a), (b), (c) and (d) of "harm" in S, 107 (2) of the Criminal Offences Act and asked if the injury he found on the complainant fell into any one of these descriptions, and he said that the injury he saw fell into the description in (c) "any wound which is not severe".
- [17] The accused had no question to ask the doctor.
- [18] **Neil Dalgety**, son of the complainant said that his secretary contacted him at about 3:00pm that day and he rang the police to go and see about his father at home at Ha'ateiho and that he then went home.
- [19] **Sione Muni** said that his job at the petrol station at Lopaukamea on Taufa'ahau Road at 'Atele started at 3:00pm that day and that he saw a male person walking from 'Atele side to Veitongo side on the far side of the road, and that the male person was wearing a black hood top and long trousers and that it was after 3:00pm then.
- [20] **Tau'atina Taufa** said that he knew the accused and that he saw him at the 'Amanaki Lelei Store at the end of Veitongo towards 'Atele between 4 and 5 pm

that day and that the accused was wearing a black hood and long trousers and that he asked the accused what he was doing and that he said that he was buying something from the shop.

[21] **The accused asked him** and he said that the accused had come there in a vehicle and went into the shop.

[22] **I asked him** and he said that he asked the accused for money and that the accused gave him his change which was \$1.00 and some coins. He said that the driver of the vehicle was may be a girl, and that the vehicle had come from Atele direction. He said he did not know where it went from the shop. He said that the accused was living on the Liku road and that he himself had grown up in Veitongo.

[23] **On re-examination** he said that the road to the Liku Road branched off (to the south) from the Taufā'ahau Road right where the shop was.

[24] **Police sergeant, Patelesio Tu'itavuki** produced the photographs he took of the complainant's home. They showed the broken pieces of timber on the floor of the hall way to the front door, several meters from the doorway and the parts of the door frame from which they had been torn when the front door was burst open from outside.

[25] It also showed the shelves at the end of that hall way on which the china teapot had been, that is the 3rd shelf up from the floor, and the broken pieces of the teapot on the floor of the hallway to the side of the shelves, and the cane bound wire handle of the teapot lying some distance from the broken pieces of the teapot.

[26] One photo showed the muddy boot or shoe marks of the person on the floor of the hall way by the front door and other muddy marks of the shoes on that floor.

[27] He produced the broken pieces and handle of the teapot as exhibit.

[28] He said that he dusted the broken pieces for fingerprint but did not find any print on them.

- [29] He also produced a sketch plan of the house and also a google map showing the locations of the complainant's house on the north side but slightly to the back from Taufa'ahau Road, the Lopaukamea petrol station where Sione Muni worked, the Amanaki Lelei store at the end of Veitongo towards 'Atele and the road from Taufa'ahau Road to Liku Road where the accused lived.
- [30] **The accused asked him** and he said that they had only one photograph of the accused and which was the one they used for the photo identification. He said that he did not know if that photograph had been shown to the complainant previously and that the complainant had not identified him as the one who had committed these offences.
- [31] He was referred to the entry no.18 in the diary of action in which it was written that "D/Ahohako says here Neil Dalgety and Lord Dalgety have seen the photographs and they did not identify anyone in those photographs", and he said that he did not know about that at all. He said that D/Ahohako used to work at CID but had resigned while working on this case. He said he did not know if there was any relationship between that officer and the accused.
- [32] **Bray Lauti** police sergeant said that he was in a search party which searched the house of 'Ila at Liku Road and the accused was there and they arrested him. He said that they found and they took with them clothes of the accused. He said the complainant had identified the accused on 12 March 2021 and that the search they carried out was on 15 March 2021 and that the search was for drugs, and they found the accused there by chance.
- [33] He explained that Neil Dalgety had complained that there had been a housebreaking on 5 February 2021 and that Ramsay Dalgety complained that there was a housebreaking on 8 February 2021. He said he saw Neil on 21 February 2021 with the set of 7 photos but that neither Neil or Ramsay identified any one of the persons shown in those photos. And that on 12 March 2021, Ramsay identified the accused out of those 7 photos. He said that in the previous identification the oval hole in the paper method was not used, but that he used it on 12 March 2021 and Ramsay identified the accused then.

