

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO MARINO, DEFENDANT AND APPELLANT.

G.R. No. 4017. March 28, 1908

Ponente: TORRES, J.

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TORRES, J.:

Owing to certain complaints and information received at the Bureau of Posts of certain irregularities committed by Pedro Mariño, a postmaster stationed in the town of Taal, to which office he was appointed on the 1st of April, 1905, performing the duties of the same until the 30th or 31st of December, 1906, the Director of Posts ordered an investigation, and to this end detailed Inspector J. O. Jones, who¹, accompanied by C. J. Milleron, proceeded to the said town. From the municipal building he sent for the postmaster, but as the latter was not in his house, the investigators proceeded thither. Upon finding that the post-office, which was established in the said house of the accused, was closed, with the consent of his wife they entered it, and then and there found a basket full of waste paper and torn-up letters together with some leaves torn out of a mailing book. By direction of Inspector Jones, Milleron called the justice of the peace, and on his arrival a few minutes later they placed in a box all the papers, books, and other things belonging to the post-office, and after closing and sealing the same deposited it in the court of the justice of the peace. On the following afternoon the box was opened in the presence of the accused and of the justice of the peace; erasures and alterations were discovered in a stub-book, and some pages of the registry of registered letters were found to be destroyed and torn out, besides evidence of other punishable deeds.

The provincial fiscal filed a complaint on the 19th of February, 1907, with the Court of First Instance of Batangas, charging Pedro Mariño with the crime of infidelity in the custody of documents, and upon the present case being instituted the judge sentenced the accused, on the 2d of March, 1907, to the penalty of eight years and one day of prison mayor, to pay Eleuteria Punsalan the sum of P5 stolen from a letter addressed to her, to suffer the accessory penalties, to pay a fine of 3,000 pesetas, to temporary special disqualification for eight years, and to pay the costs of the proceedings. From the said judgment the counsel for the accused has appealed.

It results from the proceedings that Pedro Mariño, as postmaster stationed in the town of Taal, retained in his possession without forwarding it to the addressee, a registered letter addressed by Juan Castillo, of Bauan, to Perpetuo Venturanza, a resident of Taal; that he opened the said letter and stole therefrom the sum of P27.50. The letter was afterwards found, in the course of investigation, between the pages of a book in his office, and the accused then returned the money to the sender, requesting him not to give evidence against him.

He also retained without delivering to Teresa Leonor, three letters addressed to her from Bongao, Moro Province, by Domingo Leonor, a resident of said town, and only delivered them to the addressee on the 31st of December, in consequence of the action taken by certain persons on behalf of the interested party.

On the 10th of November, 1906, W. C. Boyer, a Constabulary officer, sent a registered letter to Candida Celedonio, a resident of Aliaga, Nueva Ecija, remitting her P50 in bills, but the addressee did not receive said letter or the money until after the 1st of January, 1907, after the officer had made an investigation as to the

whereabouts of the letter; the accused further counterfeited the signature of said officer in the corresponding book of receipts, for a registered letter addressed to the latter.

Mariano Medina, a resident of Taal, delivered to the accused one day in the month of November, 1906, an open letter with 50 in bills for Epifanio Elefaño of Calamba, and as the latter did not receive the letter with the money, Medina sent him two other letters by mail and two by messenger; of all of which the last-named alone reached him. As Elefaño had never received the letters sent by mail, Medina filed his complaint with the Director of Posts, and then in consequence of the complaint, Elefano received on the 24th of December, the letter of November together with the money. One of the letters sent by the said Medina and not received by Elefaño was found in the basket by Inspector Jones.

Paula Isla, a resident of Taal, after trying several times to find out from the post-office of Taal if any letters had been received for her from her husband residing in Zamboanga, remitting money, received from the accused one day the sum of P20, and on the following day P10 more without receiving any letter from her husband, the accused stating that none had been received; it afterwards appeared that a letter, No. 1001, addressed to Paula Isla, had been receipted for in the receipt book with the name of the latter and a cross, together with a thumb print, all of which Paula Isla denied as hers because she is able to read and write, a fact that was subsequently proven.

Among several torn-up letters found in the basket above referred to, and afterwards reassembled, there appears one addressed to Vicente Garcia by his son Leandro Garcia for Maria Angeles, the latter's wife, Leandro inquiring therein whether his wife had received two previous letters by registered mail, one written in May, and the other in September and containing P25 each; said registered letters had never been received.

Eleuteria Punsalan, whose name appears to have been signed in the registered letter book on the 24th of August, 1906, denied having so signed or that she ever received any letter from her uncle, Flaviano Ocampo, inclosing P5 which were stolen by the accused.

Among the several letters found in said basket, addressed to persons residing in Taal by residents of other places and vice versa, it results, upon the fragments of the same being assembled, that inquiries were made regarding the whereabouts of registered letters that had not been received.

From the above stated and fully proven facts, it is logically inferred that the crime of infidelity in the custody of documents has been committed.

Article 360 of the Penal Code reads:

"The public official who shall steal, destroy, or hide any documents or papers intrusted to him by virtue of his office shall be punished—

"1. With the penalties of prison mayor and a fine of from 625 to 6,250 pesetas, provided that a grave injury to a third person or the public interests has resulted from his action.

