

[G.R. No. 1530. April 04, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VENANCIO SANTOS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

It was the duty of the defendant to keep the time of the laborers at the Government corral in San Lazaro. For that purpose he was furnished with two books, one for the odd-numbered days and the other for the even-numbered days. These books contained the names of the laborers, and against each name a space for each day of the month. If a man worked a particular day, a horizontal mark was made in the space corresponding to that day; if he did not work, a cipher was put in that space. These books were turned in to the office every other day, either by Santos himself, or by one of his laborers. Whether they were public documents or private documents we do not decide. They showed by marks, as indicated above, that one Lazaro de los Santos worked twenty-five days in the month of March, 1903. There is evidence to show that he did not work at all during that month. When the laborers appeared on the last day of the month for the purpose of making and signing the pay roll, one of them, Regino Verde, presented himself and on being questioned by James, the clerk who was doing the work, stated that his name was not Lazaro de los Santos, but was Regino Verde. The defendant, who was present, then stated that Lazaro de los Santos had not worked during March; that Verde had, and that there had been a mistake in entering the former's name in the books. The name of Regino Verde was thereupon placed, upon the pay roll, the name of Lazaro de los Santos omitted therefrom, and the money, amounting to 25 pesos, was paid to Verde. He later paid it to the defendant. It was also proved that

Regino Verde did not work at all during the month of March.

The charge against the defendant is that he falsified these books by entering the name of Lazaro de los Santos therein, and by making the above-mentioned marks against that name. There is evidence furnished by the Government that the name of Lazaro de los Santos upon the pages of the books for the month of March is not in the hand writing of the defendant. The name of the defendant himself, Venancio Santos, appears on these pages, but the evidence is to the effect that he did not write it there. There is no direct evidence that he made any of the marks against the name of Lazaro de los Santos. No witness so testified. In the two particulars, namely, the writing of the name of Lazaro de los Santos and the writing of the name of Venancio Santos, in which comparison of hand writing could be used to show the falsification, it was proved that such falsification did not exist. As to the other particular, namely, the placing of the horizontal and circular marks in the spaces opposite the name, such proof could not, from the nature of the case, be used.

The Government relies on the facts that it was defendant's duty to make these entries, that he had the books in his possession, was responsible for them, and that he profited by the falsification. This might lead to a strong presumption that he did in fact make them, but that, we think, is not sufficient, and it is weakened by the fact that while he seems to have signed his name to some of the pages of these books, he did not do it upon the pages for the month of March; nor did he place there the name of Lazaro de los Santos. He undoubtedly committed a fraud in obtaining the said sum of 25 pesos, and he may be guilty of the crime of falsification, for which he was sentenced by the court below to imprisonment for twelve years, but we have so much doubt as to his guilt of the latter offense that we think he must be acquitted.

The judgment is reversed, and the defendant acquitted, with the costs *de officio*.

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

DISSENTING

TORRES, J.:

From the record of the case it appears that Fred M. James, the chief clerk, states under oath that the defendant was an employee, foreman, of the sanitary department and was in charge of making and keeping the list of the laborers as well as keeping track of those who worked on the even days and those who worked on the odd days of the month, in which book the defendant wrote the names of the laborers and the number of days and hours which each laborer worked ; that in addition to keeping said books he was an overseer of the laborers. The two books which were kept; in said office being presented and his attention called to the pages corresponding to the month of March, the witness states that there appeared in same the name of Lazaro de los Santos under the number 58, adding that although he did not see the entries regarding Lazaro de los Santos at the time they were made, yet it was the duty of Venancio de los Santos to make same as foreman, and upon petition of the prosecuting attorney the two books were admitted as evidence to show the entries for the month of March regarding the man Lazaro, and they were admitted over the objection of the defense. The items regarding the name of Lazaro de los Santos, together with the dates on which he had worked, were copied in the record. The witness further stated that he was in charge of making up the pay roll according to the data given him by the foreman as taken from said books; that on the pay roll to be seen at page 17, the name of Regino Verde was put in at No.28 instead of that of Lazaro de los Santos, because, according to the defendant, Lazaro had not worked one day during the month of March and that Regino Verde worked the remainder of said month. The name of Regino Verde was then permitted to be placed on the pay roll by the witness and for that reason it appears signed by Regino Verde instead of the name of Lazaro de los Santos, on the statement of the defendant that Lazaro had not worked.

It must be noted that the defendant, Venancio, was present when the

pay roll was signed by Regino Verde and acknowledged the signature of Venancio Santos to be seen in the pay roll and also in the time book of the workmen, as authenticating same.

Regino Verde stated under oath that he began to work for said department on the 1st day of April, 1903, and notwithstanding the fact that he did not work the entire month of March, the defendant told him to sign the pay roll and to collect the money, for the reason that the defendant, Lazaro de los Santos, to whom the money belonged, was sick ; that he gave the 25 pesos he collected to Venancio Santos who told him that he could go to work in place of Lazaro from the first day of April. He states that he turned over this 25 pesos because they did not belong to him and he did not know what became of said sum or whether Lazaro de los Santos received it.

Francisco A. Sherman also stated under oath that as paymaster of the sanitary department, it was his duty to pay the salaries to the employees of the pail system in accordance with the pay roll. He stated that he paid all the men whose names appeared on the pay roll to be seen in the record of the case, except five; that he paid Regino Verde, No. 28, 25 pesos, local currency, which fact was corroborated by said pay roll introduced in evidence and admitted over the objection of the defense.

