3 Phil. 176

[G.R. No. 1298. January 14, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN SINGUIMUTO, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

On the 7th of March of this year a complaint was filed by the provincial fiscal in the Court of First Instance of Batangas, charging the defendant, Juan Singuimuto, with the offense of *estafa.* The complaint stated that Singuimuto had received in the town of Batangas, capital of the province of the same name, 300 sacks of rice from Lieutenant William H. Bell, while the latter was the commissary officer of the United States military detachment stationed at that place, and that it was his duty to buy, sell, and distribute the Government supplies in said province. These sacks the defendant had obtained by means of two orders issued in favor of the defendant by Lieutenant Bell. One of these orders was for 100 sacks of rice, the value whereof amounted to $525, Mexican, at the rate of $5.25, Mexican, per sack, and was issued on or about the 16th day of July, 1902. The other order, for 200 sacks, valued at $1,050, Mexican, at $5.25, Mexican, for each sack, was issued on or about the 13th day of October,1902. The accused received these 300 sacks of rice for sale on commission and was to deliver their value to Lieutenant William H. Bell, through the municipal president, Jose Villanueva. Singuimuto not only failed to make delivery of the proceeds of the sale, but denied ever having received the 300 sacks of rice, all of which was in violation of the law.

The facts alleged are fully proven by oral as well as by

circumstantial evidence. The offense committed is that of *estafa,* under No. 3 of article 534 and No. 5 of article 535 of the Penal.Code, inasmuch as the defendant appropriated to himself, to the prejudice of the Government, 300 sacks of rice which had been delivered to him for sale on commission and subsequently denied that he had received it. There was, furthermore, no proof that he had paid the Government the value of the rice. Although the accused pleaded not guilty, the record contains sufficient evidence to fully convince the mind as to his guilt of the offense of *estafa.*

The two orders issued and signed by Lieutenant Bell, one addressed to Sergeant Stringnits on the 16th of July, 1902, directing him to deliver to the defendant, Singuimuto, 100 sacks of rice, and the second, addressed to James.C. White, on the 13th of October of the same year, directing the delivery to Singuimuto of 200 sacks of rice, both of which orders were duly entered in the lieutenant's books, established the facts charged against the accused. Although Sergeant Stringnits did not testify in the case, he having returned to the United States, James C. White, the employee, who after the departure of Stringnits was in charge of the Government's rice warehouse, testified to having delivered, about the middle of October, 1902, 200 sacks of rice to Isabelo Javier, a representative or agent of Juan Singuimuto, by virtue of the order issued in the hitter's favor by Lieutenant William H. Bell. This witness identified the order, which is shown on folio 21 of the record. On it appears a note written by him to the effect that the 200 sacks of rice had been taken from two divisions of the warehouse, and that he delivered the rice to Isabelo Javier as agent of Singuimuto, whom he had never seen in the warehouse, which is located on the beach. White also stated that Javier was always the one who presented the orders for the delivery of rice, and that he knew Singuimuto by sight as one of the drawers and sellers of the rice, because he had seen him in his store.

Lieut. William H. Bell testified that he had issued the two orders in question for the delivery of the rice to Juan Singuimuto, which was received by the latter or by his agent, Isabelo Javier, and that

although the defendant had profited thereby he not only failed to pay the value of the rice but denied having received it. Lieutenant Bell further stated that the two orders were returned to him by the warehouse keeper after the rice had been issued, and were entered by him in his books; that Singuimuto had been appointed a seller of Government rice under a $300 bond; that it had been agreed between the witness and the defendant, Singuimuto, that the latter should pay $5.25, Mexican, for each sack, which he might dispose of for 6 pesos, the difference between the two prices being the commission due the seller, and that it had further been agreed that the proceeds of the rice so sold were to be delivered to the municipal president, who, in his turn, should turn it over to the witness; that Singuimuto had never made delivery of any amount to the president, so that in the latter's books Singuimuto's indebtedness for this rice appears unpaid; that upon comparing the president's books with the witness's, it being observed that the defendant had not paid for the 100 sacks of rice taken on July 16 and the 200 sacks withdrawn on the 13th of October, payment therefor was demanded, and that the defendant, Singuimuto, denied having received the rice. The witness also stated that Singuimuto did not speak Spanish, and that transactions between himself and the defendant were carried on through Isabelo Javier, who accompanied Singuimuto when the latter made requisition for rice, and that according to the instructions given all orders or chits issued for the delivery of rice were to be presented to the president for notation by him, a rule which Singuimuto failed to comply with.

