

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ADOLFO SACRAMENTO, DEFENDANT AND APPELLANT.

G.R. No. 31187. October 05, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Adolfo Sacramento appeals to this court from the judgment of the Court of First Instance of Manila finding him guilty, as charged in the information, of embezzlement of government funds, and sentencing him to five years' imprisonment, to pay a fine of P2,500 with subsidiary imprisonment in case of insolvency, and to perpetual disqualification for holding¹ any public office.

In support of his appeal, the appellant assigns the following alleged errors as committed by the trial court in its judgment, to wit:

"1. The lower court erred in not finding that the defendant has already been convicted of the crime with which he is charged, that is, that he is twice in jeopardy.

"2. The lower court erred in finding the defendant guilty of the crime charged, and sentencing him to five years' imprisonment, to pay a P2,500-fine, with subsidiary imprisonment in case of insolvency, and to perpetual disqualification for holding any public office"

The following facts were proved at the trial beyond a reasonable doubt:

On or about September 22, 1919, the defendant herein, being then cashier of the Bureau of Commerce and Industry, received from Madrigal y Cia. by reason of his office, the check Exhibit A in the amount of P14,663.04, in payment of the freight of the Steamship Nipsic for the period from September 11 to October 10, 1919, and on September 21 of the same year he issued original receipt No. 2001696-A, Exhibit C, to said company as a voucher for the payment of said sum, but leaving the duplicate and triplicate copies of said receipt in blank. The defendant did not record the amount of said check in the books of his office, but in the amount he turned over to the Insular Treasurer as collections made by his office during the month of September, 1919, he included said check Exhibit A, which was remitted to the National Bank to be credited to the former's account, which bank, in turn, forwarded it to the International Banking Corporation against which it was drawn, and this last-named bank paid the amount thereof to the credit of said National Bank. As cashier of the Bureau of Commerce and Industry, the defendant collected the total amount of P301,338.71 during the month of September, 1919, but he only deposited in the Insular Treasury the sum of P286,675.67, that is, P14,663.04 less, equivalent to the value of the check Exhibit A.

The defense confined itself to a presentation of Exhibit 1 as evidence, consisting of certified copies of the information's filed against the defendant in criminal cases Nos. 20143, 19946, and 31634 of the Court of First Instance of Manila, and the decisions rendered in the first two cases.

The defendant-appellant maintains, in support of his first assignment of error, that having been charged with and

convicted in criminal case No. 20143 of embezzling P7,248.62 during the months of August, September, and October of the year 1919, while he was employed in the Bureau of Commerce and Industry, and the crime of embezzlement of P14,633.04 with which the information charges him herein having been committed on September 22, 1919, as per said information, he is thus twice in jeopardy, citing in his support the doctrine laid down in the case of *United States vs. Walsh* (6 Phil., 349), which is as follows;

"EMBEZZLEMENT; DOUBLE JEOPARDY.—A conviction of a public officer for embezzlement of Government property under article 390 of the Penal Code, founded on a shortage of money, bars a second prosecution of the same man for the same offense, in the same office, during the same period, founded on a shortage of stores and supplies. The second trial puts him twice in jeopardy."

In the case of *United States vs. Eguia Lim Buanco and De los Reyes* (14 Phil., 484), this court laid down the following doctrine:

"ID.; ACTS CONSTITUTING SEPARATE CRIMES.—In pursuance of the arrangement between the two defendants as above stated, checks were drawn at different times, for different amounts, were certified, and thereafter paid by the bank. The obtaining of money from the bank upon a particular check through this method was a separate and distinct crime, and conviction therefor cannot be pleaded in bar to another prosecution against the same parties for obtaining money fraudulently upon another check by means of the same methods. Each separate fraudulent obtaining of money from the bank by means of said methods constituted a distinct crime, and the preparation, approval, and payment of numerous checks under such circumstances cannot be considered as one continuing offense."

This last doctrine is the one applicable to the case at bar by reason of the similarity of the facts.

Therefore, the first assignment of alleged error is unfounded.

As to the second assignment of error, inasmuch as it has been proved beyond a reasonable doubt that the defendant appropriated and embezzled the amount of P14,663.04, corresponding to the amount of the check issued by *Madrigal y Cia.* in favor of the Bureau of Commerce and Industry for the freight of *Steamship Nipsic*, said second assignment of error is, likewise, unfounded.

The defendant should also have been sentenced to indemnify the Government of the Philippine Islands in the amount embezzled, since it does not appear that the Government has recovered said sum.

By virtue whereof, and in accordance with the recommendation of the Attorney-General, the judgment appealed from is modified, and the defendant is sentenced further to indemnify the Insular Government in the amount of P14,663.04, and in all other respects the appealed judgment is affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, and Johns, JJ., concur.

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