

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEONCIO RADAZA, DEFENDANT AND APPELLANT.

G.R. No. 6084. November 11, 1910

Ponente: TRENT, J.

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TRENT, J.:

The appellant, Leoncio Radaza, was tried, convicted, and sentenced to one year of imprisonment and to pay a fine of P5 for the crime of malversation of public funds. He appealed to this court and now insists, first, that the trial court erred in finding that the allegations in the complaint had been established by the proofs presented; and, second, that the trial court erred in qualifying the crime as malversation of public funds.

In the month of March, 1908, in the barrio of La Paz, municipality of Burawen, Province of Leyte, Francisco Tirado paid to the appellant the sum of P5, being, as he thought, for the privilege of slaughtering a carabao. The appellant represented himself as having authority and being the person in charge of the collection of these fees. He promised to obtain a receipt for Tirado for this amount. He not only failed to obtain the official receipt for this amount but converted the same to his own use. The appellant at this time was one of the councilors of the town of Burawen and in charge of the barrio of La Paz. The real crime committed by the appellant is that of estafa and not malversation of public funds.

The first section of Act No. 1740 provides 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, * * *."

The appellant was not a bonded officer or employee at that time, neither did he take charge of the P5 by reason of his office as councilor. The P5 was not deposited with him under authority of law. It was not his duty, neither did he have authority to collect slaughterhouse fees. He did not act as councilor in receiving the P5, but as a private individual. (U. S. vs. Casin, 8 Phil. Rep., 589.)

The case of *United States vs. Togonon* (12 Phil. Rep., 516) is easily distinguished from the case at bar. In that case it was alleged in the complaint that Togonon was municipal president of the town of Corella, Province of Gebu; that by reason of his office as such president it was his duty to receive the rents from certain municipal property and deposit the same, as required by law, with the municipal treasurer, and that he did receive such funds as president and convert the same to his own use. There was a direct allegation that he received these funds, as required by law, by reason of his office. A demurrer was presented and sustained. The fiscal appealed from the order sustaining the demurrer, and this court held that the allegations in the complaint were sufficient to constitute the crime of malversation of public funds as provided in Act No. 1740, *supra*. The case was not tried upon its merits, but the order sustaining the demurrer was set aside and the record returned for further proceedings on the

complaint.

In the case at bar the appellant did not receive the P5 in his official capacity. It was not his duty to collect these fees, and he had no authority to do so. For these reasons he is not guilty of the crime of malversation of public funds, but he is guilty of the crime of estafa, as denned and punished in paragraph 5 of article 535, in relation with paragraph 1 of article 534 of the Penal Code.

The judgment appealed from is, therefore, reversed, and the appellant is sentenced to two months and one day of arresto mayor, to indemnify the offended party in the sum of P5, to the corresponding subsidiary imprisonment in case of insolvency, to the accessory penalties provided for in article 61 of the Penal Code, and to pay the costs.

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

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