

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO A. PACANA, DEFENDANT AND APPELLANT.*G.R. Nos. 22642-22644. December 19, 1924*

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-22642-22644/>**MALCOLM, J.:**

These are five related criminal cases for the crimes of falsification of public documents and estafa committed by means of falsification of public documents, in which the accused are Pedro A. Pacana, secretary of the provincial board of Misamis, Isidro Adorable, member of the provincial board of Misamis, and Vicente P. Castro, member of the provincial board of Misamis. Should convictions be sustained, Pacana will receive sentences totalling forty-four years and five days imprisonment, and Adorable and Castro for the alleged unlawful taking of P25 each will receive sentences of ten years and one day imprisonment.

The charge in the first numbered case against Pedro A. Pacana relates to the falsification by the accused of minutes of the meeting of the provincial board on June 9, 1923, for the alleged purpose of permitting the district engineer to incur illegal expenses in the reconstruction of a provincial road. The charge in the second case against the same accused relates to the falsification of minutes of the provincial board on June 16, 1923. The charge in the third case against the same accused relates to the falsification of an excerpt from the minutes of the provincial board of June 9, 1923. And the last two cases, one against provincial board member Isidro Adorable and Pedro A. Pacana, and the other against provincial board member Vicente P. Castro and Pedro A. Pacana, relate to the crimes of estafa committed by means of falsification of public documents, whereby it is alleged Adorable and Castro were each able to collect the sum of P25 as per diems for two fictitious meetings of the provincial board. Since the first three cases were tried together and the last two together, and since the facts of all of them are closely interwoven, for convenience sake a general statement will first be made, leaving for special mention certain circumstances affecting particular cases.

The provincial board of Misamis is made up of Segundo Gaston, governor, and Isidro Adorable and Vicente P. Castro, members, with Pedro A. Pacana as secretary. The board as thus¹ composed left on an inspection trip of the province on May 23, 1923. A session of the board was held in the municipality of Tulisan, Misamis, on June 4, 1923. It returned to Cagayan, Misamis, the provincial capital, on the morning of June 18, 1923. Following the arrival of the board at the provincial capital, it was kept busy during the succeeding days' because on June 19, 1923, the Governor-General landed at the port of Cagayan, because on that day was the Rizal birthday celebration, because on June 20, 1923, the Governor-General departed, and because on the same day there arrived the Quezon-Roxas-Osmena- Gabaldon-Guevara party which left on June 21, 1923. These facts are not disputed.

It is likewise admitted that the documents on which the prosecutions are based, Exhibits C, D, Q-3, Y, and X, are actually in existence. It is the theory of the prosecution that said documents were prepared by the provincial secretary with the connivance of the members of the provincial board for illegal purposes. To substantiate this theory, attention is concentrated on the following prominent facts:

Exhibits C and D were seen by the chief clerk of the district auditor, Juan Callante, in the office of Pacana on the afternoon of June 18, 1923. Copies of Exhibits C and D were made by a clerk in the office of the district auditor, Juan Borja, on the morning of June 19, 1923. An excerpt from Exhibit C containing resolution No. 224 was received in the office of the provincial treasurer of Misamis before 5:50 o'clock on the afternoon of June 19, 1923. Another excerpt from Exhibit C containing resolution No. 225, Exhibit Q-3, the basis of the third prosecution, was received in the office of the district engineer on June 27, 1923, and when the chief clerk of this office noted the date June 9, 1923, on the minutes and brought it to the attention of the provincial secretary, the date was changed to June 16, 1923. The mistake of the secretary was attempted to be rectified by the provincial board on September 20, 1923, by changing the dates of the excerpts to June 16, 1923, and thus another error was perpetrated. (Exhibit B-2.) The originals of Exhibits C and D have disappeared, possibly through the machinations of the provincial secretary. The provincial board of Misamis could not have celebrated a session at Cagayan before June 18, 1923, because of its absence on an inspection trip, and could not have celebrated a session on the afternoon of June 19, 1923, as claimed by the defense, because of a velada held on the same afternoon in the intermediate school of Cagayan at which the provincial governor and member Castro were present. And finally, before the district auditor, the three accused reaffirmed the fact that sessions of the provincial board were held on June 9 and 16, 1923. (Exhibits J, K, L.) The theory of the defense is diametrically opposed to that of the prosecution. Defendants' thesis is simple and is to the effect that on account of the carelessness of the provincial secretary and the amount of work thrown on his inexperienced shoulders, error was committed, and that, instead of meetings of the provincial board being held on June 9 and 16, 1923, meetings were in reality held on June 19 and June 21, 1923. To bulwark this stand, the defense relies on the following facts:

