

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOHN HAZLEY, JR., DEFENDANT AND APPELLANT.

G.R. No. 3688. December 19, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of embezzlement of public funds while acting as supervisor-treasurer of the Province of Misamis, P. I., in the words and figures following:

"That from the moneys belonging to the public funds Avhich the accused had under his charge and for which he Avas responsible, the said accused, during the period from the month of July, 1905, to April 8, 1906, improperly appropriated and allowed to be appropriated the sum of six hundred and fifteen pesos twenty-eight centavos from the provincial treasury of Misamis; against the statute in such case made and provided."

The defendant was arrested, was duly arraigned and pleaded "not guilty" to the crime charged in said complaint. After hearing the evidence adduced during the trial of the cause the lower court found that the evidence fully justified the facts set out in said complaint, and found the defendant guilty of said crime, in accordance with the provisions of paragraph 2 of article 392, in its relation with article 390 of the Penal Code, and sentenced him to be imprisoned for a period of three years six months and twenty-one days of presidio correccional, with the accessory penalties provided for by law, and to pay to the Province of Misamis the sum of P615.28, and in default thereof to suffer subsidiary imprisonment at the rate of 12½ pesetas per day, and to pay the costs. From this decision of the lower court the defendant appealed to this court.

The defendant was represented in this court by an attorney de oficio. The only argument presented by the defendant in this court, by means of his attorney, was that the evidence adduced during the trial of the cause in the lower court was not sufficient to support the sentence of said lower court.

During the trial of the cause in the lower court E. J. Stowers, an examiner of accounts, from the office of the Auditor of the Philippine Islands, testified that he had made a careful examination of the books of the defendant, while the defendant was supervisor-treasurer of the Province of Misamis, and that he found, from said books and from the accounts of the defendant, that there was a shortage in the cash amounting to the sum of P615.28. This conclusion of the said examiner was verified by exhibits presented during the trial of the cause, which exhibits assume to be excerpts from the books and accounts of the defendant while acting as supervisor-treasurer of said province. Exhibit A offered by the prosecution was a summary of the accountability of the defendant. Exhibit A was a resume of the different accounts kept by the defendant as supervisor-treasurer of said province. The defendant objected to the admissibility of said exhibit upon the ground that it was not the best evidence, contending that it was the duty of the prosecution to show by the books of the defendant, and not by a resume or excerpt of the books, the facts which the prosecution desired to prove. The prosecution relied upon section 69 of Act No. 1402 for its authority in presenting this resume, rather than the books of account of the defendant. Said section 69 provides that—

"Upon the trial of any complaint or information against any person for misappropriation of public moneys, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Auditor, as provided by the preceding section, and the showing of any balance against such person shall be prima facie evidence of the misappropriation of the funds unaccounted for."

Of course the defendant had an opportunity to cross-examine the witness who made the resume Or transcript, and also to present his books in evidence for the purpose of showing that said resume or transcript was incorrect. The resume or transcript only had the effect of prima facie evidence of misappropriation. In the present case the defendant made no effort to show by his books or otherwise that the said resume or transcript was incorrect. In addition to the exhibit presented by the prosecution the said examiner stated in open court that he had made a careful examination of the accounts of the defendant, and showed that' the accounts themselves, as kept by the defendant, demonstrated that the defendant was short in his cash in the sum of P615.28.

No error was committed by the" lower court in considering said Exhibit A as a part of the testimony of the witness, Stowers. The defendant has not repaid or made up this shortage.

Upon a careful examination of the record brought to this court, we find that the evidence fully justifies the findings of the lower court. Therefore the sentence of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Mapa, Willard, and Tracey, JJ., concur.

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