- [34] He said that Ramsay's house was on a side road from Taufā'ahau Road and was one allotment from the Northside of Taufā'ahau Road. He said he estimated that the distance from Ramsay's side road to the Lopaukamea petrol station was about 50 meter and that the distance from the petrol station to the junction at Veitongo to Liku Road was about 120 meters. He estimated that it was may be 2 kilometers from Taufā'ahau Road to where the accused lived on Liku Road.
- [35] The officer produced the clothes of the accused that they took away and they included one black hood jacket with the word "Boston" in white on it and one black track suit trousers with the word "AVPENOW" on it.
- [36] He said that when they arrested the accused on the night of 15 March 2021 he told him that he was being arrested for house breaking and assault and that the accused asked him whose house it was and that he told him that it a white man's and that he would tell him later.
- [37] He said that on 16 March 2021 the took the accused to the Magistrate and charged him with the present offences and that when they returned to the police station, the accused told him that he did not commit the offences because he was in 'Eua last month", meaning February 2021.
- [38] He said that on 18 March 2021, the accused said he wanted to talk to him and that when he went and talked with the accused, the accused told him that the clothes that he wore that day were the black hood jacket with "BOSTON" on it and the black trousers with "AVEPENOW" on it. He said that the accused asked him what time the offences were committed, and that he told him that it was 3:00pm. He said that the accused then said that he was with Darby and that they were going to get her kids from 'Atenisi school at that time.
- [39] He said that he wrote down what the accused told him in his notebook.
- [40] **The accused** ask him and he said that he saw the accused on the video at the Amanaki Lelei Store with a black plastic bad which he went and put in the vehicle and that he asked the accused about that video, and what was inside the plastic bag and that the accused said that it was junk food.

[41] **I asked** and he said that the time recorded on the video was 5:00pm and that the date was the 8th February 2021. I then asked the witness to put the black hood on himself and zip up the front to his neck and to pull the tie which was around the front of the hood around his face. When he pulled the tie together the front of the hood came together, around the face and only showed his face from the chin to just above his eyebrows. He could then tie the string of the tie under his chin. The back of his cheek could not be seen at all.

[42] I asked and he said that the video showed that the accused had some jandals on his feet with a strap over the flat of the foot. He said that they had looked for shoes or boots of the accused but could not find any and that he asked the accused for them and that the accused told them that he had given them away but that he did not ask him when he did that.

The Crown then closed its case.

Defence evidence

[43] **The accused, Poni 'Ahoako**, chose to give evidence and he gave sworn evidence.

[44] He said that he just did not know anything about what has been alleged against him and that he did not know what else to say but that he could answer any question.

[45] **He was questioned by Mr 'Aho**, and he said he was living with Darby on Liku Road in February 2021 and that it was true that he wore the black hood top and long trousers that day but that he was not the one who had broken into the house, or who had hit and kicked the complainant.

[46] He was shown the 3 sheets of 7 photographs and he agreed that it was his photograph that the complainant had identified each time but that it was not him who committed the offences.

[47] **I asked** and he said that he had asked his witnesses to come and give evidence but that they said that they did not want to. I asked if he still wanted to call them

to give evidence and he said yes. He then gave me their names and addresses, namely,

(a) 'Ila Mo'unga, Kolonga,

(b) Darby Bell, Kolonga, phone no. 871-8617

And I directed that subpoenas be issued to them to come to Court at 10:00am the following day.

[48] He said that he was at 'Atenisi at the time of the offences at the complainant's house at Ha'ateiho, before 3:00pm to pick up Darby's 2 children, Layla and Laretta from that school.

[49] He then told me that 'Ila Mo'unga had told him just that morning before the trial commenced, that Darby and the 2 children had left and gone to New Zealand and he was not sure if that was true. He said he wanted to call 2 girls from the office of the 'Atenisi school to come and give evidence but did not know their names.

[50] When the trial resumed the following day, I was given a copy of the passenger list of persons who had left Tonga for New Zealand on 16 November 2021, and it included the names of Darby, Layla and Laretta.

[51] 'Ila Mo'unga was called to give evidence but he did not appear, and the service officer informed me that he duly served him with the subpoena at 3:26pm on 23 November to come and give evidence at 10:00am that morning. I then issued a warrant for his arrest, and adjourned the trial to 9am the following morning. He was arrested and he gave evidence on 24 November 2021.

