THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PRUDENCIO F. GARCIA, DEFENDANT AND APPELLANT.

G.R. No. L-21908. November 05, 1924

Ponente: JOHNS, J.

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JOHNS, J.:

An information was tiled against the defendant in the Court of First Instance of Surigao, the charging part of which is as follows:

"That on or about the 31st of August, 1921, in the municipality of Surigao, Province of Surigao, Philippine Islands, and within the jurisdiction of this court, the aforesaid accused, being a Government officer and employee, to wit, municipal treasurer of said municipality and deputy provincial treasurer, and in charge, by reason of his office, of the public funds, did willfully unlawfully, and criminally, and with abuse of his official position and for the purpose of defrauding the Government, falsify his cashbook by entering thereon the sum of P3,277.88 as paid to the provincial treasury under receivable accounts, instead of P277.88, which was the true amount paid by him, said accused knowing it to be false, and that the truth was that he (the accused) on the date and in the place aforementioned willfully, unlawfully, and criminally and abusing of his position and for the purpose of defrauding, took away the amount of P3,000, after making said entry, which he misappropriated and converted to his own use and benefit, to the damage of the Government, particularly of the municipal treasury of the aforesaid municipality, the accused having caused all the vouchers of said entry to disappear in order to avoid the discovery of its falsity and secure the impunity of this crime. Contrary to law, specially section 2672 of the Revised Administrative Code and article 300 of the Penal Code, as amended by Act No. 2712, in connection with article 89 of said Penal Code."

To this information the defendant filed the following demurrer :

"Come now the undersigned attorneys on behalf of the accused and demur to the information on the ground of multiplicity of crimes alleged which are separately punished by our penal laws."

It was overruled and as a result of a trial the defendant was found guilty of malversation of public funds through falsification of public documents as defined in and penalized by section 2672 of the Administrative Code, in connection with article 300 of the Penal CJode, and sentenced to ten years and one day of prision mayor and to pay a fine of 12,500 pesetas, with the legal accessories, and to indemnify the municipality in the sum of P2,000, and to pay the costs. From this judgment the defendant appealed and assigns the following errors:

"I. The lower court erred in finding and concluding upon the evidence that the defendant and appellant was guilty of the crime charged in the information and in rendering sentence of conviction.

"II. The lower court erred in refusing to render a judgment of acquittal exonerating defendant and appellant upon the law and the evidence.

"III. The lower court erred in overruling defendant and appellant's demurrer to the information."

JOHNS, J.:

Under our view error No. 3 is the only one which is material to this decision. The information charges, first, that the defendant "did willfully, unlawfully, and criminally, and with abuse of his official position and for the purpose of defrauding the Government, falsify his cashbook by entering thereon the sum of P3,277.88 as paid to the provincial treasury under receivable accounts, instead of P277.88, which was the true amount paid by him." Standing alone it charges the defendant with falsification of a public document, which in itself is a specific crime. The information further charges that the defendant did "willfully, unlawfully, and criminally, and abusing of his position and for the purpose of defrauding, take away the amount of P3,000 after making said entry, which he misappropriated and converted to his own use and benefit, to the damage of the Government, particularly the municipal treasury of the aforesaid municipality." Standing alone that portion of the information is a specific charge "that after making said entry he took and appropriated the P3,000 to his own use," which under the law is a separate and distinct crime. The information further alleges that the defendant "having caused all the vouchers of said entry to disappear in order to avoid the discovery of its falsity and secure the impunity of this crime." That portion of the information charges the defendant with the loss and destruction of a public document for the purpose of concealing a crime which within itself is also a separate and distinct crime.

Section 11 of General Order No. 58 provides:

"A complaint or information must charge but one offense; except only in those cases in which existing laws prescribe a single punishment for various allied offences." Section 21 provides that "the defendant may demur to the complaint or information, when it appears on the face thereof that more than one offense is charged."

In the instant case, a demurrer upon such ground was promptly filed. It is true that in the argument on the demurrer, the defendant did not point out or specify that the information charges the defendant with the conversion of the P3,000 to his own use, but the specific grounds of the demurrer were "that more than one offense is charged," and it called the attention to that fact of both the prosecution and the trial court, and the information upon its face charges three separate and distinct crimes, each of which is complete within itself.

The law against charging more than one offense in an information is fundamental, and when properly challenged by a demurrer, as in this case, should be sustained by the trial court and an opportunity given to amend.

Without passing upon the guilt or innocence of the defendant and without prejudice to the rights of the prosecution, the case is reversed and remanded, with leave to the prosecution to file any further pleas or information. So ordered.

Johnson, Street, Villamor, and Ostrand, JJ., concur.

ROMUALDEZ, J., with whom concurs AVACEÑA, J., concurring and dissenting:

I concur in that the complaint is defective. I dissent from the disposition of the case for I believe that the evidence is insufficient to convict the accused who must, therefore, be acquitted.

MALCOLM, J., dissenting:

My vote is to affirm the judgment on the merits.

Judgment reversed and case remanded with instructions.

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