

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONINO ESPINOSA, DEFENDANT AND APPELLANT.*G.R. No. 4778. October 09, 1908*

Ponente: TRACEY, J.

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On the 19th of March, 1906, the appellant was on trial for malversation of public moneys while holding his office of treasurer of Concepcion, Tarlac, when the Government building burned, and with it all the papers in the case, including the evidence. At a retrial in September, 1907, the appellant was convicted and sentenced to a fine of P101.67, or 10 per cent of the amount of the defalcation, with subsidiary imprisonment.

On the 28th of April, 1905, Mariano Aguilar, agent of the provincial treasurer, on searching the safe in the barrio treasury, discovered a shortage of P1,016.68. On notifying the provincial treasurer of the shortage he was directed to take charge of the treasury, which Espinosa was ordered to turn over to him. According to the accused and his witnesses, when the count of the money in the safe was finished at noon he informed the agent that there was nothing missing and that the balance was in his drawer, and asked him if he wished to count it, to which the agent replied that he would do so after dinner. Returning at 2 o'clock, the agent declined to undertake the recount, including the additional money, and at 3 o'clock telephoned the provincial treasurer, and received from him the instruction to take charge. The rest of the afternoon was spent in inventorying and turning over the property, and the next day the agent awaited the coming of the fiscal to advise him whether to accept the balance of the money, which had not been in the safe, which was finally turned over to him about 5 o'clock.

The reason assigned for having a part of the money in the drawer, instead of the safe, where the law requires it to be regularly kept, was that when the agent arrived a count and verification of it was going on, and the uncounted portion was temporarily placed in the drawer for safety, the counted packages being secured in the safe.

The testimony of the accused as to the occurrence is supported in important particulars by that of one of the Government witnesses, Benito Suarez, the former municipal president, as well as by Iñigo Espiritu, one of the office clerks who was present at the transaction, while the prosecution rests virtually upon the narrative of Aguilar alone, who admitted that he had never asked or required of Espinosa a return of the money claimed to be missing, that he could not remember whether he had asked him where was the missing fund which he had noted but "that he had the idea that the money was missing," and finally, positively, that he had not asked him for its whereabouts and he was unable to remember whether or not Espinosa had ever told him that the missing money was in another part of the office.

In our opinion, the prosecution in this case has failed, less on account of the affirmative defense, which, however, is tenable, than because of its own inherent weakness. It is impossible to sustain a conviction upon the testimony of a single witness, who admits his own want of recollection as to the most important particulars of the disputed transaction, such as lay particularly within his notice as an official charged with the duty of acting upon them and reporting them. The testimony of such expert official witnesses should be definite and precise.

The judgment of the Court of First Instance is reversed and the accused is absolved. So ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

DISSENTING

WILLARD, J.,

I think that the judgment of conviction should be sustained. Aguilar testified that when he finished counting the money in the safe, he asked the defendant if he had any more money, and the defendant stated that he had not. The document which the defendant signed shows that there was a shortage of P1,016. This money was not delivered until the afternoon of the following day. The provincial fiscal had gone to Concepcion and was engaged that day in preparing a criminal complaint against the defendant.

To my mind, the testimony of the defendant and his brother-in-law, who was his clerk, is not worthy of belief. It seems incredible that Aguilar, who had gone there for the express purpose of counting the money, should, after he had counted a part of it, refuse to receive other money which the treasurer then offered to him. No reason of any kind appears in the case why he should have refused to receive money which was there in the room and which, according to the defendant, was then shown to him. The municipal president and the defendant's brother-in-law testified that the money which they saw in the defendant's desk was apparently copper coins in sacks and the defendant himself at one time testified that he kept the money that was wanting in his desk because the safe was not large enough to hold it. When he finally turned over the money, the amount of copper coin delivered was less than a peso.

As the Attorney-General says, if, during the counting, the defendant offered to turn over to Aguilar this money, it is difficult to understand why he should have signed without protest Exhibit A, which showed that the amount of money on hand was less than the amount which should have been on hand. That the subsequent delivery on the 29th of the P919, which appears as a note to Exhibit A, was made at a time different from the time of the signing of the body of Exhibit A, appears from the fact that the witnesses to the separate signatures are different.

It seems clear to me that there was a deficit in the defendant's accounts on the 28th and that the provincial fiscal being in town on the 29th preparing papers for the defendant's prosecution, he was able on that day to raise the money which was wanting, and then paid it over. Judgment reversed and defendant acquitted.

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