The president, Jose Villanueva, corroborated the above testimony, stating that Singuimuto was a seller of Government rice, and like others, was in the habit of taking it on credit; that the understanding was that the orders on the strength of which the rice was issued were to be presented to the president; that the defendant did not comply with this rule in the case of the two orders referred to, but went directly to withdraw the rice, so that no entry of the orders had been made in the president's books.

Isabelo Javier testified that, as a friend of Singuimuto, he had once introduced the defendant to Lieutenant Bell, asking him to give

the defendant orders for the delivery of rice, and that he acted as interpreter between the two in the conversation which ensued; that on October 14 he, in company with Gregorio Mendoza, a son-in-law of the defendant, had withdrawn in the name of Singuimuto 100 sacks and on the 15th 200 sacks of rice, which was received and paid for by Singuimuto. This witness, however, denied having taken any rice on the 13th of October, and did not recognize the two above-mentioned orders.

Upon being again put on the stand, he in part retracted his first statement, stating that on the occasions when he had obtained orders in the name of Singuimuto from Lieutenant Bell, such as those of July 10 and October 30,1902, he always went in company with Gregorio Mendoza, a son-in-law of Singuimuto, who asked that he be allowed to accompany him. He also identified the two orders and stated the names of the cart drivers who had conveyed the rice and the number of sacks taken by each. He testified also that it was not true that he was a partner of Singuimuto, and in support of this statement produced a paper showing that he had bought rice from the latter. He stated that he did not testify as to all these details while giving his previous testimony because the defendant and his son-in-law had asked him to withhold them, but that later, not wishing to act wrongfully, he had testified truth fully, rectifying his previous testimony. The witness, Gregorio Mendoza, testified that the orders for the withdrawal of rice sold by Singuimuto were obtained from Lieutenant Bell by Isabelo Javier.

From the foregoing it seems to be fully proven that Isabelo Javier on two occasions received from Lieutenant Bell, on behalf of Juan Singuimuto, 300 sacks of rice, which were delivered to him on commission for sale at retail to the people of the municipality of Batangas, and that he appropriated the rice to his own use, thereby prejudicing the Government, the lawful owner of the rice; that he denied having received the rice, and failed to make payment of the value thereof, all of which constitutes the offense of *estafa.*

It is an undeniable fact that Juan Singuimuto was one of the persons designated by the commissary of the Government for the sale of rice at

retail in the capital of Batangas, and! that for this purpose he had to file a bond for $300, Mexican, to guarantee the faithful performance of his trust, as shown by the document on folio 51 of the record. The conditions imposed on those charged with the sale of the rice were that the consignee should pay to the commissary $5.25, Mexican, for each sack of rice sold, he keeping the difference between this and the selling price as his commission, and that the proceeds of the sale of the rice were to be delivered to the municipal president, through whom payment for the rice was to be made. This is corroborated by the municipal president, Jose Villanueva, who testified that the sellers were under obligation to present to him the orders £or the delivery of rice issued by the Government commissary, in order that he might enter them in his books.

Juan Singuimuto, the defendant, failed to present to him the two orders for the delivery of rice referred to on pages 20 and 21 of the record, so that the delivery of these 300 sacks of rice was not recorded in his books. In a notebook produced in evidence, a translation of the entries in which is given on page 87 of the record, there appears at the end a memorandum stating that all the rice received had been paid for, which shows that the rice sold in Singuimuto’s store the latter had received on commission and had not purchased for cash, and that after selling all the rice which he had on hand, he had to pay the value thereof to the representative of the Government from whom the rice had been obtained.

Deceit is manifested from the moment Singuimuto, on being required to pay the value of the rice taken, denied having received the same, a denial which implies fraud and bad faith. As to Singuimuto’s intention to defraud the Government this is proven by his failure to present to the municipal president the two orders for the delivery of the rice. From such an omission the intention to defraud the Government to the extent of the value of the rice received must be inferred.

