4 Phil. 331

[G.R. No. 1214. March 27, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RAMON MELENCIO, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

The defendant is charged with the crime of misappropriation of public funds. This misappropriation, as stated in the complaint, is as follows: That the defendant, "as treasurer of the municipality of Cabanatuan, Province of Nueva Ecija, was in charge of the sum of 1,133.35 4/8 pesos, Mexican currency, belonging to said municipality; that he substracted this amount and did not deliver same to the new treasurer, Emilio Vergara, when the latter took over said office." The judge below, considering the facts as charged in the complaint proven, and taking into consideration that the act fell within the second paragraph of article 392, together with paragraph 2 of article 390 of the Penal Code, sentenced the defendant to three years and ten months of *presidio correcional* with the accessories provided for in article 58 of the same code, and to reimburse the municipal treasury of Cabanatuan in the sum of 735.53 pesos, Mexican, or to suffer the subsidiary penalty in case of insolvency at the rate of one day for each 12 1/2 pesetas for the amount unpaid, to eleven years and one day of disqualification from the office of municipal treasurer, and to pay the costs of the suit. The defendant appealed from this judgment.

It is well proven in the case, not only by the testimony for the prosecution but also by the defendant's own statement, that the defalcation mentioned in the complaint took place. The defense does not question this point; on the contrary it admits it in its argument. The

defendant, however, alleges a defense which, were it true, would deserve serious consideration. The defendant states that the sum defaulted was kept by him in a wardrobe in his house, because there was no safe place at the municipal building and that the amount was substracted, or stolen, during a fire which occurred in his house on the morning of April 20, 1902. The substraction of the money took place, according to the statements of the defendant, by means of the breaking of the lock on the wardrobe where the money was kept. When the defendant testified in his own behalf, he stated the occurrence in the following terms:

"At about 2 or 3 o'clock on the morning (of April 20, 1902), I was awakened by the cries of my servant, Leoncia de Leon, calling 'Fire! Fire!' I came downstairs to see the fire and I saw that in fact the projecting roof of my own house was burning. I likewise saw that there were many persons already there. My wife came downstairs also, leaving in the house my two children. When I heard my children crying, I went back and got them and turned them over to my wife; I then went back to the house again, after asking my wife for the key to the wardrobe. She told me that it was underneath the pillow. As I did not find it there I went to the room where the wardrobe was and there I found the municipal secretary, Jose Cuisia, who was just leaving through the door. I saw the clothes strewn over the floor and the wardrobe open, as well as the window of the room. I gathered all the clothes together and threw them out the window, telling my wife to search for the money amongst the clothes, because I found the wardrobe open. I then came down to help my wife look for the money among the clothes and as we did not find it there, I went back again to see if the money was in the wardrobe. The money was not there."

The defendant says in addition that the money which disappeared consisted in part of American bank notes which were contained in an envelope and American and Mexican coins wrapped in a handkerchief; all being kept underneath the clothes. The defendant was asked how long he stood watching the fire in the lower part of the house and he replied as follows: "I was not there long, because when I heard my children cry I went up and got them and gave them to my wife," calculating that it

had taken him five minutes to do this. He was again asked how long it was after he came out from his house bringing the Children to his wife until he went back again, and he replied that it did not take him very long “because he ran.” He added that when he went for his children he did not see anybody in the place where they were, but when he went back again he saw that there were some people at the fire and that the secretary, (Jose Cuisia), was coming out from the room. The defendant finally states that when he noticed the disappearance of the money he asked the secretary to come with him and both went together to the president’s house to give him an account of the occurrence.

In order to prove that the defendant really had in his possession the amount which is missing on the day on which the fire occurred, or some days previous thereto, the witnesses for the defense, Bias Lorenzana and Pedro Melencio, the latter a brother of the defendant, were introduced. The first of these witnesses declares that he, being the deputy provincial treasurer, went to the defendant’s house on the nigh of April 17 in order to give him part of the taxes collected from the municipality of Cabanatuan, and the defendant showed him a roll of American bank notes, but he could not estimate the amount because he did not examine the same. He did not examine into the condition of affairs at the treasury of said municipality because he did not have time to do it and he thought that everything was all right. Pedro Melencio says that on the evening of the 17th, 18th, or 19th of April he was at the house of the defendant, whom he found counting American bank notes and American and Mexican coins, and upon asking the defendant what the money was the latter answered him it was money of the municipality and he was counting it because he was going to make delivery of the same to his successor. This witness states, furthermore, that early on the morning of the 20th of April he went to the fire at the house of the accused and helped to extinguish the same; after this he observed that the inhabitants of the house were very much excited looking for the money which had disappeared from the wardrobe and that he was told then by the defendant and his, defendant’s, wife that part of the money belonged to the municipality and part of it belonged to the wife of defendant and that it all amounted to 1,133

pesos and some cents.

