on government land. The Court held in *Marbou*, however, and it is equally applicable to the present case:

"This is not sufficient to put the accused in the position of a person who takes property in good faith with the consent of an employee of the owner, honestly and reasonably believing the employee is authorized to give such consent."

The appellant thought the councilman could give consent to cut the tree but the councilman was not an employee or agent of the owner (the Trust Territory Government) and had no authority over this forest preserve whatever. All the technical elements of larceny were present. *Ebas v. Trust Territory*, 2 T.T.R. 95.

The judgment of the District Court is affirmed.

JOSEPH NGIRACHELUOLU, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 425

(District Court Criminal Case No. 7904)

Trial Division of the High Court

Palau District

September 29, 1972

Appeal from grand larceny conviction. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that conviction could be had on basis of circumstantial evidence, even though defendant directly denied commission of the crime.

1. **Criminal Law—Evidence—Circumstantial Evidence**

   A crime may be proved beyond a reasonable doubt by purely circumstantial evidence.

2. **Criminal Law—Evidence—Circumstantial Evidence**

   In a criminal case, circumstantial evidence may be fully as satisfactory as, and will sometimes outweigh, direct testimony.

3. **Larceny—Evidence—Circumstantial Evidence**

   Grand larceny conviction could be had upon circumstantial evidence which trial judge believed far outweighed defendant's direct denial

that he took the money and statement that he won money found in his possession in a dice game.

4. **Criminal Law—Trial Procedure—Reopening Trial**

Where an essential point has been omitted in a criminal prosecution and it appears evidence on the point is available, the trial may be reopened, or the case remanded, for the taking of additional evidence; but in either event, the accused is not entitled to an acquittal.

5. **Larceny—Grand Larceny—Complaint**

In prosecution for grand larceny, it was not reversible error to fail to state, in complaint, the kind and denomination of stolen bills, or to fail to state that such was not known, where it was impossible to allege and prove anything but the total amount missing from previous day's receipts of store.

6. **Larceny—Grand Larceny—Sufficiency of Evidence**

In grand larceny prosecution, strong circumstantial evidence that money recovered from defendant was part of stolen money, together with fact trial judge did not accept defendant's testimony as to how he obtained the money, sustained finding that money recovered from defendant was part of the stolen money.

Counsel for Appellant: BENJAMIN SANTOS, *Assistant Public Defender's Representative*

Counsel for Appellee: BENJAMIN N. OITERONG, *District Prosecutor*

TURNER, *Associate Justice*

This is an appeal from a conviction of grand larceny for theft of $202.61 from the office of the Palau Fishermen's Cooperative. The grounds of the appeal are that the government failed to prove the crime beyond a reasonable doubt. The appellant alleged the evidence was insufficient for conviction because it was "contradicted and circumstantial."

On a Sunday morning, August 22, 1971, the Co-op manager opened the Co-op Store and took the store receipts into another building where the Co-op office was located. The manager left immediately thereafter to go to the toilet. He was gone approximately five minutes.

During his absence, appellant went into the office, came out and hurried away. Appellant had worked Saturday night and early Sunday morning as the watchman. Two other Co-op employees, who had slept Saturday night at the Co-op, saw the appellant enter the office. Being mindful of instructions that no one was to enter the office unless on Co-op business, the witnesses reported to the manager about appellant's visit to the office.

Thereafter, the manager and accountant made a cash count and discovered the shortage as against the cash register tapes. The following day, the police arrested the appellant, searched him and found $99.50 in his possession. Further investigation accounted for expenditures by appellant Sunday and Sunday night at a tavern of approximately $60.00.

The appellant took the stand and testified he had won $150.00 shooting dice Sunday night until he went to work Monday morning. He gave names of persons who were allegedly in the dice game with him but when they were called by the prosecution as rebuttal witnesses, they denied they had shot dice on the night in question.

Counsel for appellant argued (1) there was no direct evidence that the appellant took the money; (2) that the Co-op manager and two other employees had access to the money safe in the office; and (3) the government failed to show that the money found on appellant was actually the missing money.

[1–3] This Court, in a decision ten years ago, settled the applicability of circumstantial evidence to support a criminal conviction. It is said in *Soilo v. Trust Territory*, 2 T.T.R. 368:

> "It is well established that a crime may be proved beyond a reasonable doubt by purely circumstancial evidence, and that such evidence in a criminal case may be fully as satisfactory as direct testimony, and will sometimes outweigh it."

In the present case, the trial court believed the circumstantial evidence linking appellant to the missing money far outweighed his denial that he took the money and that he had won the money found in his possession when playing dice.

[4] Appellant also complained that it was error for the court to permit the prosecution to re-open its case after resting and after a defense motion for acquittal. It is, and has been the rule in the Trust Territory that where an essential point has been omitted in a criminal prosecution and it appears evidence on the point is available, the failure may be corrected by re-opening the trial or by remanding on appeal for taking additional evidence. In either event, the accused is not entitled to an acquittal. It was not error for the trial court to permit the prosecutor to re-open after the defense had moved for acquittal. *Tkoel v. Trust Territory*, 2 T.T.R. 513; *Itelbong v. Trust Territory*, 2 T.T.R. 595; *Firetamag v. Trust Territory*, 2 T.T.R. 413; *Ngirmidol v. Trust Territory*, 1 T.T.R. 273.

The same rule applies in civil trials. The Appellate Division in *Jeltan v. Langrin*, 5 T.T.R. 358, quoted with approval *Gaamew v. You*, 2 T.T.R. 98, 100, the rule equally applicable to civil and criminal trials:

". . . the court should be alert to see that a party is not prevented by ignorance or inadvertence from introducing important evidence that would appear readily available to him. . . ."

The final argument made by appellant that it was reversible error for the government to fail to state in the complaint the number and kind of bills stolen, citing in support the statements found in 32 Am. Jur., Larceny, § 110. It is said in this section:

". . . the proper and safest course is to describe money in the indictment or information with as much particularity as the known facts will permit, and if the kind, denomination, amount and value are not known, allege that fact."

[5, 6] The circumstances of this case, that the money taken was from the previous day's receipts which had not been counted except by cash register tape, made it impossible to allege and prove anything but the total amount missing. We hold it was not reversible error to fail to allege that the kind, denomination, amount and value of the missing bills was not known. As to proof the money recovered from appellant was part of the money missing from the Co-op, it was enough that there was strong circumstantial evidence to this effect and the trial court did not believe appellant's testimony as to how he obtained the money.

We do note one technical error in the trial court judgment. Restitution was ordered of the full amount missing from the Co-op without taking into account the amount recovered from appellant at the time of his arrest. This money, amounting to $99.50, should be returned to the Co-op and credited against the missing $202.61, thus requiring restitution of only $103.11. According to the records in the Clerk of Court's Office, more than this amount has been repaid. An accounting should be made in accordance with the foregoing.

The judgment of the District Court is affirmed, subject to correcting the amount appellant is to pay in restitution.