THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MAMERTO VALDELLON Y AFURONG ET AL., DEFENDANTS. MAMERTO VALDELLON Y AFURONG AND PEDRO BAGABALDO, APPELLANTS.

G.R. No. 21487. September 27, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

The defendants Mamerto Valdellon, Atanasio Valdellon, Gregorio Elbo and Pedro Bagabaldo were accused of the crime of qualified theft, the information alleging that "on or about and within the time comprised between the 15th and 16th days of September, 1922, in the City of Manila, Philippine Islands, the said accused, Mamerto Valdellon y Afurong and Julian Flora y Bolante, being clerks of the American Express Co., Inc., a concern duly authorized to transact business in the said City of Manila, conspiring together and helping one another, did then and there wilfully, unlawfully, and feloniously, with intent of gain, with serious breach of confidence and without the consent of the owner thereof, take, steal, and carry away the following personal property belonging to the said American Express Co., Inc., to wit:

> "One steel cash box, size 16 X 9 X 4, painted black containing money in cash consisting of different denominations
>
> P9,234.35
>
> One steel cash box, size 16 X 9 X 4, painted brown, containing paper money in cash of different denominations
>
> 92,500.00
>
> One check of the Philippine National Bank representing
>
> 25.00
>
> Currencies of different nationalities valued at
>
> 546.06
>
> Miscellaneous chits for office transactions of the value of

82.20

Several American Express Co., Inc., drafts, travelers' checks, and check folders, valued at

3,400.00

to the damage and prejudice of the said owner, the said American Express Co., Inc., in the total sum of one hundred five thousand seven hundred eighty-seven pesos and sixty-one centavos (P105,787.61), equivalent to and of the value of 528,938.05 pesetas, Philippine currency; that the said Atanasio Valdellon y Afurong, being a brother of his coaccused Mamerto Valdellon y Afurong, and without taking direct part in the commission of the crime of qualified theft perpetrated by the latter, on or about the dates aforementioned and sometime subsequent thereto, but before the filing of this information in the said City of Manila, Philippine Islands, wilfully, unlawfully, and feloniously profited himself and assisted his said coaccused Mamerto Valdellon y Afurong to profit by the effects of the crime, to wit, by then and there receiving, as said Atanasio Valdellon y Afurong did in effect receive, part of the stolen money, knowing very well, as he did, that the same was stolen; and that the said Gregorio Elbo and Pedro Bagabaldo without likewise taking direct part in the commission of the said crime of qualified theft perpetrated by the said Mamerto Valdellon y Afurong and Julian Flora y Bolante, on or about the dates aforementioned, to wit, the 15th and 16th days of September, 1922, and sometime subsequent thereto, but before the filing of the present information, in the said City of Manila, Philippine Islands, wilfully, unlawfully, and feloniously and knowingly concealed and destroyed checks and other papers by means of which the crime herein described as committed by Mamerto Valdellon y Afurong and Julian Flora y Bolante could have been discovered."

Upon arraignment all of the defendants pleaded not guilty. Atanasio Valdellon and Gregorio Elbo were granted separate trials. After the testimony of the first witness for the prosecution had been taken, the action was, upon motion of the fiscal, dismissed as to the defendant Julian Flora in order that he might be used as a witness for the prosecution. The court below found Mamerto Valdellon guilty as principal of the crime charged and sentenced him to suffer seven years, four months and one day of presidio mayor, with the accessory penalties prescribed by law, to indemnify the American Express Co. in the sum of P105,787.61 and to pay one-fifth of the costs. Pedro Bagabaldo was found guilty as an accessory after the fact and was sentenced to one year and one day of presidio correctional, with the accessory penalties, to indemnify the American Express Co. in the sum of P105,787.61, with subsidiary imprisonment in case of insolvency, and to pay one-fifth of the costs. Both of the accused appeal to this court.

The leading facts shown by the evidence may be briefly stated as follows: Mamerto Valdellon was a stenographer and confidential clerk in the Manila office of the American Express Co. and acted as amanuensis for Mr. Aubrey, the cashier. The Hongkong office of the company requested that it be given the combination of the Manila office safe and Mr. Aubrey dictated to Valdellon a letter addressed to the manager of the Hongkong office containing a description of the turns of the safe combination but left the numbers blank to be filled in later on in ink. In filling in the blanks Mr. Aubrey used a new blotter. The letter was afterwards returned from Hongkong and upon receipt of it Mr. Aubrey tore it into pieces and threw them into the waste paper basket. Shortly thereafter Valdellon, with the assistance of Julian Flora, a clerk in the same office, prepared the following letter:

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"U. S. Army

"Office of the Disbursing Officer

"Corregidor, P. I.

"14th of Sept., 1922.

"Subject:

Encashment of one U. S. check

No. 179225 for U. S. $44,980 or
P89,960

"To: American Express Co., Inc.,
36 Escolta, Manila.

"GENTLEMEN :

"1. This will serve to advise you that Mr. H. L. Hibsman, our authorized representative, will call at your office on Saturday morning at 8 sharp, September 16th, for encashment of one U. S. check No. 179225 in the sum of 44,980 dollars or approximately P89,960. Mr. Hibsman is arriving on a special launch Miley and will, without fail, be at your office at the hour mentioned above. If possible, please accommodate Mr. Hibsman the largest denominations, as this sum is to be paid to a launch coming from Hongkong at 9.30 a. m., September 16th.

"2. We wish to thank you in anticipation of your prompt
attention.

