

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGUSTIN FERNANDEZ, DEFENDANT AND APPELLANT.*G.R. No. 3838. November 16, 1907*

Ponente: TORRES, J.

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In the month of March, 1904, the municipality of Iloilo passed a resolution to undertake the cleaning of latrines or water-closets in the said city, and for this purpose the municipality levied a tax or contribution for such service varying as to the rates in accordance with the classifications made. By a further resolution, passed in the month of April following, the municipality undertook to lease the said latrine service to the lowest bidder, taking as a basis the rates fixed for such service, as charges to be paid by property owners who requisitioned for such cleaning. The contract was subsequently awarded to the defendant, Fernandez, for the entire year of 1904, he being the lowest bidder. At the request of the defendant the contract for 1905 was also awarded to him by an extension of time with a certain rebate in the rates charged. In 1906, by a further rebate in the rates made by the defendant, he secured the contract under a second extension of time; but, in June, 1906, before the year was out, the said contract was suspended because of a resolution passed by the provincial board declaring that the said tax as collected by the municipality was illegal and null.

The said latrine service was divided, for the purpose of rating, into three classes, viz: The first class paid P6 per quarter, the second class paid P3, and the third P1.50. A register was kept at the office of the municipality in which the names of property owners were entered, together with the amounts paid by them, and official receipts were issued therefor. Property owners availing themselves of such service were required to pay within twenty days' time, with the privilege of a second twenty days' extension in case of nonpayment; after this extension a 20 per cent additional tax was imposed, and, if payment was still withheld, then the service was discontinued.

According to the terms of the contract the defendant, Agustin Fernandez, was entitled to collect from the municipality, for and during the year 1905, the sum of P1.20 per month each for latrines in the zone built of strong materials, and P0.40 per month each for those within the zone of light materials; but by virtue of an extension granted to him in March, 1906, the defendant was only entitled to be paid for latrines of the first class at the rate of P0.60 per month; for latrines of the second class P0.50 per month; and for latrines of the third class P.40 per month. The tax as collected by the municipality during 1905 and 1906 was modified by the following rates, viz, P2 for latrines of the first class, P1.50 for the second class, and P0.50 for the third class per month each.

It does not appear in the records that the municipality of Iloilo ever enacted an ordinance whereby property owners were compelled to accept the services of the municipal contractor for the cleaning of latrines in the said city, nor that the defendant was the only person authorized to perform such work.

The best proof that it was discretionary with property owners to engage the services of this contractor, or in fact of any other private enterprise, is that the names of delinquents in the payment thereof, after repeated efforts at collection had proven fruitless, were thereupon stricken off the contractor's list as per agreement with the

municipality. It follows, therefore, that the tax as above was voluntarily paid by the property owners, and upon their own free will depended the acceptance or nonacceptance of the services offered by the municipal contractor.

It is proven in the cause that during 1905 and 1906, and perhaps prior thereto, there were private enterprises in the city of Iloilo carrying on the business of cleaning latrines at conventional rates. This fact is testified to by one Emilio Esteban, ex-municipal treasurer of Iloilo; Bonifacio Gutierrez, employee of the said treasury; Mariano Manuel, also treasurer thereof; and one Dimas Enriquez, the latter testifying that he was at the time in the business of cleaning latrines in the said city. If there is no prohibition extant for private individuals to engage in cleaning latrines in competition with the municipality's contractor, nor is there prohibition against the municipal contractor himself, as a private individual, to engage in the business by entering into private agreements with property owners, it is evident that in charging them a consideration for his work he has neither damaged nor prejudiced the interests of the community which was benefited thereby; nor has he damaged or prejudiced the municipality, the latter having failed either to protect the city funds by establishing a monopoly or to grant an exclusive privilege in favor of the contractor who undertook to perform the work.

The fact that there were collected the amounts set forth in the documents submitted to the court below (fols. 1-38 of the record) for the cleaning of latrines belonging to individuals who paid the defendant for such service, whose names do not appear in the official list kept by the municipality and who were therefore not constrained to make payment of said tax to the municipal treasury, does not warrant the charge of deceit or fraud against the defendant, Agustin Fernandez, in receipting for and collecting the said amounts to the damage of the said individuals. For, if he performed the work, it is just that he should receive the compensation agreed upon, and this is neither to the damage nor to the prejudice of the municipality, there being no contract between the municipality of Iloilo and the said individuals who paid the defendant for such work. The municipality had no right to collect for such service, but rather the person who performed it.

If the defendant, Fernandez, outside of the municipal contract, was the person who, through his laborers, had cleaned the latrines of property owners whose names appear in the documents hereinbefore mentioned, it is just that Fernandez should be the one to collect the amounts due for the service he rendered; and by so doing it can not be said that such collections were made for and in behalf of the municipality, because they were not collected as a tax. And, further, because Bonifacio Gutierrez, one of the witnesses in the case and an employee of the municipality, testified to the method and procedure observed by the municipality in the defective administration of the said tax, under which the property owners themselves paid their respective quotas into the municipal treasury.

It is an established doctrine of the courts that, in order to sustain the charge of estafa, it is essential that there should be deceit or fraud or an attempt to deceive or to defraud.

There is no evidence in the cause to show that the defendant, in collecting through his agents the several amounts due him for services rendered in the cleaning of the said latrines, has acted with deceit or malice to the damage of the community or of the municipality; nor has he committed fraud to the prejudice of either the former or the latter. Nor has it been shown that an attempt was made to cause such prejudice. The crime of estafa therefore has not been clearly established from the facts as proven in the cause under review.

For the reasons above set out we are of the opinion, and so hold, that the judgment below should be, and is hereby, reversed, and the defendant acquitted of the charge, with the costs of both instances de oficio. So ordered.

Arellano, C. J., Johnson, Willard, and Tracey, JJ., concur.

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