

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ISIDORO T. POLICHER, DEFENDANT AND APPELLANT.

G. R. No. 41008. October 23, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

Isidoro T. Policher was charged with, and convicted of the complex crime of estafa through falsification of public documents in the Court of First Instance of Lanao which sentenced him to ten years and one day of prision mayor with the corresponding accessories of the law, to pay a fine of P1,000, and to indemnify Moros Somampot, Donato Marcos and Tindigan Dipatuan in the sums of P4, P16 respectively, with costs.

The information which gave rise to the action against said accused reads as follows:

"That on or about and during the period intervening from May 20, 1928, to May 29, 1930, in the municipal district of Kolambugan, Province of Lanao, Philippine Islands, and within the jurisdiction of this court, said accused, the then duly appointed treasurer of said municipal district and as such was in charge and responsible, among other official duties, for the issuance of cedula certificates in said municipal district of Kolambugan, voluntarily, unlawfully and feloniously, and with grave abuse of his official position and with intent to gain and of prejudicing and defrauding Moros Somampot, Donato Marcos and Tindigan Dipatuan, falsified cedula certificates G-Nos. 3844057, 3222523, 3843641, 3843629, 3844005, 3221650, 3221649, 3221752 and 3221753, by erasing the names written thereon of persons to whom said cedula certificates had originally been issued so as to reissue them, and in fact he reissued them, in order to appropriate for himself, and in fact he voluntarily, unlawfully and feloniously appropriated for his own use and benefit, the proceeds of this reissuance of the cedula certificates in question, amounting to P36, to the damage of said Moros Somampot, Tindigan Dipatuan, and Donato Marcos in the sums of P4, P16 and P16, respectively. Contrary to law."

The accused appealed from the judgment rendered against him, assigning in his brief three alleged errors as committed by the trial court, to wit:

"1. The lower court erred in not holding that all the webs of circumstances leading to the prosecution of the crime were deliberately planned and ingeniously manipulated by the enemies of the accused to satisfy their lust of vengeance.

"2. The lower court erred in giving credit to the self-contradicting and perverted testimony of the three more witnesses for the prosecution.

"3. The lower court erred in convicting the defendant-appellant of the crime of estafa thru falsification of public documents beyond reasonable doubt and in not absolving him from all criminal responsibilities."

The evidence shows that the appellant was the municipal treasurer of the municipal district of Kolambugan, of the Province of Lanao, for at least some years prior to February 27, 1927, the date on which the witness for the prosecution, Felix Jalasan, entered the service as clerk under said appellant. Prior to the date above stated, he had acted as municipal treasurer of other municipalities, and in 1933, when this case was tried, he had already been in

the Government service as municipal treasurer for about eleven years.

In May, 1928, the appellant, in his own handwriting, issued cedula Nos. 3221649 (Exhibit F-1), 3221650 (Exhibit G-1), 3221752 (Exhibit H-1) and 3221753 (Exhibit I-1), stated in the information, the first two in favor of Mamongcar Bomantay and the last two in favor of Macaraub Bangor. In 1929 said appellant's office issued cedula Nos. 3844057 (Exhibit A-1), 3222523 (Exhibit B-1), 8843641 (Exhibit C-1), 3843629 (Exhibit D-1) and 3844005 (Exhibit E-1), also stated in the information, in favor of Daniel Calumba, Ditual, Balinting Alongan, Ditual Macaagan and Salangan, respectively.

All the blanks of said first four cedulas (F-1, G-1, H-1, and I-1) were filled in by the appellant himself in his own handwriting, and those of the last five (A-1, B-1, C-1, D-1 and E-1), intended for entry of the personal record of the taxpayers, all with respect to Exhibit A-1 and partially with respect to the rest, or B-1, C-1, D-1 and E-1, were filled in by Felix Jalasan, according to the stub of the first, Exhibit A-1, and the duplicates of the others, Exhibits B-1, C-1, D-1 and E-1. The only spaces of these cedulas which could be filled in then were those intended for the names, said witness Jalasan having written therein those of Ditual, Balinting Alongan, Ditual Macaagan and Salangan, respectively, because they were the only data then available-.

