

2 Phil. 242

[G.R. No. 1043. May 15, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. JULIAN ATIENZA,
DEFENDANT AND APPELLEE.**

D E C I S I O N

MAPA, J.:

The accused was acquitted in the First Instance of the charge of robbery, upon which he was prosecuted. The complaining witness and the provincial fiscal appealed against the judgment of acquittal.

The evidence in the record shows: (1) That the accused, who was employed as a secret-service agent by the military authorities, received orders from Lieut. J. B. Hennesy to seize all the money in the possession of Father Angel Ilagan, the complaining witness, it being believed, upon information-received by the said lieutenant, that the money referred to was the property of a revolutionary officer; (2) that in obedience to the said order the accused, together with three sergeants of scouts, whom the lieutenant had put under his orders to assist him in the execution of the command, proceeded to the dwelling house of Father Ilagan and that of Sixto Rojas, to which Father Ilagan's family had removed, and seized a certain amount of money; (3) that the accused appropriated part of this money before delivering to Lieutenant Hennesy the funds seized, turning over to him a sum less than that which was really found by him in the house of Father Ilagan and that of his family.

The record does not disclose the exact amount of money converted by the accused. The information charges that it amounted to 1,381 pesos and 15½ cents. This may have been the fact, but we do not consider the evidence conclusive upon this point. In the document appearing on pages 138 and 139 of the record, signed by the accused, and which, according to the testimony of Cecilio Rosal and Marciano Arguelles, contains a statement made by the accused before the provost judge of Lipa, Mr. Johnson, he acknowledges and confesses that he did appropriate the sum of 300 pesos. The authenticity of this document has not been

denied by the accused at the trial, and the witnesses Rosal and Argtielles affirm that they were present and heard the statement made by the accused before the provost judge, as recorded in the said document. Consequently, it may be regarded as proven that the accused converted at least the sum mentioned, 300 pesos.

Nevertheless, this act does not constitute the crime of robbery, with which the accused is charged in the complaint. The seizure of the money in Father Ilagan's house and that of his family was not in itself unlawful, because it was done in obedience to a lawful order given for that purpose by competent authority. The unlawful and punishable appropriation took place subsequently to this act, when the money appropriated was lawfully in the possession of the accused. The order given to him by his commanding officer was for the precise purpose of the seizure of this money, and consequently the seizure in itself does not constitute an act of unlawful taking, a necessary element for the existence of the crime of robbery, as well under the different cases covered by article 502 and the other articles included in the chapter of the Penal Code, which deals specifically with robberies, as in the special case Covered by article 206 of the said Code.

The subsequent conversion by the accused, after getting the money into his possession, by keeping part of it instead of turning it all over to the officer who had directed the seizure, may perhaps constitute the crime of malversation of public funds or that of *estafa*, according to whether the accused may or may not be regarded as having been in the discharge of the duties of a public officer when committing the deed, and that the money converted came into his possession by reason of his office. Upon this point we can not at this time express an opinion, as that would be to prejudge a question which is not presented to us for our decision. The prosecuting attorney is at liberty to file such information as he may see fit upon these facts.

For the reasons stated, and upon the sole ground that the facts proven in the case do not constitute the crime of robbery charged in the information, and without prejudice to the presentation by the prosecuting attorney of the corresponding information upon the facts, the judgment appealed is affirmed, with the costs of this instance *de officio*.

Arellano, C. J., Cooper, Willard, and Ladd, JJ., concur.

DISSENTING

TORRES, J.:

Upon the facts proven in the case, and especially the fact that Julian Atienza, in obedience to orders from Lieut. J. B. Hennesy, proceeded to search the dwelling house in which lived Father Angel Ilagan, parish priest of Lipa, Batangas, looking for money, which, according to the statements of Atienza, was the property of a revolutionary officer, in the possession of the said priest; that Atienza, as a member of the secret police, accompanied by three sergeants of scouts, seized all the money found in the dwelling house of Father Ilagan and that of Sixto Rojas, to which the priest's family had removed, having used intimidation in so doing and having made threats, revolver in hand, against the relatives of Father Ilagan in case they should hide or fail to point out the latter's money; and that, without having counted the money at the time of the seizure, or at the time it was returned by Lieutenant Hennesy to its owner, the evidence in the record sufficiently shows that the accused appropriated at least the sum of 300 pesos out of the total amount seized.

