

2 Phil. 662

[G.R. No. 1269. November 06, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MATEO BUMATAY,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On January 28, 1903, the provincial fiscal of Ilocos Sur filed an information charging Mateo Bumatay, municipal treasurer of the town of Salcedo, with the crime of malversation of public funds, defined and penalized in article 390 of the Penal Code. It was alleged that the defendant in October, 1902, received from one Lino de Abaya, deputy provincial treasurer, the sum of \$75 and some odd cents for deposit in the municipal treasury, but that the defendant, instead of so depositing it, appropriated the money to his own use and that he failed to make any entry of the amount in the proper account book of the municipality.

Page 46 of the record contains a document acknowledging receipt of \$65.47, Mexican currency, signed September 20, 1902, by Mateo Bumatay.

From the certified copies of the account book of the treasurer of the municipality shown in the record, it appears that at the beginning of September, 1902, there was a balance on hand of \$240.47 On October 1 following the balance on hand was \$283.29, and on November 1 of the same year there was only \$132.64.

The witness Lino de Abaya in his testimony stated that he had not delivered any money to the defendant, but that the deputy treasurer, Mr. Archibald McFarland, while in Candon acting as deputy of the defendant, received from the witness the sum of \$65.47, Mexican, and, immediately afterwards, in the presence of the witness, turned this money over to the defendant, Bumatay. This statement was corroborated by the testimony of Deputy McParland, who stated that the delivery of the sum mentioned took place on the 1st or 2d of October, and that the defendant, Bumatay, gave him a proper receipt therefor.

The defendant pleaded not guilty. After acknowledging the authenticity of his signature in the account books and in the receipt on page 46, he stated that on the 27th of November of last year, while he was in bed, very ill, the vice-president and several members of the municipal council, together with the man who relieved him, entered his house and informed him that he had been removed from the office of municipal treasurer, and that they thereupon seized the cash box he had in Ms house, with all the money which it contained, as well as the treasury books, but that they did not prepare any inventory or count the money of which they had taken possession, stating that this would be done in the office of the president of the municipality, as they themselves did not know how to count the American dollars and bank notes; that they promised him that they would send him the inventory and receipt that afternoon, but that they failed to do so; that on the following day the defendant's wife, by his direction, went to obtain the inventory and receipt, but that they gave her evasive answers; and that, notwithstanding various demands made for the documents mentioned, he did not succeed in obtaining either of them. The witness added that the money which was so taken by the persons mentioned amounted to 347 Mexican pesos, of which 161 pesos belonged to the municipal treasurer and the remainder to himself; that the persons mentioned informed him at that time that the accounts as found agreed with the treasury books, but that five or six days later they demanded \$37 of him to cover an alleged shortage, which sum the defendant's wife paid, without, however, succeeding in obtaining a receipt therefor. The defendant further testified that he had received from McFarland the sum of \$65.47, referred to, and that he got the president to enter the amount for him in his account books; that he was accustomed to avail himself of the assistance of the president for this purpose, as he, the defendant, made many mistakes; and that the book in which the entry was made was among those taken from him by the persons mentioned. Upon being shown the monthly account books for September and October, he said that he could not find an entry for the sum in question, but that such an entry had originally been made. The defendant's wife and two other witnesses testified to the facts related by the defendant, to which they were eyewitnesses. They also affirmed that the councilors took away the account books and the money without having made any inventory thereof, and without giving any receipt for the money so taken.

The municipal president, Dionisio Biloaon, testified that the defendant, Bumatay, Avhen removed from his office of treasurer, was found to have failed to enter in his books certain sums of money received by him. This witness also testified that the accounts, after being, balanced, showed a shortage; that the defendant, when asked to state what had become of the money lacking, replied that it had been expended for the benefit of the municipality, that

the witness did not remember how much money had been delivered by the defendant to the persons who went to take the money from his house, but that this appears from the papers of the municipality. The witness further testified that as soon as the shortage was discovered, the defendant was made to pay over the amount lacking and that the witness was assured by the councilors that they had made up the accounts in the presence of the defendant. The witness stated that he and the municipal secretary assisted the accused in keeping the treasury account books and that, at the request of the defendant himself, he had frequently made entries therein. This witness states it was true that, at the time the defendant, Bumatay, was removed from his office no inventory was made, but that the new treasurer made out a receipt which showed the condition of the accounts.

It is a fact admitted by the defendant himself that he received from Deputy McFarland the sum of \$65.47, Mexican currency, evidenced by a receipt signed by him. This, however, is not sufficient to justify the conclusion that this amount was embezzled by him, because, when the defendant was removed from his office of treasurer (while very ill and in bed, and apparently on this account alone, for no other reason has been given, nor has it been shown by what authority the removal was made), the persons who effected this irregular removal and took charge of or seized the cash box and its contents, as well as the books of the treasury, failed to observe the formalities prescribed by law. They did not count the money which they received or seized, did not examine the books, and made no inventory in the presence of the accused, thus omitting all the precautions which the most ordinary prudence and common sense would dictate. This unlawful proceeding was carried out in the presence of the defendant and of three other persons, whose unimpeached testimony we have before us.

The defendant states that the sum of 347 Mexican pesos was taken from his house, and that of this sum 161 pesos belonged to the municipality, the remainder being his own property. It is believed from this that the sum of \$65.47, Mexican currency, alleged to have been embezzled by him was included in this remainder, and he can not be considered guilty of a crime which could not have existed, notwithstanding the fact that this money alleged to have been embezzled does not appear in the account or receipt books. Owing to the informal manner in which the vice-president and the members of the municipal council proceeded when taking charge of the books and of the money in the cash box, we can not, in justice, hold that there was any misappropriation by the defendant of funds belonging to the municipality, since it appears that he had belonging to himself in the cash box, which was taken from him, a larger sum of money than that alleged to have been misappropriated.

The municipal president himself testifies that the accused, owing to his ignorance or unfamiliarity with bookkeeping methods, was accustomed to avail himself of the president's assistance when entering his receipts in his cash book, and from this it may well be inferred that if the sum of money supposed to have been embezzled does not appear on the book, this omission is chargeable to the municipal president.

In the absence of evidence to the contrary, we must give credence to the statement of the defendant that he had in the municipal cash box money of his own exceeding the amount alleged to have been embezzled. A sum of money, uncounted, was taken from his house, and the amount of this money is unknown at the present time. The record does not disclose what sum was seized by the vice-president and the members of the municipal council who removed the defendant from office. We therefore can not regard the accused as guilty of appropriating a sum of money much inferior in amount to the funds in his hands at the time he ceased to hold office.

For these reasons we are of the opinion that the judgment below should be reversed and the defendant acquitted, with the costs *de officio*. So ordered.

Arellano, C. J., Cooper, Willard, and Mapa, JJ., concur.

MCDONOUGH, J., dissenting :

I dissent. I think that the facts found are sufficient to justify the conviction and that the judgment below should be affirmed.