

EL PUEBLO DE LAS ISLAS FILIPINAS, QUERELLANTE Y APELADO, CONTRA PASCUAL Z. VIASON, ACUSADO Y APELANTE.

R. G. No. 37360-37370. December 21, 1933

Ponente: AVANCEÑA, J.

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AVANCEÑA, J.:

El apelante Pascual S. Viason fue tesorero municipal de San Carlos, Negro Occidental. Habiendo tenido el tesorero provincial informaciones de que el apelante llevaba una vida de disipacion y se dedicaba al juego, ordeno su traslado a otro municipio para apartarle de los peligros en que le colocaba aquella vida en relacion con los fondos publicos que tenia bajo su custodia. A este efecto el Sr. Caduñgon, al recibir los fondos que el apelante debia tener, descubrio que faltaba la cantidad de P11,752.25. Informado de esto el tesorero provincial, este, el tesorero provincial auxiliar, Sr. Alfabeto, y el auditor del distrito se constituyeron en el municipio de San Carlos y practicaron investigacion sobre el estado de cuentas del apelante, habiendo descubierto irregularidades que constituian serias infracciones de ley.

Como resultado de aquella investigacion se presentaron contra el apelante diez causas criminales por falsificacion de documentos publicos y una causa por malversacion de fondos publicos por la cantidad de P11,266.39 (Nos. 37360, 37361, 37362, 37363, 37364, 37365, 37366, 37367, 37368, 37369, 37370).

En la causa 37360 de esta Corte, que corresponde a la 8211 del Juzgado de Primera Instancia de Negros Occidental, se ha probado que el 15 de Enero de 1931 el apelante pago a los empleados su salario correspondiente a la primera quincena de aquel mes en la cantidad de P457.22, y este pago lo asento en el libro de caja Exh. D, pagina 149, asiento No. 2. Al fin de aquel mes el apelante pago a los mismos empleados su salario correspondiente a la segunda esta cantidad solamente en el Exh. D, asiento No. 89, puso la de P916.05, que es el sueldo de dichos empleados correspondiente a todo el mes.

Se ha probado tambien que el 15 de Marzo el apelante pago a los empleados su salario correspondiente a la primera quincena de aquel mes en la cantidad de P458.83, asentandola en su libro de caja Exh. D, pagina 154, asiento No. 81. Al fin de aquel mes el apelante pago a los empleados sus salarios correspondientes a la segunda quincena en la cantidad de P445.05, pero hizo constar en el Exh. D en la pagina 157, asiento No. 115, la cantidad de P903.88, que corresponde al salario de todo el mes.

El 15 de Junio el apelante pago a los emppleados la cantidad de P458.83 correspondiente a sus salarios de la primera quincena, acreditando esta cantidad en su libro de caja Exh. D, pagina 164, asiento 239. Al fin de aquel mes el apelante pago a los empleados la cantidad de P458.83 correspondiente a su sueldo de la segunda quincena, pero, hizo aparecer en su libro de caja Exh. D, pagina 162, asiento 198, que habia pagado P917.66, que es el sueldo correspondiente a todo el mes.

El 15 de Julio el apelante pago a los empleados la cantidad dse P388.83 correspondiente a la primera quincena de aquel mes, asentando esta cantidad en su libro de caja Exh. D, pagina 164, asiento 257. Al fin de aquel mes el apelante pago a los empleados el resto de su salario en la cantidad de P528.83, pero, asento en su libro de caja

Exh. D, pagina 166, asiento 282, la cantidad de P917.66, que es el sueldo correspondiente a todo el mes.

De esta manera el apelante vino a hacer asientos dobles haciendo aparecer que al fin de cada mes pago el salario completo de los empleados, cuando en realidad solo pago el resto, despues de deducido lo pagado en la primera mitad del mismo, resultando de esto que los pagos hechos por el apelante correspondientes a la primera quincena de los meses mencionados, no obstante haber sido ya asentados en su libro de caja, volvio a incluirlos en el asiento del pago hecho al fin de cada uno de dichos meses, haciendo aparecer que ha pagado al fin de cada mes el sueldo completo, cuando en realidad solamente ha pagado el resto.