By the testimony of the two witnesses who were present and heard the statements of the accused, and upon the Avritten statement, made and signed by the accused before the provost judge, Mr. Johnson, and which appears on pages 138 and 139 of the record, it is unquestionably proven that the accused converted and appropriated the said sum of 300 pesos, part of the money belonging to Father Ilagan, which was seized. The authenticity of this statement has not been denied or impugned during the trial, and it was proven at the trial that the said priest had a considerable sum of money in cash which was seized during his absence.

This appropriation constitutes the crime of robbery with personal violence, defined and punished in paragraph 2 of article 206, in connection with article 502 and paragraph 5 of article 503, of the Penal Code. Atienza, while engaged in the public service as a detective of the military authorities, and therefore acting as a public officer, and on the occasion of the search for and seizure in the house of the complaining witness of the sum of money belonging to the latter, appropriated and converted to his own use part of this money *lucris causa* and to the prejudice of its owner. This crime is specially defined by the law in article 206 as robbery with personal violence, in consideration of the character and special circumstances of the criminal act.

The search for and seizure of the money was made without compliance with the formalities prescribed by the law. The money was not counted in the presence of the owner or his nearest relatives, or of two neighbors, and therefore, notwithstanding the fact that the

seizure of the money was effected by virtue of a lawful order given by competent authorities, the seizure was not carried out in the manner prescribed by the law.

For this reason it can not be held that the punishable conversion took place subsequently to the seizure of the money by virtue of an order from competent authorities, inasmuch as the failure to comply with the requisites prescribed by the law, and the fact that the money seized was not counted, and that the accused was the person who had denounced the existence of this money, raise a strong presumption that Atienza, when carrying out the orders of seizure, went there with the criminal intent to steal and appropriate to his own use part of the money denounced by him.

He availed himself of the occasion to proceed to search Father Ilagan's house, and seized a considerable sum of money belonging to the latter in order to appropriate (*lucri causa*) the sum of 300 pesos. Although the punishable act and unlawful conversion may not be regarded as simultaneous, the malicious intent to keep part of the money found is made manifest by the mere fact that the search was conducted with unnecessary harshness and intimidation, and that all the money found in the two houses was seized without the same having been counted in the presence of the parties in interest, this being an indispensable requisite to the legality of the act.

The nature and character of the crime committed by the accused are such that the offense does not fall within the conditions of the law with respect to the crimes of *estafa* and malversation. Persons guilty of *estafa* or malversation lawfully come into the possession of the money which they (subsequently convert or embezzle. The deceit, the fraud, and the abuse of confidence are supervenient to the original lawful act. The policeman, Julian Atienza, did not receive from anyone Father Ilagan's money, but, by virtue of a lawful order, seized this money himself without compliance with the legal requisites, and on the occasion of his irregular compliance with this order, took and appropriated the sum of 300 pesos, separating it from the total amount seized.

The facts may not, perhaps,, disclose all the characteristics of a crime of robbery. Nevertheless the fact remains that the criminal law so defines these facts in article 206, and attributes to a public officer who so unworthily abuses his official position a higher degree of criminality and malice.

For these reasons, no mitigating or aggravating circumstances having concurred in the commission of the crime, the writer is of the opinion that the information upon which this

trial was commenced should be sustained, the judgment of acquittal reversed, and Julian Atienza convicted as principal in the crime of robbery with personal violence, and condemned to four years of *presidio correccional*, with the accessories of suspension from all public office, profession, trade, or right of suffrage, and to the restitution of the 300 pesos to Father Ilagan, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay the costs of both instances.

McDonough, J., did not sit in this case.

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