

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. SERGIO VILLACRUCES, DEFENDANT AND APPELLEE.*G.R. No. 10083. December 19, 1914*

Ponente: TORRES, J.

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Appeal filed by counsel for the Government from the order dated June 12, 1914, whereby the Honorable Bartolome Revilla, judge, disqualified himself from trying the present case in favor of the court having jurisdiction and dismissed it with the costs de officio.

On May 22, 1914, the provincial fiscal of Cebu filed an information against Sergio Villacruces in the Court of First Instance of said Province of Cebu, charging him with estafa, on the ground that on or about October 21, 1913, within the boundary of the municipality of Cebu, of this province and judicial district, the said Sergio Villacruces, being the navigating officer of the steamer Jayme Vaño, and as such the custodian of all its cargo, received from Messrs. Cang-Suco Bros, doing business in this place, a package that contained the sum of P6,000, with its corresponding bill of lading, which package was closed and carefully sealed, to be delivered by him personally to the Chinaman Florentino Dy, of the town of Dulag, Leyte, to whom it was addressed; but that said accused, willfully, illegally and criminally and with intent of defrauding Messrs. Cang-Suco Bros., instead of delivering the said package whole and complete to the said Florentino Dy, as he had received it from the sender, opened it and without any authorization whatsoever abstracted therefrom the sum of P2,000, all in twenty-peso bills, and appropriated the same to his own personal profit, to the prejudice of the said Cang-Suco Bros., in violation of law.

It was brought out at the trial instituted, that on October 21, 1913, the firm of Cang-Suco Bros, of Cebu, through its representative Nicolas Eugenio, after loading rice on the steamer Jayme Vaño, delivered to the defendant, the navigating officer of said ship, a closed package, well-sealed at the ends, containing the sum of P6,000, to be delivered to the Chinaman Florentino Dy in Dulag, Leyte. The defendant issued the bill of lading, Exhibit A, page 12 of the record, wherein he certified that he had received from Cang-Suco Bros, for transportation to Dulag, Leyte, 500 sacks of Saigon rice and a package, on the cover or wrapping whereof, Exhibit B, appear the figures P6,000 and also some pieces of wax at both ends. Can Sunlin, cashier of the Cang-Suco firm, stated that he had sent to Florentino Dy exactly P6,000, wrapped up in the package, Exhibit B, and composed of a sheaf of bills of different denominations; that when the steamer Jayme Vaño reached Dulag the defendant delivered to Florentino Dy said package with a letter, but as Florentino saw that the package was open at both ends he refused to receive it and directed the defendant to count in his presence the money contained in the package, the result being that there was only P4,000, and as in the letter and the bill of lading it was stated that P6,000 had been sent him, the said Florentino refused to accept said sum, which the defendant took back, and upon his arrival in Cebu he returned it to Cang-Suco.

The defendant pleaded not guilty and set up no defense, but presented a motion to dismiss the case on the ground that the evidence demonstrates that the Court of First Instance of Cebu lacks competency to try it, for the reason

that it was not proven that the criminal act was committed in waters in the jurisdiction of the Province of Cebu; that there was no evidence that the defendant had abstracted the sum of money stated in the complaint and that in any event the real parties injured would be Smith, Bell & Co., and not Cang-Suco Bros.; whereupon the court issued the order mentioned, from which the provincial fiscal duly appealed.

Counsel for the Government alleges in this instance that the court erred in dismissing the case on the ground of lack of jurisdiction, especially when it was proven at the trial that the defendant received in Cebu from the firm of Cang Suco Bros, the sum of P6,000 with the obligation of delivering it to Florentino Dy in Dulag, Leyte, and that upon arrival in the port of Dulag instead of delivering to Florentino Dy the sum of P6,000 he tried to deliver only P4,000, alleging that he had not received more; whence it is inferred that one of the essential acts of the crime of estafa occurred in Cebu and the other was performed in Leyte, wherefore, in accordance with the ruling in the case of *The United States vs. Santiago* (27 Phil. Rep., 408), the Court of First Instance of Cebu has concurrent jurisdiction with that of Leyte over the crime at bar.

The complaint against Ruperto T. Santiago was filed in the Court of First Instance of Iloilo, because the accused Santiago, being the agent in said province of the West Coast 664 Life Insurance Company, whose central office is in this city of Manila, collected the premium on a certain policy in Iloilo and kept the sum collected instead of sending it to the company's office in Manila, according to the terms of the contract. The fact that he did not deliver said sum to the insurance company in Manila constituted a physical act, essential to the crime and necessary for its consummation, and the collection and retention of the sum received as a premium in Iloilo, with failure to remit it to the company in Manila, under the terms of the contract, constituted other important and essential acts for consummation of the crime. In view of the fact, therefore, that the crime was committed partly in the Province of Iloilo and partly in the city of Manila, this Court held that the Court of First Instance of Iloilo had concurrent jurisdiction with that of Manila over the crime so committed.

In the case at bar the facts brought out are different, for while it has been duly proven that the sum of P6,000 was intrusted to the defendant in Cebu to be delivered to Florentino Dy in the town of Dulag, Leyte, and that upon arrival at said town the defendant tried to deliver to the said Dy the sum of P4,000 only, P2,000 less than the amount the defendant received, yet it has not been demonstrated that the abstraction of the sum of P2,000 from the package that contained the P6,000 took place within the jurisdiction of the Province of Cebu, for the crime might have been committed while the ship was traveling towards Leyte. The fact is that the exact place where the crime of estafa was committed is unknown, although it is to be presumed that it was committed on shipboard in navigable waters of the Philippine Archipelago, and therefore competency to try and decide the case lies with the Court of First Instance of any province touched at by the ship or craft whereon the crime or misdemeanor is presumed to have been committed. This is positively so stated in section 1 of Act No. 400, amending section 56 of Act No. 136. In accordance with the law cited, therefore, the court that has legal competency and jurisdiction to try the said penalized act is the Court of First Instance of Leyte, for the steamer Jayme Vaño, after leaving the port of Cebu, touched at the port of Dulag on said island of Leyte.

In the case of *The United States vs. Dasal* (3 Phil. Rep., 6), the accused committed the crime of murder on board a merchant steamer, registered in the coastwise trade of these Islands, while anchored at the port of one of the islands of this Archipelago and within the navigable waters thereof. After the crime had been committed, said ship entered the port of Manila, where the accused were arraigned, and this court, in applying the provisions of said Act No. 400, decided that: "The Court of First Instance of the port where, after the commission of the crime, a ship licensed in the Philippines put in, has jurisdiction of a crime committed aboard the ship, to the exclusion of all the other courts of the Archipelago."

Although the package of money was received by the defendant in Cebu, the crime was discovered in Dulag,

Province of Leyte, where the defendant made delivery of the package, already opened, containing only P4,000 of the P6,000 he ought to have delivered to Florentino Dy; and therefore the crime of estafa was discovered and consummated in said town of Dulag, Leyte, where the defendant should have fulfilled his errand. But he did not do so, nor has he explained the absence of the P2,000, since the bill of lading shows that he received a package which, according to the wrapper, contained P6,000 (Exhibit A) and he did not later show cause why this sum had been reduced to P4,000.

For these reasons the order appealed from is affirmed, that is, the disqualification in favor of the Court of First Instance of Leyte, at whose disposition the defendant will be placed. The fiscal of said province should file the corresponding complaint against the presumed perpetrator of the crime.

Arellano, C. J., Johnson, Carson, Moreland, Trent, and Araullo, JJ., concur.

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