Instead of delivering the nine cedulas in question to the taxpayers who had paid for them, they were retained in the appellant's office on the ground that the interested parties had not furnished all the necessary data relative to their personal circumstances. While waiting for said data, the cedulas in question together with others were in the custody of clerk Felix Jalasan. At this juncture, the appellant summoned Moros Somampot, Tindigan Dipatuan and Donato Marcos to appear before him in order to demand of them the payment of their back cedulas. As soon as said three Moros had arrived at the appellant's office, he bade them enter and forthwith asked his clerk to deliver to him the cedulas in question, that is, Exhibits A-1 to I-1 which, as stated, were already partially filled out with the date appearing on their respective stubs and duplicates, Exhibits A, B, C, D, E, F, G, H and I, and which were theretofore in the custody of said clerk. In compliance with the appellant's requirement said Moros then delivered to him, the first P4, the second P8 and the third P24, to complete the sums which they had paid him for their cedulas on former occasions.

The various sums of P4 seated in cedulas Exhibits A-1 to I-1, amounting to P36, and which were paid by the persons in whose favor said cedulas had originally been issued, were duly deposited in the safe and entered in the official records of the appellant (Exhibits A-2, B-2, C-2, D-2, E-2, F-2, G-2, H-2 and I-2); but those paid to him by Moros Somampot, Tindigan Dipatuan and Donato Marcos when he delivered to them the certificates which were already altered as they are at present, were not deposited in the safe and do not appear to have been entered by the appellant in any of his records, thus leading to the logical conclusion that he misappropriated them.

The names on the cedulas in question showing that they were issued in favor of said Moros Somampot, Tindigan Dipatuan and Donato Marcos, and not to Daniel Calumba, Ditual, Balinting Alongan, Ditual Macaagan and Salangan, are in the appellant's handwriting, if credit is to be given to the testimony of Miguel Burdeos, chief clerk of the provincial auditor, who examined the accounts and investigated the appellant, and that of Felix Jalasan, confidential clerk of said appellant. Both witnesses who are familiar with the appellant's penmanship by reason of their long association with him, categorically affirmed that the alterations appearing on the cedulas in question are in the appellant's handwriting. The testimony of said two witnesses and that of said three Moros, who claimed to have delivered to the appellant the sums required of them and received said cedulas from said appellant's own hands, jointly prove that it was the appellant and no other person who made the alterations in the cedula certificates in question.

However, the appellant contends that it was not he who committed the falsification or received the money which

the three Moros claimed to have delivered to him. In support of his contention, he insinuates in his brief that Felix Jalasan might have made the alterations imputed to him and that said witness did so serving as a tool for the vengeance of chief of police Salvador C. Rabaya who harbored a grudge against him because he had once deducted from Rabaya's salary the payment of a certain municipal tax due from the latter's barber shop in Kolambugan, Lanao. His testimony, however, is insufficient to destroy that of the five witnesses for the prosecution particularly when the motive attributed by him to said chief of police Salvador C. Rabaya is not of such nature that it may be considered sufficient to have induced Rabaya to plot against him in connivance with the witnesses for the prosecution named Somampot, Tindigan Dipatuan, Donato Marcos, Felix Jalasan and Miguel Burdeos. Furthermore, there is absolutely nothing of record to show that there had actually been a plot against him.

Another argument used by the appellant in support of his contention that Felix Jalasan might have been the author of the falsification is that the handwriting on said cedula is similar to his own handwriting and also to that of Jalasan. Acting under this supposition, the appellant, after the prosecution had presented its evidence, asked the lower court to postpone the continuation of the trial at least until the following session of said court in order to have the opportunity to engage the services of a handwriting expert from Manila, who might be able to determine the truth of his contention. The lower court justly denied his petition, first, because he did not then assure that if the handwriting expert were to testify he would declare that the alterations appearing on the cedulas in question were made by Jalasan; second, because when he entered the trial, he failed to reserve the right later to present a handwriting expert to prove that the alterations on the cedulas in question were not in his own handwriting; and third, because although he then knew that the crime with which he was charged was falsification of the cedulas stated in the information, from October 5, 1932, when the information was filed, or nearly one year prior to the holding of the trial, he neither made any effort to look for a handwriting expert nor thought of setting up the defense alleged by him later in his brief. Therefore, the belief that the appellant's purpose in asking for the suspension of the trial until the following session of the court was merely to delay the action, as stated by the fiscal at the trial, is not unfounded.

On the other hand, there is absolutely no reason to believe that Felix Jalasan has distorted the facts in his testimony inasmuch as he felt nothing but gratitude towards the appellant because the latter not only gave him the job, as the appellant himself stated at the trial, but also allowed him to continue in the service notwithstanding his lack of efficiency during his first years of service until he (the appellant) became pleased to retain him upon observing his progress and diligence. Furthermore, it is not Felix Jalasan's testimony or that of Miguel Burdeos alone that points to the appellant as the author of the falsification, but also that of the three Moros as restated. It is the testimony of said five witnesses, corroborated as it is by the aforesaid documentary evidence of record, that denounces him and proves his direct participation in the commission of the crime of falsification.

