

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NAZARIO B. CASTAÑEDA, DEFENDANT AND APPELLANT.*G.R. No. 4344. March 25, 1908*

Ponente: WILLARD, J.

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"ESTAFA;" NONAPPEARANCE OF WITNESSES.—From the Court of First Instance of Ilocos Sur. The accused as postmaster was short in his accounts. He stated in defense that the shortage was caused by a theft of funds by one Paulino Valleros. Certain witnesses for defense failed to appear and counsel agreed as to the nature of the testimony which they would have given. As the accused knew the thief but made no complaint or effort to recover the money, his testimony was considered unworthy of belief, and as all defaulting witnesses were favorable to the defendant, and counsel for the Government accepted the statements as to the nature of the proposed evidence as true, such nonappearannce was held insufficient for granting a new trial. U. S. vs. Donato (9 Phil. Rep., 701) distinguished. Judgment of conviction affirmed; indemnity decreased.

Per Willard, J.

For appellant: Cayetano Tlipolito.

For appellee: Attorney-General Araneta.

DECISION

The defendant, postmaster at Bangued in the province of Ilocos Sur from some time in 1906 until the 24th of January, 1907, did not sent to Manila during the Spring of 1907, the money which he received at the times when he was required to make such remittances. He made a false entry in his books in the month of June, 1907. He admitted that on the 24th of June, 1907, there was a deficit in his accounts. He explained this deficit by saying that one night on returning to his office where he slept he met Paulino Valleros escaping therefrom; that he and his companion pursued Paulino and saw him enter his house, and that they returned to the office and found that his writing desk had been opened and some money which he kept there had been taken. The amount of money he did not specify. He had an iron safe in his office, but stated that the combination of the safe was so complicated that he was not able to work it well and for that reason he kept some of his money in his writing desk. The court below did not believe this story and found him guilty of "malversacion de caudales publico."

As far as appears, although the defendant knew who the robber was and saw him enter his house, no attempt was made to arrest him and to recover the money, and no proceeding were ever taken against him. We agree with the court below in thinking that the evidence of the defendant can not be believed. That court fixed the amount of money misappropriated at 158.60 pesos. This was the amount according to the testimony of one of the witnesses at the trial. The Government, however, introduced two certificates from the Auditor of the Islands which showed that the deficit was 117.94 pesos. This difference is probably explained by the fact that the witness did not give credit for the sum of 43.33 pesos salary due the defendant which was applied in part payment of the account.

The Attorney-General asks that the judgment be reversed and the case remanded on the ground that the parties in the court below agreed that certain witnesses for the defendant would testify in a certain manner, such witnesses not being produced in court, and cites the case of *The United States vs. Remigio Donato*, No. 3905. decided October 17, 1907. In that case, which came from the same judicial district as this does, the agreement related not only to the testimony of the defendant but also to the testimony of the Government, and it also appears from the decision in that case that the judge heard what some of the witnesses had to say without making any record of it, as required by law. In this case the agreement was entirely for the benefit of the defendant because his witnesses thereby escaped cross-examination on the part of the Government. We do not think under the circumstances that a new trial should be granted for this irregularity in the procedure.

The judgment of the court below is modified by making the indemnity 117.94 pesos instead of 158.60 pesos. In all other respects it is affirmed, with the costs of this instance against the defendant.

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