

44 Phil. 471

[G.R. Nos. 19403, 19404, 19405. January 30, 1923]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
ISIDORO LERMA, DEFENDANT AND APPELLANT.**

D E C I S I O N

MALCOLM, J.:

Three criminal cases grew out of the manipulation of funds through the purchase of German marks, by Isidoro Lerma, chief of the foreign department of the Philippine National Bank. The first prosecution (No. 23463 below; here, No. 19403) was for the crime of *estafa* in the amount of P37,573.90. The second prosecution (No. 23478 below; here, No. 19404) was for the crime of *estafa* committed by means of falsification of private documents in the amount of P38,359. And the third prosecution (No. 23594 below; here, No. 19405) was, likewise, for the crime of *estafa* through falsification of private documents in the amount of P14,333. Convicted in all three cases after separate trials, defendant Lerma has appealed to this court.

The cases can be more accurately resolved by considering the facts and the law pertaining to each, separately.

I. R. G. NO. 19403

Between September 27, 1919, and October 9, 1919, both dates inclusive, the New York branch of the Philippine National Bank bought 1,850,000 marks at P0.092125, P0.0796, and P0.076 per mark. Of these marks 1,780,000 were sold to different persons at prices ranging from P0.10 to P0.1175 per mark, or a total of P193,625. This latter sum, Isidoro Lerma, chief of the foreign department of the Philippine National Bank, should have turned in and credited to the bank. Instead of doing this, only the sum of P154,477.50 was credited. The difference between the sum which should have been actually set up on the books of the bank

and the sum which apparently was set up represents the sum of P39,147.50, which Lerma is alleged to have misappropriated.

The device conceived and executed by Lerma was something as follows: Soon after notice was received by the Philippine National Bank that the marks ordered had been purchased and remitted to its Berlin correspondent, Lerma transferred the entire lot to the account of one Nicanor Carag, although this person in fact ordered no marks and made no deposit for their purchase. Lerma made it appear that Carag bought the marks at prices slightly greater than the purchase price. This done, the numerous orders for marks were filled at prices allowing a considerable margin of profit, which was entered in the books as deposits made by N. Carag.

The explanation offered by defendant Lerma was as follows: On September 27, 1919, N. Carag ordered the purchase of one million marks and deposited P5,000 to safeguard the bank against all possible fluctuation in the price of the mark. This transaction was approved by Manuel Concepcion, Secretary of the Philippine National Bank. Lerma then claims that he had authority from Carag to resell the marks at advantageous terms. Since at that time no other marks were available in the Manila market, the customers of the bank had to be served by selling them the Carag marks.

Predicated on the testimony of the defendant, counsel claims that he should only be held guilty of having violated business ethics. But sad to relate, defendant's version of the transaction does not ring true. In the first place, there is no record of a written contract between N. Carag and the Philippine National Bank. In the next place, the so-called deposit by Carag was not entered in the books of the bank. Finally, Carag was not called upon to testify that such contract really existed, or that such deposit was really made, or that he collected or received the profit which resulted from the speculation. There are a number of other reasons which might be cited, all going to disprove the testimony of the defendant, but sufficient has been said to demonstrate the untenability of his position.

What really happened, therefore, is that Lerma, taking advantage of his position in the bank, created, in so far as the transaction was concerned, a fictitious purchaser of marks and a fictitious depositor. While as a bank

official he was not prohibited from speculating with his own money in foreign exchange, he was not authorized as a bank official to purchase marks for the bank and then to so manipulate their sale as to gain a compensation for himself personally. The real clients of the bank believed at all times that they were dealing with the bank through Lerma, and had no way of knowing that he merely held himself out as an intermediary and as a private speculator.

The trial judge found the defendant guilty of the crime of *estafa* as punished by article 535, paragraph 5, in relation to article 534, paragraph 3, of the Penal Code. The judgment was that defendant Lerma be sentenced to two years, eleven months, and ten days' imprisonment (*presidio correccional*), with suspension from all public professions, offices, and rights during the time of the sentence, to indemnify the National Bank in the sum of P31,147.50, with subsidiary imprisonment in case of insolvency, and to pay the costs. The Attorney-General suggests that the indemnity should be P39,147.50, in place of P31,147.50. This, however, cannot be, since the information only alleges a misappropriation in the amount of P37,573.90, the limit of reimbursement which can be imposed. With this slight modification, we agree in all respects with the decision of the trial judge.