After it has been proven that the appellant is guilty of falsification and inasmuch as only one information had been filed against him, (1) for how many crimes of said nature may he be held liable? (2) Should he also be held liable for the crime of estafa or that of malversation, having appropriated his collection from said three Moros instead of depositing it in the Government coffers?

These are questions which necessarily arise after knowing the facts just stated.

In the opinion of this court, it is not the said three Moros (Somampot, Tindigan Dipatuan and Donato Marcos) who suffered the damage resulting from the falsification and the appropriation by the appellant of the money collected from them, but the Government itself because inasmuch as said Moros knew that the appellant was the public official designated by law and by the constituted authorities to collect cedula taxes, having done so for a long time, and furthermore, inasmuch as they knew that they were obliged to pay said taxes, it should be stated

that they were only acting with absolute propriety when they delivered to said appellant the sums which he demanded of them in payment of their respective cedulas corresponding to former years. For the same reason that they had no intervention in the administration of the appellant's office, it was not and it is not just to require that they should have made sure that their money paid for said concept has been deposited in the safe by the appellant and furthermore entered by him in his corresponding records. When a public official, whose official duty is to collect taxes, receives a payment in said concept, he makes himself directly accountable to the Government for the money so collected and received inasmuch as thereafter said money acquires the character or forms part of the public funds and the tax on account of which said payment was made should also thenceforth be considered paid by the taxpayer without further responsibility on his part. To hold the taxpayer responsible for the misappropriation of the money collected for taxes due, by the public official who has collected and received payment, would be not only unreasonable but also highly unjust. Therefore, the crime committed by the appellant is not the complex crime of estafa through falsification but nine falsifications of official or public documents, as are the cedulas, and malversation.

It is true that only one action was instituted and only one information filed against the appellant but it is none the less true that in said information he was expressly charged with nine acts of falsification of public documents by reason of the issuance of nine different cedulas. In the case of *United States vs. Balaba* (37 Phil., 260), this court held that there is nothing to prevent the imposition upon the accused of as many penalties as there are offenses imputed to him and proven at the trial, if, as in this case, it satisfactorily appears that he has consented to the action wherein said crimes were imputed to him by failing to interpose on time, although he could have done so, a demurrer on the ground that the information charged him with more than one offense. The right to be charged with not more than one offense in an information may be waived, the only exceptions to this rule being the cases where one of the offenses charged has been a necessary means for committing the other and where both have been the result of a single act, (Article 89 of the old Penal Code; article 48 of the Revised Penal Code.)

As to the second question, this court is of the opinion that the appellant cannot be declared guilty of estafa because the proven facts show, for the reasons already stated, that the crime committed was not estafa but malversation, which is a crime entirely different from the former and for the existence of which some elements not belonging to estafa are necessary. The appellant, upon entering trial, was undoubtedly unprepared to defend himself from the charges for malversation and falsification except only from falsification and estafa, and it would be taking him by surprise if he were to be sentenced also for malversation. It has been stated during the consideration of this case that under the allegations contained in the information, the appellant may also be declared guilty of malversation inasmuch as it has been proven that he appropriated his collection from the aforesaid three Moros instead of depositing it in the safe. In the information, however, there is no allegation to justify the inference, without resorting to the proven facts, that it is the Government that sustained the injury resulting from the appellants crime. What the information clearly expresses and states is that it was the three Moros in question who sustained the injury. Therefore the various acts of malversation committed by the appellant should not be taken into consideration in this case because he was not charged therewith.

Inasmuch as the falsifications proven at the trial took place long before the Revised Penal Code went into effect, the law applicable to the case is undoubtedly the old Penal Code. Under the provisions of article 88 of said Code, a penalty in excess of three-fold the most severe penalty which the appellant deserves for one of said crimes cannot be imposed upon him (or said nine crimes of falsification of public documents. According to said Code, as amended by Act No. 2712, each of said acts of falsification is punishable with prision mayor and a fine of from 250 to 12,500 pesetas. In view whereof, and taking into consideration the fact that no modifying circumstance of any kind has been proven, the penalty which should be imposed for one of said crimes is eight years and one day of prision mayor which is the minimum of the medium period of prision mayor plus a fine of 250 pesetas.

