

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LAMBERTO A. GETA, DEFENDANT AND APPELLANT.*G. R. No. 17144. September 29, 1921*

Ponente: AVANCEÑA, J.

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Two informations were presented against the accused Lamberto A. Geta in the Court of First Instance of the Province of Samar, one for misappropriation of public funds and the other for falsification of public documents. When the case for malversation was called for trial the attorney for the accused asked for the consolidation of this case with that for falsification, on the ground that both were founded upon the same facts, but the court denied the petition. The case for malversation then took its course and after the evidence was taken and the case was merely awaiting decision, the court *motu proprio* reconsidered its resolution denying the consolidation of the two cases and decided to consolidate them. The court afterwards rendered its decision, finding the accused guilty of the offense of falsification committed as a necessary means for the commission of the malversation and sentenced him to suffer imprisonment for five years, to pay a fine of P800 with subsidiary imprisonment in case of insolvency, with absolute and perpetual disqualification to hold public office. From this judgment the accused appealed.

About June 19, 1918, at Catubig, Samar, while the accused was postmaster of. said municipality, he received from Severo Segundo the sum of P1,250 to be transmitted as a telegraphic money order to Leon Badilla at Gubat, Sorsogon. As the addressee could not be found at Gubat and as the change of addressee proposed by Severo Segundo could not be effected due to the fact, as the accused stated, that the telegraph lines were out of order, the latter on July 24 following demanded of the accused the return of the above amount to which the accused replied that he had telegraphed to the Director of Posts for authority to do so. On September 16 of the same year, Severo Segundo again went to the accused for the same purpose and the latter paid him P417, on account, stating that he had no more money at the time but that the balance would be paid later. The accused admits that he only refunded Severo Segundo P417 of the P1,250 received.

The accused states that after he had received authority from the Director of Posts to return to Severo Segundo the P1,250 on account of the telegraphic money order in question, he delivered to him the sum of P302 on account and that Severo Segundo signed Exhibit B in which he admits having received from the accused all of the P1,250 on August 27, 1918. According to the accused, he. had subsequently delivered to Severo Segundo other sums, on account of his money order, aggregating P417 including the P302 which he had delivered at one time. The accused states that he agreed with Severo Segundo to pay him, as his personal debt, the remainder until the full P1,250 should have been paid.

The signature of Severo Segundo which appears in Exhibit B, compared with his other authentic signatures, is decidedly different. Severo Segundo denied having signed Exhibit B, on which point we believe him, and he positively stated that on the date this document bears, he was not in Catubig. The accused stated that this exhibit was signed by Severo Segundo in his presence, but this is not so. The accused, according to the evidence, was

well acquainted with the signature of Severo Segundo, and it cannot be believed that he would accept Exhibit B from Severo Segundo bearing, as it does, a signature notably different from his usual signature.

On the other hand, if Severo Segundo had wished to admit voluntarily the receipt of the sum of P1,250 by means of said Exhibit B, why should he affix thereto a signature wholly different from his ordinary signature?

Neither can we credit the allegation of the accused that on September 16, 1918, Severo Segundo agreed to consider the remainder of the P1,250, after deducting therefrom the sum of P417 paid by the accused, as the letter's personal debt, for it appears that on the 19th of the same month Severo Segundo telegraphed to the Director of Posts asking for an investigation with respect to the unpaid balance.

We are of the opinion that the evidence establishes beyond a reasonable doubt that the accused appropriated to himself the sum of P833 the remainder of the P1,250 which he received from Severo Segundo to be transmitted as a telegraphic money order to Leon Badilla.

The information for malversation filed against the accused refers to the appropriation by the latter of said sum of P833 and the information for falsification of public document refers to the falsification of Exhibit B, the supposed receipt for the sum of P1,250 signed by Severo Segundo. We hold that the guilt of the accused as to the malversation is fully proved, but we abstain from making any finding as to the falsification of Exhibit B in view of the decision that we are to render in this case.

The trial court erred in including in the judgment rendered in the case for malversation that which should have been rendered in the case for falsification. When evidence was presented in the case for malversation it was understood by all the parties and the court itself that the trial did not include the case for falsification, inasmuch as the court denied the consolidation of both causes. It therefore results that the judgment of the court with respect to the offense of falsification was rendered without due process of law.

On the other hand the court also erred in considering in this case the offense of malversation and that of falsification as a complex crime in the sense that the latter was a necessary means to commit the former. Under the circumstances revealed by the record, the falsification of Exhibit B was not a means, and much less, a necessary means, to commit the malversation. The amount appropriated to himself was in the possession and at the disposal of the accused and he could have appropriated it to himself without the necessity of Exhibit B. This document, for all that appears, was used by the accused, not as a means for the commission of the malversation, but rather to conceal this offense. It was the result rather than the means.

The judgment appealed from is reversed in so far as it refers to the offense of falsification, and we hold that the accused is guilty of the offense of malversation of public funds in the sum of P833 and he is therefore sentenced, in accordance with section 2672 of the Administrative Code, to the term of three years of imprisonment, to pay a fine of "P800, to indemnify Severo Segundo in the sum of P833 or suffer, in case of insolvency of both sums, subsidiary imprisonment at the rate of one day for every P2.50, but not to exceed one year, and to pay the costs. So ordered.

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

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