

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MODESTO BALILO, DEFENDANT AND APPELLANT.

G.R. No. 6204. December 09, 1910

Ponente: CARSON, J.

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CARSON, J.:

Appellant in this case was convicted of the crime of "faithlessness in the custody of documents," as defined and penalized in subsection 1 of article 360 of the Penal Code.

The evidence discloses that while acting as assistant postmaster of the municipality of Mabalacat, Pampanga, the defendant extracted P24 from a registered letter which had been handed him for registry; that he entered the letter in the registry receipt book of the post-office, but failed and neglected to forward it to its destination; that some days after the letter had been received for registry he took it to the sender, confessed that he had extracted the money, returned a part thereof, and promised payment of the remainder, and begged the sender of the letter to forgive the wrong he had done him and to conceal his misconduct.

Counsel for appellant contends that these facts do not justify the conviction of the defendant under the provisions of subsection 1 of article 860, because as counsel alleges, the record fails to disclose affirmatively that the defendant was a "public official" at the time the alleged crime was committed; and because further, as he insists, even if it be admitted that he was a public official and that he did unlawfully appropriate the money contents of the letter, "grave injury to a third person or to the public interests did not result from the act," so that the less harsh penalty prescribed in subsection 2 of article 360 should have been imposed.

Article 360 is as follows:

"The public official who shall steal, destroy, or hide any documents or papers intrusted to him by virtue of his office shall be punished

"1. With the penalties of provision mayor and a fine of from 625 to 6,250 pesetas, provided that a grave injury to a third person or the public interests has resulted from his action.

"2. With those of prision correccional in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas if the injury to the third person or to the public interests were not grave.

"In either case there shall, furthermore, be imposed the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification."

Notwithstanding the denial of the defendant that he had ever been appointed assistant postmaster, we think the evidence strongly tends to establish that fact; but however this may be, the defendant's own admissions leave no room for doubt that at the time when he received the letter in question for registry, he was acting for, and instead of, the postmaster, by commission of and direction of the postmaster, and the postmaster being undoubtedly a "public official," defendant was criminally liable for any infidelity in the custody of the documents and papers thus intrusted to him, as though he himself were a public official, by virtue of the general provisions of the second

paragraph of article 362 of the code, which are as follows:

"The penalties prescribed in the three preceding articles are also applicable to ecclesiastics and to individuals intrusted temporarily with the transmission or custody of documents or papers, by commission of the Government or of officials to whom they may have been intrusted by virtue of their office."

The question whether or not the acts complained of resulted in a "grave injury" to the public interests presents more difficulty.

Viada suggests that for the purpose of determining the character of damages referred to in these articles we should look to the eighth chapter of Title XII of the code, which, treating of damages to property of another unlawfully and criminally caused (in cases wherein the code imposes no specific penalty in other provisions thereof), prescribes a greater or lesser penalty as the amount is greater or less than 6,250 pesetas. But, while this chapter might, perhaps, be safely followed in cases where the amount of damage is capable of monetary valuation, it furnishes no satisfactory guide in cases of damages where the injury is not subject of monetary valuation, since it expressly provides a single penalty, with wide discretionary limits, in all cases of the destruction of documents and papers whose value is not subject of monetary valuation.

It would be impossible to give a precise monetary value to the injury done to the public service by the theft of the contents of registered mail by an employee charged with its transmission. Certain it is that in addition to the actual injury done to the owner of the contents of such mail, the doubt and uncertainty as to the safety of registered packages resulting from thefts of their contents, does amount to a very real and positive injury to the postal service and hence to the "public interests." In the case of *The United States vs. Marino* (10 Phil. Rep., 652) wherein the defendant was charged with a crime similar to that committed by the defendant in this case, and it was shown that defendant had been guilty of several separate thefts from registered mail intrusted to him, we held as follows, stating the doctrine as laid down in the syllabus of that case:

"For the proper qualification of the gravity of the injury caused to third parties or to the public interests in consequence of the above-mentioned crime of infidelity in the custody and dispatch of mails intrusted to the administration of posts, it does not suffice to take into account the extent of the injury or damage inflicted respectively on each of the parties interested in the ordinary or registered letters stolen, hidden, or destroyed by the unfaithful functionary, but it must be further considered that the unlawful conduct of the officer affects the public interests, inasmuch as the loss of packages, and the disappearance of letters, generally cause uneasiness and a certain alarm among the interested parties, some of whom, in the case at bar, filed their complaints with the Director of Posts. Such deeds committed in a post-office tend to alienate the confidence of the public in a Government service of the greatest necessity in social life, thus causing a grave injury of far-reaching effects to the public interests. Therefore, the penalty that should be applied is the more severe one prescribed in No. 1 of article 360 of the Penal Code, according to the jurisprudence established by the supreme court of Spain in its decisions of the 2d of December, 1895, and the 7th of January, 1904, rendered on appeals in cassation, when applying the provisions of the corresponding article of the Spanish Code, analogous to that in force in these Islands."

After a full consideration and review of the reasons upon which our decision in that case was based we adhere to the conclusions announced therein, and we are further of opinion, and so hold, that the injury done to the "public interests" by each and every separate theft of the contents of registered mail by post-office officials into whose hands it is intrusted for delivery is a "grave" injury thereto, and subjects the offender to the penalties prescribed in subsection 1 of article 360 of the Penal Code.

The judgment of conviction and the sentence imposed by the trial court should be affirmed, with the costs of this instance against the appellant. So ordered.

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

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