

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BARTOLOME MIJARES, DEFENDANT AND APPELLANT.

G.R. No. 5153. September 01, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The complaint in the present case charges the crime of misappropriation of public funds, and reads as follows:

"That on the 23d of October, 1904, the accused, Bartolo Mijares, being at that time deputy sheriff of the municipality of Cadiz, Occidental Negros, Philippine Islands, received, in his capacity as deputy sheriff, from Sebastian Olvido, the sum of seven pesos and forty-two centavos (P7.42) with which to pay his, Olvido's, land tax, and did maliciously and with criminal intent appropriate and apply said sum to his own use."

Upon the conclusion of the hearing of the case, the Court of First Instance of Occidental Negros found, with regard to the facts, that from the testimony of the accused himself, he had received from Felipe Ibañez, on behalf of Sebastian Olvido, the sum of 7 pesos and 42 centavos as a deposit to be turned into the municipal treasury of the town of Cadiz Nuevo in said province in payment of the land tax due by Sebastian Olvido for the year 1903. This appears in a document signed by the accused and bearing his seal of office.

Up to the 5th of July, 1907, when the accused was arrested as a result of the aforesaid complaint, the said amount had not been paid for the purpose already stated. It was only on the 31st day of said month that he called at the provincial treasury of Occidental Negros in order to settle the indebtedness of Sebastian Olvido for the year 1903, with the result that the latter then owed for the tax, surtax, and interest the sum of P12.66 which the accused paid into the municipal treasury of Cadiz Nuevo. The said total of P12.66 was the amount due up to the 1st of August, 1907, when the settlement was made. Thus, as remarked by the Attorney-General in this instance, the 6 per cent interest charged for delinquency corresponds to the forty-three months which elapsed from the 1st of January, 1904, to the 1st of August, 1907, while if the tax and surtax had been paid in 1904, Sebastian Olvido would only have had to pay the sum of P10.42.

The accused gave the following explanation:

"Q. Here is this document marked 'Exhibit A;' do you know what it is?—A. It is a receipt for an amount corresponding to the tax due by Sebastian Olvido.

"Q. By whom is it signed?—A. By me, and because, sir, as it was not the exact amount due, because he owed P12.66, they refused to issue the proper receipt from the treasury until the total amount was forthcoming, and so he was notified, and before going to live in Silay I informed him that I was about to leave.

"Q. And when you received said amount of P7.42 which Sebastian Olvido handed you to pay for his land tax, did you not call his attention to the fact that it was not sufficient, and that it was not the amount that was due for the tax that he had to pay?—A. I did so because I had a note from the treasurer stating that he had to pay P12.66, and he told me to come back within a week when he would make up the difference."

It is evident that this fact could not have been brought to the attention of Sebastian Olvido in 1903, when he could not have owed more than P10.42, but on the first of August, 1907, when in addition he finally owed on account of interest of the delinquency a total of P12.66.

The trial court did not punish the deed as misappropriation of public funds but as estafa under the provisions of article 534, paragraph 1, of the Penal Code, and sentenced the accused to two months and one day of arresto mayor, and to pay the costs.

In this instance the Attorney-General is, however, of opinion that the accused should be punished under article 399 of the Penal Code, and that he should be further sentenced to temporary special disqualification, thus applying the doctrine established in the cause of the United States vs. Solis (7 Phil. Rep., 195).

According to the facts as proven the above doctrine can not be applied in this case.

The record shows that Mijares had not requested Olvido to hand him any sum whatever, either as deputy sheriff or as a private individual; nor that Olvido appeared as a delinquent taxpayer in the list which Mijares kept for collection; the fact is that on said occasion Olvido simply availed himself of the opportunity to settle up his tax, and asked Mijares to deposit in the municipal treasury the aforesaid sum of P7.42.

Such being the facts in the case, the accused, upon merely receiving the request to make a deposit, did not act as a public official nor in any way abuse his office; he acted as might any other private individual to whom Olvido might have made such a request, and who might or might not have faithfully discharged such a request. This is the sense in which the trial court has considered the offense.

It therefore follows that the doctrine applicable herein is that established in the case of the United States vs. Casin (8 Phil. Rep., 589). As a private individual only is he guilty of the crime of estafa.

Therefore, the judgment appealed from is hereby affirmed, with the costs of this instance.

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

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