

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NICOMEDES MORALES, DEFENDANT AND APPELLANT.

G.R. No. 5108. September 30, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Under the provisions of section 55 of the Internal Revenue Law, Act No. 1189, the Court of First Instance of Albay sentenced Nicomedes Morales to one year and one day's imprisonment, and to pay a fine of P2,000, or, in case of insolvency, to suffer subsidiary imprisonment at the rate of one day for every P2.50 that he failed to pay, not to exceed six months, and did not sentence him to pay the costs.

The accused has appealed from the said sentence, and his appeal having been heard by this court it appears that the judgment appealed from contains the following findings of fact:

That, on the 12th of March, 1908, Nicomedes Morales, in his capacity of councilor, ordered the lieutenant of his district to warn the residents thereof of the necessity of providing themselves with a cedula corresponding to said year, but that those who did not possess the same for the years 1906 and 1907, should be sent to him; the order was obeyed by the said lieutenant, and on the 15th of the same month of March four individuals, among whom was Paulino Esperanza, were sent to him.

That Paulino Esperanza, when he appeared before Councilor Morales, after demand had been made upon him for the value of the cedula for 1907 and 1908, paid down P4, Morales promising to take out for him the cedula for 1907 and 1908.

That Morales went to the municipal treasury of Albay on the 16th of March with a list of the persons for whom he asked cedula, Paulino Esperanza appearing among the same as of 42 years of age.

That the clerk whose duty it was to issue cedula, made out one for Paulino Esperanza entering on it and on the stub the age of 42 years.

That before issuing the cedula, the clerk requested Councilor Morales to produce the cedula of the interested party for 1907, whereupon Morales said that Paulino Esperanza was only 18 years of age; thereupon the clerk changed the number 42 to read 18.

That the cedula having been signed in the above form by the municipal treasurer and delivered to the accused, the latter sent the same to Paulino Esperanza through Pastor Loberes.

The punishable fact consists in that the cedula of Paulino Esperanza now appears neither with the age of 18 years, nor with that of 42, but with that of 48 years.

The truth is, and it is so shown in the record, that Paulino Esperanza did not obtain a cedula for 1907; but together with the cedula for 1908 he received a document bearing date of the 17th of March, 1908, stating that Morales was in possession of P2 for the said cedula for 1907.

The cedula on which the two successive alterations have been made still perceptibly shows that 42 had first been written on it; that over the 4 a 1 was afterwards written, and that the 2 had been changed into an 8; and that later (the handwriting and ink being different) an angle had been added to the 1 in order to convert it into a 4, the cedula now appearing "48 years of age" instead of 42 as first written, and instead of 18 as it should have left the hands of the clerk.

The following are also findings in the judgment: "That the accused knew Paulino Esperanza, and was perfectly well aware of the fact that said Paulino was much older than 18; that the personal appearance of Paulino Esperanza would convince anybody that he is a fairly old man; and that this cedula was altered after having been issued."

And in view of these last findings the court below found that Morales is the author of the falsification of said cedula; a finding completely impugned by the first assignment of error in the brief of the defense in this instance.

The first of the findings of fact in the judgment is proven by the original order issued by the accused (Exhibit D) page 57, and furthermore by the testimony of Lieutenant Candido Morgano or Marsan who received the order and sent up Paulino Esperanza, Pastor Loberes, and two others who had no cedulas for 1907. In addition, the accused admits that he issued said order (folio 43).

But the accused denied that he had ever had anything to do with Paulino Esperanza, or that the latter had been sent to him.

It has been proven that Paulino Esperanza, Pastor Loberes, Anastasio Lorio, and Albino Lodrono were sent to the house of Councilor Morales on the 15th of March, 1908, by his instructions; their appearance having been ordered by Lieutenant Marsan and effected by corporal of police Cristino Lobendino according to the testimony of these witnesses in addition to that of Esperanza and Loberes.

The second finding is a proven fact, that Paulino Esperanza delivered P4 to Councilor Morales because the latter had offered to obtain the cedulas for 1907 and 1908. Paulino Esperanza so testified and it is shown by the cedula obtained, and the receipt (Exhibit B) which reads as follows: "Received the sum of P2 for the purpose of delivering a cedula for 1907 to Paulino Esperanza when I go to Albay. Daraga, March 17, 1908-N. Morales;" the authenticity of this document, as signed by Morales, was established without contradiction by the provincial fiscal as a witness.