Meetings of the provincial board were actually had on the afternoons of June 19 and June 21, and to this effect is the testimony of the members present, the secretary, and a clerk. Subjects were treated in these two sessions which could not possibly have come to the attention of the provincial board prior to the sessions. The preoccupations of the provincial secretary due to the inspection trip of the provincial board and the arrival and departure of the parties of the Governor-General and of the Legislature, were the cause of the mistakes. Errors of a similar character appear in other meetings of the provincial board. The excerpts of the meetings transmitted to the offices of the district engineer and district auditor, respectively, were prepared by a clerk in the office of the provincial governor and were merely signed as a matter of form by the provincial secretary. The book in which the minutes were kept was obtained by the district auditor so that the original minutes could have disappeared while in his possession. The accused all signed the statements before the district auditor not understanding what the investigation was about. As soon as the mistakes in dates were discovered and before the criminal prosecution was begun, the provincial board corrected its minutes. (Exhibits 8, 10.)

Certain other points in relation with the questioned documents are helpful in resolving these cases. Turning first to Exhibit C, on which the first case is exclusively founded, and related to three of the other cases, it is interesting to take note of its contents. It is headed "Regular Meeting of the Provincial Board of Misamis Held at Cagayan on Thursday, June 9, 1923." As a matter of fact, June 9 fell on a Saturday. Then after showing who were present and who were absent and the authority for the meeting, under the general heading "Resolutions" comes a resolution concerning the payment of the real property tax. Further on, the letter of His Excellency (Exhibit 4) informing the board of his disapproval of resolution No. 207 of the board, current series, is again mentioned. As a matter of fact, this letter was dated at Manila, on June 11, 1923, and probably was not received at Cagayan until June 19, 1923. Next following in the minutes mention is made of a "letter dated June 14, 1923, of the district engineer." Obviously, a "letter dated June 14, 1923," could not have been acted upon at a meeting held on June 9, 1923. Next following in the minutes, comes a resolution having to do with a communication of the district engineer "dated June 16, 1923." Obviously, again, a communication of the district engineer "dated June 16, 1923," could not have

been approved at a meeting of the provincial board held on June 9, 1923. Also in the same minutes are found data as to letters of the district engineer of June 8, 1923, of the Chief of the Executive Bureau, and of the Public Utility Commissioner. So much for Exhibit C.

As for Exhibit D, on which the second case is founded and having connection with two other prosecutions, it shows on its face a regular meeting of the provincial board of Misamis held at Cagayan on Saturday, June 16, 1923. It discloses action taken on about fifty resolutions of municipal councils. Included therein is approval of a resolution of the municipal council of Salay of June 15, 1923. According to the witness Sabas Abao, municipal secretary of Salay, this resolution was not placed in the mails until June 16, 1923, and according to the postmaster of Balingasay, could not have left for the provincial capital until June 20, 1923.

As to Exhibit Q-3, the basis of the third prosecution, it purports to be an "excerpt from the minutes of the regular meeting of the provincial board of Misamis held at Cagayan on Thursday, June 9, 1923." The provincial secretary then certifies to the correctness of a resolution concerning a "letter dated June 14, 1923, of the district engineer." The utter impossibility of such approval needs no discussion.

Exhibits Y and X, approved by the provincial governor and certified to as correct and just by the two members of the provincial board, respectively, are provincial vouchers in the usual form calling for services rendered as members of the provincial board during the period June 9, 16, 23, and 26, inclusive, at P12.50 a meeting.

According to the prosecution, the motive for the criminal acts was, first, the desire on the part of the provincial secretary to fabricate resolutions probably with the connivance of the provincial governor and the members of the provincial board, which would placate the American engineer, Mr. Allen. The motive in the second place, according to the prosecution, was to permit the members of the provincial board to collect a total of P50 not legally due them. On the other hand, according to the defense, the cause of the prosecution is the enmity existing between the district engineer and the district auditor, and has been brought about as an act of vengeance by the district auditor. Political intrigue is also insinuated.

Up to this point, we have endeavored to state briefly and fairly the salient facts of record as they are pressed upon us by the opposing sides. No comment of any importance has been proffered. Having progressed thus far, the case comes down to a determination of whether there was an intentional and deliberate falsification of public documents on the part of the accused, or whether there was merely a human error committed, in which criminal intent was wholly lacking.

