

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO A. REYES, DEFENDANT AND APPELLANT.*G. R. No. 5141. January 10, 1910*

Ponente: TORRES, J.

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Shortly after 9 o'clock of the morning of Monday, the 27th of April, 1908, Panfilo Espinosa, deputy provincial treasurer of Pampanga, appeared at the municipal treasury of Guagua for the purpose of counting the cash in the safe in charge of Pedro A. Reyes, the municipal treasurer, and examining the accounts of the said treasury. Reyes was at his office, but alleging that he had forgotten his keys he asked for a few minutes in order to get them; his absence, however, lasted about forty minutes and as soon as he returned the inspector ordered him to open the safe and place all the money contained in it on the table. The inspector noticed that Reyes was worried and nervous, and that his pockets were bulging out; that he went to another apartment of the building and brought back an old cigar box without a lid, which contained, when counted, the sum of P1,520; this sum, according to Reyes, was a portion of the municipal funds. Deputy Espinosa observed that Reyes' trousers pockets no longer bulged out, for which reason he refused to receive the aforesaid amount as being part of the municipal funds, and because the money was not in the safe; but as Reyes insisted that the said sum was the amount of certain checks that he had had cashed, it was agreed between them to lay the matter before W. W. Barclay, the provincial treasurer, and to this end Espinosa and Reyes went to San Fernando, the capital of the province, to see the provincial treasurer.

In the presence of the latter, Pedro A. Reyes repeated his statement that the said sum of P1,520 was the value of certain checks, although he was unable to say by whom they were drawn, or where and by whom the same were cashed; he only indicated two persons for P500 each, and the balance he said was cashed at his own house; but the Chinese named Suana and Reyes' own wife denied having cashed any check. Later on Reyes told Treasurer Barclay that the checks were cashed at the bank in Manila, but that he had forgotten the name of the bank, as well as the name of the person who at his request had gone to Manila to cash them; however, as the investigation proceeded Reyes finally confessed that he had taken the money from the municipal safe and had loaned it to some of his friends residing in the said town, although he could not give their names, but he assumed the responsibility therefor.

During the counting of the cash found in the safe, Treasurer Reyes, between 2 and 3 o'clock in the afternoon, presented the sum of P155.86 which he took from the drawer of the desk of his clerk, Carlos Dyjanco, saying that this amount was a portion of or proceeded from the market collections, and had been in the custody of said clerk from Saturday until Monday, the 27th of said month. This witness, notwithstanding the fact that he was in the office since that morning, and that he witnessed the counting of the money, made no mention of said amount until the afternoon of that day.

Before the counting of the money was finished, Reyes asked if there was still any deficit for him to make up, and in effect, between 3 and 4 p. m., he was told that there was still a shortage of P193.79; which sum, as soon as he

was informed, he took out of his pocket and gave to the said clerk, Dyjanco, directing him to hand over the amount to Espinosa.

At about 9 p. m. on the same day Reyes signed the document offered in evidence as Exhibit A, wherein he himself admitted that he was short in the sum of P1,869.65. He told C. F. Richmond, the district auditor, that he was responsible for the shortage and that he assumed the whole responsibility, but he said he could not be prosecuted other than for estafa because he had refunded the money, and prayed that he be not prosecuted before the courts because it would be unpleasant for him as he was a married man.

A complaint was filed by the provincial fiscal on the 2d of June, 1908, with the Court of First Instance of Pampanga, charging Pedro A. Reyes with the crime of misappropriation of public funds under Act No. 1740, and these proceedings were instituted. The trial judge entered judgment on the 13th of October of the same year, and sentenced the accused to the penalty of three years' imprisonment, to pay a fine of ₱1,500, and in case of insolvency to suffer subsidiary imprisonment at the rate of one day for every P2.50 that he failed to pay, which subsidiary imprisonment, however, should not exceed one third of the principal penalty, he further sentenced him to be perpetually disqualified for public office and to pay the costs. From said judgment the accused has appealed.