The accused says that on the 18th or 19th of March, 1908, he gave two receipts to a woman who begged him for two cedulas, one for her husband and another for one of her relatives. He denied any knowledge of the cedula obtained for Paulino Esperanza, stating that he did not recall said name, or remember having obtained from the treasury the cedula in question, but he did remember having given the receipt to a certain Esperanza. And one of his witnesses says that it was on the 14th or 15th when Morales gave those receipts.

This being the case, the receipt in question could not be one of those that the accused and his witness say was given to a woman, because it was on the 18th or 19th of March when Morales, as he says, saw the woman, or, the 14th or 15th as his witness says, while the receipt in Esperanza's hands bears date of the 17th of said month and year.

The third, fourth, and fifth findings are also proven facts, supported by the uncontradicted testimony of the municipal treasurer of Albay, Godofredo Aquende, and his clerk Norberto Avaluado, and fully confirmed by the stub of the cedula in question produced in evidence. There appears on said stub "this cedula was issued on the 16th of March, 1908;" and in the age space, first 42, crossed out in parenthesis, and then 18.

And finally, the last finding, proved by the testimony of Pastor Loberes for whom Morales offered to take out a cedula in Albay, and to whom besides his own, Morales delivered the one for Paulino Esperanza together with a receipt to be delivered to the latter; this Loberes delivered, the cedula in question being identified as the one so delivered.

Paulino Esperanza can not be the author of this falsification. It has been proven that he paid out P4, two for the cedula for 1908 which he holds, and two for that for 1907, which, according to a document; the accused promised to get him. If Esperanza had gone to the municipal treasury for cedulas for the years 1907 and 1908, he would certainly have obtained them; in that case the P2 for 1908 would have been paid, as they were paid, into the municipal treasury, as would also the other P2 for the year 1907 and which, on the 16th of March, he gave for that purpose to Councilor Morales who unlawfully kept them in his possession.

Neither could the clerk, Avaluado, be the author of the falsification, because he made out the cedula for 1908 (bearing the age of 42 or 18, according to the declarations that he was receiving from the councilor) and collected P2 for the said cedula, but there is no proof that he received the other P2 for the 1907 cedula; this last amount is proved to have remained in the hands of the accused Morales. Had he not taken the two pesos or otherwise benefited himself he would not ordinarily have run the risk of being prosecuted for falsification, as did the accused in undertaking to obtain a 1907 cedula for Paulino Esperanza and then neither producing it nor the purchase money from the 17th of March until the 23d of October, 1908, when he was charged with having caused the insertion of the words 18 years of age instead of 42, in order to convince the treasurer that there was no necessity of obtaining a prior cedula, that is, one for 1907, and afterwards again changing the figures to 48 in order to make it fit the case.

According to the Penal Code two crimes would have been committed, falsification of an official document as a means to estafa as an end; the penalty for the graver crime should be imposed in the maximum degree. (Art. 89.) And the penalty to be applied should be that corresponding to the crime of falsification of a certificate of registration (cedula de vecindad), that is, arresto mayor in its maximum degree to prision correccional in its minimum degree, from four months and one day to two years and four months, and a fine up to 3,250 pesetas.

But the complaint was filed in accordance with section 55 of the Internal Revenue Law, and the penalty for defrauding the public revenue should be imposed in accordance therewith.

This court can not confirm the addition of one day to the penalty of one year's imprisonment imposed under the provisions of a law which allows ample discretion in imposing, from one extreme to the other, the penalty indicated. One day more, thus imposed, is utterly ridiculous, because it has no such far-reaching consequence as where, under the Penal Code, one day additional represents a higher degree in the penalty, according to the graduated scale that regulates the discretion of courts, and which signifies that the court desired to impose the superior degree but to moderate the penalty imposed thereunder to its minimum.

Therefore, provided that the penalty of imprisonment shall be for one year only, the judgment appealed from is hereby affirmed as to the rest thereof, with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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