The fact that Juan Singuimuto is unable to read or write, and that he had never appeared in person in the commissary warehouse to withdraw the rice, Isabela Javier and his son-in-law, Gregorio Mendoza, having

represented him on these occasions, do not exempt him from liability, inasmuch as the 300 sacks of rice received from the Government were taken to Singuimuto's shop and there sold to the public. It is therefore not just that after having pocketed the value of the 300 sacks of rice, as owner of the store, he should be exempted from any liability.

The later testimony of Isabelo Javier is worthy of credit because it is corroborated by the other evidence in the case, and especially by the testimony of Gregorio Mendoza, who appears to be the defendant's confidential agent as well as his principal assistant in the store. Mendoza affirms that he noted down on a list which he had of the sacks or cavans of rice received in his father-in-law's store the orders for rice which Javier had taken from Lieutenant Bell, and which were presented at the warehouse as authority for the withdrawal of the rice therefrom, but the defendant kept no books wherein to note down all his transactions with respect to the buying and selling of Government rice.

From these statements it is deduced that although it has not been proven that Javier and Singuimuto were partners, as testified to by Mendoza, it is nevertheless true that Javier, by order and with the consent of the defendant, was the person who was in the habit of taking out the rice called for in the orders issued in Singuimuto's name, and in view of the studied silence of the latter and his son-in-law's testimony, Javier's later testimony, which has been in part corroborated by Mendoza, can be accepted as true. Consequently Singuimuto, in denying that he had received the 300 sacks, tried to defraud the Government, and abused the confidence of his friend, who had officially acted as his agent and who had brought him in touch with the Government commissary.

This element of deceit is inherent in the crime of *estafa,* and as in the commission of this offense no aggravating or mitigating circumstances were present the penalty should be imposed in the medium degree. In view of the request made by the prosecution, the decision appealed whereby the defendant is sentenced to pay a fine of $2,550,

Mexican, and an indemnity to the Government of $1,275, Mexican, and the costs, should, in our opinion, be reversed. The defendant should be condemned to the penalty of one year eight months and twenty-one days of *presidio correccional,* to the accessory penalties prescribed in article 50 of the Penal Code, to the indemnification of the Insular Government for the value of the rice involved, and in case of insolvency with respect thereto, to suffer subsidiary imprisonment not exceeding one-third part of the time fixed for the principal penalty, and to the payment of the costs in both instances. Let this record be returned to the lower court with a copy of this decision for the execution thereof.

SO ORDERED.

Cooper, McDonough, and *Johnson, JJ.,* concur.
Arellano, C. J., Willard and *Mapa, JJ.,* dissent.

ON MOTION FOR A NEW TRIAL.

TORRES, *J.* :

The attorneys for the defendant, Singuimuto, have moved the court for a new trial upon the ground of the discovery of new evidence material to the defense of the accused. In support of the motion they have presented the affidavits of the defendant, Singuimuto, and those of nine men who are ready to testify in contradiction of the evidence given against him by Isabelo Javier, a witness for the prosecution.

The testimony of these men, whose names appear with those of others in the list at page "98 of the record and in the testimony at page 93 thereof, may throw light upon the facts of the case and upon the question of the guilt or innocence of the accused. After the evidence was taken and the case closed on the 8th of April, 1903, judgment was rendered on the same date. Consequently neither the prosecution nor the defense had an opportune to ask for a continuance, or to hate the men in question, said to be the drivers of the wagons by which the rice in

question was removed, examined as witnessess. It appears that these men were not found at once, but, as stated by the accused under oath, only in October following the trial. Consequently in the interests of justice a new trial should be granted.

Under the provisions of section 42 of General Orders, No. 58, the Code of Criminal Procedure, the judgment appealed is set aside as also the decision of this court herein. The cause will be remanded to the court below with a certified copy of this decision, and accompanied by the original affidavits presented, a copy of which will be kept with the files of the case. The case will be continued from page 100 of the record, the subsequent proceedings being set aside; it will not be necessary to retake the testimony introduced at the trial up to that page of the record, but without prejudice to the rights of the parties to introduce such other evidence as they may desire to submit.

