

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. LUCIANO MALEZA AND GABRIEL ADLAON, DEFENDANTS AND APPELLEES.*G.R. No. 5036. November 17, 1909*

Ponente: TORRES, J.

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On the 31st of May, 1906, Luciano Maleza, as treasurer of the municipality of Sevilla, Province of Bohol, certified that an account of the same date, showing payments made to carpenters and day laborers who worked on the construction of the municipal building during the years of 1903 and 1904, as well as the cost of certain packages of nails used therein, was a true and exact statement; said account amounted to P249.35, and was approved by a resolution of the municipal council. He further certified that the services were rendered as stated and were necessary for the public interest, and that the articles purchased had been recorded in the municipal register.

It appeared that Gabriel Adlaon, whose signature appears at the foot of the document, had received the said amount as the balance due of a former account. Maleza, however, failed to tell the truth in the statement of facts contained in the said document, inasmuch as he stated therein that the money was intended to pay the carpenters, when as a matter of fact it was drawn and paid to Luciano Maleza himself, he being commissioned by P. Cayetano Bastes to collect and receive the amount loaned by the said Bastes to the municipal president and treasurer of Sevilla in the year 1903. Adlaon also, with reckless negligence, failed to tell the truth in stating the facts contained in the said document. He said therein that he had received the money, when in reality neither was the money paid for the work done by the carpenters, nor was it received by him.

In view of the above a complaint was filed by the provincial fiscal charging said two individuals with the crime of falsification of a public document by reason of reckless negligence. Counsel for the the accused demurred to the complaint, alleging that the facts therein complained of did not constitute a crime; that the complaint was not drawn according to law, and that if the facts mentioned constituted a crime, the result would be that two crimes were charged under the same complaint.

On the 7th of October, the court below; after hearing both parties, sustained the demurrer on the ground that the facts did not constitute the crime complained of, as in the opinion of the trial judge there neither exists, nor can there exist, any such crime as falsification of a public document by reason of reckless negligence. From his decision the fiscal has appealed.

Between an act performed voluntarily and intentionally, and another committed unconsciously and quite unintentionally, there exists another, performed without malice, but at the same time punishable, though in a lesser degree and with an equal material result; an intermediate act which the Penal Code qualifies as negligence, or reckless negligence.

A man must use common sense, and exercise due reflection in all his acts; it is his duty to be cautious, careful, and prudent, if not from instinct, then through fear of incurring punishment. He is responsible for such results as

anyone might foresee and for acts which no one would have performed except through culpable abandon. Otherwise his own person, rights and property, and those of his fellow-beings, would ever be exposed to all manner of danger and injury.

On the above theory, which is a perfectly just one, article 568 of the Penal Code reads:

"He who shall execute through reckless negligence an act that, if done with malice, would constitute a grave crime, shall be punished with the penalty of *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree, and with *arresto mayor* in its minimum and medium degrees if it shall constitute a less grave crime.

"He who in violation of the regulations shall commit a crime through simple imprudence or negligence shall incur the penalty of *arresto mayor* in its medium and maximum degrees."

Therefore, any act executed without malice or criminal intent, but with lack of foresight, carelessness, or negligence, and which has harmed society or an individual, deserves the qualification of either reckless or simple negligence or imprudence. The penalty, in the practical application of the above-quoted article, depends upon the relative seriousness of the crime and whether malice or criminal intent is present; the denomination or qualification is according to the circumstances of the case and nature of the act, such as homicide by reckless negligence, infidelity in the custody of prisoners through imprudence, falsification of documents by reason of reckless negligence, etc.

The courts which have heretofore dealt with and tried acts punishable under the Penal Code of Spain, which is almost the same as the one now in force in these Islands, have tried several cases of falsification of documents by reckless negligence. To these the provisions of article 581 of the Penal Code, identical with article 568 above cited, have been applied, as may be seen, among others, from the judgments in cessation of July 8, 1882; December 21, 1885; November 8, 1887; and December 7, 1896. See also the case of *The United States vs. Mariano Vega*, No. 2818 of the general register of this court.[1]

For the considerations above set forth, and which relate solely to the reasons on which is based the order appealed from, and considering that the classification of falsification of documents by reason of reckless negligence is perfectly legal, considering the nature and circumstances surrounding the act which is the subject of the complaint, it is our opinion that the said order should be reversed. Let the case be remanded to the court whence it came with a certified copy of this decision, and let the judge below proceed with the case and enter judgment therein in accordance with the law. So ordered.

Arellano, C. J., Johnson, Carson, Moreland, and Elliott, JJ., concur.

[1] Decided March 16, 1907; not published.

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