3 Phil. 223

[G.R. No. 1376. January 21, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. J. VALENTINE KARELSEN, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

The defendant was accused of the crime of embezzlement in the language following :

> "That the said J. Valentine Karelsen, on the 2d day of April, 1903, whilst acting as postmaster at Calamba, of the Province of Laguna, P. L, and haying in his charge public funds belonging to the post-office, withdrew, for his own use and benefit, the sum of $1,000, gold currency of the United States, the property of the Post-Office Department of the Government of the Philippine Islands, contrary to the statutes made and provided in such cases."

This complaint was presented on the 27th day of April, 1903. On the 21st day of May, 1903, the said accused presented a demurrer to the said complaint, alleging the following grounds:

First. That the amount of the funds alleged to have been embezzled does not appear in the complaint.

Second. Neither does there appear in the complaint a description of said funds in such a manner that an intelligent person can identify them.

On the 22d day of May the court overruled the said demurrer in the following

language:

> "The attorneys for the accused base their exception on the fact that the complaint does not state the value of the funds embezzled nor specify of what they consist.
>
> "A reading of the complaint convinces me that there is no ground for such exception.
>
> "Therefore, after considering the reasons set forth by both parties, I am of the opinion that the exception set forth should be overruled, and the accused must answer to the complaint."

On the same day the defendant was duly arraigned and pleaded not guilty. The cause thereupon proceeded to trial on the same date.

On the 27th day of May, 1903, the court, after hearing the evidence adduced in the trial of said cause; found the defendant to be guilty of the crime of embezzlement of public funds, and sentenced him to be imprisoned for the period of ten years and one day of *presidio mayor,* perpetual absolute disqualification, indemnification to the Government in the sum of $1,000, gold, which must be made effective by the bond given by the accused, and to the payment of costs.

On the 2d day of June, 1903, the defendant gave notice of his intention to appeal to this court from said sentence.

The attorney for the defendant assigns the following errors:

First The court erred in overruling the demurrer interposed by the accused to the complaint.

Second. The court erred in pronouncing judgment against the accused for a *"delito grave"* in the absence of the accused.

Third. The evidence adduced at the trial does not prove the guilt of the accused beyond a reasonable doubt.

Fourth. The court erred in taking into consideration the statement of the clerk with regard to the condition and appearance of the mail bag mentioned in the record.

In the first assignment of error it is alleged that the demurrer should have been sustained because: First. The complaint did not contain a description of the money embezzled by piece or denomination; second, because the penalty fixed by article 390 of the Penal Code for embezzlement is based upon the number of pesetas embezzled, and that the court could not measure the value of the money given in the complaint in pesetas, there being no fixed equivalent value of gold dollars in pesetas; third, that no person should be held to answer for a criminal offense without due process of law, and in all criminal prosecutions the defendant shall enjoy the right to demand the nature and cause of the accusation against him and that the complaint must contain a description of all the requisites of the crime, so that the accused may know just what offense he must prepare to defend himself against.

At the early practice under the common law complaints were made or might be made orally. This practice led to so much confusion and embarrassment and deprivation of rights upon the part of the accused that in the year 1688 (February 13) the people of Great Britain demanded and received from the Prince and Princess of Orange what has ever since been known as the “Bill of rights.” The bill of rights put an end forever to oral complaints, and required that thereafter every person charged with the commission of crime should not be brought to trial until after he had been informed in writing, fully and plainly, of the nature of the offense with which he was charged. This provision of the bill of rights has been adopted in the Constitution of the United States as well as in the constitutions of all the States. By Act 235, the organic law of the Philippine Islands, enacted by the Congress of the United States, July 1, 1902, this ancient bulwark of the liberties of men was extended to the people inhabiting these Islands.

The object of this written accusation was—

First. To furnish the accused Avith such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the

same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. (United States *vs.* Cruikshank, 92 U. S., 542.) In order that this requirement may be satisfied, facts must be stated; not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must contain a specific legation of every fact and circumstance necessary to constitute the crime charged. For example, if a malicious intent is a necessary ingredient of the particular offense, then malice must be alleged. In pther words, the prosecution will not be permitted to prove, under proper objection, a single material fact unless the same is duly set forth by proper allegation in his complaint. Proof or evidence of material facts is rendered admissible at the trial by reason of their having been duly alleged in the complaint. (Rex *vs.* Aspinwall, 2 Q. B. D., 56; Bradlaugh *vs.* Queen, 3 Q. B. D., 607.)

