

4 Phil. 458

[G.R. No. 2052. April 25, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRANCISCO LICAS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The crime charged against the defendant and for which he was sentenced by the Court of First Instance of Tayabas to the penalty of eight years and one day of *presidio mayor*, in accordance with the provisions of article 390 of the Penal Code, is that of misappropriation of public funds—the misappropriation of 5,181.76 pesos, Mexican currency, and 178.02 pesos, Philippine currency, which the defendant had in his custody as municipal treasurer of the town of Guinayangan, Province of Tayabas. The deficit of this amount was fully shown, not only by the testimony of the witnesses for the prosecution but by the clear and positive confession of the defendant himself. The existence of this shortage was verified officially on November 11, 1903, and on the 21st of the same month, viz, ten days later, the amount taken was fully reimbursed, the public service having suffered no damage or impediment by reason of the misappropriation. This reimbursement was made, according to one of the witnesses for the prosecution, not by the defendant himself but by his bondsman, who was required to do so by the provincial treasurer, and, according to the defendant, the reimbursement was made by his order.

The complaint was filed some time after the reimbursement, to wit, on the 7th of January, 1904. On speaking about the embezzlement the defendant says, in his declaration, literally as follows:

“My object in appropriating that amount was to apply it to my own personal use, and, in fact, I invested that sum in the lumber business. I never had any intention to conceal the subtraction of moneys belonging to the municipal funds, and my bondsman has paid in the amount by my order, because he knows that I have

several businesses. I took that amount because I hoped to be able to turn over all the money of the municipal treasurer, because, as I have already stated, I have quite a number of businesses and at the same time I was afraid that the *tulisanes* (ladrones), who were around the town, might take possession of the same.”

The judgment appealed from sentences the defendant in accordance with article 390 of the code, after taking into consideration as above stated that his bondsman, and not he, reimbursed the amount substracted. The court considered the case as one of substraction and not mere diversion of public funds. In his judgment, the bondsman made the reimbursement in fulfillment of his obligation, and not by order of the defendant. This consideration seems, in fact, to be based upon the declaration of a witness for the prosecution that the bondsman paid the money *because he was ordered by the provincial treasurer to do so*. However, as the prosecution calls attention to the fact in its brief, the statement does not exclude the fact that the defendant took, on his part, all the necessary steps in order that the bondsman should reimburse the amount diverted. The defendant affirms that his bondsman paid it at his (defendant's) order, the latter taking into consideration the fact that the defendant had important businesses of different kinds.

We really do not see the least contradiction between this affirmation and the statements of the witnesses for the prosecution, to which reference is made above; both may be true, and we believe they are. A compliance with his own duty and the steps taken by the defendant, when compared with the responsibility of his social position, he being a prominent business man, together, might have influenced the bondsman to reimburse the amount abstracted and caused him to reimburse it with the promptness he did, without waiting for the filing of a suit, as was later done against the defendant. We think, with the prosecution, that the acts should be judged as malversation by diversion and not by substraction, since the sum taken was reimbursed before the suit was filed; and considering further, that the misappropriation caused no damage or prejudice to the public service, the defendant should fall within the provisions of paragraph 3 of article 392 of the Penal Code.

For this reason we impose on the defendant the penalty of suspension from the position of municipal treasurer for the period of two years and one day and a fine of 10 per cent of the amount diverted or, in case of his insolvency, subsidiary suspension from the same position for a period of time equivalent to one day for each 12½ pesetas which he shall fail to pay, but not to exceed one-third of the time of the principal penalty, thus modifying in this respect, and affirming in all other respects the judgment appealed from, with the costs in

this instance to the defendant. So ordered.

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

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