

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BRIGIDO CASIN, DEFENDANT AND APPELLANT.

G.R. No. 3615. September 24, 1907

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Brigido Casin is accused of having committed an abuse of office in that, while being a councilor of the municipality of Malinao, Province of Albay, with intent to defraud, he demanded of Paula Calleja and received from her the sum of 2 pesos, Philippine currency, by means of deceit and causing her to believe that it was compulsory for women to be provided with a personal *cédula*, and that the money received was for the payment thereof, without, however, delivering to her such *cédula*, and failing to return the money. The amended complaint is dated September 4, 1906, yet up to that date the accused had not returned the 2 pesos.

It appears from the testimony of Paula Calleja and Andres Conde that the accused received the 2 pesos on the 15th of July, 1905, and by the testimony of the provincial secretary it appears that at the time the accused was a municipal councilor.

Brigido Casin testified that, as he and Calleja lived in the same house, the latter gave him the money in order to procure her *cédula* for the purpose of instituting an action for the release of a parcel of land which had been taken from her; that he went to the municipal building and was there told by the treasurer that there were no more *cedulas*; that in July, 1905, women were obliged to pay for a *cédula*, but that in the month of August when he went to the municipal building he learned that women had been exempted from the payment of *cédulas*; that he had not seen the circular according to which women had to procure a *cédula*, but that he had heard of it from the treasurer; that he had not received any orders from the president to direct the women of his district to buy *cédulas*; and that at the time when he was testifying, the said 2 pesos, which he so persistently stated he had endeavored to return by means of several persons to Calleja, were still in his possession.

From the very testimony of the accused the fact is disclosed that, as a councilor, he had nothing to do with the exaction of the *cédula*. Under the provisions of section 121 of Act No. 1189 the issue of *cédulas* was solely in charge of the provincial treasurers and their authorized deputies. Therefore, the accused in this case did not act as a councilor, but as a private individual who lived in the house of Paula Calleja.

Inasmuch as he did not act as a councilor and was not concerned in the issue of *cédulas*, he could not have taken advantage of his office and be, therefore, punishable for the crime of illegal exaction under the provisions of article 399 of the Penal Code, which fixes the penalty for a public official who, taking advantage of his office, shall commit any of the crimes specified in Chapter IV, Section II, Title XIII of Book II.

The accused, however, is guilty of the crime defined by Section II of Chapter IV of said Title XIII, as he has committed the crime punished by article 535, case 5, by appropriating money which he had received for the purpose of buying a *cédula*, under an implied obligation to return it if he did not obtain one; and, as he himself has confessed, the *cédula* was not obtained nor was there any reason to secure it because women were exempted from

the payment of the tax. The crime is included within the terms of the complaint.

In view of the facts as related above, the penalty prescribed by article 535, in connection with article 534, paragraph 1, should be imposed, which is that of *arresto mayor* in its minimum and medium degrees. And as the punishment which should be imposed is an average between these two degrees, the penalty of imprisonment for two months and one day in the provincial jail, imposed by the judgment appealed from, is within the rule.

Therefore, this portion of the judgment is affirmed as well as that which refers to the accessory penalties of article 61, and the payment of 2 pesos as indemnity to Paula Calleja, with costs. The special disqualification from office for eleven years and one day, which we hold to be improper, is hereby revoked. Let judgment be entered with the costs of this instance. So ordered.

Torres, Johnson,, Willard, and Tracey, JJ., concur.

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