Para ocultar estas alteraciones el apelante tuvo que alterar tambien los numeros de los vouchers correspondientes.

En la causa 37361 de esta Corte, que corresponde a la No. 8212 del Juzgado de Primera Instancia de Negros Occidental, se ha probado que el apelante asiento en su libro de caja Exh. D, pagina 150, asiento No. 24, que pago a Guillermo Dacalan el 10 de Febrero de 1931 la cantidad de P348 por materiales, cuando en realidad no hizo tal pago ni Dacalan recibio esta cantidad en tal fecha. Es verdad que Dacalan recibio una cantidad igual, pero, esto fue en 2 de Abril de 1930 y este pago tambien se asiento en la pagina 117, asiento 107, del libro de caja Exh. D. Para disimular aquel asiento falso el apelante hizo aparecer que Dacalan reembolso esta cantidad al gobierno. Dacalan niega haber hecho tal reembolso.

En la causa 37362 de esta Corte, que corresponde a la 8213 del Juzgado de Primera Instancia de Negros Occidental, se ha probado que el apelante asiento en su libro de caja Exh. D, pagina 153, asiento No. 61, que pago a la Negros Philippine Lumber Corporation la cantidad de P424.68 y en la pagina 164, asiento No. 256, del mismo Exh. D el apelante asiento otro pago hecho a la misma Negros Philippine Lumber Corporation por la misma cantidad de P424.68, cuando en realidad la Negros Philippine Lumber Corporation solamente recibio del apelante una vez esta cantidad, como pago por maderas suministradas al municipio.

Resulta de los hechos expuestos en estas tres causas el apelante falsifico en diferentes fechas su libro oficial de caja Exh. D, haciendo en el asientos falsos y alterando la verdad en la narracion de los hechos.

En la causa 37363 de esta Corte que corresponde a la No. 8214 del Juzgado de Primera Instancia de Negros Occidental se presento la siguiente querella:

"That on or about the 4th day of February, 1931, in the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, the herein defendant, being then municipal treasurer and deputy provincial treasurer thereat and taking advantage of said position did then and there wilfully, unlawfully, and maliciously and for the purpose of concealing malversation for which he is prosecuted in a different information, falsify page 150 of said Municipal Form No. 20 (A), by then and there making it appear therein that he made disbursement to one Leon C. Rigor of San Carlos of P1,117.80 by supporting same with a falsified voucher Municipal Form No. 3 (A) which he prepared himself, when in truth and in fact as he very well knew, he never paid to said Leon C. Rigor in said voucher the amount of P1,117.80, thereby making false narration of facts in said Municipal Forms No. 3 (A) and No. 20 (A)."

En la causa 37364 de esta Corte que corresponde a la No. 8223 del Juzgado de Primera Instancia de Negros Occidental se presento la la siguiente querella:

"That on or about the 10th day of August, 1931, in the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, the herein defendant, being then deputy provincial treasurer and municipal treasurer of said municipality and taking advantage of said office did then and there wilfully, unlawfully, criminally and maliciously and for the purpose of concealing malversation for which he is prosecuted in a separate information, falsify General Form No. 45 (A) known as requisition and issue voucher, by erasing and altering figure 1 of figures 138 falling under the columns for quantity of the requisition and inserting in lieu

thereof a figure 5, thereby varying said figures as to make it appear, as it does appear now, that the quantity of materials requisitioned was 538, instead of 138, and by intercalating in the column falling under 'total value' figure 1 before figures 345 which are written twice in two lines, thereby varying the total which was originally 345 to 1,345 and by altering figure 1 of figures 138 appearing on the face of the said voucher, as to make it read, as it does read now, that the number of cubic meters furnished therein was 538 instead of 138 as it originally appeared and by intercalating, furthermore, in the certificate No. 6, above the signature of the creditor Angel C. Mondragon the words 'One thousand' before the words 'Three Hundred Forty-Five Pesos Only' as to vary, as it in fact did vary, said amount from three hundred forty-five pesos only to one thousand three hundred forty-five pesos only and with the use of said vouchers did then and there wilfully, unlawfully, and maliciously make an entry on page 166 of M.F. No. 20 (A), known as municipal cashbook, corresponding to No. 294 thereof, that he paid to one Angel C. Mondragon alias A. C. Mondragon, the amount of P1,345 when in truth and in fact, as he very well knew, he paid to said Mondragon the amount of P345 only, thereby making false narration of facts in said documents, and altering and intercalating therein figures and words which were not originally written thereon at the time said creditor Mondragon received the amount of P345 only, and thus varying the amounts in said documents."