If personal property is the subject of the offense, it must be described with certainty, and in those cases in which its value is material the value must be stated. Personal property can usually be described by the name by which it is generally known. For example, in a charge of the robbery of a horse or carabao it would be sufficient to describe this property simply as a horse or carabao. If, however, the value of the horse or carabao is a necessary element of the offense in order that the punishment may be properly fixed, then the complaint would not be sufficient if no value was given to such property. It would be necessary, for example, in every complaint under subsections 1, 2, 3, 4, and 5 of article 518 of the Penal Code to allege some value to the property stolen. If the property is made up of different kinds or of different parts, then a value should be given each. The complaint generally would be bad if in such a case a total value only was alleged. These rules do not require that a minute description of the property shall be given—they do not require an impossibility. For example, if a clerk, in sole charge of a business as agent or factor, collects, at different times, sums of money, on general account, consisting of various kinds and denominations and then fraudulently appropriates them to his own use, these rules do not require the prosecution to describe each piece of money so collected and misappropriated. If the descriptive terms used are sufficient in their common and ordinary acceptation to show with certainty to

the common understanding of intelligent men what the property was and to fully identify it they will be sufficient. *In other words, the description of property, in such cases is subject to the rule that the law only requires such certainty as the nature of the property and the circumstances will permit.* (Wilson *vs.* State, 69 Ga., 224.) *A less degree of certainty is required in the description of the offense token the facts which constitute it lie more particularly within the knowledge of the defendant.*

There is a general opinion that a greater degree of certainty is required in criminal pleading than in civil. This is not the rule. The same rules of certainty apply both to complaints in criminal prosecutions and petitions or demands in civil causes. Under both systems every necessary fact must be alleged with certainty to a common intent. Allegations of "certainty to a common intent" mean that the facts must be set out in ordinary and concise language, in such a form that persons of common understanding may know what is meant.

In this case it is alleged that the complaint was insufficient in that it did not describe the "one thousand dollars" by piece or denomination or value. Our attention is called to several cases in the United States upon this question. In the case of Lavarre vs. State (1 Texas Court of Appeals, 085) the complaint alleged "three hundred gold dollars," without alleging that they were lawful money or current coin of the United States or of any country. The complaint was held bad for this' reason. The court there states that "an allegation of value is material in two respects: First, there can be no theft of an article unless that article has either intrinsic or relative value, and no value could be proved unless alleged in the indictment; and second, under the statute the degree of punishment for theft depends upon the value of the thing stolen."

In the case of the People *vs.* Ball (14 Cal., 101) the allegation was "three thousand dollars, lawful money of the United States." This was held an insufficient allegation because the particular denomination or species of coin must be set forth. This was also a complaint for larceny.

In the case of People *vs.* Cohen (8 Gal., 42) the language used was "four hundred thousand dollars, money, goods, and chattels." Here the accused could not determine how much money, what goods, and what chattels, and the complaint was therefore held bad. Judge Baldwin, in the case of People

vs. Green (15 Cal., 512), in commenting upon this case (People *vs.* Cohen), said: "It is true, the court says, money should be described as so many pieces of the current gold or silver coin of the country, but we think we may well infer that a twenty-dollar piece of the gold coin of the United States is current coin of the United States, and is of the value of twenty dollars of our money."

A complaint for the crime of embezzlement ought to state the description of the property embezzled with the same particularity as is required in a complaint for larceny. But in the case of larceny the property was in the possession of the owner, and he is presumed to know its particular description, while in embezzlement where the offense is committed by a person, in the course of a long, continuous employment as a clerk, cashier, or postmaster, who is daily receiving and disbursing large sums of money, a description of the pieces or denominations of the money is absolutely impossible. In such a case, if his accounts are correctly kept, the only description which can be made is by a general statement of the amount which his books disclose. Is it to be argued that a cashier, for example, who daily embezzles sums of money for months is to be discharged from liability simply because the prosecution can not give a minute description by piece or denomination of all the money so misappropriated? England has taken advanced ground upon this question, and by the seventh and eighth George IV, chapter 29, section 48, enacted that "it shall be sufficient to allege embezzlement to be of money without specifying any particular coin or valuable security, etc."

In the present case the books of the accused showed that he had the sum of $1,046.64, gold, United States currency, belonging to the Post-Office Department on the 1st day of April, 1903. He is charged with embezzling "$1,000, gold, legal money of the United States." This allegation is in substance in the terms of his own accounts, and we fail to see how he can in any way misunderstand the allegation or be confused in making his defense under it.

It is argued that the complaint is bad because it failed to allege the value of the property embezzled in terms of pesetas. One peso, Mexican, is equivalent to five pesetas, and by a proclamation of Governor Taft issued on the 11th day of March, 1903, the value of $1, United States currency, was fixed at 2.60 pesos of Insular currency. This would make the value of $1, gold, equal to 13 pesetas.

Not only this, but the evidence showed that the accused was familiar with the exchange value of gold and Mexican for the reason that he had, on or about the 1st day of April, 1903, been exchanging one for the other. Under the said proclamation it was the duty of the accused to pay to the Government or to account to the Government for every gold dollar received, either the gold dollar or $2.60, Mexican, its equivalent.

