

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CAYETANO TOBIAS, DEFENDANT AND APPELLANT.

G.R. No. 6540. September 06, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of "faithlessness in the custody of documents," in violation of the provisions of paragraph 2 of article 360 of the Penal Code.

After hearing the evidence, the lower court found the defendant guilty of the crime charged and sentenced him to be imprisoned for the period of one year and nine months of prison correctional, with the accessories of the law, to pay to Alejo Anupol the sum of P16, to suffer subsidiary imprisonment in case of insolvency, giving him the benefit of one-half the time of imprisonment which he has already suffered, to pay the costs and to be disqualified for twelve years from holding the office of justice of the peace or any other public office in the Philippine Islands.

From that sentence the defendant appealed.

The complaint filed against the defendant was as follows:

"On or about the month of October, 1907, the said accused, being auxiliary justice of the peace of San Antonio, and as such entrusted with the documents of that court, heard and decided a civil cause between Leocadio Aguirre and Alejo Anupol, from which decision the latter appealed; but the accused, for the purpose of keeping the deposit of P16 which the appellant made with him, did maliciously and criminally conceal and destroy said cause instead of forwarding it to the Court of First Instance of this province; with serious injury to the parties and to the public. The act occurred in the municipality of San Antonio, Province of Nueva Ecija, P. I., in violation of law."

An examination of the evidence brought to this court discloses the following undisputed facts:

First. That the defendant was auxiliary justice of the peace of the municipality of San Antonio, Province of Nueva Ecija, in the month of October, 1907.

Second. That in said month of October, 1907, a case was pending before the said auxiliary justice of the peace between Arcadio Aguirre, as plaintiff, and Alejo Anupol, as defendant.

Third. That in that action the said defendant herein rendered a decision in favor of the plaintiff and against the defendant.

Fourth. That after receiving notice of the decision of the defendant herein, Alejo Anupol appealed to the Court of First Instance of the Province of Nueva Ecija, and for that purpose presented a bond and deposited P16 with the said defendant herein, thus complying with the requirements for the perfection of an appeal from a decision of the justice of the peace to the Court of First Instance.

Upon the perfection of the appeal as above stated, it was the duty of the defendant herein to forward to the Court

of First Instance the record in the appealed case, together with the P16 (section 38, Act No. 1627) to the Court of First Instance. The defendant herein attempted to prove that he did deliver a certified copy of the record, together with P16 to one Nazario Cando, for the purpose of having said documents and money delivered to the clerk of the Court of First Instance of the Province of Nueva Ecija. This fact is positively denied by Nazario Cando. The defendant presented no receipt showing that he had delivered said documents and money to Nazario Cando, and makes no explanation of his failure to take from Nazario Cando a receipt for the documents and money. The fact is that neither the documents nor the P16 were ever received by the clerk of the Court of First Instance.

Some time after the perfection of the appeal, the said Alejo Anupol inquired of the clerk of the Court of First Instance if his appeal had been received in the office of the clerk, and upon being informed that the appeal had not been received, he put on foot an administrative investigation concerning the loss of the documents, which investigation was conducted by the Court of First Instance of said province. At the conclusion of said investigation, the court ordered that the defendant be prosecuted for the crime herein charged against him.

Another very important fact which goes to show the culpability of the defendant with reference to the facts charged in the complaint is that at the close of his services as auxiliary justice of the peace he delivered to the clerk of the Court of First Instance of said province a list of the causes which had been pending before him as such auxiliary justice of the peace and the cause between Aguirre and Anupol was not included in said list. No explanation is given of this omission.

The Hon. Julio Llorente, the judge who tried the defendant, commenting upon the declaration of the defendant at the trial of the cause, said:

"The accused testified falsely, and we are convinced that he effected the disappearance of the cause prosecuted against Alejo Anupol in order to make it appear that he had forwarded it to the court with the P16."

The attorney for the defendant in this court attempts to show that the evidence adduced during the trial of the cause demonstrates that the defendant is guilty of the crime of estafa and not of the crime charged in said complaint.

Groizard, in his valuable Commentaries on the Penal Code, with special reference to article 360, in speaking of the essentials of the crime of faithlessness in the custody of documents says:

"Four circumstances are required to establish the crime: (1) that the agent be a public officer; (2) that he abstract, destroy or conceal documents; (3) that the documents which he abstracts, destroys or conceals be entrusted to him by reason of his office; and (4) that injury to a third party or to the public follow from the abstraction, destruction or concealment. If any of these circumstances be not present, the crime disappears, or rather, does not arise." (Groizard, Penal Code of 1870, Vol. IV, p. 146, edition of 1891.)

Viada, in discussing the provisions of the same article of the Penal Code, says:

"Remember that for the existence of the crime herein specified it is an essential condition that the papers or documents, whose abstraction, destruction or concealment is in question, should have been entrusted to a public officer by reason of his office: otherwise, the abstraction would be converted into the act of a mere private person, and would not be punishable under this article but under number 9 of 548, which applies to those who commit fraud by abstracting, concealing, or rendering useless in whole or in part some cause, record, document or other paper of that kind." (Viada, vol 2, p. 563, edition of 1890.)

It seems clear from all the facts that the defendant is guilty of the crime charged in the complaint and not of the crime of estafa.

It will be noted that the punishment provided for under article 360 includes imprisonment and a fine. The lower court failed to impose the fine. Under all the circumstances surrounding the commission of the crime charged, as demonstrated by the evidence adduced during the trial of the cause, we are of the opinion that the sentence of the lower court should be affirmed and that in addition thereto a fine should be imposed upon the defendant in the sum of 1,000 pesetas. With this modification, the sentence of the lower court is hereby affirmed. It is so ordered.

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

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