

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. AGATON SALAZAR, DEFENDANT AND APPELLANT.

G. R. No. 13371. September 24, 1959

Ponente: BARRERA, J.

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BARRERA, J.:

The accused Agaton Salazar was charged in the Court of First Instance of Batangas (in Criminal Case No. 384) with the crime of malversation of public funds under the following information:

"That on or about the 14th day of May, 1957, and for some time prior thereto, in the Municipality of Balayan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then the Deputy Provincial and Municipal Treasurer of said municipality, and as such, accountable for the funds collected and received by him by reason of his said position, in the way of taxes, fees, dues, costs, and bonds, did then and there wilfully, unlawfully, feloniously and with grave abuse of confidence, misappropriate, misapply, embezzle, and convert to his own personal use and benefit, from said funds, the sum of P13,897.77, Philippine Currency, to the great detriment of the public interest.

"Contrary to law."

Upon said information, the accused was duly arrested and arraigned. Upon arraignment, he pleaded "not guilty", which he later withdrew and changed to one of "guilty", whereupon the court, in consideration of voluntary surrender and plea of guilty on the part of the accused, and after considering the facts set out in the information, sentenced him to be imprisoned for an indeterminate period ranging from (2) years, eleven (11) months and eleven (11) days of prison correccional as minimum, to eight (8) years, eight (8) months and one (1) day of prison mayor, as maximum to suffer the penalty of perpetual special disqualification, to pay a fine of P7,000.00, and to indemnify the Government in the sum of P13,897.77, without subsidiary imprisonment in case of insolvency, and to pay the costs. From this sentence, the accused appealed to this Court.

The appellant contends that the lower court committed an error in sentencing him to suffer the aforementioned penalty "without recommending executive clemency" for him, on the ground of lack of malice in the commission of the crime, in that, he did not apply the missing funds to his personal use and benefit but lost the same while he was drunk.

The contention is untenable. In the first place, there is nothing in the record which supports the claim now made for the first time that the missing funds were lost while the appellant was drunk. On the contrary, the following appears in the supplemental report of the Provincial Auditor partly quoted from page 3 of the appellant's brief:

"* * * demand (for the missing funds) was immediately made by Mr. Ibe (one of the investigators) and when the accountable officer (herein appellant) failed to produce, the latter alleged that there were some vouchers probably still missing.

"At the time the Treasurer (appellant) was searching for the vouchers, alleged to be missing, he asked for permission to leave, as according to him, he was then seriously ill of stomach ache. In the meantime, Mr. Ibe

then required the Treasurer (appellant) to sign the reports including Provincial Form 8 (A) Exhibit 'B' which the latter did. * * *

"No affidavit or sworn statement was taken from Mr. Salazar (appellant) as since he left the municipal building on May 14, 1957, up to the present writing (May 17, 1957) he has not as yet shown up, hence it could not be determined as to the cause of the shortage." (p. 16 of the records.)

On May 15, 1957, in a letter sent to the appellant, he was specifically required to immediately make good the amount found to be short and "to explain as to the disposition you have made thereof. Failure to make good the amount shall be prima facie evidence that you have put the missing funds to your personal ends." (p. 14 of the records.) The appellant failed to make any such explanation.

When the Provincial Fiscal set the case for preliminary investigation in his office, the appellant was duly notified thereof, but he chose not to attend the same and kept his silence.

On the day of the trial before the court a quo, the appellant assisted by his counsel Atty. Martiniano Vivo, voluntarily withdrew his former plea of not guilty and instead pleaded guilty. In fact the appellant took the witness stand to prove the mitigating circumstance of voluntary surrender. Not a word was said regarding the supposed loss of the missing funds.

Secondly, when the appellant entered the plea of guilty, he thereby admitted, not only his guilt, but also all the material facts alleged in the information,[1] namely, that he "wilfully, unlawfully, feloniously, and with grave abuse of confidence, misappropriate, misapply, embezzle, and convert to his personal use and benefit, from said funds, the sum of P13,897.77," thus clearly indicating malice or evilness of intent on his part. In penal statutes, the word "wilfully", means with evil intent, or with legal malice, or with a bad purpose. (2 Bouvier's Law Diet. [3rd Revision] 3454-3455, citing *Galvin vs. Mill Co.*, 98 Cal. 268, 33 Pac. 93 and *Com. vs. Kneeland*, 20 Pick [Mass.] 220.) Consequently, the appellant's plea of guilty carried with it the acknowledgment or admission that the wilful acts charged were done with malice.

Under the circumstances of the case, we find no reason for holding that the penalty imposed is clearly excessive which would justify the application of Article 5 of the Revised Penal Code.

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed, with costs against the appellant. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia and Gutierrez David, JJ., concur.

[1]U. S. vs. Barba, 29 Phil., 206; U.S. vs. Burlado, 42 Phil., 72; People vs. Valencia, 59 Phil., 42; People vs. Buco, G. K. No. L- 2633, prom. February 28, 1950; People vs. Sabilul, 89 Phil., 283; People vs. Egido, 90 Phil., 7623; People vs. Acosta, 98 Phil., 642; 52 Off. Gaz., [4] 1930; People vs. De Lara, 98 Phil., 584; 53 Off. Gaz., [1] 141; People vs. Llagas, G. E. Nos. L-5015-17, prom. May 31, 1957; and People vs. Lambino, 103 Phil., 504; 55 Off. Gaz., [9] 1565.

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