En la causa 37365 de esta Corte que corresponde a la No. 8224 del Juzgado de Primera Instancia de Negros Occidental se presento la siguiente querella:

"That on or about the period from August the 12th to 15th, 1931, in the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, the herein defendant, being the deputy provincial treasurer and municipal treasurer of said municipality and taking advantage of said office, did then and there wilfully, unlawfully, criminally, and maliciously and for the purpose of concealing the crime of malversation for which he is prosecuted under separate information, falsify, by a series of continuous and correlated acts, Municipal Form No. 3 (A), known as municipal voucher, by making it appear thereon and by attaching thereto a false issue voucher which he himself falsified, that one Angel C. Mondragon received from him (Pascual Z. Viason), in his capacity as such municipal treasurer, the amount of P1,500 for materials furnished to the municipality, by writing in Certificate No. 6 of said voucher the name of Angel C. Mondragon; and, with the support of said vouchers falsify, page 167 of Municipal Form No. 20 (A), known as municipal cashbook, corresponding to entry No. 307, by making it appear that he paid by virtue of said falsified Voucher No. 307, to one Angel C. Mondragon the amount of P1,500, when in truth and in fact, as he very well knew, said requisition and issue voucher and Municipal Form No. 3 (A), (Voucher No. 307) were false and that the entry corresponding to the same on page 167 of said municipal cashbook was false, thus making it appear in said voucher No. 307 that a person intervened or participated in an act when in truth and in fact he did not, and making false narration of facts in said public documents.

En la causa 37366 de esta Corte que corresponde a la No. 8225 del Juzgado de Primera Instancia de Negros Occidental se presento la siguiente querella:

"That on or about the 4th day of February, 1931, in the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, the herein defendant, being then deputy provincial treasurer and municipal treasurer of said municipality and taking advantage of said office did then and there wilfully, unlawfully, criminally, and maliciously and for the purpose of concealing the crime of malversation of public funds for which he is prosecuted in a separate information, falsify G. F. No. 45 (A) by intercalating before figure 64, falling under quantity as requisitioned in said issue voucher, figure 5, thereby varying the quantity of said requisition as to make it appear, as it did in fact appear, that 564 was requisitioned by the municipality instead of 64 which is the true quantity, which requisition and issue voucher, without the intercalation described above, was the supporting paper, prior to February 4, 1931, of Municipal Voucher No. 342, series of 1930, and detaching therefrom said requisition and issue voucher and falsifying same by intercalation as already described above, and using it together with a requisition and issue voucher corresponding to August 14, 1930, which latter requisition and issue voucher was the supporting paper of Municipal Voucher No. 359, series of

1930, as supporting requisition and issue vouchers of Municipal Voucher No. 12, falsify Municipal Form No. 3 (A) by making it appear thereon that he received the materials described and enumerated in the above two described requisition and issue vouchers after he had intercalated a figure 5 on the issue voucher of August 1, 1930, and by making it appear in said Voucher No. 12 that he paid to one Angel C. Mondragon the amount of P1,906.40 for said materials, when in truth and in fact as he very well knew, the above two described requisition and issue vouchers belonged and corresponded to Municipal Vouchers Nos. 342 and 359 before the said intercalation was made and that he did not deliver and pay to said Angel C. Mondragon the said amount of P1,906.40, and, furthermore, by the use of the falsified Voucher No. 12 said accused falsify Municipal Form No. 20 (A), page 149 thereof, entry No. 12, by making it appear thereon that he delivered to said Angel C. Mondragon the amount of P1,906.40, knowing as he very well did know, that the said Voucher No. 12 was falsified and that Vouchers Nos. 324 and 359 had already been entered as paid, previously on page 132 of said municipal cashbook, thereby, by said series of continuous and correlated acts, making false narration of facts intercalations and alterations, in the above described municipal and general forms."