The facts related in the complaint bear the character of the crime of misappropriation of public funds, under section 1 of Act No. 1740, enacted October 3, 1907, which reads as follows:

"Any bonded officer or employee of the Insular Government, or of any provincial or municipal government, or of the city of Manila, and any other person who, having charge, by reason of his office or employment, of Insular, provincial, or municipal funds or property, or of funds or property of the city of Manila, or of trust or other funds by law required to be kept or deposited by or with such officer, employee, or other person, or by or with any public office, treasury, or other depository, fails or refuses to account for the same, or makes personal use of such funds or property, or of any part thereof, or abstracts or misappropriates the same, or any part thereof, or is guilty of any malversation with reference to such funds or property, or through his abandonment, fault, or negligence permits any other person to abstract, misappropriate, or make personal use of the same, shall, upon conviction, be punished by imprisonment for not less than two months nor more than ten years and, in the discretion of the court, by a fine of not more than the amount of such funds and the value of such property."

It appears fully proven in the case that Deputy Inspector Panfilo Espinosa went to the office of the municipal treasurer of Guagua after 9 o'clock on the morning of the 27th of April, 1908; that when the accused Pedro A. Reyes, opened his safe by order of said inspector and counted the money therein, there appeared a shortage of P1,869.65. As this amount was not in the municipal safe the treasurer in charge of its care and custody must be considered as being discovered in default; this he acknowledged himself to be in the document marked "Exhibit A," drawn up at the time as a result of the inspection, and which was subscribed by the accused. It is undeniable that as a result of the counting of the money, which, by the books of the municipal treasurer of Guagua ought to be in the safe, there appeared a shortage of P1,869.65 which, according to the provisions of section 21 (e) of Act No. 82, should have been kept in the municipal safe, apart from the private funds of the treasurer; the latter was not empowered to dispose of, loan, or use it, except in the manner authorized by law.

The accused pleaded not guilty, and denied the charge imputed to him. His allegations in exculpation were not proven, and indeed he himself contradicted them in his statements to the inspector, the provincial treasurer, W. W. Barclay, to the district auditor, C. F. Richmond, and by the contents of the said document Exhibit A authorized by the accused himself.

By the terms of the said Act, the regulations published by the Insular Auditor, and the circular instructions issued to all treasurers, it was the unavoidable duty of the accused as a treasurer, to deposit all moneys belonging to the

municipality, or other Government funds, in the safe kept for that purpose, and which is in charge of the officer charged with the custody of the same.

When the accused Reyes was ordered by the inspector Espinosa to produce all the money which, according to the books of the municipal treasury of Guagua, ought to have been in the safe under his charge, he was unable to comply with the order, which was a perfectly legal one; the result showed that the said sum of P1,869.65 was missing from the safe, and when asked to explain how and why such part of the funds, which according to the books ought to be found therein, was so missing, after making various vague explanations, he finally stated at the expiration of some hours that he had disposed of part of the money belonging to the safe and had loaned it to certain of his friends in the town, and that although he could not give their names he assumed all the responsibility in the premises; on making this confession he alleged that as he had refunded the money taken from the municipal funds he believed that he could only be prosecuted for estafa.

In spite of this, the defense alleged that the money with which the accused Reyes had replaced the amount missing from the municipal safe was in the precincts of the treasury, and should therefore be admitted and considered as forming a part of the funds in said safe.

Act No. 82 and the regulations on the subject prescribe that funds belonging to the treasury must be kept in the safe, with the exception of certain amounts required for the purpose of making change during office hours, and it appears by the confession of the accused himself that he disposed of the missing money for the purpose of loaning it to some of his friends; thus, when the inspector presented himself at his office and ordered him to produce the money, he went back to his house on the pretext of getting the keys, and when he returned more than half an hour later, he brought with him a little less than the amount that was lacking; this he produced in a manner and under conditions that leads to the well-founded presumption that the said sum of P1,520 was not in the office, and that he had been obliged to recover it from the friends to whom he said he had loaned it. From all of the above it is undeniable that said amount did not form part of the municipal funds, nor was it in the office of the municipal treasurer as belonging to such funds at the time when the demand was made, and it must further be taken into account that the sums of P155.86 and P193.79 were still short and were paid some hours later.

