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[G.R. No. 1143. April 23, 1903]

**UNITED STATES, COMPLAINANT ARID APPELLEE, VS. MARIANO BALBOA ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TORRES, J.:

It appears from the statements in the information filed by the provincial fiscal of Pangasinan on the 22d of October, 1902, that the two accused and five other persons were in the office of the municipal treasurer of the town of Bautista; that *lucri causa* they committed the crime of theft, by taking several checks, American bank notes, and two warrants against the provincial treasurer of Pangasinan, of the total value of \$3,477.16 $\frac{3}{8}$, Mexican, and which were in two envelopes in the pocket of the coat of Graciano Bautista, deputy provincial treasurer, which coat, as appeared subsequently in the course of the trial, its owner had taken off on account of the heat and had left it hanging on the edge of the writing table where Ramon Reynado, the municipal treasurer of said town, was working; that between 6 and 7 o'clock at night on the said date, after they had finished the work of collecting the taxes, deputy Graciano Bautista noticed that the envelopes containing the said valuable documents had disappeared from his pocket, and that he, in consequence, immediately reported the loss to the local authorities.

Although the charge was first brought against the two accused and Honorato Carungay, Hilario Caneja, Norberto Alviar, Jose Santos, and Simeon de Guzman, because the latter were in the same office at the time in which the taking of these documents must have occurred, nevertheless, during the course of the trial, the court, in view of the result of the proceedings, and acting in accordance with the opinion of the prosecuting attorney, directed an acquittal of the last five accused, to the end that they might be called as witnesses against the first two, Balboa and Reynado.

The fact related, if proven, would constitute the crime of theft, defined and punished by

articles 517 and 518 of the Penal Code, inasmuch as the valuable papers were taken *lucri causa* from the pocket of the coat of the deputy, Graciano Bautista, without violence or intimidation of the person, or the employment of force. Some of these papers were bank notes of the value of \$157, all having been obtained from taxes collected in the said town of Bautista.

The two accused plead not guilty to the crime with which they were charged. The only evidence against them disclosed by the record of the case is the testimony of the deputy, Graciano Bautista. He testifies that on the afternoon of the 22d of August, 1902, he was in the office of the municipal treasurer, engaged in collecting taxes; that the two accused, Balboa and Reynado, were there, as also Honorato Carungay, Norberto Alviar, Jose Santos, Hilario Caneja, and Simeon de Guzman, who remained there all that afternoon; that the said Balboa and Reynado knew that the checks, warrants, and bank notes in two envelopes were in the pocket of his coat, which he had left hanging on the edge of the desk where Reynado was working; that shortly after Graciano Bautista saw Balboa and Reynado get up and take seats near the place where his coat was hanging; that a few moments before he noticed the disappearance of the said documents the two accused left the omce, while the others remained there, and therefore the witness presumes that they were the persons who committed the offense. The record also disclosed the fact that, when Graciano Bautista gave the alarm upon the disappearance of the money, the accused, Balboa and Reynado, returned to the office; that when it was suggested that all present be searched, Graciano Bautista objected to this operation; that in the course of the afternoon Balboa picked up some papers which had fallen near or under the writing table where the coat was hanging, and that Balboa was nervous that afternoon.

Although the record disclosed the source of the checks, warrants, and bank notes concerning the theft of: which this case deals, the record does not disclose sufficient evidence that these papers were actually placed in the pocket of the coat, there being no witness who saw them placed there, and, therefore, in view of the fact that no search was made of the persons present in the room, as suggested by Deputy Bautista, some doubt arises, as to whether or not the crime charged in this information lias been committed.

The evidence for the prosecution is not satisfactory or conclusive, or of such weight and character as to remove all reasonable doubt of the guilt of the accused. The mere fact that they were in the office on the afternoon of the occurrence is not sufficient proof of their guilt, any more than it was of that of the five men who were acquitted, but who were also present at the place at the time at which the theft was supposed to be committed.

Even in case the innocence of the accused should appear doubtful, it not being possible to determine from the evidence which of the two is the one guilty of the theft, the presumption of innocence exists in favor of each of them. Their guilt not having been satisfactorily proven, we are of the opinion that they are entitled to acquittal. (Sec. 57, G. O., 58.)

Therefore the judgment below must be reversed. The accused, Mariano Balboa and Ramon Reynado, are acquitted, with the costs of both instances *de officio*. So ordered.

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

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