

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. EULOGIO REYES CARRILLO DEFENDANT AND APPELLEE.

G.R. No. 4922. April 12, 1909

Ponente: MAPA, J.

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MAPA, J.:

The defendant herein was charged with the crime of slander (calumnia) because in a public gathering held in the city of Manila on the 24th of March, 1908, he made certain statements in Tagalog and Pampango, the Spanish [English] version of which is as follows:

"This book, I want you to know, is a cashbook, and I am going to read it for you: Dr. Lucban collected subscriptions in Pampanga amounting to more than P4,500 with which to organize the independence party; out of this sum he spent for shoes, two bottles of beer, carromata hire, P16, and for meals, and ice. Dr. Lucban also took the sum of P20.20 and other things. The cashbook and the cash box remain, but the contents of the latter have disappeared."

The defendant presented a demurrer to the information on the grounds that: First, it is not substantially in the form prescribed by law; and second, the facts charged do not constitute a crime. The lower court dismissed the demurrer as to the first ground, but sustained the same as to the secondhand in consequence ordered that the accused be released and his bond canceled. The prosecution appealed from said order.

The mere reading of the words said to be slanderous will suffice to show that none of the facts thereby imputed to Dr. Lucban constitute a public offense. The fact that Dr. Lucban collected the sum P4,500 by subscriptions to organize the independence party does not, of course, constitute a public offense; neither does the fact that he expended part of the money so collected on shoes, beer, carromata hire, meals, and ice, inasmuch as it has not been said that he acted without authority from the subscribers to the fund, or from entities or persons, whoever they be, lawfully empowered to direct or manage the investment of said subscription fund; it has not been stated that the objects for which the money was expended did not serve the ends intended by the constitution of the said party nor that the expenditure of the fund by Dr. Lucban involved fraud and deceit or was made to the prejudice of the subscribers, in which case the act constituting the deceit and prejudice caused to the latter should have been specifically stated. Finally, the fact imputed to Dr. Lucban, that the latter took P20.20 from said funds does not constitute a crime inasmuch as it has not been stated in what manner or for what purpose or object he took that amount.

And nothing further is charged against Dr. Lucban. As regards the phrase "the cashbook and the cash box remain but the contents of the latter have disappeared," which is apparently relied upon by the prosecution in this instance, it clearly appears that, being an impersonal statement, it may apply equally to Dr. Lucban or to any other person. Moreover, merely saying that the contents of the cash box had disappeared, does not necessarily mean that they disappeared by means of a criminal or punishable act, for among other hypotheses that perfectly fit the vagueness and uncertainty of that phrase, it may well be that the disappearance of said funds was the actual result of the total expenditure thereof for the purposes for which they were intended, in which case no crime has really

been committed.

According to article 452 of the Penal Code, slander or calumnia is the false imputation of a crime subject to prosecution at the instance of the government (de oficio). In the absence of an imputation of this nature, and an imputation directly and specifically charging the doing of a specific and particular punishable act, which we have shown does not exist in this case, there is not and there could be no slander, even though there might be present the essential elements of some other offense.

The order appealed from is hereby affirmed with the costs of this instance against the appellant.

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

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