[52] **'Ila Mo'unga** said that he had known the accused for many years and that he came and lived with him and his girlfriend Darby and her two children at a house on Liku Road which they rented. He said the 2 girls were aged 6 and 7, and that they had bought a car to take the children to and from 'Atenisi School whilst he would use his own vehicle to go to his plantation at Kolonga, which is some distance away.

- [53] He said that Darby and Poni would drop the children off and pick them up after school. He said that one day he was sick and he was in bed and that Darby was calling out that the children had to be picked up, and he called the accused and the accused said he would go with Darby and that he told them, to buy him a bottle of liquor when they returned. He said they returned at around 4 pm but they did not bring his bottle.
- [54] He said that he just could not remember what day that was or its date or what month it was.
- [55] He said he remembered when the police came and searched and took the accused with them. He said he and Darby went and saw a lawyer the following day to get the accused released but he was not released, and that about 2 weeks later, he met up with the accused at his (accused's) mother funeral and that he asked him why the police had arrested him and that he said that it was a ticket and that was all he said and that he said that a prison officer was accompanying him so he could attend his mother's funeral at the time.
- [56] He said in the past months he had talked with the accused and that he told him that a lawyer or a judge had been beaten up and that he was being accused of doing it. He said he asked the accused when it was said to have happened and that the accused just shrugged his shoulders and said nothing else.
- [57] He said that they got him bailed out about 2 weeks after his mother's funeral and that he asked him about the charge of beating up the judge and he said that it was not him and that he believed him because at that time the accused would be picking up the 2 children. He said he could not remember who had told him the time at which the offences were committed but that the news was in the Taimi 'o Tonga newspaper.
- [58] He said that he believed that the accused was telling him the truth because the accused would not have left the house on his own without either Darby or himself taking him in the car. He said that the accused was innocent of the offences.
- [59] **When questioned by Mr. 'Aho**, he said that Darby always took the accused with her to pick up the kids. He however agreed that Darby sometimes went

alone to pick up the kids. He agreed he did not know where the accused was at all times and he could not recall which day the accused did what.

[60] He said that he had told the accused that he was not to leave the house except with him or Darby, and that if he did, he would not be allowed back to live with them, and that the accused followed that rule.

[61] He said that the school finished at 1pm and that the children were home by 3 or 3:30pm.

[62] He said that the accused never asked them to come and give evidence for him.

[63] **When questioned by the accused again,** he said that before the trial was to commence on Tuesday that week, he came to town and that the accused went over and asked him to come and give evidence for him and that he told the accused no and after "fist-touching" with him, he told him again no.

[64] **I then asked** and he said that Darby did not like to drive in Tonga but she had to go, as parent, to pick up the children, and that she could drive alone and did drive on her own in the car at times.

[65] I then adjourned the trial to 26 November and then to 1 December 2021 to enable the accused to speak to Darby by telephone to give her evidence by audio visual link but on 1 December 2021, the accused informed me that he had spoken with Darby and that she told him that she did not want to give evidence.

[66] I asked the accused and he said that he had no other witness to give evidence for him, and he accordingly closed his case.

Submissions

[67] I then asked the accused whether he was ready to make his submissions and he said that he was.

[68] He then said that all he could say was that it was not him who had committed the offences, and that he knew who did it because that person had told him that it was him who had done it.

[69] I asked him if that person would be willing to come and tell me that and he said no. He said that person was in the prison at the time. I told him that I could do nothing about that if he was not willing to tell me that person's name. He did not reply to that.

[70] Mr. Aho then made his submissions for the Crown. He said that the complainant positively identified the accused from the photographs as the person who had committed the offences, and that other evidence, namely that of the bowser attendant and of the person at the shop in Veitongo confirmed the presence of the accused in the area, as well as the clothes the complainant said the person wore.

[71] He said that the evidence of alibi raised by the accused failed to prove he was not there at the scene of the crime because the witness he called did not know what day the offence occurred and where the accused was on that day. He said that the evidence did not raise any doubt that the complainant could be wrong about his identification of the accused.

[72] He submitted that the accused be found guilty of the offences.

