

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BASILIO SILVALLANA, DEFENDANT AND APPELLANT.

G.R. No. 43120. July 27, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The appellant was tried in the Court of First Instance of Cagayan on a plea of not guilty to an information alleging:

"Que en o hacia el mes de julio de 1934, en el Municipio de Btfguey, Provincia de Cagayan, Islas Filipinas, el referido acusado Basilio Silvallana siendo assistant postmaster de dicho Municipio de Buguey, y como tal tenia el deber de recibir, abrir y despachar todas las balijas de correspondencias que se entregan a el y como en efecto recibio en dicho mes varias correspondencias de entre eilas im sobre dirigido al postmaster de Ganzaga, Cagayan, que contenia el cheque No. 131703 por valor de P30 expedido por el Banco Postal de Ahorros de las Islas Filipinas a favor de Francisco P. Peralta pero una vez en su poder este sobre, y abusando de su cargo, en vez de enviarlo a su destinatario, voluntaria, ilegal y criminalmente lo abno y se apodero del cheque y con el proposito de apropiarse para su uso propio no solamente de la cantidad de P30 que es el importe de dicho cheque sino de la cantidad de P230, falsified el mencionado cheaue raspando las palabras 'thirty .only' y en su lugar escribio las palabras 'Two hundred and Thirty only' asi como tambien en los guarismos P30 anadio anteponiendo el guarismo '2' entre el signo de 'P' y la cantidad de P30, alterando de este modo el valor del cheque de P30 a P230, despues lo firmo fingiendo la firma de 'Francisco P. Peralta' que es la persona a favor de quien estaba expedido dicho cheque, asi como tambien firmo el nombre de un tal 'Pedro Siggaoat' como endosatario que es un nombre ficticio, habiendose por este motivo supuesto en el acto la intervention de personas que no la han tenido y hecho en un documento verdadero mediante dicha alteracion, un documento falso y despues hizo efectivo dicho cheque en la recaudacion quo tenfa como assistant postmaster, apropiandose del importe del mismo, o sea, la cantidad de P230 en perjuicio del Gobierno entregando mas tarde el cheque como parto de su recaudacion a su coassistant postmaster Pascual Baclig, quien a su vez canjeo al tesorero municipal de Buguey."

The trial judge found the appellant guilty of the complex crime of malversation of public funds through the falsification of a public document and sentenced him to suffer ten years and one day of prision mayor, with the accessories of the law, to pay a fine of P500, to suffer perpetual special disqualification, and to pay the costs; and, for the purposes of the Indeterminate Sentence Law the minimum penalty was fixed at four years, two months, and one day of prision correctional, with the accessories of the law, the payment of a fine of P500, with subsidiary imprisonment which should not exceed one-third of the principal penalty, perpetual special disqualification, and payment of the costs.

Appellant's attorney alleges that the trial court erred:

"(a) In holding that the accused has altered and falsified treasury warrant A-131703, Exhibit B of the prosecution, and appropriated to his own personal use its import in the amount of P230;

"(b) In holding that the alteration of the check, Exhibit B, can be seen or noted with facility;

"(c) In not giving credit to the testimony of the accused which was corroborated in all its material points by eyewitnesses who saw that the check, Exhibit B, was actually cashed by one Pedro Siggaoat, who actually received from the accused its import in the amount of P230;

"(d) In not absolving the accused from the crime charged in the information on the ground of reasonable doubt."

The appellant was the assistant postmaster of Buguey, Cagayan Province, and during the period from July 1st to July 23rd, 1934 acted as postmaster. Francisco P. Peralta, a resident of the municipality of Gonzaga, Cagayan Province, had a savings account with the Philippine Postal Savings Bank. In June, 1934, he applied for the withdrawal of P30, and on July 5th the Philippine Postal Savings Bank mailed Treasury Warrant A-131703 for P30, payable to Francisco P. Peralta or order, to the postmaster of Gonzaga for delivery to the payee upon the production of his deposit book and the making of the corresponding entry therein, but the treasury warrant in question. Exhibit B, never reached the postmaster at Gonzaga or Peralta.

When the defendant's accounts were examined on July 22, 1934, the treasury warrant in question was found in his possession. It then purported to be for the amount of P230 and to be indorsed by Francisco P. Peralta and Pedro Siggaoat. Giving to the treasury warrant the value of P230, the examiner found that the defendant had on hand a surplus of P38.50. The defendant explained this surplus by saying that he had used P38.50 of his personal funds to cash the treasury warrant for Pedro Siggaoat, because as acting postmaster he did not have enough public funds on hand to cash the warrant. On July 24, 1934, the defendant delivered the funds in his possession, including the treasury warrant in question, to Pascual Baclig, who acted as postmaster at Buguey from July 24 to July 28. Baclig cashed the warrant in the office of the municipal treasurer of Buguey, Conrado Ligot, who later delivered it, together with other collections, to Bernardino Pagalilauan, a deputy of the provincial treasurer.

