G.R. No. 9632

[G.R. No. 9632. September 23, 1904]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LORENZO REGALA, DEFENDANT AND APPELLANT.

D E C I S I O N

MORELAND, J.:

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LORENZO REGALA, DEFENDANT AND APPELLANT.

On the 1st day of February, 1912, the prosecuting attorney of the Province of Pampan'ga presented an information against the appellant Lorenzo Regala for estafa, alleging:

> "That the said Lorenzo Regala on one of the days of the month of October, 1911, in the municipality of Floridablanca, Pampanga, P. I., being then and there a public official, namely, justice of the peace of Floridablanca, Pampanga, P. I., in abuse of his office and authority, voluntarily, illegally, intentionally, and criminally, making use of deceit, that is to say, pretending that there had been presented to his court by Luisa Garcia a claim against Juan Montemayor for the sum of P12, took and received from said Juan Montemayor the said sum of P12 for delivery to Luisa Garcia, but said accused then and there delivered to the said Luisa Garcia the sum of P6 only, which was the sum actually claimed by her, and appropriated then and there to his own use the said sum of P6, to the injury and detriment of the said Juan Montemayor, thereafter denying having received said sum from him and refusing to return it."

On the 13th day of March, 1912, the accused appeared before the court for trial. The cause was duly opened and the trial proceeded with, the Government presenting as witnesses Luisa Garcia, Juan Montemayor, Juan Manlulu, and Gervasio Lalic. These witnesses having testified, the court came to the conclusion that it was without jurisdiction, dismissed the case and ordered the prosecuting attorney to present an information to the justice of the peace.

On the 9th of August of the same year the prosecuting attorney, instead of presenting an information for estafa to the justice's court, as ordered, filed an information against said accused in the Court of First Instance of Pampanga charging him with malversation of public funds. The information alleged:

> "That the said accused on one of the days of the month of October, 1911, in the municipality of Floridablanca, Pampanga, P. I, voluntarily, illegally, and criminally, being, as he was, a public official, namely, justice of the peace of the aforesaid municipality of Floridablanca, and charged for that reason with the care and custody of public funds, collected from Juan Montemayor the sum of P12 which, according to the representations of the accused, Luisa Garcia had claimed before him as such justice of the peace was due her from said Juan Montemayor, obtaining and receiving thereby from the said Montemayor the said sum of P12 for delivery to the said Luisa Garcia; but the said accused delivered to said Luisa Garcia the sum of P6 only, which was, as a matter of fact, the only sum claimed from the beginning, neglecting and refusing to deposit the remaining P6 in the municipal treasury and refusing to give an account of the same, thereby embezzling the same and converting the same to his own use."

On the 5th of November, 1912, the accused, by his attorneys, demurred to thecomplaint on the ground that it did not state facts sufficient to constitute malversation of public funds. This demurrer was overruled and the accused was ordered to plead: On the 2d of April, 1913, the accused excepted to the order overruling the demurrer, pleaded not guilty and at the same time entered a plea of former jeopardy and one of autre fois acquit. The latter pleas were based upon the fact that he had been tried once for the crime of estafa upon precisely the same facts alleged in the information in the present case and acquitted thereof.

The cause went to trial and the accused was found guilty and sentenced to two months' imprisonment, to indemnify Juan Montemayor in the sum of P6, with subsidiary imprisonment in case of insolvency, and to pay the costs. The judgment also perpetually disqualified the accused from holding public office within the Philippine Islands.

The judgment must be reversed.

The acts alleged to have been committed by the first information constitute the crime of estafa against the complaining witness. As a necessary result those alleged in the second information do not constitute the crime of malversation of public funds. The money paid by the debtor to the accused and herein complained of was paid involuntarily and under false representations and pretense made by the accused for the purpose. The accused represented to the complainant that he was authorized and required to collect P6, the amount of the claim against him, and P6 damages.

The debtor paid upon that representation and the accused received in accordance therewith. This representation was false. The creditor neither required nor authorized such a collection. Wherever false representations are knowingly and intentionally made and money obtained by virtue thereof which is subsequently converted to the use pf the person making the false representations

or of some person other than the one from whom it was obtained, a criminal action lies.