"Very truly yours,
"Per

"E. M. BOULLARD

"Chief Clerk & Disbursing Officer

(Sgd.) "E. M. BOULLARD

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"Major R. L. Grooves, Q. M. C.

"emb. hgt."

It is not disputed that the name H. L. Hibsman is fictitious. On the day before the commission of the robbery the letter was handed to Mr. Aubrey who, in compliance with the request contained therein, withdrew the sum of P90,000 from the International Banking Corporation and placed the same in the safe so as to have it ready for "Hibsman" in the morning of the following day. The next morning the safe was found open and it was discovered that not only the money withdrawn from the bank but also an additional sum in cash, drafts, and checks had been removed.

It being evident that the crime had been committed by some member of the office force, suspicion was directed to Valdellon by reason of the fact that he had been in position to ascertain the combination of the safe from the letter written to the Hongkong office and from the blotter used by Mr. Aubrey, and though allowed to continue in his employment, he was kept under surveillance several months. In March, 1923, the witness Procopio Rebenque, who was then living in the house of Valdellon, saw Bagabaldo, Elbo and Valdellon's brother, Atanasio, in the house on several different occasions. The last time they were there the witness observed Bagabaldo and Atanasio burn some checks similar to Exhibit T, an American Express Company traveller's check, while Elbo was occupied in counting large quantities of currency, an operation which lasted until very late in the evening. On the following morning Atanasio Valdellon, Bagabaldo and Elbo went away in an automobile carrying with them all the money. The witness found a portion of a money order which had not been entirely consumed by the fire and which he carried to a secret service agent by the name of Nelson. Some days afterwards Valdellon gave the witness two letters for mailing, but instead of placing them in the mail the witness delivered them to Nelson.

A number of other circumstances have been testified to by various witnesses. It thus appears that Atanasio Valdellon was found to be in possession of unusually large sums of money and that upon a search of his effects several American Express Company travellers' check covers were found.

The evidence against Valdellon is overwhelming and shows him guilty beyond a reasonable doubt. Aside from the circumstances related and Julian Flora's testimony as to the writing of the letter Exhibit C, the signature "E. M. Boullard" appearing in that letter exhibits the characteristics of Valdellon's handwriting and leaves no doubt whatever that he was the writer notwithstanding the fact that two so-called handwriting experts testified to the contrary.

In regard to the defendant Bagabaldo, the proof is less voluminous but nevertheless establishes his guilt beyond a reasonable doubt. It is true that the only direct testimony against him is that of Procopio Rebenque, whose credibility has been attacked by the defense, but his testimony is so conclusively corroborated by Exhibit U-1 as to leave no doubt of its essential truthfulness. This exhibit is one of the letters handed to Rebenque for mailing but delivered by him to detective Nelson. The letter is in the handwriting of Mamerto Valdellon and reads as follows:

"MR. PEDRO BAGABALDO.

"DEAR SIR: I hereby remind you of our conversation of March 22d, so that you may send me the money immediately by registered mail, because I have come to an agreement with the person from whom the instruments are to be taken.

"Keep the money well, for something wrong may happen to us. Send me money more frequently, for I do not retain any amount at home, because I am afraid to keep money there, as I am working, and put the money inside

the big tube in order that it may not be wet in the culvert. "And tear the check remaining with you and put it on the fire, since it has no more value, and do not be spending the money, for if something should happen, we will spend that money in the litigation. And in case we are convicted, that same money will save us. That's all for the present.

> "Respectfully,
>
> (Sgd.) "MAMBETO VALDELLON"

The letter was never received by Bagabaldo and counsel argues that it therefore is not admissible in evidence. In this counsel is mistaken. Rebenque's testimony establishes prima facie the existence of a conspiracy between Bagabaldo and the other accused and it is a well-established rule that letters written or statements made by one coconspirator is admissible against the other. Corpus Juris, citing numberous authorities, says:

"Letters written by a conspirator in connection with the conspiracy are admissible against a coconspirator, although he was not present when they were written. Thus, where defendant and two others were charged with stealing certain indictments, letters written by one of the defendant's alleged coconspirators expressing the desire to get rid of the indictments were admissible against defendant. Even a letter which appears from its date to have been written prior to the formation of the conspiracy may be admitted, where it appears by other evidence that the date was a mistake and that it actually was written after the conspiracy was formed." (16 C. J., pp. 664-5.)

Counsel also argues that inasmuch as it does not appear that Bagabaldo was in confidential relations with the offended party, the penalty imposed by the court below is too severe. This point is well taken. The qualifying circumstance of breach of confidence which in the case of Valdellon justifies the imposition of a penalty of one degree higher than that prescribed for simple theft does not apply to Bagabaldo, who was not in confidential relations with the offended party and who therefore should be punished as an accomplice in the commission of the crime of simple theft only. (U. S. vs. Santos, 2 Phil., 669; U. S. vs. Maharaja Alim, 38 Phil., 1; 3 Viada, Codigo Penal, 447; 2 Hidalgo, 717-718.)

The prison sentence imposed on the defendant Pedro Bagabaldo is therefore reduced to three months of arresto mayor. In all other respects the judgment appealed from is affirmed, with the modification that the appellants jointly and severally indemnify the American Express Company in the sum of P102,280.41, the defendant Pedro Bagabaldo to suffer subsidiary imprisonment in case of insolvency. Each of the appellants will pay one-half of the costs of this instance. So ordered.

Street, Malcolm, Avancena, and Villamor, JJ., concur.
Johnson and Romualdez, JJ., did not take part.

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