On July 24, 1934, Pagalilauan noticed the alterations on the treasury warrant, and made inquiries in Manila as to the amount for which it had been issued. The Director of Posts and the Insular Auditor replied that the amount for which the warrant was drawn was P30. The defendant was then investigated. He stated that the warrant in question was presented to him on July 15, 1934 by a man whom he knew by sight, who told him that the postmaster of Gonzaga did not have enough money on hand to cash the warrant. Defendant admitted that the warrant shows that it has been altered as to the amount, but claimed that he did not notice the alterations when he cashed it; that when it was presented to him it was already indorsed by Francisco P. Peralta; that as Francisco P. Peralta was an old acquaintance of his and he knew by sight the bearer of the warrant, he consented to cash it; that the bearer signed the name of Pedro Siggaoat under that of Francisco P. Peralta, and the defendant delivered to him P230, making use of P38.50 of his personal funds for that purpose. The investigator then required the defendant to produce Pedro Siggaoat, who according to the defendant lived in the municipality of Gonzaga, but nobody of that name could be found. Soon afterwards the defendant repaid to the government the sum of P230.

At the trial the defendant contended that he received the warrant in question from Pedro Siggaoat and paid over to him P230. The defendant presented several witnesses to prove that he made the alleged payment.

Francisco P. Peralta testified that he never received the warrant in question, and it is evident that the signature on the warrant reading "Francisco P. Peralta" is not the same as the signature of Francisco P. Peralta appearing in his deposit book. Appellant's attorney contends that the postmaster at Gonzaga, who was not presented as a witness, might have misappropriated the warrant in question after forging the name of the payee thereon. The evidence shows, however, that the defendant had an opportunity to take possession of the warrant in question because the mail for Gonzaga goes through the post office at Buguey, and the envelope in which the warrant was enclosed showed that it was from the Philippine Postal Savings Bank. Furthermore, there was found in the possession of the defendant a piece of paper, Exhibit H, on which there had been written "Francisco P. Peralta", "For Francisco

P. Peralta', and "Pedro Siggaoat". Defendant admitted to the provincial auditor that these names were written by him. A comparison of these signatures with the signatures appearing on the warrant shows such similarities as to justify us in concluding that they were probably written by the same person. Defendant tried to explain this fact by stating that he copied the signatures on the back of the warrant for the purpose of comparing the signature reading "Francisco P. Peralta" with the genuine signature of the payee, but this explanation is not worthy of credit. At the trial the defendant denied having written the names on Exhibit H, but when he was investigated he was required to write the names, Francisco P. Peralta and Pedro Siggaoat, five times (Exhibit I). After comparing Exhibits H and I, we are of the opinion that they were both written by the same person. The theory of the prosecution that the defendant wrote the names in question on Exhibit H before writing them on the warrant is more credible.

The treasury warrant in question was stolen, and the amount of it was raised from P30 to P230. The warrant was found in the possession of the defendant, and the burden was on him to show that he came into possession of it lawfully. His explanation that he cashed the warrant without noticing that it had been altered, and paid Pedro Siggaoat P230 is incredible, in view of the fact that the alteration is evident, and the defendant did not know the signature of the payee, Francisco P. Peralta, and had casually seen the person in possession of the warrant only once before. Defendant was unable to find anybody by the name of Pedro Siggaoat, and the testimony of the witnesses presented by the defendant to prove that he paid Pedro Siggaoat P230 on July 15, 1934, is of no probative value.

According to the contention of the defendant, he had a surplus of P38.50 on hand when his accounts were examined on July 22, 1934, which he explained by stating that he had advanced that amount of his personal funds. We cannot accept this explanation of the defendant. It is improbable that he would make use of his personal funds, if he had such funds available, to accommodate a man he had seen only once before. He says that the man purporting to be Pedro Siggaoat told him that the postmaster at Gonzaga did not have sufficient money on hand to cash the warrant. That statement ought to have aroused the suspicion of the defendant, because he must have known that the municipal treasurer of Gonzaga was able to cash the warrant, even if the postmaster was not.

We agree with the lower court that the defendant is guilty of the complex crime of malversation of public funds through the falsification of a public document, because the amount of the warrant was altered and the signature of the payee was forged for the purpose of enabling the defendant to misappropriate the sum in question with less risk of being discovered. In accordance with article 48 of the Revised Penal Code the penalty for the more serious crime, which is the falsification, must be applied in its maximum period. The penalty applicable in accordance with article 171 is therefore prision mayor in its maximum period and a fine not to exceed P5,000. The penalty next lower in degree to prision mayor in its maximum period is prision mayor in its medium period. (People vs. Co Pao, 58 Phil, 545.) The appellant is therefore sentenced to suffer ten years, eight months, and one day of prision mayor, and to pay a fine of P500, and for the purposes of the Indeterminate Sentence Law, the minimum sentence to be served by the defendant is fixed at eight years and one day of prision mayor.

The defendant must suffer the accessory penalty of perpetual special disqualification, not because article 217 of the Revised Penal Code provides that in all cases persons guilty of malversation shall suffer perpetual special disqualification in addition to the principal penalty, but as a consequence of the penalty of prision mayor provided in article 171. In accordance with article 42 of the Revised Penal Code the penalty of prision mayor carries with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage, and article 32 provides that during the period of his disqualification the offender shall not be permitted to hold any public office. Moreover, article 73 of the Revised Penal Code provides that whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of articles 40, 41, 42, 43, 44, and 45 of the Revised Penal Code, it must be understood that the accessory penalties are also imposed

upon the convict. It is therefore unnecessary to express the accessory penalties in the sentence.

Modified as hereinabove stated as to the penalty, the decision appealed from is affirmed, with the costs against the appellant.

Avanceña, C.J., Abad Santos, Hull, and Recto, JJ., concur.

Judgment modified, penalty increased.

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