

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARIANO FELICIANO, DEFENDANT AND APPELLANT.

G.R. No. 5624. February 03, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The defendant, Mariano Feliciano, is charged with having misappropriated and applied to his own use the sum of P53.05 in his custody as municipal treasurer and deputy provincial treasurer for the municipality of San Pedro Macati, in violation of section 1 of Act No. 1740, which punishes the appropriation of public funds and their application to personal use. The Court of First Instance of the Province of Rizal sentenced him to two months' imprisonment, to pay a fine of P12 and costs, and from this judgment the accused has appealed.

One of the grounds for the appeal to this court is that, in the present case, Act No. 1740 has been invoked instead of article 392, paragraph 3, of the Penal Code.

In connection with the legal point thus raised, all that is said by this court in the decision rendered on this date in case No. 5623, U. S. vs. Jose Feliciano,[1]for identically the same crime, should be considered as reproduced herein.

The other reason alleged is that the court below erred in considering that the facts proven in this case constitute the crime of misappropriation of public funds.

A deputy auditor testified that on the 20th of May, 1908, he went to the municipality of San Pedro Macati for the purpose of making an inspection of the office, cash, and accounts of the municipal treasury of said town, of which Mariano Feliciano was the treasurer; that there resulted from the examination a shortage of P53.05 in the cash of the municipal treasury; that at the moment when the difference was discovered he notified the treasurer of it, and the latter took the sum of P53.05 from his pocket and paid it, but he did not remember, however, whether he had questioned the treasurer as to why the amount was not in the safe; and that, at the time when the examination was made, there were other persons present, to wit, the municipal president and the municipal secretary.

When the above witnesses were examined, the first named stated that they were called by the deputy auditor at the commencement of the examination in order to witness the same, and he remembered that there was a deficit of some fifty-odd pesos and that the treasurer at once paid the money that was lacking, taking the same out of his own pocket. The second witness stated that he was not present at the commencement of the examination, and that it was only when the shortage was discovered that the deputy auditor called him in to bear witness thereto; that, as he remembered, it amounted to more than P50; that what he did see was that the shortage was at once covered by the treasurer, Mariano Feliciano, who took the necessary amount from his pocket.

The accused being placed on the stand testified that an examination of the cash and accounts kept by him as municipal treasurer was made on the 20th of May, 1908, and that when the examiner called his attention to the fact that there was a shortage of some 79-odd pesos, he told the latter that there was more money in a small box in

the safe, which was true, as the examiner has certified; that subsequently the latter observed that even with this there was still money lacking, and the witness then recalled that he had money in his desk representing the remainder of certain payments for wages of laborers, which money he also presented to the examiner, but the latter in his report stated that said money was not in the safe and that the cash was short. In explaining why this money was not in the safe, he said that it was destined to pay wages on the previous Saturday, but that as all the laborers had not appeared to collect their wages he kept it in his desk, and it remained there because he had begun to prepare his report for the ten-day period.

Section 2 of Act No. 1740 provides that - "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 previous section."

If, according to the officer who made the examination of the accounts, at the very moment when the shortage of P53 was discovered and the treasurer was notified he at once presented the money, no prima facie evidence of the crime of misappropriation can be established, nor any proof whatever that there was such misappropriation.

Therefore, the judgment appealed from is hereby reversed with the costs of both instances de oficio. So ordered.

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

[1] Page 142, *supra*.

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