

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALFREDO ELVIÑA, DEFENDANT AND APPELLANT.

G.R. No. 7280. February 03, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment convicting the accused of the crime of misappropriation of public funds upon the following information:

"That from the 1st of July, 1909, until the 31st day of January, 1910, the said accused, who was municipal treasurer of San Juan de Guimba, Nueva Ecija, had in his possession various properties and sums of money pertaining to his office, but during said time maliciously and criminally disposed of said properties and money for the sum of P2,505.61 and refused to render an account of the same in spite of having been required by the District Auditor to do so."

It is undenied in this case that the sum of P2,505.61 with the embezzlement of which the accused is charged was actually paid out by him and that such payments were made under resolutions of the municipal board authorizing him to do so. The sole basis for the present proceeding against the accused is that he did not furnish to the auditor such vouchers and proofs of the payments conceded to have been made as the auditor thought under the law he was required to have.

Without going into the question whether the information is sufficient to charge misappropriation of public funds, or whether it merely alleges a failure on the part of the accused to render an account of his acts as such treasurer (United States vs. Saberon, 19 Phil. Rep., 391), we are of the opinion that the defendant must be acquitted in either case.

Certainly one cannot be convicted of the crime of misappropriation of public funds when such funds have actually been paid out by him in good faith to persons who have rendered services to the municipality of which he is treasurer and under and in accordance with resolutions of the municipal council authorizing him to make such payments. Such disposition of the moneys of the municipality lacks many essential elements going to make up the crime of misappropriation of public funds. There is no criminal intent. There is no such conversion of the money to the use of the accused or to the use of any other person as is contemplated by the criminal law. There is no such deprivation of the municipality of its funds as is required to make the act criminal. It is true that section 2 of Act No. 1740 provides that "the absence of any of the public funds or property of which any person described in said section has charge, and any failure or inability of such person to produce all the funds and property properly in his charge on the demand of an officer authorized to examine or inspect such person, office, treasury, or depository, shall be deemed to be prima facie evidence that such missing funds or property have been put to personal uses or used for personal ends by such person within the meaning of the preceding section;" but it must be borne in mind that along with the proof of the absence of the sum of P2,505.61 goes also the proof that the accused had paid out said money in the interest and for the benefit of the municipality, in good faith and in the honest belief that he had the right and that it was his duty to do so. If he honestly erred in the payment of said moneys, if he paid them out

upon insufficient vouchers, if he did not furnish precisely the kind of proof required by law, that does not necessarily mean that he is a criminal. If he made an honest mistake as to the law or the facts as to his duties relative to the expenditure of the public funds, although he might be liable civilly he is not criminally. The mere absence of the funds establishes against him merely a prima facie case which can be overcome by the production of evidence negating the implication of criminality springing from such absence.

In the case of the *United States vs. Catolico* (18 Phil. Rep., 504, 506), the court said:

"The case made against the appellant lacks many of the essential elements required by law to be present in the crime of malversation of public funds. The accused did not convert the money to his own use or to the use of any other person; neither did he feloniously permit anybody else to convert it. Everything he did was done in good faith under the belief that he was acting judicially and correctly. The fact that he ordered the sums, deposited in his hands by the defendants-appellants in the sixteen actions referred to, attached for the benefit of the plaintiff in those actions, after the appeals had been dismissed and the judgments in his court had become final, and that he delivered the said sums to the plaintiff in satisfaction of the judgment which he held in those cases, cannot be considered an appropriation or a taking of said sums within the meaning of Act No. 1740. He believed that, as presiding officer of the court of justice of the peace, he had a perfect right under the law to cancel the bonds when it was clearly shown to him that the sureties thereon were insolvent, to require the filing of new undertakings, giving the parties ample time within which to do so, to dismiss the appeals in case said undertakings were not filed, and to declare the judgment final. He believed that after said appeals had been dismissed and said judgment had become final, the sums deposited were subject to be applied in payment of the judgments in the actions in which said sums had been deposited and that he was acting judicially and legally in making such applications.

"To constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by a criminal intent, or by such negligence or indifference to duty or to consequences, as, in law, is equivalent to criminal intent. The maxim is, *actus non facit reum, nisi mens rea*—a crime is not committed if the mind of the person performing the act complained of be innocent.

