

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE BARBAS, DEFENDANT AND APPELLANT.

G. R. Nos. 41265, 41266. July 27, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

In these two cases the defendant was charged in the Court of First Instance of Occidental Negros with the crime of malversation of public funds through the falsification of public documents. In case No. 8857 (G. R. No. 41265) it was alleged:

"Que en o hacia el mes de abril de 1932, en el Municipio de Sagay, Provincia de Negros Occidental, Islas Filipinas, el acusado arriba nombrado siendo un delegado especial del tesorero provincial de esta Provincia para la venta de cedula personal y por razon de su cargo era responsable de los fondos publicos que tuviere en su poder recibio de Marciano Salazar la cantidad de P2 como pago de la cedilla personal de dicho Marciano Salazar correspondiente al afio 1932 y el acusado con abuso de su cargo entrego a dicho Marciano Salazar el duplicado de la Cedula F No. 1061367 falsificandolo antes, en la siguiente forma: Que el original de dicha cedula fue expedido a Patricio Fernandez y en dicho original asi como en el duplicado aparecia el nombre de Patricio Fernandez despues de las palabras impresas 'This certifies that'; que el acusado con el objeto de poder recibir la cantidad de P2 de Marciano Salazar, con. abuso de su cargo borro en el duplicado de la cedula No. 1061367, el nombre de Patricio Fernandez que aparece despues de las palabras 'This certifies that', y en su lugar escribio y puso el nombre de Marciano Salazar, y una vez conseguida de dicho Marciano Salazar la cantidad de P2, voluntaria e ilegalmente se apropió para su uso y beneficio de dicha suma en dano y perjuicio de la Provincia de Negros Occidental y del Municipio de Sagay."

The information in case No. 8859 (G. R. No. 41266), except as to the names, reads the same as the one quoted above.

After hearing the evidence, the trial judge found the defendant guilty of estafa through the falsification of public documents, and sentenced him in each case to suffer an indeterminate sentence of not less than six months and one day of prision correccional and not more than ten years and one day of prision mayor, to indemnify Marciano Salazar and Policarpo Palmares, respectively, in the sum of P2, and to pay the costs.

Appellant's attorney now alleges that the trial court erred in considering the acts committed by Jose Barbas as estafa by means of the falsification of public documents, and in not acquitting him, with the costs de oficio.

In our opinion there is no doubt as to the guilt of the defendant. The evidence clearly shows that after selling the cedula marked D and F to Angel Baflor and Patricio Fernandez, respectively, the defendant sold and delivered Exhibits A and C, the duplicates of these two cedulas, to Policarpo Palmares and Marciano Salazar respectively, and collected from each of them P2. The defendant did not account for the money which he collected from Palmares and Salazar.

Cedula certificates are prepared in triplicate. The original is delivered to the purchaser, and the duplicate and

triplicate, which are carbon copies of the original, are retained by the internal revenue officer. Because the defendant accounted to the municipal treasurer of Sagay for the cedula received, the lower court found that the defendant was not guilty of malversation but of estafa through the falsification of public documents. It is clear, however, that the defendant, acting as a special deputy of the provincial treasurer, collected from Policarpo Palmares and Marciano Salazar P2 each in payment of their cedula tax and delivered to them what he represented to be the corresponding cedulas. This money was clearly received by the defendant in his capacity of a public officer, and in our opinion constituted a valid payment of the cedula tax of Palmares and Salazar, and the defendant who misappropriated it is guilty of the malversation of public funds.

The evidence shows that the defendant altered the duplicates of the cedulas in question as alleged in the informations. These duplicates are public documents, and the alterations made by the defendant constituted the falsification of public documents. The evidence shows that the duplicates of the cedulas in question were falsified by the defendant in order that he might sell them to Palmares and Salazar. The falsification was therefore the means which the defendant availed himself of in committing the crime of malversation. As the acts of the defendant constitute a complex crime, the penalty applicable thereto is that corresponding to the more serious offense, or the falsification of a public document. The corresponding penalty therefore is the maximum degree of prision mayor, or from ten years and one day to twelve years of prision mayor, and a fine of not more than P5,000. The medium degree of prision mayor in its maximum period is from ten years, eight months, and one day to eleven years and four months.

In case No. 8857 (G. R. No. 41265) the defendant is sentenced to suffer an indeterminate sentence of not less than one year of prision correccional and not more than ten years, eight months, and one day of prision mayor, to pay a fine of P5, and to indemnify the Government of the Philippine Islands in the sum of P2, without subsidiary imprisonment in case of insolvency, and to pay the costs. The defendant is further sentenced to suffer the penalty of perpetual special disqualification.

In case No. 8859 (G. R. No. 41266) the defendant is sentenced to suffer an indeterminate sentence of not less than one year of prision correccional and not more than ten years, eight months, and one day of prision mayor, to pay a fine of P5 and to indemnify the Government of the Philippine Islands in the sum of P2, without subsidiary imprisonment in case of insolvency, and to pay the costs.

As thus modified, the decisions appealed from are affirmed, with the costs against the appellant.

Street, Abad Santos, Hull, and Diaz, JJ., concur.

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