There has not been a time since January 1, 1901, until April 2, 1903, when $1, gold, was not worth at least 10 pesetas. Figuring the value of $1,000, gold, on this basis, their value in pesetas would at least amount to 10,000 pesetas.

At the trial the said defendant admitted the following facts:

(a) That on the 2d day of April, 1903, he was the postmaster at Calamba, in the Province of Lagtina, P. I.

(b) That on said 2d day of April he had in his possession as such postmaster the sum of f 1,046.64, gold currency of the United States, and claimed that on said day he had remitted $1,000, gold, to the Postmaster or Director of Posts at Manila.

The defendant claimed that he had remitted $1,000 to Manila through the mails. He also claimed that two persons (Green and Canicosa) were present at the time (April 2) when the said money was sealed in the mail sack just before the same was sent out in the mail. Green and Canicosa each deny this fact. It is true that Green did sign the "letter of remittance," etc. He testified that he signed said letter on April 1, as a matter of favor at the request of the accused. It was shown by other proof that Green was not at the office of the accused on the morning of the 2d of April.

There was an attempt made to show that the said mail sack was robbed of the $1,000, gold, while in transit to Manila from Calamba, and therefore that the defendant was innocent. We are of, the opinion that this proof was not sufficient to establish the fact.

Upon consideration of all the proof adduced at the trial we find that the said accused did, on the 2d day of April, 1903, while acting as postmaster at

Calamba, in the Province of Laguna, P. I., while having in his custody and under his control public funds belonging to the Post Office Department of the Philippines, appropriate to his own use and benefit the sum of $1,000, gold, legal money of the United States, which was equivalent in value at least to the number of 10,000 pesetas, which offense is provided for and punishable under subsection 3 of article 390 of the Penal Code.

Under all the evidence given in the trial of this cause we find that an ocular inspection of the mail sack, in which it is alleged the said money was sent to Manila as claimed by the accused, would not aid the court in reaching its conclusion.

It is alleged that the court committed error in announcing its sentence during the absence of the accused. It is admitted that the sentence of the court below was announced to the accused in the jail, and not by the judge;but by the clerk; that he was not brought into open court and informed by the judge there of the sentence. Section 41 of General Orders, No. 58, provides that "the defendant *must* be personally present at the time of pronouncing judgment, if the conviction is for a felony." The offense here was a felony.

In all criminal prosecutions the accused has an absolute right to be personally present during the entire proceeding from arraignment to sentence if he so desires. In cases of felony he can not waive this right. The court in case of felony must insist upon the presence of the accused in court during every step in the trial. The record must also show that the accused was present at every stage of the prosecution. (Hopt *vs.* Utah, 110 U. S., 574,) It is not within the power of the court, the accused, or his counsel to dispense with the provisions of General Orders, No. 58 (sec. 41), as to the personal presence of the accused at the trial. We mean by the phrase "at the trial" to include everything that is done in the course of the trial, from the arraignment until after sentence is announced by the judge in open court.

The question is what effect shall a violation of the terms of section 41 of General Orders, No. 58, have upon the rights of the accused.

> "We are of the opinion that for this error the.sentence of the court below should be reversed, without disturbing the verdict, and the cause remanded with

direction to the court below to pronounce the judgment in accordance with the provisions of section 41, General Orders, No. 58."

The court below appreciated two aggravating circumstances provided for in subsections 7 and 8 of article 10 of the Penal Code, as follows, (1) premeditation and (2) fraud. These constitute not aggravating circumstances in this case but elements of the offense.

There being neither aggravating nor extenuating circumstances, under article 81 of the Penal Code the medium degree of *presidio mayor* should be imposed.

Arellano, C. J., Torres and *McDonough, JJ.,* concur.

Willard and *Mapa, JJ.,* concur in the result.

DISSENTING

COOPER, *J.*:

By the provisions of article 534 of the Penal Code, under which the defendant has been convicted, the degree of punishment for embezzlement depends upon the value of the embezzled property: (1) With the penalty of *arresto mayor* in its minimum and medium degrees if the property does not exceed 250 pesetas in amount; (2) with that of *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree if the property exceeds 250 pesetas and not be more than 6,250 pesetas; (3) with that of *presidio correccional* in its minimum and medium degrees if it should exceed 6,250 pesetas.

There being no fixed ratio between gold dollars of United States currency and pesetas, which is a Spanish silver coin, it was necessary to state in the complaint the value in pesetas of "one thousand dollars, gold currency of the United States," alleged to have been embezzled.

For this defect in the complaint the judgment should be reversed.

This view will render it unnecessary to consider the other questions which have been discussed in the majority decision, and upon which I express no opinion.

Date created: January 08, 2019