

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. RUFINO PONTE ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 5952. October 24, 1911

Ponente: CARSON, J.

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CARSON, J.:

Rufino Ponte, Pedro Pedraza, Juan Alamida, Ignacio Narvades, Agapito Cada, Alejandro Metram, and Esteban Verata, were charged with the crime of malversation of public funds, as defined and penalized in Act No. 1740, in an information couched in the following terms:

"That on or about the 6th day of September, 1909, the defendant Rufino Ponte was a bonded employee of the provincial and municipal government of Calabanga, Ambos Camarines, and as municipal treasurer of said pueblo had in his possession and in his charge the sum of P3,795.93 and a safe valued at F50. The defendant Pedro Pedraza was the janitor or" porter of the municipal treasury of Calabanga, and Juan Alamida, Ignacio Narvades, Agapito Cada, Alejandro Metram. and Esteban Verata were municipal policemen of said pueblo of Calabanga, Ambos Camarines, and as such officers had committed to them the guardianship and custody of the municipal treasury of Calabanga, where the said sum of P3,795.93 and the safe containing it were kept.

"That the said defendant Rufino Ponte did maliciously, criminally and unlawfully misappropriate and make personal use of the said sum of P3,795.93, and refused and failed to render account of the same, as well as of the safe containing it.

"That the defendants Pedro Pedraza, Juan Alamida, Ignacio Narvades, Agapito Cada, Alejandro Metram, and Esteban Verata, did, each and every one of them, maliciously, criminally and unlawfully, directly aid said Kufino Ponte in this malversation by taking said safe with the said amount from the municipal treasury and carrymg it to the sitio of Inarian: in violation of law."

Counsel for the defendants Juan Alamida, Ignacio Narvades, Agapito Cada, Alejandro Metram and Esteban Verata, demurred to the information on the ground that as to these defendants the facts set out in the information did not constitute the crime with which they were charged. The grounds upon which they base this contention are stated by counsel as follows:

"The crime with which the above-named defendants are charged is provided for and penalized by a special Act, No. 1740, which has repealed such provisions of the Penal Code relating to malversation and misappropriation as conflict with the provisions of said Act.

"According to the information cited, the above-named accused were municipal policemen of Calabangar where the crime was committed, and their sole participation therein was that they directly aided Rufino Ponte, the municipal treasurer, in said malversation by taking the safe with the sum misappropriated and carrying it from the municipal treasury to the sitio of Inarian.

"It is evident from what has just been stated that the question relates to the guilt of the accused Alamida, Narvades, Cada, Metram and Verata as accomplices in the crime of malversation. (3 Phil. Rep., 6; art. 14, Penal Code.)

"As accomplices, said defendants are not liable under Act No. 1740, because this Act only punishes the principals, the officers, whether bonded or not, who misapply or misappropriate the funds they may have in their possession by reason of their office.

"The provisions of the Penal Code regarding the criminal responsibility of accomplices in crimes are applicable to this case, because the crime under consideration is penalized by a special Act, which is the only law that should govern.

"Therefore, in view of the arguments adduced, the court is requested to sustain this demurrer and order the dismissal of this cause with reference to the accused municipal policemen of Calabanga."

The court below sustained the demurrer in the following order:

"Careful perusal of section 1 of Act No. 1740 shows that it refers, to bonded officers or employees and any other persons who, having charge, by reason of their office or employment or by operation of law, of funds or property of the Government, who misappropriate, fail to render account, etc.

"Two requisites are therefore necessary for the existence of the crime of malversation, according to Act No. 1740? to wit: (1) That a bonded officer or employee or any other person by reason of his office or employment or by operation of law have charge of funds or property of the Government; and (2) that said officer or person refuse or fail to render account, or make personal use of the same or misappropriate them, etc.

"Are these requisites applicable to the accused policemen?

"No: for the office of municipal policeman does not carry with it any duty of guardianship or custody of Government funds, nor is there any law which prescribes that by reason of being policemen they must take charge of and guard Government funds, nor is it alleged in the complaint that the funds in question were turned over to them; it merely appears that it was their duty as policemen to guard the safe, or municipal treasury. The information itself avers that 'as such officials they had committed to them the guardianship and custody of the municipal treasury of Calabanga, where the said sum of P3,795.93 and the safe containing: it were kept.' More clearly: the law does not refer to those who guard or care for the municipal building¹ or treasury, but to those who are intrusted with or have in their charge funds or property of the Government.

"Accordingly, if the policemen abstracted the money and the safe containing it, and carried it to another place, as is alleged in the complaint, they committed the crime of robbery, or some other crime against property, but not the crime of malversation as denned in Act No. 1740.