En la causa 37367 de esta Corte que corresponde a la No. 8226 del Juzgado de Primera Instancia de Negros Occidental se presento la siguiente querella:

"That on or about the period of May 7 to 9, 1931, inclusive, in the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, the herein defendant, being then the deputy provincial treasurer and municipal treasurer of said municipality and taking advantage of said office, did then and there wilfully, unlawfully, criminally, and maliciously and for the purpose of covering a malversation for which he is prosecuted in a separate information, falsify page 157 of Municipal Form No. 20 (A) known as municipal cashbook of said municipality, by making it appear in the entry corresponding to No. 118, and supporting it with false Municipal Voucher No. 118 and a requisition and issue voucher, that he paid to one Guillermo Decalan the amount of P1,465.80 as payment for materials alleged to have been received from said Guillermo Decalan, when in truth and in fact, as he very well knew, the municipality never received said materials from said Guillermo Decalan nor did he (accused) pay such amount to the same, thereby making false narration of facts in said public documents."

En la causa 37368 de esta Corte que corresponde a la No. 8227 del Juzgado de Primera Instancia de Negros Occidental se presento la siguiente querella:

"That on or about the period covered from December, 1930, to September 5, 1931, in the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, the herein defendant being then deputy provincial treasurer and municipal treasurer of said municipality and having under his custody all public funds belonging to the same did then and there wilfully, unlawfully, criminally, and feloniously and with abuse of confidence reposed in him by the Government, take, abstract, malverse and appropriate to his personal use and benefit, by a series of continuous acts concealed by falsifications of public documents with which he is separately charged, the amount of P11,266.39 which was under his custody and for which he was responsible and accountable to the Government and did refuse and still refuses to account for and produce said amount, in spite of repeated demands made to that effect by competent authorities, to the damage and prejudice of the municipal government of San Carlos in the amount of P11,266.39, Philippine Currency."

En la causa 37369 de esta Corte que corresponde a la No. 8228 del Juzgado de Primera Instancia de Negros Occidental se presento la siguiente querella:

"That on or about the period covered from February to May 31, 1931, in the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, the herein defendant, being then deputy provincial treasurer and municipal treasurer of said municipality and taking advantage of said office, did then and there wilfully, unlawfully, criminally, and maliciously and by a series of continuous and correlated acts and for the purpose of concealing malversation for which he is prosecuted in a different information, falsify Municipal Form No. 7 (A), known as municipal payroll, and Municipal Form No. 20 (A) known as municipal cashbook, by then and

there making it appear in said municipal payroll Voucher No. 46, that he paid on February 28, 1931, the salaries in full of the members of the police force of San Carlos, Occidental Negros, for the period of February 1-28, 1931, inclusive, when in truth and in fact as he very well knew, he only paid said members of the police department their salaries corresponding to the last half of said month, that is, for the period of February 16-28, 1931, inasmuch as he had already paid to the members listed therein, the amount of P237.50 as per Voucher No. 120, which is the amount corresponding to the period of February 1-15, 1931, and with the use of said Voucher No. 46, that is, the one corresponding to February 1-28, said accused did falsify page 152 of said municipal cashbook, by making an entry corresponding to February 21, 1931, that he paid the total amount of P475 in the form of salaries for the whole month of February to the members of said police department, which entry No. 46 appears as of February 21, 1931, in the cashbook; and, on May 10 to 12, 1931, the herein accused, did then and there falsify municipal payroll, Voucher No. 120 by erasing on the back thereof the word 'February' which was originally written thereon and altering the same after it had been erased, as to make it appear, as it does appear now, that said payroll was for the month of 'May', 1931, and, with the support of said Voucher No. 120 did then and there wilfully, unlawfully, and maliciously falsify page 158 of Municipal Form No. 20 (A), municipal cashbook, by making it appear on entry No. 120 thereof, corresponding to May 10, 1931, that on this date, he paid the members listed in the municipal payroll, Voucher No. 120, the amount of P237.50, when as a matter of fact which he very well knew, said Voucher No. 20, although actually paid in February 15, 1931, should have been considered as included in entry No. 46 in the cashbook, page 152 thereof, thereby making alteration of dates in Voucher No. 120 and making false statements of facts in said document and in the said municipal cashbook."

