

IN THE SUPREME COURT OF TONGA

NO.CR.132-135/00

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

REX

-V-

KOMANI TUKIA

BEFORE THE HON. CHIEF JUSTICE WARD

COUNSEL : *Mr Kefu for the Prosecution and Mr Veikoso for the Accused.*

Date of Hearing : *29 and 30 January 2001*
Date of Judgment : *1 February 2001*

Judgment

The accused has pleaded not guilty to a single count of Abetment of Armed Robbery. The indictment wrongly charges the offence under sections 15 and 154(1) of the Criminal Offences Act when it should have been under sections 8 and 154(3). However, the actual offence charged is clearly stated and understood by the defence so I proceed on the basis of the charges under the correct sections

The evidence is short. There is no dispute that there was an armed robbery on 28 February 2000 in which Zhu Ai Yu, a Chinese man who runs a delivery business, was attacked whilst he drove along a narrow rough road. During the course of the robbery, he was struck on the head and the hand apparently with a baseball bat and sustained nasty injuries. His attackers then drove off in his van taking all its contents. The prosecution case is that there were three men involved at the scene of the attack, Matiasi Taufu, Peni Malafu and Tevita Lavaki. There is no suggestion that this accused was involved at that stage.

The van was recovered, damaged, the next day near the sea where there had apparently been an attempt to dispose of it. The contents, apart from a few slippers, were missing as was the vehicle's radio.

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This accused was seen by the police on 21 April 2000 and interviewed under caution. The answers given and the statements he made are not challenged.

He was first asked if he knew why he was there and replied that it related to a Chinaman's delivery. The interview continued:

Q - Can you tell me about it in detail?

A - Yes, it was a delivery van of a Chinaman who was beaten up by Tevita and the man ran away while there were goods in the van.

Q - Did you actually see what happened?

A - No.

Q - How did you know about it?

A - I knew about it when Peni Malafu came to Mataiasi Taufu's home and asked me to go with him to the Mormon church at Ha'ateiho because Mataiasi and Tevita were waiting there in the delivery van."

The accused explained that the four of them lived in Mataiasi's house and recalled that Peni came for him at about 9 pm. He was then asked, "When Peni called you what did you understand then?" and he replied, "Nothing but between Mataiasi's house and where the other two were waiting, Peni explained to me and then I understood it was a stolen van of the Chinaman."

He said they then drove the van to an allotment on the Liku road and took the goods that had been in the van by foot to the kitchen adjacent to Mataiasi's home. The accused made three such journeys. They then consumed or used the stolen items.

He then told the police that Mataiasi and Tevita had taken the van and parked it near the sea and was asked, "Did you plan anything about the van?"

A - "After we took the goods we went back to burn the van but the police were already there and they chased us and we went back to Ha'ateiho."

In court the accused gave evidence and explained that Peni had come and asked him to go with him to see the other two. As they went along the road "he explained what occurred earlier". Later in his evidence he said, however, that he was only told it was delivery van. He knew it did not belong to them and belonged to someone else so he knew he was involved with stolen goods.

Later in his evidence he agreed that the other three told him as they drove the van that they had "forced the van from the Chinaman". It was after that he was involved in the carrying of the goods and the journey to burn the van.

Mr Veikoso for the accused asks the court to consider that the evidence reveals a case of receiving stolen goods and that is the offence with which he should have been charged. The accused, he suggests, did not take any part

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in the robbery and was simply dealing with the goods the others had already stolen.

I cannot agree. Abetment under section 8 of the Criminal Offences Act makes "every person who knowingly does any act for the purpose of facilitating the commission of an offence by any other person" an abettor.

In the present case, the other three men actually committed the offence of armed robbery. That offence included the attack on the victim, the taking of the van and the final disposal of the goods and the van. Until all those events had been carried out, the offence of armed robbery was still being committed.

On the evidence before the court, I am satisfied beyond any doubt that the accused knew full well that he was helping Peni and the others to commit the offence albeit in the last stages only of that offence. The assistance with the final removal of the goods that had been in the van and the fruitless journey to burn the van were all steps taken knowingly by the accused to facilitate the commission of the other men's crime.

I am equally satisfied that his answers to the police show that he was told the full nature of the crime he was abetting by Peni as they went along the road to Mataiasi's house the first time. Having described, in his interview, how Tevita had beaten the Chinaman, he was asked if he had seen it and said that he had not but had heard about it when Peni came and asked him to go to join the other two. I am satisfied that, at that point, he knew enough of the details to be aware that the crime he was going to assist was one of armed robbery.

I should add that, had I not been satisfied that he knew it was armed robbery, I would still have convicted him of the offence charged. The definition of abetment requires knowledge that the act is done to facilitate an offence. The prosecution must prove that the accused knew that an offence was being committed and did some act to assist knowing that act would facilitate the commission of the offence. The fact he does not know the actual details of the offence gives him no defence.

The accused is convicted as charged.

[Handwritten signature]

Nuku'alofa: 1st February, 2001

CHIEF JUSTICE