"Therefore the court sustains the demurrer, declaring this cause dismissed with reference to the policemen Juan Alamida, Ignacio Narvades, Agapito Cada, Alejandro Metram, and Esteban Verata, with five-sixths of the costs de oficio, and orders the provincial fiscal again to investigate the facts and then present an information against said policemen for robbery or some other crime against property."

We are agreed with the trial judge in so far as he refused to give any weight to contention of counsel for the defense that the information merely charges these defendants as accomplices in the commission of the crime defined and penalized in Act No. 1740, and that there is nothing in the Act which penalizes the assistance rendered by accomplices in the commission of this crime; it will be seen that the information expressly alleges that "the defendants did, each and every one of them, maliciously, criminally and unlawfully, directly aid said Rufino Ponte in this malversation by taking said safe with the said amount from the municipal treasury and carrying it to the sitio of Inarian," thus charging them with having taken a direct part in the commission of the crime, which could not have been successfully carried out had it not been for their direct participation and cooperation. Clearly these, defendants are charged in the information as co-principals and not as accomplices.

But we can not agree with the trial court in sustaining the demurrer on the ground that the accused, not having had

the money in question in their charge by reason of a public office held by them, could not commit the crime of malversation of public funds as defined in Act No. 1740, the true nature of the crime committed by them being, in the opinion of the trial judge, "robbery" or some other of the offenses against property defined and penalized in the code. It may be that the acts committed by these defendants constituted the crime of robbery, but under all the circumstances, we have no doubt that these acts also constituted the crime of malversation of public funds as defined in Act No. 1740.

Groizard, in his Commentaries on article 405 of the Spanish Penal Code, which is substantially identical with article 390 of the Philippine Code, says that:

"Doubt, weighty doubt may arise, nevertheless, regarding the definition of the crime and of the penalty to be imposed upon the private party who abstracts public funds with the consent of the officer charged with their custody. Shall the person so doing be guilty of the crime of malversation here provided for, and shall he suffer the same penalty as the unfaithful officer, or shall he be guilty only of the crime of theft and undergo the punishment he deserves therefor?

* * * * *

"Without overlooking the force of the arguments we have just cited, we are inclined to take the first point of view. We are led thereto by the consideration that in contending for the imposition of the same penalty upon the private party who abstracts public funds as upon the employee who gives his consent thereto we recognize the differentiation with which crimes are always described and penalized in the code. In the action which the text describes as a crime there is perfect unity: the private party does not act independently from the public officer: rather, he knows that the funds of which he wishes to get possession are in the latter's charge, and instead of trying to abstract them by circumventing the other's vigilance he resorts to corruption, and in the officer's unfaithfulness seeks and finds the most reprehensible means for accomplishing a deed which by having a public officer as its moral instrument assumes the character of a social crime. If the article were not so interpreted, it would be necessary to agree that the act, in spite of its evident unity, would constitute not one but two distinct crimes, and the persons participating therein, although they acted together throughout, would be guilty of two different kinds of wrongdoing. Moreover, the rule of article 80, which prevents extension from some culprits to others of the responsibility that arises from their personal qualities, is restricted by fundamental principles and by the article itself, wherein it is applied to the consideration of the extenuating and aggravating circumstances which may affect the persons respectively responsible for the crime, and it neither can nor must influence in any way the characterization of the facts. One who helps a son kill his father is an accomplice of parricide: one who plans with a servant to commit a theft (*hurto*), and does commit it, is guilty of *hurto domestico*. When the law clearly defines a crime, as it has here defined the crime of malversation, those who in any way participate therein must be principals, accomplices or abettors thereof." (Vol. 4, p. 275.)

Viada, in his Commentaries upon the same article, says:

"Shall the person who participates or intervenes as coperpetrator, accomplice or abettor in the crime of malversation of public funds, committed by a public officer, have the penalties of this article also imposed upon him? In Opposition to the opinion maintained by some jurists and commentators (among others the learned Pacheco) we can only answer the question affirmatively, for the same reasons (*mutatis mutandis*) we have already advanced in Question I of the commentary on article 314. French jurisprudence has also settled the question in the same way on the ground that the person guilty of the crime necessarily aids the other culprit in the acts which constitute the crime." (Vol. 2, 4th edition, p. 653.)

The reasoning by which Groizard and Viada support their views as to the correct interpretation of the provisions of the Penal Code touching malversation of public funds by a public official, is equally applicable in our opinion, to the provisions of Act No. 1740 defining and penalizing that crime, and we have heretofore, in the case of the

United States vs. Dowdell (11 Phil. Rep., 4), imposed the penalty prescribed by this section of the code upon a public official who took part with another in the malversation of public funds, although it was not alleged, and in fact clearly appeared, that those funds were not in his hands by virtue of his office, though it did appear that they were in the hands of his co-principal by virtue of the public office held by him.

The order of the lower court sustaining the demurrer should be and is hereby overruled.

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

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