II. R. G. NO. 19404

On October 18, 1919, Isidoro Lerma, chief of the foreign department of the Philippine National Bank, received advices from the New York branch of the bank that one million marks had been purchased at the rate of P0.073 a mark, and remitted to Berlin to the account of the Philippine National Bank. Between October 22 and October 25, 1919, 938,000 of these marks were sold to different persons at rates varying from P0.10 to P0.115 a mark, for a total of P105,251. Lerma, however, only turned over to the Philippine National Bank P78,000, the difference, P27,251, being the amount which he is alleged to have misappropriated to his own use.

N. Carag was made the purchaser of the million marks. Entries in the surety account of the Philippine National Bank dated October 22, 23, 24, and 25, 1921, credited Carag with deposits in payment of marks at the rate of P0.078 a mark, when in fact these purchases and these payments were made by other persons at higher rates. The difference between P0.078 and P0.10 or P0.115 a mark, as the

case might be, was then accumulated in two accounts; one in the name of C. Reyes and the other in the name of P. Rivera. Afterwards, the sums placed to the credit of these two accounts were withdrawn by means of a check in the name of Sergia Lerma, the daughter of the accused.

Lerma in his own defense stated that it was only a mistake of his which caused him to transform N. Carag into a purchaser of marks, when the truth was that the purchasers were C. Reyes and P. Rivera. The defendant further testified that he did not know the identity and residence of Reyes and Rivera. He further said that he drew the check in favor of his daughter, for the purpose of delivering the amounts due to the said C. Reyes and P. Rivera, when they are encountered.

Nicanor Carag, who was called as a witness in this case, testified that he never dealt in marks. No effort was made to secure the presence of C. Reyes and P. Rivera, if indeed any such persons existed.

Counsel argues that the book, Exhibit LL, called surety account, is not a mercantile document. We do not find this claim sustainable and are of the opinion that the surety account is just as much a commercial document as journal books, ledgers, etc. (2 Viada, *Codigo Penal*, p. 419.)

The trial judge found the defendant guilty of the complex crime of *estafa* committed by means of falsification of a mercantile document as punished by article 301 of the Penal Code, as amended, in relation with articles 535, paragraph 1, and 89, of the Penal Code. The judgment was that the defendant should suffer six years' imprisonment (*prision correccional*), should pay a fine of 250 *pesetas*, and should indemnify the Philippine National Bank in the sum of P27,251, or in case of insolvency, should suffer the corresponding subsidiary imprisonment, with the accessory penalties provided by law, and the costs. This is correct, with the rather insignificant change that instead of 250 *pesetas*, which is the minimum fine provided by the Code, a somewhat higher fine should be imposed, in order to comply with the law; we fix this fine at P200.

III. R. G. NO. 19405

On October 30, 1919, 1,100,000 marks were ordered from New York at P0.0644

per mark by the Philippine National Bank and sent to Germany. All but 10,000 of these marks were sold later in Manila to two persons; 750,000 at P0.0693 a mark, and 340,000 at P0.11 a mark, making in all P89,375. But Lerma caused it to appear in the books of the Philippine National Bank that the entire 1,090,000 marks were sold to one C. Reyes at P0.0689 a mark or for a total of P75,901. The difference of P14,274 was the sum misappropriated by the accused.

C. Reyes was not called to testify, and the lower court pronounced him a fictitious person created by the defendant to cloak his misdeed.

The trial judge in this case found the defendant guilty of the crime of *estafa* with falsification of a mercantile document, in accordance with article 301 of the Penal Code, as amended, in relation to article 535 of the Penal Code. The judgment was that the defendant be sentenced to five years, four months, and twenty-one days' imprisonment (*prision correccional*), to pay a fine of 250 *pesetas*, and to indemnify the Philippine National Bank in the sum of P15,007, or to suffer the corresponding subsidiary imprisonment in case of insolvency, with the accessory penalties provided by law, and the costs. This is correct, except that again a fine of P200 must be substituted for the fine of 250 *pesetas*, and that the indemnity must be fixed at P14,274.

JUDGMENTS

We find, therefore, that notwithstanding the arguments advanced by counsel for the defendant, who has done all possible for his client, the defendant and appellant has been proved guilty beyond all reasonable doubt of the crimes alleged in the three informations. We also find no reversible error present, and that the law has been correctly applied to the facts. We find finally that the judgments are substantially correct, with the minor changes previously indicated.

The judgment in case No. 19403 is affirmed, with the sole modification that the indemnity shall be P37,573.90, in lieu of P31,147.50. The judgment in case No. 19404 is affirmed, with the sole modification that the fine shall be P200 in lieu of 250 *pesetas*. The judgment in case No. 19405 is affirmed, with the sole modifications that the fine shall be P200 in lieu of 250 *pesetas*, and the indemnity shall be P14,274, in lieu of P15,007. The costs of each of the

three cases shall be taxed against the appellant. So ordered.

Araullo,

C.J., Street, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ.,

concur.

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