Wherefore, by amending the appealed judgment, the appellant is hereby sentenced, for the nine crimes with which he was charged and convicted, to twenty-four years and three days of prison, which is threefold eight years and one day of prison mayor, and to pay a fine of P150, with costs. In view, however, of the provisions of Act No. 4103, the minimum of said penalty of twenty-four years and three days of prison is fixed at six years. So ordered.

Street, Malcolm, Hull, Butte, and Goddard, JJ., concur.

VICKERS, J., with whom concurs AVENCENA, C. J., concurring and dissenting in part:

I concur in the decision of the majority convicting the defendant of the crime of falsification of public documents as to each of the cedula in question, but I dissent from that part of the decision which holds that he is not also guilty of malversation. This conclusion of the majority rests upon the finding that the allegations in the information are not sufficient to charge malversation. The principal, if not the sole, reason for this finding appears to be the fact that it is not alleged in the information that the Government was prejudiced by the defendant's misappropriation of the sums collected by him as municipal treasurer from the Moros for cedulas. There is no question as to the sufficiency of the evidence, and no objection was made to the form of the complaint. Any defect therein was cured by the evidence, which shows that the defendant while acting as municipal treasurer collected from the Moros mentioned in the information the money in question, but failed to account for it; that he altered and delivered to the Moros certain cedulas belonging to other persons. The Moros were not prejudiced, because the payments made by them were valid payments of their cedula taxes.

It is charged in the information:

"That on or about and during the period intervening from May 20, 1928, to May 29, 1930, in the municipal district of Kolambugan, Province of Lanao, Philippine Islands, and within the jurisdiction of this court, said accused, the then duly appointed treasurer of said municipal district and as such was in charge and responsible, among other official duties, for the issuance of cedula certificates in said municipal district of Kolambugan, voluntarily, unlawfully and feloniously, and with grave abuse of his official position and with intent to gain and of prejudicing and defrauding Moros Somampot, Donato Marcos and Tindigan Dipatuan, falsified cedula certificates G-Nos. 3844057, 3222523, 3843641, 3843629, 3844005, 3221650, 3221649, 3221752 and 3221753, by erasing the names written thereon of persons to whom said cedula certificates had originally been issued so as to reissue them, and in fact he reissued them, in order to appropriate for himself, and in fact he voluntarily, unlawfully and feloniously appropriated! for his own use and benefit, the proceeds of this reissuance of the cedula certificates in question, amounting to P36, to the damage of said Moros Somampot, Tindigan Dipatuan, and Donato Marcos in the sums of P4, P16 and P16, respectively. Contrary to law."

In my opinion the crime of malversation is sufficiently charged in the body of the information. It is immaterial that in the information the offense was erroneously designated as estafa instead of malversation, and the allegation that the offended party was the Moros is a mere conclusion of law.

It has been repeatedly held by this court that in criminal procedure the character of the crime will be determined from the facts alleged in the complaint and not by the qualification of the crime made in the title to the complaint. (U. S. vs. Supila, 13 Phil., 671; U. S. vs. Treyes, 14 Phil., 270; U. S. vs. Jeffrey, 15 Phil., 391; Davis vs. Director of Prisons, 17 Phil., 168.)

The designation of the crime by name in the caption of the information is a conclusion of law on the part of the fiscal and is a usurpation of the powers of the court and, if binding, would be in effect an adjudication by him of the crime of which the accused must be convicted if he were to be convicted of any offense. The denial of the designation of the fiscal raises no issue. (U. S. vs. Lim San, 17 Phil., 273; U. S. vs. Vega, 31 Phil., 450.)

As a matter of fact the court is the only person or institution authorized by law to say what crime has been

committed. Such designation is a conclusion of law resulting from the facts proved upon the trial. Until that time arrives it is of no consequence, either to the people or to the accused, what the technical name of the crime charged may be. (U. S. vs. Lim San, 17 Phil., 273.)

In determining the nature of the crime charged in a complaint the body and not the title of the complaint must be examined. The designation of the crime as found in the title of the complaint is not controlling. (U. S. vs. Cabe, 36 Phil., 728; U. S. vs. Ondaro, 39 Phil., 70.)

It was held in the case of the United States vs. Go Chanca (23 Phil, 641), that a complaint is sufficient if the facts are alleged and set out in such a manner as to enable a person of common understanding to know what is intended, and the court to pronounce judgment according to right; that a complaint is sufficient if it describes the offense in the language of the statute, if the statute contains all of the essential elements constituting the particular offense; that it is not necessary, however, to follow the language of the statute in a complaint; that the complaint is sufficient if it describes the crime defined by law.

