

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TIMOTEO SANTOS, DEFENDANT AND APPELLANT.

G.R. No. 13217. January 21, 1918

Ponente: CARSON, J.

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CARSON, J.:

The accused in this case was convicted in the court below of the crime of infidelidad en la custodia de documentos and sentenced to 8 years and 1 day of prision mayor to pay a fine of 3,000 pesetas, together with the accessory penalties prescribed by law.

The facts in this case are substantially similar to those in the case of United States vs. Marcelo Mataban (R. G. No. 12565, decided August 25, 1917 [not published]), it appearing that the accused, a letter carrier in the employ of the Bureau of Posts, was found on the 19th day of May 1917 with a number of letters in his possession which had been turned over to him for delivery to the addressees of these letters some time prior to the date when they were found in his possession and the evidence tends to disclose that the accused had unlawfully detained and failed to deliver more than one hundred letters entrusted to him for that purpose; that he had opened many of these letters; and that his misconduct began some time in the month of November, 1913, and continued down to the 19th of May, 1917, when the letters were discovered in his possession. The proof, however, is not conclusive as to the precise date upon which all of these letters were turned over to the accused, though there can be no question that some of them were delivered to him at or about the time they were found in his possession; that he was unlawfully detaining mail matter which had been deposited in a post-office, and had unlawfully opened some of this detained mail matter in violation of section 2689 of the Administrative Code of 1916 (Act No. 2657). The penalty imposed by that provision of the Administrative Code in force at the time when the offense was shown to have been committed, being more favorable to the accused than that prescribed in the Penal Code, we are of opinion that under the doctrine announced in the above cited case of United States vs. Marcelo Mataban (*supra*), the former penalty, and not the latter, is that which should have been imposed upon him on his conviction of the offense defined and penalized in section 2689 of the Administrative Code of 1916.

It may be worth while at this time to direct attention to the amendment to section 2689 of the Administrative Code of 1916 (Act No. 2657), by the enactment of section 2756 of the Administrative Code of 1917 (Act No. 2711). Under the provisions of section 2689 of the Administrative Code of 1916, any person whether an employee of the post-office or not, may be punished for the unlawfully opening or detention of mail matter in the manner and form therein set out; whereas under the provisions of section 2756 of the Administrative Code of 1917, the imposition of the penalties therein set forth are limited to cases wherein persons "other than an officer or employee of the Bureau of Posts, are convicted of the unlawfully opening or detention of mail matter." It follows that officers or employees of the Bureau of Posts who are found guilty of the unlawful opening or the detention of mail matter since the date when the Administrative Code of 1917 became effective (October 1, 1917), cannot be convicted under the provisions of this section, and must be brought to trial, and upon conviction, sentenced under the general provisions of the Penal Code which defines and penalizes such offenses.

We conclude that following the precedent established in the case of *United States vs. Marcelo Mataban* (*supra*) the judgment entered in the court below should be reversed and that in lieu thereof, judgment should be entered convicting the defendant and appellant of a violation of the provisions of section 2689 of the Administrative Code of 1916, and imposing upon him a sentence of six months' imprisonment and a fine of P300 with the costs of both instances. So ordered.

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

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