Arellano, C. J., Willard, Mapa, and *McDonough, JJ.,* concur.

Johnson, *J.*, with whom concurs Cooper, *J.*, dissenting:

This case was an appeal from the sentence of the Court of First Instance of the Province of Batangas, and was filed in this court on the 17th day of April, 1903. A decision was rendered by a divided court on January 14, 1904. On the 18th day of January, 1904, a motion was made in this court for a new trial by the said defendant, alleging as a cause for granting a new trial the fact that he had several witnesses who could testify that the testimony given by Isabelo Javier (one of the witnesses for the prosecution in the trial below) was untrue; that after the said Isabelo Javier had given his testimony in the court below that he, the defendant, immediately looked for these witnesses but was unable to find them. He presents here his own affidavit of these facts. He also presents now the sworn statements of nine of these witnesses to the effect simply that the testimony of Isabelo Javier is not true. Upon the showing the court granted a new trial.

Isabelo Javier in the trial below gave the names of fourteen persons who had certain knowledge with reference to the facts presented to the court. The fourteen persons were laborers in the community where the trial took place. Each of these fourteen persons had knowledge of the same facts. The statement made by the accused that immediately after hearing the testimony of the said Javier he went to look for these persons but was unable to find any of them, would indicate that due diligence had not been exercised. It is very improbable that all of these fourteen persons should be absent from the jurisdiction of the court on that occasion. The statement by the accused that none of them could be found should not be believed.

There is nothing of record to show that the defendant made any effort to secure the presence of these witnesses in the trial of the cause below, except his affidavit here presented. No summonses were issued for their presence;neither was the court requested to grant a continuance until their presence in court could be had; not even a suggestion that the testimony of these was important was made by defendant in the court below.

The application is made upon the theory that this evidence has been nearly discovered. The affidavit filed by the defendant in this case shows plainly that he knew of the existence of the evidence at the time of the trial. Therefore it can not be true that it is newly discovered evidence. Section 42 of General Orders, No. 58, provides that at any time before the final entry of the judgment for conviction, the defendant may move, either in the court below or on appeal to a higher court for a reopening of
the cause on the ground of newly discovered evidence material to his defense."

This section further provides that "a new trial may also be granted after a conviction on account of errors of law committed at the trial." The application for the new trial and the affidavits filed therewith show that said application is based upon new witnessess and not newly discovered evidence. The purpose is to introduce impeaching testimony only.

It is clear, and the attorney for the defendant in his argument in the case admitted, that the additional evidence which he desires to produce on the new trial is rebuttal simply, or in other words is cumulative defense. All of the courts hold that where an application is made for a new trial based upon newly discovered evidence that such evidence must not be cumulative—that the new evidence must be such as could not, with reasonable diligence, have been discovered and produced at the trial. As proof of due diligence the party must have had summonses issued at least for the appearances of said witnesses. It is also the rule that the courts will never grant a new trial for the purpose of admitting purely impeaching evidence. (McDermott *vs.* Iowa, etc., Co., 47 N. W. Hep. 1037; Husted *vs.* Meade, 58 Conn., 35; Husted *vs.* Meade, 19 Atl. Rep., 233; State *vs.* Smith, 35 Kans., 618; State .*vs.* Smith, 11 Pac. Rep., 908; O'Dea *vs.* State, 57 Ind., 31.)

The evidence proposed to be introduced on the new trial in this cause, according to the affidavit of the defendant himself, as well as the affidavits presented by the other witnesses, all go to show that it is purely for the purpose of impeaching the testimony of Isabelo Javier.

The courts do not generally regard motions for new trials upon the ground of newly discovered evidence with favor, the policy of the courts being to require of parties care, diligence, and vigilance in securing and presenting evidence upon the trial, and whenever the courts do grant new trials upon newly discovered evidence they hold that it is indispensably necessary for the moving party to show clearly that he exercised the greatest diligence in his efforts to discover and produce the evidence on the trial. In order to show the greatest diligence he must, at least, have either taken out summonses or citations for these witnesses to appear, and in case he was unable to secure the presence of the said witnesses he then ought to have requested an adjournment of the trial until such witnesses could be obtained.

For these reasons the motion for a new trial should have been denied.

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