[73] The accused replied that the identification was wrong because the complainant had already seen his photograph before and had not recognised him then and that he suddenly subsequently recognised him afterwards. He said he did not agree that having the hole in the paper over the photo made the difference to the complainant to enable him to make the identification. He said that that photo of himself was of him in 2014 when he was much younger and should not have been used by the police.

Standard and burden on proof

[74] In considering the evidence in this case to see if the charges have been proved, I have to bear in mind that it is for the Crown, to prove that the accused committed the two offences, and to ensure that I am satisfied beyond reasonable doubt that the accused committed them.

[75] Just because the accused has said that he was elsewhere when the offences were committed does not remove the burden of proof, and standard of proof, from the

Crown. It still rests upon the Crown to prove that the accused committed the offences. It only means that the Crown must remove any reasonable doubt which might be created by the evidence of the accused that he was elsewhere at the time of the commission of the offences.

Proof of commission of the offences

[76] And just because the accused has said that he was elsewhere when the offences were committed, does not mean that the Crown does not have to prove the other ingredients of the two offences beyond reasonable doubt either. The Crown still has to prove the other ingredients beyond reasonable doubt as well.

Serious housebreaking offence

[77] Having heard the evidence of the complainant that the person burst through the front door, by either kicking or by putting his shoulder, with great force on the front door and forcing the door bolt to rip the metal latch on the door frame together with part of the timber door frame to split off the door frame and thrown several meters from the doorway on the floor of the hallway inside, and confirming that was what happened when I see the photographs produced in exhibit, and accepting the evidence of the complainant that he had not invited the person to do that or to come inside, and accepting that the person assaulted the complainant by punching and kicking him and hitting his head with a china teapot he took off a shelf in the house, I am satisfied beyond reasonable doubt that the person entered the complainant's house as a trespasser and that he committed a crime in the house. I am therefore satisfied that the offence was serious housebreaking beyond reasonable doubt.

[78] I therefore find that the other ingredients of the offence of housebreaking which is charged in count 1 of the indictment have been proved beyond reasonable doubt.

Serious causing bodily harm

[79] Having also heard the evidence of the complainant that the person hit him on the left side of his head with the china teapot and broke the teapot and which caused the complainant to fall down and that he received minor injury which bled

in his right ear canal as a result, as the doctor confirmed in his evidence, I am satisfied beyond reasonable doubt that the person seriously caused bodily harm to the complainant because he used the teapot as a weapon to cause the injury, although the injury was not severe.

[80] I am therefore satisfied beyond reasonable doubt that the other ingredients of the offence of serious causing bodily harm which is charged in count 2 of the indictment have been proved beyond reasonable doubt.

Identity of the person

[81] Now, as to the remaining ingredient of the two offences, namely the identity of the person who committed the two offences, I have to be satisfied beyond reasonable doubt that it was the accused who committed them. If I am not, I have to acquit him.

[82] In considering the evidence whether or not it was the accused who committed these two offences, and because the identity of the person is the substantial issue in this trial, I must caution myself with the same caution which the Court of Appeal of England laid down in ***R v Turnbull*** [1997] Q.B.224 and which has been summarised in Archbold 2003 at 14-17 as follows: Where the case depends wholly or substantially upon correctness of identification evidence, the judge should:

- a) Warn the jury of the special need for caution before convicting on the evidence;
- b) Instruct the jury as to the reason for such need namely that a mistaken witness can be a convincing witness;
- c) Direct the jury to examine closely the circumstances in which each identification was made.
- d) Remind the jury of any specific weakness in the identification evidence;
- e) Identify evidence which appear to support the identification but which does not in fact have that quality.

