

MELCHOR V. KATANIAG, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 48398. November 28, 1942

Ponente: MORAN, J.

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MORAN, J.:

- CRIMINAL LAW; INFIDELITY IN THE CUSTODY OF PUBLIC DOCUMENTS; ESSENTIAL ELEMENTS.—Whether during or after office hours, if the removal by a public officer of any official document from its usual place of safe-keeping is for an illicit purpose, such as to tamper with or to otherwise profit by it, or to do in connection therewith an act which would constitute a breach of trust in his official care thereof, the crime of infidelity in the custody of public documents is committed. On the other hand, where the act of removal is actuated with lawful or commendable motives, as when the public officer removes the public documents committed to his trust for examination in connection with official duty, or with a view to securing them from imminent danger of loss, there would be no crime committed under the law. This is so, because the act of removal, destruction or concealment of public documents is punished by law only when any of such acts would constitute infidelity in the custody thereof. Several circumstances are set out in the body of the decision to show conclusively that in the instant case there has been a removal effected for illicit purposes.

- ID.; ID.; ID.; REMOVAL NEED NOT BE COUPLED WITH PROOF OF INTENTION TO CONCEAL; STATUTORY CONSTRUCTION.—TO warrant a finding of guilt of infidelity in the custody of public documents, it is not necessary that the act of removal must be coupled with proof of intention to conceal. The law punishes "any public officer who shall remove, destroy or conceal documents or papers officially entrusted to him." (Art. 226, Revised Penal Code.) The word "or" is a disjunctive conjunction which, in the ordinary usage, signifies dissociation and independence of one thing from each of the other things mentioned. While in the interpretation of statutes, "or" may read "and" and vice versa, it is so only when the context so requires. And, in the instant case, there is nothing in the context of the law which would require the giving to the conjunction "or" a meaning different from its ordinary usage. Accordingly, removal, destruction and concealment must be viewed as distinct modes of committing the offense.

- ID.; ID.; ID.; DAMAGE TO PUBLIC INTEREST OR TO THIRD PARTY.—Upon the matter of damage to public interest or to third party, it is true that such damage must be actual and not hypothetical. But an actual damage need not necessarily be pecuniary or material. It may consist in mere alarm to the public or in the alienation of its confidence in any branch of the government service. In the instant case, aside from the necessity of maintaining the integrity of public records, the removal for illicit purposes by petitioner of the documents in question from their usual place of safekeeping against the strictest surveillance ordered by the higher authorities and in the midst of the immigration scandal when the probe was in full swing, constitutes such a perversion of official character and a brazen defiance of law as to impair almost irretrievably public confidence in the integrity of public officials. Such effect constitutes damage to public interest, and such damage is, under the circumstances stated, unquestionably a serious one.

- ID.; ID.; ID.; CRIME COMMITTED IS CONSUMMATED AND NOT MERELY ATTEMPTED.—Petitioner has committed not merely the attempted but the consummated crime of infidelity in the custody of public documents. True, at the moment of his arrest the records he was caught carrying with him were intact, but as he had already succeeded in removing or secreting away the documents in question from his office, for he was caught carrying them after he had locked the door of his office and was already out walking through the lobby towards the main door of the building, the crime of removal of public documents in breach of official trust had been consummated, it being immaterial whether he has or has not actually accomplished the illicit purpose for which he had removed said documents.

PETITION for review on certiorari.

Decision penned by Associate Justice Manuel V. Moran.

Vicente del Rosorio, Segundo M. Martinez and Baldomero Luque for petitioner.

Assistant Solicitor-General Reyes and Solicitor Zulueta for respondent.

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