

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ROQUE DATO AND SEVERO LUSTRE, DEFENDANTS. ROQUE DATO, APPELLANT.

G.R. No. 12855. December 21, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 23d day of December, 1915, the prosecuting attorney of the Province of Samar presented a complaint against the appellant accusing him of the crime of "malversacion de caudales publicos." The complaint alleged:

"That on or about the 23d day of October, 1915, one Floro Basada, being a duly qualified and bonded public officer of the Insular Government, to wit, postmaster of the barrio of Carangian, of the municipality of Bobon, Province of Samar, Philippine Islands, and acting in the performance of his official duties, and having thereby the possession, keeping, and care of insular funds and properties, and the funds under trust and some other kind which the law requires him to keep, said Floro Basada on the date above-mentioned, criminally and illegally, withdrew, with the intention of profiting thereby, the following public funds and properties that were then under his care, to wit, P4,028.01 cash, postage stamps amounting to P161.66, and one safe box valued at P50, and misappropriated and used for his own benefit the said properties, failing to account for same. And that the accused Roque Dato and Severo Lustre, allying and cooperating with said Floro Basada, voluntarily, criminally and illegally, directly assisted the said Floro Basada in said withdrawal and misappropriation, bearing away the said safe box with the amount and property above-mentioned, and after appropriating the above-mentioned amount of P4,028.01, threw the box into the sea.

"An act committed within the jurisdiction of this court, in violation of Act No. 1740 of the Philippine Commission."

Upon said complaint the defendants were duly arrested and arraigned. On the 3d day of February, 1916, upon a motion presented by the prosecuting attorney, the complaint was dismissed against the said Severo Lustre in order that he might be used as a witness for the prosecution. The cause proceeded to trial against the appellant Roque Dato. Upon arraignment he plead not guilty after having presented a demurrer to the complaint which was overruled. After hearing the evidence, the Honorable W. M. Connor, judge, found the defendant Roque Dato guilty of the crime 'charged in the complaint and sentenced him to be imprisoned for a period of 5 years, and to pay the costs. From that sentence he appealed.

The appellant presents two questions, (1) one of fact and (2) one of law. He alleges that the proof adduced during the trial of the cause fails to show, beyond a reasonable doubt, that he committed the crime charged in the complaint.

An examination of the evidence found in the record clearly justifies the findings of fact made by the lower court which are as follows:

"First. That under date of October 23, 1915, and before said date, beginning September 9, 1914, Floro Basada was

acting as postmaster of the post-office established by the Government of the Philippine Islands in the locality of Carangian, of the municipality of Bobon, Province of Samar, and that he as such post-master and by reason of said office was in charge within said locality of funds and properties belonging to said Government and of trust funds which the law required said officer to keep; that on the said date of October 23, 1915, said postmaster had under his control and care funds which he was in charge of as such postmaster, amounting to four thousand twenty-eight pesos and odd centavos; that said postmaster, Floro Basada, on said date was only 22 years of age; and that he. is a young man having an average mind, and a very weak character subject to evil influences from any person having a stronger will.

"Second. That the accused Roque Dato, a resident in the the above-mentioned locality of Carangian, is a person of matured age, quite prominent, powerful and influential among the few inhabitants of said locality of Carangian, having a good amount of instruction and an exceptionally vigorous character.

"Third. That on the afternoon of the said 23d day of October, 1915, the accused Roque Dato, having learned that the said postmaster, Floro Basada, had eventually under his control and in his office in said locality the amount of four thousand pesos which he had received through the ordinary course of the mail in a registered package addressed to the municipal treasurer of Bobon, Province of Samar, and forwarded by the provincial treasurer of Samar, proposed and succeeded in moving and inducing the said postmaster to ally and join with him in the scheme and agreement which they entered into for the withdrawal of said amount from the said office of the accused by the accused Roque Dato during that same night.

"Fourth. That during that same night, to wit, between midnight and 3 a. m. of the following day, the said Roque Dato, carrying out the referred plan and agreement made, entered the above-mentioned post-office during the absence of the postmaster with the aid of one Severo Lustre, and once inside he cut the wire that tied the box to keep it from moving, which box contained the funds of the said postmaster, opened the said box the combination of which the postmaster had left open in compliance with the plan and agreement above-mentioned, and withdrew from the said box the said registered package with the contents of same of four thousand pesos, which the said Roque Dato appropriated at once while the said postmaster was arriving at the scene.

"Fifth. That once the above-mentioned four thousand pesos were withdrawn in the manner above referred to, the said Roque Dato, taking advantage of the nighttime and with the aid of the said Severo Lustre, caused the said box to be born away from the office on that same occasion and carried to a banca, by latter to the sea under orders to throw it into the sea, which the said Severo Lustre succeeded in doing."

The foregoing facts clearly show that the appellant participated in the commission of the crime described in the complaint. That conclusion brings us to the second contention of the appellant that, even admitting that he took part in the commission of the crime, being a private person and not charged with the custody of public funds, he cannot be guilty of the "malversacion de caudales piiblicos."

That question has heretofore been discussed and decided by this court. In the case of *United States vs. Ponte* (20 Phil. Rep., 379) the precise question presented by the appellant was discussed and decided. In the course of that opinion it was said:

"Those who take a direct part in the commission of the crime of malversation of public funds by public officials, as defined in Act No. 1740 (art. 2672, Act No. 2711—Administrative Code), and those who cooperate in the commission of that crime * * * are guilty as principals although they themselves may not be public officials. (*U. S. vs. Ponte*, 20 Phil. Rep., 379; 4 *Groizard*, 275; 2 *Viada* (4th Ed.), 653; *U. S. vs. Dowdell and Harn*, 11 Phil. Rep., 4.)"

We deem it unnecessary, in answering the contention of the appellant, to say more than was said in the case of *United States vs. Ponte* (supra).—The defendant took a direct and active part in the commission of the crime, well knowing the character of the moneys and effects, in the appropriation of which he was assisting. He not only took a direct part in the commission of the crime but directly induced others to commit it, and is therefore a principal. (Art. 13, Penal Code".)

It will be noted that the lower court imposed a penalty of imprisonment only. Considering the peculiar facts and circumstances surrounding the commission of the crime, we are of the opinion that the fine authorized by the law should also be imposed. It will also be noted that the lower court failed to impose the disqualification upon the defendant provided for by section 3 of Act No. 1740. The provisions of said section are mandatory and must be imposed. Said article provides: "Every person convicted of a violation of this Act shall, ipso facto, be forever disqualified from holding any public office or employment of any nature whatever within the Philippine Islands."

Therefore, it is hereby ordered and decreed that the sentence imposed by the lower court be modified, and that in addition to the 5 years of imprisonment the defendant should be fined in the sum of P4,000 and, in case of insolvency, to suffer subsidiary imprisonment in accordance with the provisions of the law. It is further ordered and decreed that the defendant be forever disqualified from holding any public office or employment of any nature whatever within the Philippine Islands. With said modifications, let a judgment be entered sentencing the defendant and appellant to be imprisoned for a period of 5 years and to pay a fine of P4,000 and, in case of insolvency, to suffer subsidiary imprisonment in accordance with the provisions of the law, and to pay the costs, and that he be forever disqualified from holding any public office or employment of any nature whatever within the Philippine Islands. So ordered.

Arellano, C. J., Torres, Carson, Araullo, Street, Malcolm, and Avancena, JJ., concur.

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