

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. URBANO BORLONGAN, DEFENDANT AND APPELLANT.*G.R. No. 6646. January 17, 1912*

Ponente: TORRES, J.

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Appeal by Urbano Borlongan from a judgment rendered by the Honorable Simplicio del Rosario.

On October 21, 1909, when the deputy provincial treasurer, Martin Allorde, was in the municipality of Obando, Province of Bulacan, examining the accounts of the municipal treasurer, Urbano Borlongan, he discovered a deficit of P114.42 in the funds in the municipal safe. When asked to explain the whereabouts of this sum, Borlongan submitted two vouchers, one for P16.65, his salary for half a month, and the other for P97.28, which he said he had paid to the municipal president, Sixto Joaquin, although the latter denied having received it. Both vouchers lacked the corresponding warrants of the municipal president, and were therefore rejected, with the result that, after overlooking the irregular application of the sum of P16.65, which he took from the safe as payment for his salary for 15 days in October, 1909, Borlongan was short, as municipal treasurer, the sum of P97.28, which appeared in voucher No. 5 as having been paid to the municipal president, without proof thereof.

An information was accordingly filed in the Court of First Instance by the provincial fiscal of said province on January 7, 1910, charging Urbano Borlongan with the crime of malversation of public funds. After trial thereon, the court rendered judgment on October 8 of the same year, sentencing the defendant to the penalty of six months imprisonment and costs, and ordering him to turn over to the then municipal treasurer the sums of P97.28 and P17.42, which form part of the funds of the municipal treasury, without prejudice to payment to the defendant of his unpaid salary for the time he discharged his duties, and to the municipal president the sum called for in vouchers Nos. 4 and 5. From this judgment the defendant appealed.

The municipal council by resolution at its meeting of August 4, 1909, authorized the payment to Sixto Joaquin, municipal president, of the sum of P97.28, as reimbursement for expenditures made by him, so the question at bar is reduced to whether the bill of the same date, stating the amount and signed by the creditor, Sixto Joaquin, was or was not paid to him by the defendant, Urbano Borlongan, municipal treasurer of that pueblo.

The latter avers that he paid said amount to the president Joaquin, although such payment does not appear on the balance sheet of that treasury made out on August 8, nor does it appear that the corresponding warrant for its payment was issued by said municipal president, who on his part avers that he did not collect said amount, but that he presented the bill to the accused treasurer with the voucher for its payment.

It appears from the trial that, according to the president Sixto Joaquin, the accused Borlongan owed him P200, delivered in two installments of P100 each, on different dates. This averment was corrected by the defendant, who said that he only owed the president Joaquin P197.28, of which amount he had received, one day in the month of February, 1909, P100 as a loan on the occasion of his marriage, and that in the latter part of the succeeding July he had asked for another loan, which Joaquin promised to let him have in a few days. So, on August 4, the

president Joaquin presented to him the said bill for P97.28 with his vouchers for its payment, and half an hour after he had taken from the safe the amount of the bill and paid it to Joaquin, the latter again came downstairs from the president's office to the treasury, situated on the lower floor of the building, and gave him as a loan the same sum which half an hour before he had collected from the municipal treasury, and therefore with the aforementioned P100 he owed him P197.28.

The president, Joaquin, had been getting from him on account by means of signed acknowledgments sums that amounted to P188, as he (Borlongan) remembers, so that he only owed him a balance of P9. In proof of the authenticity of these vales, or acknowledgments, issued by his creditor, the latter executed in his favor a document in Tagalog, which was not impugned by the prosecution and which, translated, reads as follows:

"I, Sixto Joaquin, married, native and resident of Obando, hereby declare and affirm that I have issued various receipts in my own hand-writing and signed with my name, the total amounts expressed in which I have received from Urbano Borlongan; and whenever he submits to me an itemized statement of said receipts, the total thereof shall be deducted from what he owes me, which is P197.28. — In witness whereof, I sign herewith, this 15th day of October, 1909. — (Sgd.) Sixto Joaquin."

In order to establish the crime of malversation of public funds in the present case, it is necessary to prove that the accused Borlongan appropriated to his own use and benefit the sum of P97.28, which was missing from the safe of the municipal treasury in his charge, and that he did not deliver it to the municipal president Sixto Joaquin as payment for said bill, according to resolution of the municipal council. The failure to issue a warrant for the payment was an error in administrative procedure, just as it was an inaccuracy or irregularity to make the application the defendant did of the sum of P16.65 in payment of his own salary for half the month of October, although he had a right to collect his salary.

If it is true, as appears from the proceedings, especially from the document in Tagalog written by the creditor Sixto Joaquin, that the accused only owed the latter P197.28 — that is, P100 received from him in February, 1909, and P97.28 more received from him on August 4 of the same year — and as long as the case does not disclose sufficient evidence that the defendant received from his creditor Joaquin another P100, instead of P97.28, in such manner that the total of the amounts owed reaches P200, it is imperative to recognize and admit the defendant's allegation that the president Joaquin received said P97.28, which sum he immediately turned over to the defendant as a loan. It is therefore indisputable that the defendant Borlongan withdrew this sum from the treasury in a lawful manner in order to pay the creditor who received it, and accordingly he did not commit the crime of malversation with which he is charged.

To show that the defendant Borlongan received from him two sums of P100 each on different dates, the president, Joaquin, avers in his testimony that he received, as payments from his debtor Borlongan on two occasions, the sum of P2.72, without issuing any receipt for so small a sum; but the defendant denies that he received the last P100, or that he paid this or any other sum to his creditor without a receipt, for Joaquin himself one day said to him that, in order to avoid confusion in his debt, it were better that receipts be issued for the sums paid on account, just as has creditor did in fact issue the receipts on pages 64 and 86, for various sums which he had paid on his debt of P197.28, as stated in the document in Tagalog above quoted. It is indeed peculiar that when the defendant took care not to pay any sum on account to his creditor that he should have given the latter P2.72, without taking any receipt, as he had been doing for the various sums received by Sixto Joaquin; from which fact, and others appearing in the case, it is inferred that the debt was not for P200 but for P197.28. It further appears, on page 108 of the record, that the defendant at the beginning of the trial deposited the sums alleged to be misappropriated, without prejudice to his right over them.

According to section 57 of General Orders, No. 58, a defendant in a criminal action shall be presumed to be

innocent until the contrary is proved, and in case of a reasonable doubt that his guilt is satisfactorily shown he shall be entitled to an acquittal.

The case does not furnish satisfactory or conclusive proof beyond all reasonable doubt of the guilt of the defendant, and even were his innocence doubtful, there is still insufficient basis for an adverse judgment, and he is therefore entitled to acquittal of the charge.

For the foregoing reasons, it is our opinion that the judgment should be reversed and Urbano Borlongan be and is hereby acquitted, with the costs in both instances de oficio. The sum deposited will be returned to him, without prejudice to Sixto Joaquin's right to collect the amount said Borlongan still owes him.

Arellano, C. J., Mapa and Moreland, JJ., concur.

Carson and Trent, JJ., dissent.

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