

[G.R. No. 18688. February 10, 1923]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
EUSEBIO C. CAMACHO, DEFENDANT AND APPELLANT.**

D E C I S I O N

OSTRAND, J.:

This is an appeal from a judgment of the Court of First Instance of Pangasinan convicting the defendant of the crime of unfaithfulness in the custody of public documents, and sentencing him to suffer one year, eight months and twenty-one days of *prision correccional*, with the corresponding accessory penalties prescribed by law, to pay a fine of 325 *pesetas*, with subsidiary imprisonment in case of insolvency, and with disqualification for public office for the term of eleven years and one day.

The information alleges "that on or about the 30th day of June, 1920, in the town of Bayambang, Province of Pangasinan, the municipal treasurer of said municipality sent by means of a messenger to the herein accused, Eusebio C. Camacho, as municipal president, for his examination, certification and signature, the municipal pay roll of said municipality for the payment of the salaries due the municipal functionaries and employees for the month of June, 1920, and that said accused, upon obtaining possession of said public document, voluntarily, illegally, and criminally put aside, concealed and destroyed said document, which had been entrusted to him by reason of his office, with the purpose of not paying or reimbursing a certain sum for which he was in duty bound to reimburse the municipal treasury, said sum consisting in per diems illegally collected, with grave injustice to the public interests as well as to the persons interested in said municipal pay roll, in violation of article 360 of the Penal Code."

The evidence shows that the municipal pay roll alleged to have been destroyed was prepared in the office of the municipal treasurer and that the clerk who prepared it took it to the office of the accused, as municipal president, for his approval. The roll was not signed or certified to by any of the officials whose signatures were required before payments of salaries could be legally made, but it appears that notwithstanding this fact the municipal treasurer had already paid the salary of the municipal secretary when the roll was presented to the president for approval.

As to what occurred in the office of the president when the pay roll was shown to him, the evidence is conflicting. That of the prosecution is to the effect that the president, upon being handed the roll, became angry because it was accompanied by a memorandum requiring him to reimburse the municipality for the sum of P33 alleged to have been overdrawn by him by way of *per diem* allowances, and that he therefore tore the roll into pieces. The defendant denies that any demand was made upon him for a reimbursement or that he, for that reason, destroyed the pay roll.

The witnesses for the defense, among them the clerk who prepared the pay roll and brought it to the president for approval, testify that the president, upon ascertaining that the municipal secretary had already been paid, notwithstanding the fact that the pay roll had not been approved and that no deductions had been made for alleged absences, manifested his displeasure therewith and told the municipal secretary that he would not approve the roll; that the secretary, who appeared to be intoxicated, then became incensed and attempted to take the pay roll away from the president, and that in the ensuing struggle the pay roll was torn.

It appears from the record that there was considerable ill-feeling between the president and the secretary due to political rivalry and that the treasurer also was hostile to the president. In view of the fact that no deduction was made upon the pay roll for the P33 alleged to have been overdrawn by the president, the reason given by the prosecution for the destruction of the pay roll does not appear very probable and considering the enmity existing between the parties it seems more likely that the president, finding that the salary of the secretary had been paid without his approval, felt that he and his office had been slighted by the treasurer and that, losing control of his temper, he,

and not the municipal secretary, was principally responsible for the damage to the roll.

But from the point of view we take of the case, the facts in dispute are not of controlling importance in its final determination and the result will be the same whether we adopt the version given by the witness for the prosecution or whether we accept that of the defense.

The alleged public document, with the destruction of which the defendant is charged, is in the evidence before us. It consists of a printed blank form called "Municipal Pay Roll" filled in with the names of the municipal officials and employees to whom salaries were due, together with their designations and the amounts due them. At the foot of each page there is a blank space for its approval by the municipal president and in addition thereto the following form for a certificate appears:

"I hereby certify on my official oath that the above Pay Roll is correct and that the services have been duly rendered as stated.

_____ (as to office of President and police force).

(Municipal President)

_____ (as to office of Secretary).

(Municipal Secretary)

_____ (as to office of Treasurer).

(Municipal Treasurer)

_____ (as to office of _____)"

Neither the certificate nor the space for the approval of the roll have been signed. The only signature on the roll is that of "A. Garcia" appearing by way of receipt for the salary of the municipal secretary. In the absence of the approval of the president, the payment of that salary was contrary to law (Administrative Code, sec. 2300), and being thus completely unauthorized, neither the payment nor the receipt therefor, nor the signature signifying such receipt can be considered of official character. In that incomplete state of the pay roll, the signature "A. Garcia" had no legitimate place thereon and for the

purpose of determining the character of the instrument may be entirely disregarded.

A document is a writing or instrument by which a fact may be proven and affirmed (2 *Escriche Dic. de Leg. y Jurisprudencia*, 714). The writing here in question proves nothing and confirms nothing; it is not a document but merely a draft of one. Until approved or certified to by one or more of the proper officials, it would not be entitled to filing in any public office or archive and might be disapproved or even destroyed by the official whose approval was necessary to give it effect, without giving rise to criminal liability on his part.

The Attorney-General, in his brief, cites the case of *United States vs. Asensi* (34 Phil., 750), as authority for the contention that the writing in question is a public document. It is true that in a *dictum* in the decision in that case the court, citing *United States vs. Carrington* (5 Phil., 725), said "We have also held that the blank forms prepared by the Auditor of the Philippine Islands, in accordance with Act No. 90 of the Philippine Commission, are public documents." An examination of the *Carrington* case shows that what the court there held, and what it evidently meant to say in the *Asensi* case, was that documents executed on blank forms prepared by the Auditor of the Philippine Islands in accordance with Act No. 90 of the Philippine Islands, are public documents. To hold that a mere blank in itself alone is a public document would lead to the absurdity that a person might be criminally prosecuted under article 360 of the Penal Code for the destruction of a printed blank form containing no other writing whatever. (For a discussion of what constitutes a public document within the meaning of the Penal Code, see sentence of the supreme court of Spain of May 27, 1882.)

Counsel for the defendant argues that there in the present case was no destruction of the alleged document in so far as it, with slight repairs, might have been made serviceable. There is some force in this contention, but, in view of our conclusions as to the character of the writing, the point need not be discussed.

For the reasons stated, the judgment appealed from is reversed and the defendant will stand acquitted of the offense charged in the information. So

ordered.

Araullo, C.J., Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

Street, J., concurs in the result.

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