According to the municipal president, Leocadio Jarenas, on the morning of the 20th of April the defendant told him that his house had been set on fire and that, due to the efforts used to put the fire out, the same was confined to the projecting roof of his house; that during the fire his wardrobe where he kept the funds of the municipality had been broken open and about 600 pesos in bank notes and 150 pesos in coin belonging to the municipality had been substracted, together with 100 pesos belonging to his wife, but that when the witness was writing out a notice to the proper authorities of the occurrence the defendant told him a very different story, viz, that the amount which had been stolen was 800 pesos in bank notes and 200 pesos in coin belonging to the municipality and 200 pesos belonging to his wife. The defendant, according to this witness, stated to him that lie and his family did not leave the house during the fire.

The municipal secretary, Jose Cuisia, who accompanied the defendant at his request when the latter went to give an account of the occurrence to the president, corroborates in part the testimony of the latter as regards the fact that according to what the defendant first said to the president, the amount stolen during the fire was only 600 pesos, bank notes, and 100 pesos, coin, and another 100 pesos belonging to his wife. This witness was living at the house of the defendant when the fire took place and he asserts that the defendant slept in the lower floor of the house on that night and that during the fire some neighbors came and among them he saw some near the roof engaged in putting out the fire, but he did not see anybody inside the house. This witness, as well as the former witness, to wit, the municipal president, Leocadio Jarenas, affirms to have examined the wardrobe immediately after the fire, the lock of which, according to the defendant, had been broken, and that they did not find any signs of violence having been used on the exterior of same. Corroborating this testimony is that of the provincial governor, Epifanio Santos, who says that, having examined the wardrobe in consequence of the notice he received of the occurrence, he saw that there was no sign of it having been broken from the outside and that, althought the lock was out of

place or unfastened, it must have been from some cause from within and not from without—that is to say, that the door seemed to have been opened by means of the key and after it was opened, the screws which held the lock were removed with a screw-driver.

All the witnesses who testified as to the fact of the fire agree with one another that the fire was discovered almost as soon as it started, and for this reason the municipal secretary, Jose Cuisia, says that "the fire was in its infancy." The governor, Epifanio de los Santos, says that the fire was confined to the inner court and not even the inner court was burned. The defendant himself, when reporting the affair to the municipal president, told him that the fire was found in the roof of the house, or, better, in the part which projected over the staircase, as appears in several parts of the record.

These witnesses and the defendant declare that some days previous to the fire, Emilio Vergara had been appointed to succeed the defendant in the office of municipal treasurer of Cabanatuan.and that the new treasurer had not taken possession of his office up to that time, for the reason that he had not examined the books of the treasurer. The defendant knew that this appointment had been made and made delivery of his office to his successor on the day following the fire, viz, the 21st of April, but he did not then turn over to him the sum of 1,133.33 4/8 pesos, Mexican, which was missing.

From these facts we make the following conclusions:

> (1)That it has not been sufficiently proven that the defendant really had in his possesison the amount defaulted when the fire took place in his'house, on the morning of the 20th of April, 1902. His witnesses, Blas Lorenzana and Pedro Melencio, even taking their statements as true in every respect, refer to a time two or three days previous to the 20th of April, and they did not know the amount of money which they respectively state they saw in the possession of the defendant.
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> (2) Be that as it may, and no matter whether the

> fire was accidental or intentional on the part of the defendant, or some other person—for it is not necessary to determine that fact for the purpose of this opinion—the truth remains that not only was it not proven that the amount missing had been robbed from the defendant during the fire or at the time said fire took place but it can not be stated as a fact, fully proven by all the particulars given at the; trial, that such robbery ever took place; it was only simulated for the purpose of covering up the existence of the defalcation. The fire was so short and so insignificant that it could not really be called a fire, but rather the beginning of a fire. According to all the witnesses, and the defendant himself, it was confined to the same place where it started. Of so little importance was this fire that neither the defendant nor his wife left the house. This appears from what the defendant himself told the municipal president immediately after the fire, notwithstanding that he may now want to state differently, when he testified as a witness in the case.

