

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ERIBERTO M. PASCUAL, DEFENDANT AND APPELLANT.

G.R. No. 8860. December 04, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Cagayan convicting the accused of the crime of embezzling public funds and sentencing him to three months' imprisonment, to suffer the disqualifications provided in section 3 of Act No. 1740, and to pay the costs.

The court also ordered the Government to return to the accused P112.21 standing to his credit in the office of the municipal treasurer of Gattaran. From this portion of the judgment no appeal is taken.

It appears that on the 18th day of March, 1912, the appellant in this case, at that time 22 years of age, was appointed municipal treasurer of Gattaran, Cagayan Province. This was the first public office which the appellant had ever held. He had had no business experience, no experience in the handling of public funds, in the keeping of books of account, in making out reports of public officers, and was, accordingly, ignorant of the duties and responsibilities of the office to which he was appointed.

On the 12th of July, 1912, that is to say, about four months after his appointment to office, he was visited by the auditor of that district, Mr. Guy Drake, who proceeded to make a partial examination of the accounts of the office and of the moneys on hand. The examination having reached a certain point, the district auditor found what he alleged to be a shortage of P159.85 in appellant's accounts. He thereupon asked the accused to produce funds sufficient to make it good. Alarmed and frightened the accused paid over the sum claimed to be short; so that, on the following day, the 13th of July, when the auditor sent his assistant, Lupo Guzman, to continue the examination, the alleged shortage had been made good, the accounts were found correct, and the books duly balanced.

The accused was immediately removed from office by his superiors, they acting upon the belief that he had embezzled the funds or that he was incompetent to manage the affairs of his office. Some time after his successor had been appointed there were found about the office in some unaccustomed place certain receipts showing that the appellant should not have been charged with a shortage of P159.85, but that if there was a shortage at all it was much less. One of these receipts was for P98.42 and the other P13.79, making a total of P112.21. These receipts had been issued to the appellant while he was in office for remittances made of public funds. They reduced the shortage, if any there was, to P47.64. Instead, however, of making a reexamination of the accounts of the accused, the district auditor began the criminal proceedings resulting in this appeal.

Upon these facts it is evident and undisputed that, the accused is entitled to recover from the Government the sum of P112.21, he having made up the alleged shortage of P159.85.

Prior to the examination by Mr. Guy Drake and just after the appointment of the accused, there had been an

official visit made to this office by the traveling deputy provincial treasurer of Cagayan Province, named Pagalilauan, who also made an examination of the accounts of the accused. This examination was made during the latter part of the month of June. The accounts at that time were found correct, so far as the records show, and in pursuance of such examination the accused turned over at that time more than one thousand pesos in cash, the amount of the funds with which he was chargeable. Two or three days after this visit the accused became convinced that he had paid Pagalilauan P200 more than the amount named in the receipt which had been issued to him upon such payment. In this belief he wrote a letter to Pagalilauan stating that: "That is a difference of P200, that is, instead of your taking the amount of P1,234.15 as Transfer to Provincial Treasurer, you took the amount of \$1,435.15, thus leaving a difference of P200." The letter terminates with the request: "Wherefore I hope you will give me details or send me said amount as the safe is short that much money, for the reason that you carried away P200 too much." There passed between the accused and Pagalilauan, as traveling deputy provincial treasurer, several letters, in one of which the latter said: "* * * relative to that suspicion or imputation for that amount which you are short, in the midst of my poverty I can pay it up in order not to lose our positions, especially because we are young yet. Should there be a shortage in the settlement to be made by you and compadre Canapi, pay into the safe that amount of P200 as I will go down there on the 23d, and if my verification turns out to be the same, then I will have no objection to pay you, compadre, even if for no other reason than because of your suspicion of me, this being the first time that such a small treasury as that has charged me with taking the amount of P200, although I might steal as much as P50,000. * * * Compadre, pay up the amount should there be a shortage, and I will pay you when I go down there, * * *."

We are satisfied from the whole case that the appellant in all that he did was acting in good faith and that the shortage, if any, was due to his youth and inexperience and incompetency to handle the business of his office, and not to the embezzlement of the funds of his office. The fact that the shortage was claimed to be at one time P159.85 and that the accused, without hesitation, made it up, when, as a matter of fact, he was not owing anything like that amount, if anything at all, is an indication not only of his incompetency as a public official but speaks strongly with respect to his good faith; and the fact that Mr. Drake, after what he claimed was a thorough examination, declared the shortage to be P159.85, when, as a matter of fact, it was only P47.64, if anything, casts a doubt upon the correctness, of his examination and leaves us pondering whether or not the P47.64 was not also a mistake.

Moreover, touching the good faith of the accused, it appears undisputed that he claimed that the traveling deputy provincial treasurer of Cagayan Province, Pagalilauan, had taken P200 more than he gave receipts for and that accordingly he was entitled to have his office reimbursed that amount. If that contention were true, or he honestly believed it to be true, he had another ground upon which to base his contention of good faith. Moreover, we have held that an immediate payment by the accused of the sum alleged to be short, where that shortage is small and might easily be the result of a mistake or of an honest difference of opinion between the examiner and the accused, would have considerable weight in establishing the lack of criminal intent. This court in the case of *United States vs. Feliciano* (15 Phil. Rep., 144) had the following facts before it:

"A deputy auditor testified that on the 20th of May, 1908, he went to the municipality of San Pedro Macati for the purpose of making an inspection of the office, cash, and accounts of the municipal treasury of said town, of which Mariano Feliciano was the treasurer; that there resulted from the examination a shortage of P53.05 in the cash of the municipal treasury; that at the moment when the difference was discovered he notified the treasurer of it, and the latter took the sum of P53.05 from his pocket and paid it, but he did not remember, however, whether he had questioned the treasurer as to why the amount was not in the safe; and that, at the time when the examination was made, there were other persons present, to wit, the municipal president and the municipal secretary."

In deciding the case the court said: "If, according to the officer who made the examination of the accounts, at the very moment when the shortage of P53 was discovered and the treasurer was notified he at once presented the money, no prima facie evidence of the crime of misappropriation can be established, nor any proof whatever that there was such misappropriation."

While in the case just cited the accused produced the money from his own pocket and made good the alleged shortage, in the case at bar it is alleged that the accused went out and borrowed the money which went to make up the shortage. It should be noted, however, that it does not appear that, if the shortage found had been the correct shortage, namely, P47.64, the accused would not have had that sum in his pocket or in the office. There having been demanded of him a sum, as a shortage, nearly four times as large as that which he actually owed, no conclusions prejudicial to him can be drawn from the fact of his borrowing the money to meet it.

In the case of *United States vs. Catolico* (18 Phil. Rep., 504), after quoting that portion of Act No. 1740 which provides that the absence of the funds "shall be deemed to be prima facie evidence that such missing funds or property have been put to personal uses," the court said: "Nevertheless, that presumption is a rebuttable one and constitutes only a prime 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."

We are satisfied that the record demonstrates the good faith of the appellant and the entire lack of criminal intent to embezzle. The judgment of conviction is reversed and the accused acquitted.

Arellano, C. J., and Torres, J., concur.

Carson, J., concurs in the result.

Trent, J., dissents.

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