"2. With those of prison correccional in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas if the injury to the third person or to the public interests were not grave.

"In either case there shall, furthermore, be imposed the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification,"

The accused, Pedro Mariño, as postmaster, is an officer or employee of the Bureau of Posts, and by virtue of his office he was intrusted by the administration with the receiving, keeping, dispatch, and coursing of mail matter, both official and private, with the obligation to enter in the corresponding books the letters, parcels, and papers received and forwarded to their destination, and registered letters in particular; it was also his duty to comply with

all the regulations, rules, and instructions given by his official superiors; and notwithstanding all this, the accused, neglecting his duties and violating the confidence reposed in him by the Government, committed the deeds described above, together with several other grave crimes, all of which are punishable under the code.

It has been clearly proven in the case that the letters enumerated above were received at the post-office in charge of the accused; they were opened, and the sums of money that they contained were stolen, and although after some months or weeks some of the said amounts were delivered to the addressees or to the owners thereof, it has been noticed that the bills returned were not the same ones that were remitted; such delivery or return being only made in view of a possible prosecution.

The simple act of retaining the mail without forwarding the letters to their destination, even though without opening them or stealing the moneys they contained, already constitutes the crime of infidelity on the part of the post-office official, because he, seriously neglecting his duties, stole and concealed several letters, and separated them from the ordinary and legal course which they should follow in order to reach their destination without delay.

The supreme court of Spain, applying in its decision of the 5th of July, 1887, the provisions of article 375 of the Benal Code of that country, analogous to article 360 of the code in force in these Islands, on an appeal in cassation in a case similar to the one herein, saw fit to establish the following doctrine:

"That the custody of packages sent through the national post-office is intrusted by the administration to all the officers of this branch of the public service who intervene in the distribution thereof, it being their bounden duty, and inherent in their respective offices, to remedy mistakes and prevent possible confusion in the mails where any exist; therefore, from the fact that an employee of said department stole a package with declared values which he received mixed up with others, and hid the same without forwarding it to its proper destination, or presenting it to his chief, he was unfaithful to his office and position of confidence, and committed at least the crime defined in said article 375, which punishes the public functionary who shall steal or hide a document intrusted to him by virtue of his office."

The alterations and corrections found in the books in charge of the accused and for which he was responsible; the tearing out and the destruction of some of the pages of said books; the counterfeiting of the signatures of the addressees of letters; the destruction and disappearance of many of the said letters, proven in a manner by the many complaints received at the Bureau of Posts, to such extreme that he did not transmit a complaint sent by wire to the Director of Posts; all of the above facts, some of which are proven, and others being strongly indicated, corroborate the certainty and reality of the crime at bar committed by the accused, whose responsibility as principal has been fully proven, notwithstanding his denial and unproven exculpatory allegations; the case contains complete evidence, and produces on the mind a full conviction, beyond all reasonable doubt, of the guilt of the accused.

In the commission of the crime no mitigating or aggravating circumstance is present; therefore, the proper penalty should be applied in its medium degree.

The question set up by the defense and which has to be expressly determined is, that since there has been no serious injury affecting a third person of the public interests, the penalty to be applied to the accused should be the one provided for in No. 2 of article 360 of the Penal Code, instead of that fixed by No. 1 of the said article, which pretension is objected to by the Attorney-General for the reasons stated by him, alleging that the great number of deeds performed by the accused, and the alterations and counterfeiting of signatures made in the register, together with the destruction of some of the pages thereof, clearly show the gravity of the injury caused to the public interests.

If the injury of which article 360 of the code speaks is to be understood to mean the detriment or material damage suffered in consequence of the crime, it is unquestionable that in order to accurately judge whether the injury caused is grave or less grave, the court must abide by the provisions of articles 503 to 566 of the Penal Code.

Although there might be a doubt as to the importance of the injury or damage caused respectively to each of the parties interested in the ordinary or registered letters stolen, hidden, or destroyed by the accused, there is none as to the effect of the defendant's conduct so far as the public interests are concerned, inasmuch as the frequency and repetition of the losses and disappearance of letters during the time that the accused was in office had caused uneasiness and a certain alarm among many interested parties residing both in the locality and in other provinces; complaints were received by the Director of Posts of the conduct of the accused, and such deeds committed in a post-office contribute to alienate the confidence of the public in a government service of the greatest necessity in social life, thus causing grave injury, of far-reaching effects to the public interests. Therefore, the penalty that should be applied to the author thereof is that prescribed in No. 1 of the said article 300 of the Penal Code in conformity with the jurisprudence established by the aforesaid supreme court in its decisions of the 2d of December, 1895, and 7th of January, 1904.

For the considerations above set forth it is our opinion that Pedro Mariño should be sentenced to the penalty of eight years and one day of prison mayor, to suffer the accessory penalties of article 61, to pay a fine of 3,000 pesetas, without subsidiary imprisonment in view of the nature of the penalty, to twelve years temporary special disqualification from public office, right of suffrage, active and passive, profession or occupation, to indemnify Eleuteria Punsalan in the sum of P5, and to pay the costs of this instance; the judgment appealed from being hereby affirmed in so far as it is in conformity herewith and reversed in so far as it is not. So ordered.

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

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