Under such circumstances it is unlikely that a robbery could have taken place without the defendant or his family, who all stayed in the house, having noticed same. But even admitting that they came out of the house, as the defendant states in his testimony, it would still be just as improbable, if we take into consideration the short time which passed between the moment the defendant came out of the house with his two children and turned them over to his wife who was in the yard, and at which moment there was no stranger inside the house, until the time when he went back into the house, when he says he saw some people in it, and pretended to have discovered the supposed robbery. The shortness of the time which transpired between the one act and the other can be estimated when we consider that the defendant came down from the house and went back upstairs running, as appears from his own statements. He states that when he went back to the house he found there the municipal secretary, Jose Cuisia, who was his guest, coming from the room where the wardrobe was containing the money. Therefore we can only state that the room was never abandoned, because while the defendant was out of it, Jose Cuisia was inside; or, at most, the room was vacant for so short a time that it can not be conceived how a

robber could have broken the lock of the wardrobe, rummaged among the clothes which were inside, and throwing them on the floor, while looking for the bank notes concealed among said clothes, and disappear then with the bank notes and with the heavy load of four hundred pesos in coin, without being seen by the defendant or any one of his companions in the house. But the best proof and the one which shows more conclusively that the robbery was only simulated is the pretension that the wardrobe was broken, in which the money was supposed to have been kept. This fact is fully proven by the corroborative testimony of three witnesses who deserve full credit, and according to these witnesses there was no breaking but merely a simulation of a breaking and a very poor one at that. The wardrobe" did not show any signs of violence from without; the violence was exercised from within by removing the screws of the lock with a screw-driver, after having opened the wardrobe with its own key. This operation required time and coolness. It could not have been done by a robber in the short time during which the room was left alone. It does not seem reasonable even that a robber would waste time in un-screwing a lock after having opened the wardrobe.

All these things lead us to believe that it was the defendant himself who did it, in order to simulate robbery by the breaking of said piece of furniture. It is only thus we can explain the contradiction of the defendant when he gave the account of the occurrence to the municipal president, telling him first that the sum robbed belonging to the municipal treasury was only 600 pesos in bank notes and 150 pesos in silver, and later, at the time of writing the notice to the proper authorities, that the money amounted to 800 pesos in bank notes and 200 pesos in silver. Of course, even granting the last statement, there would still be a balance against the defendant of over 130 pesos, the difference between the amount of the deficit against him and the sum of which he alleges to have been robbed. This also explains the unjustified excitement and the serious contradictions which the defendant made when he was examined by the governor, as appears from the testimony of the provincial governor, Epifanio de los Santos. And, finally, this explains the fact that the defendant offered

to reimburse the balance of the money, provided he was not subjected to a criminal trial, as he stated in his petition addressed to the Attorney-General of these Islands, as appears from the testimony of the said Governor de los Santos, who affirms to have seen and read said petition.

The above facts necessarily lead us to the conclusion that the defendant is guilty. We do not take into consideration the rumors which some witnesses for the prosecution heard of sums of money, more or less considerable, which this defendant lost at the cockfights on some days previous to the date of the fire; these are mere rumors and can not be taken into consideration as sufficient proof of this fact.

According to the doctrine established by the supreme court of Spain, in the judgment of November 21, 1888, in order to determine the guilt of an accused as principal in the crime of misappropriation provided for in article 407 of the Penal Code (392 of the Code for the Philippines) it is sufficient to prove that the defendant received in his possession certain sums of money, that he did not deliver them and did not have them, and could give no reasonable excuse for the disappearance of the same.

Although the defendant alleges as a defense that he was robbed of the amount which he is short he has not only not proven the truth of such allegation but all the particulars testified to during the trial show in an undeniable manner that this robbery was only simulated in order to explain the nonexistence of any defalcation and to avoid criminal liability.

Of the amount misappropriated one of the bondsmen for the defendant has reimbursed the sum of 377.78 pesos and the balance has not been reimbursed as yet. For this reason it is not necessary to determine whether the misappropriation caused any injury or detriment to the public service, because, with or without such effects, the liability provided for in paragraph 2 of article 392, together with article 390 of the Penal Code, is that applicable to the present case, because the amount misappropriated has not been reimbursed in greater part.

Therefore we affirm the judgment below, with the costs in this instance against the defendant. So ordered.

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

Date created: April 24, 2014