It must be admitted that the physical facts are mostly in favor of the accused. The documents, Exhibits C and D, could not have been fabricated on June 9 and June 16, if the matters to which they relate were not then before the provincial board for action. Unless by supernatural means, that would be an utter impossibility. Just how we can reconcile these circumstances with the strong oral testimony, mostly circumstantial in nature, presented by the prosecution, is hard to say, unless there was exaggeration on the part of some of the witnesses.

Now as to the motive, recognizing that a quarrel was on between two provincial officers, and that possibly the provincial board was siding with the, district engineer and against the district auditor, just why was it necessary to make meetings out of the air to serve this purpose when actual meetings' would have served the same purpose just as effectively? The resolution approving of the acts of the district engineer had to be "made public and copies of it had to be sent to the proper authorities. Just why two members of the provincial board would care to certify to the correctness of meetings which were never held, in order to benefit themselves in the paltry amount of P26 each, when they could have recovered the same amount for actual meetings, is also difficult to understand.

The whole case impresses us as a job bunglingly performed by the provincial secretary. He is a man who should

not be entrusted with official responsibility. He has none of the qualifications which fit one for public office. But it is a far cry from hopeless ineptitude and hopeless stupidity to criminal intent and criminal responsibility. Still, even under the most favorable aspect, the facts skirt perilously near to the Penal Code crime of reckless imprudence.

Ordinarily, evil intent must unite with an unlawful act for there to be a crime. *Actus non facit reum, nisi men sit rea*. There can be no crime when the criminal mind is wanting. Ignorance or mistake as to particular facts, honest and Teal, will, as a general rule, exempt the doer from criminal responsibility. The exception, of course, is neglect in the discharge of a duty or indifference to consequences, which is equivalent to a criminal intent. The element of malicious intent is supplied by the element of negligence and imprudence.

A decision of the supreme court of Spain of December 23, 1885, is in point. It appeared that one of the clerks in the office of the district court, in spreading upon the record the proceedings taken for the appointment of a guardian ad litem for certain minor children and the declaration of heirship in their favor, entered such proceedings as of a date anterior to the date on which they were actually entered. The clerk, for this act, was charged with the falsification of a public document, was convicted of *imprudencia temeraria* in the court of first instance, and appealed to the supreme court of Spain, which tribunal in reversing the judgment said in part:

"Considering that even though in the falsification of public or official documents, whether by public officials or by private persons, it is unnecessary that there be present the idea of gain or the intent to injure a third person, for the reason that, in contradistinction to private documents, the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed, it must, nevertheless, be borne in mind that the change in the public document must be such as to affect the integrity of the same or to change the effects which it would otherwise produce; for, unless "that happens, there could not exist the essential element of the intention to commit the crime which is required by article 1 of the Penal Code; considering that the fact that Don Augustin Montes Moreno set out the proceedings as of a date prior to that on which they actually occurred, and therefore incorrectly, the remaining part of the document being true, * * * neither affected the integrity or truth of said proceedings nor affected in any essential way their results or effects, it is necessary to conclude that the criminal intent mentioned in the previous observation was absent; considering that, even though the accused consciously attached incorrect dates to the proceedings, nevertheless that act does not take on the character of a crime, and for that reason the Audiencia de Huelva erred in convicting the accused * * *." (See further decision of supreme court of Spain of February 25, 1885; *U. S. vs. Mateo* [1913], 25 Phil., 324, 334; *U. S. vs. Reyes* [1902], 1 Phil., 341; *U. S. vs. Ah Chong* [1910], 15 Phil., 488; *U. S. vs. Catolico* [1911], 18 Phil., 504; and Guevara's Penal Code, 2d edition, pp. 1-3, 401-406.)

It is a serious matter to be responsible for sending the accused to prison for long terms. All reasonable doubt intended to demonstrate error and not crime should be indulged in to the benefit of the prisoners at bar. The Government has suffered no loss. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused of the crime charged and the other consistent with their guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. (*U. S. vs. Maafio* [1903], 2 Phil., 718.) We cannot bring ourselves to find these accused guilty on the facts of record.

It results, therefore, that we must, as we hereby do, reverse the judgments appealed from and acquit the accused of the charges laid against them, with costs de oficio. So ordered.

Johnson, Street, Avancena, Villamor, Ostrand, Johns., and Romualdez, JJ., concur.

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