Section 2 of Act No. 1740, cited above, provides:

"In all prosecutions for violations of the preceding section, the absence of any of the public funds or property of which any person described in said section has charge, and any failure or inability of such person to produce all the funds and property properly in his charge on the demand of any officer authorized to examine or inspect such person, office, treasury, or depository shall be deemed to be prima facie evidence that such missing funds or property have been put to personal uses or used for personal ends by such person within the meaning of the preceding section."

The accused performed the duties of said office for more than three years; therefore he knew perfectly well that it was strictly his duty to keep and maintain in the municipal safe all of such amounts as constituted the funds of the municipality; but having been surprised on that morning by the sudden appearance of the inspector, and by the latter's peremptory demand to open the safe and produce for the purpose of counting all the money in his charge, he at once understood that he had incurred liability on account of the absence of part of the funds that should have been found therein; even before the money was counted he appeared to be worried and nervous, passing from one side of the house to the other, sweating copiously, and showing by his demeanor that he was not an innocent man; thereafter, in view of the result of the count he subscribed the document marked as "Exhibit A," admitting that the amount misappropriated was in effect missing from the safe, and confessing at the same time that he had loaned the money of the municipality to some of his friends although he assumed all the responsibility therefor.

So that, the case not only offers prima facie and unimpeached evidence of the crime, under the provisions of the foregoing section 2 of Act No. 1740, but other conclusive proof that the accused disposed of a certain portion of the municipal funds and employed the same for personal and outside uses, other than such as are authorized by law, since it is so testified by Treasurer Barclay, Auditor Richmond, and Inspector Espinosa, competent witnesses who saw the money counted and heard the confession and other statements of the accused at the time when they were exercising their functions.

Even though the confession which the accused made in the presence of the above-named officers only constitutes circumstantial evidence, or raises a grave suspicion as to him, according to law 7, title 13, partida 3, yet, it is corroborated however by other circumstantial data showing that the three amounts with which the shortage was covered came from other persons, or from places outside of the treasury building, and it is a fully "proven fact, admitted by said accused, that on counting the money which according to the books, ought to have been in the treasury, the amount stated in the said document Exhibit A was missing; thus it was that the accused, being convinced of the truth and reality of the fact, made no objection to signing said document, and for this reason his culpability as the only principal, convicted beyond all doubt of the crime prosecuted herein, can not be denied. The fact that on the same date that the money was counted he refunded the amount that he had misappropriated does not exempt him from responsibility, it having been proven that he had withdrawn the same from the safe and used it for personal or for outside purposes, without warrant, and in manifest violation of the law requiring that all public funds, including municipal funds, shall be kept only in the safe.

For the foregoing reasons the several unfounded errors assigned to the judgment appealed from have been fully refuted, since in conclusion it is fully shown that the accused unlawfully disposed of a portion of the municipal funds, putting the same to his own use and to that of other persons in violation of Act No. 1740, and consequently he has incurred the penalty therein established as principal of the crime of misappropriation; and even though when imposing it, it is not necessary to adhere to the rules of the Penal Code, the court in using its discretionary powers as authorized by law, believes that the circumstances present in the commission of crimes should be taken into consideration, and in the present case the amount misappropriated was refunded at the time the funds were counted.

Therefore, in view of what has been set forth, it is our opinion that the judgment appealed from should be affirmed, provided, however, that the principal penalty shall be six months' imprisonment with the costs of this instance against the accused. So ordered.

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

Carson, J., concurs in the result.

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