It is not necessary for the protection of the substantial rights of the accused, nor for the effective preparation of the defense, that he be informed of the technical name of the crime for which he stands charged. The crime of which the defendant stands accused is that described by the facts stated in the information and not that designated by the fiscal in the preamble thereof. An issue in a criminal action is one of fact. It is raised by the allegation of facts in the information and the denial of these facts by a plea of not guilty. (U. S. vs. Lim San, 17 Phil., 273.)

Sections 7 and 10 of General Orders, No. 58 read as follows :

"SEC. 7. Except when time is a material ingredient of an offense, the precise time of commission need not be stated in a complaint or information, but the act may be alleged to have been committed at, any time before the filing thereof. And when an offense shall have been described with sufficient certainty to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial."

"SEC. 10. No information or complaint is insufficient, nor can the trial, judgment, or other proceedings be affected by reason of a defect in matter of form which does not tend to prejudice a substantial right of the defendant upon the merits."

In the case of the United States vs. Kepner (1 Phil., 519, 526), this court said:

"The allegation of the complaint that the unlawful misappropriation of the proceeds of the warrant was to the prejudice of Aun Tan may be disregarded by virtue of section 7 of General Orders, No. 58, which declares that when an offense shall have been described in the complaint with sufficient certainty to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial. In any event the defect, if defect it was, was one of form which did not tend to prejudice any substantial right of the defendant on the merits, and can not, therefore, under the provisions of section 10 of the same Order, affect the present proceeding."

It is a familiar rule that defects in the form of a complaint are waived unless objected to in the trial court, and that such defects may be cured by the evidence. (U. S. vs. Li-Pao, 2 Phil., 458; U. S. vs. Del Castillo, 35 Phil., 413.)

In the case of Mortiga vs. Serra and Obleno (5 Phil., 34), this court held that objections to the complaint based upon an insufficient statement of the facts constituting the offense will not be considered by this court when they were not presented to the court below. In affirming the decision of this court the Supreme Court of the United States (Serra vs. Mortiga, 204 U. S., 470; 11 Phil., 762) held that while the complaint on a charge of adultery under the Penal Code of the Philippine Islands may be fatally defective for lack of essential averments as to place and knowledge on the part of the man that the woman was married, objections of that nature must be taken at the trial, and if not taken, and the omitted averments are supplied by competent proof, it is not error for the Supreme

Court of the Philippine Islands to refuse to sustain such objection on appeal.

ABAD SANTOS, J., with whom concur VILLA-REAL and IMPERIAL, J., dissenting:

Upon the evidence presented in this case, I am not convinced of the guilt of the appellant, and I believe that he is entitled to an acquittal.

It appears that the appellant was a treasurer of the municipal district of Eolambugan, Province of Lanao. Prior to his assignment to Kolambugan, he acted as treasurer for other districts. Before the institution of this proceeding against him, appellant had served the Government as municipal treasurer for ten years or more. His record during this period appeared to be without blemish.

The unpopularity of tax-gatherers, such as the appellant was, is proverbial. In Mindanao particularly, municipal treasurers are among the most hated of public servants. Unaccustomed to the modern ways of government, the Moros naturally hate those who would compel them to pay taxes. Under these circumstances, it is rendered an easy matter for any one who has certain influence to fabricate charges against municipal treasurers based upon the testimony of three ignorant Moros, such as the three principal witnesses for the prosecution in this case appear to be. There is enough in the record to indicate that vindictiveness on the part of the chief of police of Kolambugan lay behind the prosecution of the appellant. It is by no means improbable, therefore, that the appellant is the victim of a frame-up.

In this situation, it seems the part of prudence and wisdom to scrutinize the evidence with the utmost caution and to give the defendant the amplest opportunity to prove his innocence. The important issue of fact involved in this case was whether the writings appearing on certain documents were those of the appellant, or whether they were made by someone who tried to imitate his hand-writing. Appellant asked for an opportunity to present a handwriting expert to establish his contention that said writings were not his, but, on objection of the prosecution, the court below only granted him twelve days within which to produce a hand-writing expert. Considering that the trial took place in Lanao, and that hand-writing experts are scarce, the shortness of the period granted by the trial court was, as the defense contended, tantamount to a denial of its petition. Under the peculiar circumstances of this case, I consider the testimony of a hand-writing expert essential to the just determination of the guilt or innocence of the appellant, and the refusal of the trial court, based on the objection of the prosecution, to grant the appellant sufficient time to engage the services of a hand-writing expert, was, in my opinion, a denial of his right to a fair trial.

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