

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SERGIO MENDOZA, DEFENDANT AND APPELLANT.

G. R. No. L-5563. July 31, 1953

Ponente: PADILLA, J.

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PADILLA, J.:

Sergio Mendoza was charged with falsification of a public or official document. The information reads thus—

"That on or about the 27th of July 1949, in the City of Manila, Philippines, the said accused being then employed as inspector of the Division of Sanitary Engineering, of the Office of the City Health Officer, in said City of Manila, did then and there wilfully, unlawfully and feloniously commit various acts of falsification on a public and official document, to wit: Official Receipt No. 188903-V, issued by the City Treasurer's Office, City of Manila, by then and there erasing the name "Elena Manansala" and the figure "P1.00" therein and afterwards, writing, inserting and intercalating, or, causing it to be written, inserted and intercalated thereon in such a way as to change its import and meaning, the words "Roberto B. Almaden," "forty-six only" and the figure "46" thereby making it appear that said receipt was issued to the said Roberto B. Almaden and that the latter paid the sum of P46 to the City Treasurer's Office, when in truth and in fact, as the said accused well knew, Official Receipt No. 188903-V was in the name of Elena Manansala as aforesaid and said receipt was issued to her when she paid the amount of P1 to the Department of Engineering and Public Works, in said City, for the issuance of a duplicate copy of a building fee."

Upon arraignment he entered a plea of not guilty, but on 18 February 1952, the date set for the trial of the case, with the consent of the trial court and the prosecuting attorney, the defendant, assisted by counsel, entered a plea of guilty for the crime of falsification described and punished in the last paragraph of article 172 of the Revised Penal Code. Thereupon, the court sentenced him to suffer 4 months and 1 day of arresto mayor, to pay a fine of P50, or suffer subsidiary imprisonment in case of insolvency, and costs. From this sentence the defendant has appealed.

On 14 June 1952, Vicente T. Velasco, Jr., the attorney de oficio appointed by the court, filed a motion stating that he could not find a way to question the legality of the penalty imposed, which is the only question raised by the appeal. By resolution the court directed that the motion of the attorney de oficio be considered as the appellant's brief. On 17 June 1952, attorney Carlos Perfecto appeared and gave notice of the withdrawal of the appeal stating that the appellant was ready and willing to serve the sentence imposed on him by the trial court. Acting on this petition the court ordered that a copy thereof be furnished the appellant who was required to comment thereon within ten days from notice. On 16 July 1952 copies of the notice of withdrawal of appeal and of the resolution of the court requiring the appellant to comment within ten days from notice were served on him in the municipal jail, Manila Police Department, but he has failed to do so. On 4 August 1952 the Solicitor General filed the brief for the appellee and the case was set for hearing on 1 October 1952 but no one appeared at the hearing. In his brief the Solicitor General recommends that the penalty be not less than 1 month and 1 day nor more than 4 months of arresto mayor, as minimum, and not less than 1 year and 1 day nor more than 1 year and 8 months of prision correccional, as maximum, because the penalty imposed by the lower court is below the range provided by law.

The trial court allowed the defendant to enter a plea of guilty to a lesser offense for that of not guilty, to a more serious crime previously entered under and pursuant to section 4, Rule 114. The substitution of plea could not lawfully be made taking into consideration the fact that the crime charged in the information is falsification of a public document. Falsification of a public document by a public officer or employee or by a private person is a very serious crime punished with prision mayor to its full extent and with prision correccional in its medium and maximum periods, respectively, and in both with a fine not to exceed P5,000. Being an employee or inspector of the Division of Sanitary Engineering of the Office of the City Health Officer the defendant was not a private person. He could be considered as such if notwithstanding his government employment he took no advantage thereof in committing the falsification. The crime of falsification described and punished in article 172 of the Revised Penal Code is committed by a private individual who does any of the falsifications described in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and by a person who, to the damage of a third party, or with intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article. The last paragraph of article 172 punishes a private person who introduces in evidence in any judicial proceeding and uses any of the false documents embraced in the next preceding article or in any of the subdivisions of the article. For that reason the crime of falsification defined and punished in the last paragraph of article 172 is not necessarily included in the offense charged in the information for falsification of a public document by a public officer or employee or by a private individual. The crime punished in the last paragraph of article 172 of the Revised Penal Code may be a lesser offense but it certainly cannot be deemed necessarily included in the crime of falsification of a public document by a public officer or employee or by a private person. Hence section 4, Rule 114, was misapplied. Under the view we have taken of the case, neither the penalty imposed by the trial court nor that recommended by the Solicitor General is in accordance with law. The penalty should be not less than 4 months and 1 day of arresto mayor, as minimum, and not less than 3 years, 6 months and 21 days and not more than 4 years, 9 months and 10 days of prision correccional, as maximum, the accessories of the law and a fine of P50, or subsidiary imprisonment in case of insolvency, and costs.

As a general rule, the withdrawal of an appeal before the filing of the appellee's brief is allowed and granted. The presumption is that attorney Carlos Perfecto had the authority to appear for the appellant. The latter was given an opportunity to disown what his attorney had done but has failed to do so. His silence leans towards confirmation rather than toward disavowal. Consequently, the motion for dismissal of the appeal is granted.

Paras, C. J., Pablo, Bengzon, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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