John E. Enright testifies that Venancio Santos was examined and appointed foreman of the workmen in the pail system by the Civil Service Board, such appointment of Venancio Santos being with a salary of \$300; such appointment was copied into the record and reads as follows :

“Department of the Interior, Office of the Board of Health. Actual employment, foreman; salary, \$300; name, Venancio Santos; place of birth, Rizal; year of birth, 1864, native; class of examination, foreman; age, 35; date of original appointment, June 5, 1902; original office, same; original employment, same; change of station.”

Sixto Guansing and Sixto Endaya stated that they knew the defendant, Santos, Regino Verde, and Lazaro de los Santos for the reason that they were workmen in the service of the pail system; that they did not see the individual, Lazaro de los Santos, who was an old workman, during the month of March in said service and that he ceased working during that month for the reason that he was sick and for having been detained by the police; that Regino Verde did not work either during said month of March, although according to the former witness when he asked Regino where he had collected so much money as he had in his possession, the latter told him that he had collected it from the office by order of Venancio Santos in place of Lazaro de los Santos.

At page 9 of the record the contents of the book containing the even days of the month of March, 1903, and exhibited by the prosecution, is copied, on which the following is written:

“Time book, department of pail system, for the month of March, 1903. Venancio Santos in charge of the time book and of the time. No. 58. Lazaro de los Santos; occupation, P.; March 2.”

There are several days of even numbers of same month up to March 30, at the rate of 1 peso.

In the time book of odd dates for the employees of the pail system:

“Venancio Santos in charge of the time book and of the time. Month of March, 1903, No. 58. Lazaro de los Santos; occupation, P.; March 30.”

There are several days following of odd numbers corresponding to the month of March up to the 29th day, at the rate of 1 peso per day.

The fact charged and proven and which is the object of the present suit consists of having entered in the books of the time of the workmen in the service of the pail system, which books set forth the days and hours which each workman had worked and the salary earned by each one of the men, the name of Lazaro de los Santos, and it appears in said

book that the latter had worked and earned 25 pesos, local currency, at the rate of 1 peso per day when it was not true that this party had worked in said branch of said Board of Health or had earned said salary. There was a misrepresentation made when it was stated in the books of the office of the pail system that Lazaro de los Santos had worked in said department and had earned and received 25 pesos for his services, to the prejudice of the public funds, and therefore the crime provided for and punished in article 300 of the Penal Code was committed. Further, it appears also that on the pay roll, opposite the number "28," the name of Regino Verde was entered and that the latter was paid as for services rendered the sum of 25 pesos, when this man had not worked during said month of March which was done in substitution of Lazaro de los Santos at the instigation of the defendant, who so informed the employee in charge of making the pay roll.

Venancio Santos was an employee appointed as foreman by the Civil Service Board in the office of the pail system and his liability is manifest, because the defendant was in charge of engaging the workmen needed for the pail system and kept in his charge the two books in which the names of the workmen and the number of days and hours which each worked and the amount earned by each daily were entered and he was the only one whose duty it was to keep watch of the workmen, and for this reason he only is responsible and he only can explain. During the course of the trial he has failed to explain as to how the name of Lazaro de los Santos appeared in the daily time books when he had not worked or rendered any services to the department of the pail system a single day during the month of March and the truth is, if we believe the statement made by the witnesses introduced by the defense, that he sent through these witnesses to Lazaro de los Santos the sum of 25 pesos, which he in fact received by virtue of having caused to appear on the pay roll the name of Regino Verde. However, notwithstanding his not having worked during the month of March, as well as Lazaro de los Santos, the name of Verde appears in place of the, other's name on the pay roll because of the fraud of the defendant. The defendant's name appears in the list of public employees as such foreman. He receives a

salary from the public funds and exercises public duties as an employee of the public pail system, one of the branches of the Board of Health of the city of Manila, for which reason it can not be denied that the defendant as such public functionary infringed the criminal law when he stated in the daily books of which he was in charge, the name of Lazaro de los Santos, when in fact that person had not done any work deserving remuneration, as has occurred in this case through the fraud practiced by Venancio Santos. The falsification committed in said two books must be qualified as falsification of a public document, since said books belonged to a public department and were kept by the defendant for the purpose of preserving the names of the workmen who rendered service to the Government or municipality in the sanitary department, with the number of days and hours each worked and the amount earned by each workman, and for this reason the misrepresentations made in the items in these books can not but be considered as made in a public document, for the reason that these books as such, because of their exactitude and correctness, affect directly the funds of the State or of the municipality.

In the commission of the crime there is no aggravating circumstance to be considered. There is, however, the extenuating circumstance established in article 11, viz, the condition of race and lack of intelligence of the defendant and taking this into consideration, the penalty should properly be imposed in the minimum degree.

Therefore, by virtue of the reasons above stated I am of the opinion that with a reversal of the judgment appealed from, the defendant Venancio Santos should be sentenced to the penalty of twelve years and one day of *cadena temporal* with a fine of 2,250 pesetas, with the accessories of civil interdiction during the period of his imprisonment, absolute perpetual disqualification and subjection to the surveillance of the authorities during his life, and to pay the costs in both instances, without having to suffer subsidiary imprisonment in case of insolvency, because of the character of the principal penalty.