The charge of malversation of public funds has no foundation. The funds were not public funds. Section 790 of the Code of Civil Procedure provides what fees or sums a justice of the peace is authorized to collect in civil and criminal actions and the disposition which must be made thereof. It provides that:

> "The following are the legal fees which a justice of the peace shall collect:
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> "For each civil action, three pesos.
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> * * * * * * *
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> "For taking affidavit, fifty centavos.
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> "For writing and certifying depositions, including oath, per one hundred words, or fractional part thereof, twenty centavos.
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> "For certified copies of any record, per one hundred words, or fractional part thereof, twenty centavos."

Section 73 of Act No. 136 provides: "No justice of the peace, clerk, or amanuensis thereof shall collect or receive any fee, except such as are prescribed in the fee bill embraced in the Code of Civil Procedure."

Section 71 of Act No. 136, as amended, provides in part as follows: "Except when the justice of the peace acts as judge of the Court of First Instance, all fines imposed by a justice of the peace in criminal prosecutions and all fees charged in civil suits or for any other service and collected shall be paid without delay to the municipal treasurer, or in the city of Manila to the Collector of Internal Revenue, to whom on the first day of each month the justice shall present a detailed statement of the amounts thus collected by him since his last previous report and of the amounts which the municipal treasurer should pay f6r fees in criminal proceedings during the preceding month. His account shall forthwith be audited by the municipal treasurer and president, or in Manila by the Insular Auditor, by examining the records of the justice of the peace and any other papers or persons deemed necessary, and all mutilated or

spoiled receipts must be accounted for and turned in by said justice. But it shall not be necessary for the justice to prove the insolvency of parties who have failed to pay costs taxed against them."

It has not been contended that the P6 collected by the accused constitued in any sense any of the fees enumerated in the sections just quoted. No civil action was begun. No witnesses were sworn or oaths taken; no record was made and no expenses incurred. There arose no occasion for the collection of any of the fees specified in the Code of Civil Procedure. As a necessary result, no part of the money collected was public money and the accused was under no duty to the public in relation thereto.

We are also of the opinion that the plea of former jeopardy was well founded and that the present action should be dismissed for that reason alone.

The ground for the dismissal of the action for estafa after the prosecution had presented its case was that the sum involved being only P6, the penalty imposed under subdivision 1 of article 534 would be *arresto mayor* in its minimum and medium degrees,—that is, the maximum punishment would not be
more than six months' imprisonment and P200 fine; that, this being true, the case fell within the exclusive jurisdiction of justice courts and the Court of First Instance accordingly had no jurisdiction.

In this reasoning the trial court overlooked the fact that in addition to the penalty imposed by article 534 of the Penal Code, article 399 of the same code provides that under certain circumstances there shall be imposed, in addition to arresto mayor, temporary special disqualification in its maximum degree to perpetual special disqualification. The latter is a penalty which justices of the peace have no jurisdiction to Impose. (U. S. ` Bernardo, 19 Phil. Rep., 265.) As a necessary result the crime of estafa as charged in the information in the case before us is not one over which a justice of the peace has jurisdiction. (U. S. *vs*. Ang Suyco, 17 Phil. Rep., 92.)
Accordingly, the action was one within the jurisdiction of the Court of First Instance and the dismissal for lack of jurisdiction was erroneous.

As will be seen from reading the informations above set out the two charges are made upon precisely the same facts. While in one case the fact that the justice of the peace was a public functionary is emphasized more than in the other and stress is laid in one information more that in the other upon his failure to account for the sum he received, nevertheless, essentially the facts are the same. It is not a case where the acts complained of constitute two or more separate and distinct offenses for which he can be separately tried.

The accused having already been put in jeopardy for his acts under one charge, cannot now be tried for the commission of the same acts under another charge.

The judgment appealed from is reversed and the appellant acquitted; costs *de officio.*

Arellano, C. J., Torres, Johnson, and *Araullo, JJ.* concur.

CONCURRING

CARSON, J.

I concur on the ground of double jeopardy.

Date created: April 14, 2010