En la causa 37370 de esta Corte que corresponde a la No. 8229 del Juzgado de Primera Instancia de Negros Occidental se presento la siguiente querella:

"That on or about the 1st day of September, 1931, in the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, the herein defendant, being then deputy provincial treasurer and municipal treasurer of said municipality and taking advantage of said office, did then and there wilfully, unlawfully, criminally, and maliciously and by means of a series of correlated acts, and for the purpose of concealing the crime of malversation for which he is prosecuted in separate information falsify Municipal Form No. 3 (A), known as Municipal Voucher No. '237' by erasing and altering the figures and words '237' and 'July 15' which were originally written on the face and on the back of said voucher, and inserting over the erased figures '237' the figures '327' and with the use of said voucher as altered to '327', and by making same appear as voucher of September 1931, did then and there wilfully, unlawfully, and maliciously make an entry No. 327 in the Municipal Form No. 20 (A), known as municipal cashbook, that he paid to Leon C. Rigor on September 1, 1931, the amount of P1,515.50 for materials supplied to the municipality when in truth and in fact, as he very well knew, he did not make such payment to said Leon C. Rigor on September 1, 1931, inasmuch as he had already paid Leon C. Rigor for the very same materials furnished by the latter to the municipality in Voucher No. 237, on July 15, 1931 and which payment, was entered as No. 238 on page 163 of said municipal cashbook, thereby making alterations which varied the dates on the voucher, and false narration of facts in Municipal Form No. 3 (A) and making false narration of facts in Municipal Form No. 20 (A)."

Las pruebas establecen tambien los hechos acusados en estas ocho querellas restantes, excepto en la causa por malversacion en cuanto a la cantidad malversada, que es de P10,577.69 en vez de P11,266.39 como se alega en la querella.

Se alega en esta instancia que el Juzgado erro al ordenar el arresto del acusado sin haberse practicado antes la correspondiente investigacion preliminar. Consta, sin embargo, que esta investigacion fue prwctcada por el mismo Juzgado de la Instancia.

Los hechos probados en las causas 37360, 37361, 37362, 37363, 37364, 37365, 37366, 37367, 37368, 37369, y 37370 de es que autor el apelante, constituyen el delito de falsificacion de documento publico, a saber, su libro de

caja oficial, faltando a la verdad en la narracion de los hechos, con abuso de su cargo como Tesorero Municipal. La pena señalada al delito por el antiguoCodigo Penal en su art. 300 es prision mayor, multa no menor de 250 ni mayor de 2,500 pesetas e inhabilitacion perpetua para ejercer cualquier cargo publico.

Los hechos probados en la causa 37368, de que tambien es autor el apelante, constituyen el delito de malversacion de fondos publicos castigado en el art. 2672 del Codigo Administrativo con prision no menor de 2 meses ni mayor de 10 años, inhabilitacion perpetua para ejercer todo cargo publico y, a discrecion del Tribunal, una multa no mayor de la cantidad malversada.

Sin embargo, no pudiendo las penas de prision ser cumplidas simultaneamente, su maxima duracion, segun el art. 88, parrafo 2 del antiguoCodigo Penal, no debe exceder del triple de la mas grave y debemos dejar de imponer las que excedan de este triple. Segun esto, solamente podemos imponer las penas de prision correspondientes a las causas 37360, 37361 y 37362.

Por tanto, teniendo en cuenta, ademas, las disposiciones de la ley 4103 condenamos al apelante en cada una de las causas 37360, 37361 y 37362 a la pena de 2 años de prision correccional a 8 años y 1 dia de prision mayor, con sus accesorias, a inhabilitacion perpetua para ejercer todo cargo publico, a pagar una multa de 500 pesetas y, ademas, a indemnizar al Gobierno en la cantidad de P10,577.69, sin prision subsidiaria en caso de insolvencia, con las costas.

Asi se ordena.

Street, Santos, Butte y Diaz, MM., conformes.

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