"In the case at bar the appellant was engaged in exercising the functions of a court of justice of the peace. He had jurisdiction of the actions before him. He had a right and it was his duty to require the payment by each appellant of P16, as well as the giving of a proper undertaking with solvent sureties. While, in dismissing the appeals and delivering the P256 to the plaintiff in said cases, he may have exceeded his authority as such court and passed beyond the limits of his jurisdiction and power, a question we do not now discuss or decide, it was, so far as appears from the record, at most a pure mistake of judgment, an error of the mind operating upon a state of facts. Giving the act complained of the signification most detrimental to the appellant, it nevertheless, was simply the result of the erroneous exercise of the judicial function, and not an intention to deprive any person of his property feloniously. His act had back of it the purpose to do justice to litigants and not to embezzle property. He acted that honest debts might be paid to those to whom they were legally and justly due, and not to enrich himself or another by criminal misappropriation. It was an error committed by a court, not an act done by a criminal-minded man. It was a mistake, not a crime.

"It is true that a presumption of criminal intention may arise from proof of the commission of a criminal act; and the general rule is that, if it is proved that the accused committed the criminal act charged, it will be presumed that the act was done with criminal intention, and that it is for the accused to rebut this presumption. But it must be borne in mind that the act from which such presumption springs must be a criminal act. In the case before us the act was not criminal. It may have been an error; it may have been wrong and illegal in the sense that it would have been declared erroneous and set aside on appeal or other proceeding in the superior court. It may well be that his conduct was arbitrary to a high degree, to such a degree in fact as properly to subject him to reprimand or even suspension or removal from office. But, from the facts of record, it was not criminal. As a necessary result no presumption of criminal intention arises from the act.

"Neither can the presumption of a criminal intention arise from the act complained of, even though it be admitted that the crime, if any, is that of malversation of public funds as defined and penalized in Act No. 1740. It is true that that Act provides that 'In all prosecutions for violations of the preceding section, the absence of any of the public funds or property of which any person described in said section has charge, and any failure or inability of such person to produce all the funds and property properly in his charge on the demand of any officer authorized to examine or inspect such person, office, treasury, or depository shall be deemed to be prima facie evidence that such missing funds or property have been put to personal uses or used for personal ends by such person within the meaning of the preceding section.' Nevertheless, that presumption is a rebuttable one and constitutes only a prima facie case against the person accused. If he present evidence showing that, in fact; he has not put said funds or property to personal uses, then that presumption is at an end and the prima facie case destroyed. In the case at bar it was unnecessary for the accused to offer any such evidence, for the reason that the people's own pleading alleged and its own proofs presented, along with the criminal charge, facts which showed, of themselves, that said money had not been put to personal uses or used for personal ends. In other words, the prosecution demonstrated, both by the allegations in its information filed against the accused and by its proofs on the trial, that the absence of the funds in question was not due to the personal use thereof by the accused, thus affirmatively and completely negating the presumption which, under the act quoted, arises from the absence of the funds. The presumption was never born. It never existed. The facts which were presented for the purpose of creating such presumption were accompanied by other facts which absolutely prevented its creation."

This case disposes, in our judgment, of the case at bar. We refer, however, in closing to the case of the United States vs. Acebedo (18 Phil. Rep., 428). The court in that case said:

"It is unquestioned that the appellant was unable to turn over to the justice of the peace the said P29.90, together with certain other sums, making nearly P40, and that he alleged as an excuse that said sums had been collected by his secretary, Crisanto P. Urbina, to whom he had confided their collection and who, he believed, had turned them over to the proper official. From this the learned attorney for the people argues that the accused must necessarily be guilty of the malversation of said sum. We do not think that this conclusion necessarily follows. Under the provisions of the law a person is guilty of malversation of public funds only when he converts them to his own use or to the use of some other person, or when he handles them so negligently as to permit someone else to convert them. In this case it was unquestioned, from the evidence, that the accused did not convert said sums or any portion of them to his own use, nor to the use of any other person. It appears proved beyond question that said sums were converted by his secretary, Crisanto P. Urbina, to his own personal use and not to the use or benefit of the appellant in this case. That portion of the law which provides that the failure on the part of a person to account for public funds which have come into his hands is prima facie evidence of his guilt does not meet the situation here presented. Such presumption simply takes the place of affirmative proofs showing the actual conversion. It obviates the necessity of proving acts of conversion on the part of the accused, a thing almost always extremely difficult to do. Therefore, such presumption stands, making a prima facie case against the accused only until such time as he rebuts it by proofs showing the contrary. In the case at bar the appellant has presented proofs conclusively showing that such presumption is not applicable in his case, inasmuch as he did not receive the money, never had it in his physical possession, and did not convert the same."

The judgment is reversed, the accused acquitted, and his discharge from custody forthwith ordered, unless he be detained for some other reason.

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

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