The identification

- [83] I have to consider the way in which the complainant identified the accused, namely, by having a paper with an oval hole cut out of it that fits just around the face of each person shown of each of the 7 photos. That was how he said he could identify the accused and that was why he could not identify him out of the 7 photos previously.
- [84] I find that explanation plausible, reasonable and convincing, when I had the officer Lauti put on and zip up the black hood jacket and told him to pull the tie around the front of the hood. When he did that, it only left the oval of his face showing just like when the oval hole in the paper was placed over the faces of each of the 7 persons in the 7 photos.
- [85] The complainant also said in his evidence that he was concentrating his attention on the eyes of the person whilst he was holding his neck at his arm's length from him at the time. I therefore accept that he would have been able to recall those eyes, and face, if properly separated by the oval hole in the paper from the rest of the body as shown in the 7 photos.
- [86] I also consider that it is relevant that he made that identification before the accused was arrested and had not seen him before at any time at all.
- [87] And I also consider that it is relevant that the accused was living some 2 kilometers away at the time and that he was travelling back and forth past his home to drop off and pick up the 2 children with whom the accused was staying at the time.
- [88] I also consider that the black hood which the complainant said the person was wearing at the time was similar to the black hood which the accused said that he wore that day, and which the bowser attendant saw the boy was wearing as he walked past the bowser away from 'Atele towards Veitongo at around that time.
- [89] I also consider that the accused could have come with Darby in the car to pick up the children from school but that he asked and he was dropped off in Veitongo and was again picked up from there before going to the 'Amanaki Lelei Store to buy his junk food.

The teapot

- [90] I have also considered the china teapot, and how the person would have held it and had hit the complainant's head with it when the complainant was holding him away from him at arm's length. If the person had held it by the round body of the teapot, that is, if his fingers could go around it sufficiently to have a firm grip of it, then it was possible for him to have hit the complainant with it by holding it that way with sufficient force to smash the teapot and knock the complainant down to the floor.
- [91] But it would not be possible for him to hit the complainant with it on the left side of his head, which I accept he did, because his hand with the teapot in it would not have reached the complainant's head because his arm would only be as long as the complainant's arm which was holding him away by holding on to his neck, and the complainant said that the person was more or less the same height as himself.
- [92] But the teapot had a handle made of very thick and stiff wire bound with sliced cane wound around it, as shown in the photograph no. 11 produced by Officer Tu'itavuki. It is clear that the person had grabbed the teapot by that handle. That would have extended the reach of the teapot from the person's hand to the complainant's head, as indeed it did.
- [93] If the teapot had been held by its body when it was smashed on the complainant's head, the handle would have fallen on the floor together with the broken pieces of the teapot, but it did not. It was found and was photographed quite some distance away and at another area along the same hallway. It is more likely that it was thrown or dropped there by the person as he was running off to the front door after he kicked the complainant on the back as the complainant said he did.
- [94] That evidence to me supports the evidence of the complainant that he had held the person by the neck and had kept the person at arm's length from him at all times they were struggling in the house, and it supports his evidence that he had concentrated his attention and gaze on the eyes and face of the person in all that time, such that when the paper with the oval hole was placed over each

photograph, he was able to recall the face that he had seen in his house that day.

[95] That is why I consider that his evidence is convincing and I consider that he was not mistaken, and that he correctly identified the accused as the person who had broken into his house and caused the injury to his right ear canal by hitting his head with the teapot.

The Alibi

[96] But what I find most damaging to the accused and most supportive of the complainant's evidence was that the accused lied to Officer Lauti that he did not commit these offences because he had been in 'Eua when they were committed. At the time he told Lauti that, he had known that he had just been charged before the Magistrate with having committed the offences on 8 February 2021. I would have thought he would have asked Lauti where the offences were committed and what time they were committed, if he had not committed them. Instead he straight away lied that he did not commit them because he said he was in 'Eua at the time. He gave no evidence that he was at 'Eua at all.

[97] I also consider that he had ample time after he was released from custody to ascertain where he was and what he was doing at the time and date of the offences and to have had the witnesses who would verify where he was at that time on that date, but he did not do any such thing.

[98] I therefore find that I do not believe the alibi which the accused has given evidence about at all. I believe the evidence and the identification which the complainant has made instead.

[99] Finally, I do not believe the accused's evidence that a person at the prison had told him that he was the one who had committed these 2 offences at the complainant's house on that day at all.

Conclusion

[100] I therefore come to the conclusion, having duly considered the **Turnbull** cautions which I outlined above, that it is safe to accept the identification which

the complainant has made. I am therefore satisfied beyond reasonable doubt that the accused committed both the two offences.

Verdict

[101] Accordingly, I find the accused, Poni `Ahoahako, guilty of both offences in counts 1 and 2 of his indictment and convict him accordingly.

Nuku'alofa: 15 December 2021

