

DALMACIO CELINO, DECEASED, SUBSTITUTED BY THE JUDICIAL ADMINISTRATRIX OF THE INTESTATE, PETITIONER, VS. ALEJANDRO BAUTISTA, RESPONDENT.

G.R. No. L-2417. January 29, 1949

Ponente: FERIA, J.

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FERIA, J.:

The petition for certiorari by way of appeal from the judgment of the Court of Appeals to this Court on the ground that the former has decided a question not in accord with the decision of this Court has remanded this case to it for proper action.

The pertinent part of our decision reads as follows:

"The Court of Appeals clearly erred in not passing upon the liability of the respondent in connection with the checks (Exhibits G, H and I). In his complaint Dalmacio Celino seeks to recover the value of said checks which the respondent allegedly failed to deliver to the former. The respondent was thereby required to account for said value, and this is the reason why in his answer he denies any liability and claims that Dalmacio Celino had admitted having received the amount of the checks and, at the trial, he introduced evidence tending to show that said amount was applied to debts owing by Dalmacio Celino to the respondent. Therefore, the plain issue raised by the pleadings and on which the case was tried, is whether Dalmacio Celino has the right to recover the value of the checks. This is exactly the issue which the Court of First Instance of Laguna decided when it sentenced the respondent to pay P10,022.61, represented by the checks (Exhibits F, G, H and I). We accordingly hold that it was the duty of the Court of Appeals to determine as a question of fact, upon the evidence of both parties, whether the respondent, who admittedly cashed the checks (Exhibits G, H and I) on behalf of Dalmacio Celino, has satisfactorily proved that he had accounted for their value one way or another, in full or in part. In the affirmative case, the respondent should be absolved from corresponding liability; otherwise he should be sentenced to pay what he has failed to account for.

"It is futile to contemplate the necessity of any further accounting on the part of the respondent, since in this case he had already made allegations that the amount of the checks in question was received by, or applied to the payment of the debts of, Dalmacio Celino. What remains to be done, is only to verify whether said obligations are supported by the proof, and this task properly falls under the fact-finding power of the Court of Appeals." (Italics ours.)

In accordance with the above quoted directive or decision, the only question or conclusion of fact for the Court of Appeals to find is, whether or not the preponderance of evidence shows that the plaintiff delivered the checks at bar to the defendant in payment of his obligation or debt to the latter or, in the language of the very decision of this Court, "what remains to be done, is only to verify whether said obligations are supported by the proof." "In the affirmative case, the respondent should be absolved from corresponding liability; otherwise he should be sentenced to pay what he has failed to account for."

From a mere cursory reading of the decision of the Court of Appeals it appears evident that said court has acted in

accordance with the foregoing decision. The Court of Appeals, after analyzing and considering the declaration of the plaintiff, who denied the authenticity of his signature affixed in the cash vouchers exhibits 11, 12, and 31, which correspond to the checks in question, G, H, and I, respectively; the testimony of Jose Sison, accountant and cashier of Kellogg and Sons, Inc., about the signing of said vouchers by the plaintiff and the delivery of the corresponding checks to the defendant by express order or instruction of the plaintiff; and the testimony of the defendant, who corroborated the said testimony of Jose Sison and admitted that he has received said checks from the plaintiff and cashed them in payment of the obligation due him from the plaintiff, made the following conclusions or findings of fact and decision:

"La negativa de Celino de haber tenido conocimiento de la expedicion de los cheques Exhibits G, H e I se compagina con los cash vouchers Exhibits 11, 12 y 31 no son suyas, en lo cual le ha sostenido el Juzgado a quo. Pero habiendo el Tribunal de Apelaciones llegado a la conclusion de que dichas firmas son autenticas, pronunciamiento esto que es hoy firme, cae por su base la afirmacion de Celino de que no ha tenido conocimiento de la libranza de tales cheques, ni que los haya el entregado a Bautista. Desacreditado Celino en este particular, lo dicho por Sison de que era la practica en las transacciones de la casa Spencer Kellogg & Sons que el cheque y el cash voucher que lo soporta se preparan a la vez, y el interesado a cuyo favor se expide el cheque tiene que firmar el cash voucher, para que ambos documentos a su vez se firmen y expidan por el manager o tesorero de la compania, es de creer; y, en el curso ordinario, es lo que ha sucedido en el presente asunto, en que Celino firmo los cash vouchers Exhibits 11, 12 y 31 y recibio consecuentemente los cheques Exhibits G, H e I, entregandolos despues a Bautista, quien los endozo y cobro sus respectivos importes. Bautista asevera que ha recibido los expresados cheques en pago de cantidades tomadas de el en prestamo por Celino. Como no es lo natural que se entreguen cheques, sobre todo de las cantidades que representan los Exhibits G, H e I, sin causa ni razon, y ninguna de Celino, fuerza es aceptar la alegacion de Bautista, de que se los dio en pago.

"Con la revocacion de la sentencia apelada, en cuanto condena a Alejandro Bautista a pagar a Dalmacio Celino el importe total de los cheques Exhibits G, H e I, se confirma en todo lo demas la sentencia apelada, sin costas en esta instancia."

As it is seen, the Court of Appeals predicates its finding of fact that the preponderance of evidence shows that the contention of defendant Bautista that the plaintiff delivered the checks in question in payment of the plaintiff's debt or obligation to the defendant, upon the latter's testimony, corroborated by the presumption *juris tantum* "that a negotiable instrument was given or indorsed for a sufficient consideration" (section 69 (s), Rule 123) ; and upon the fact that plaintiff's assertion, given credence by the Court of First Instance, that his signatures in the vouchers Exhibits 11, 12, and 31 were a forgery, in support of his contention that he did not deliver the checks to the defendant Bautista nor did he have any knowledge of their delivery to him, in order to avoid the application of said presumption, had been rejected by the Court of Appeals in its previous decision, already final, promulgated on June 16, 1942, in which it was held that they are genuine. While the mere denial of plaintiff Celino of the existence of such debt is not supported by any evidence or reason ("* * * sin causa ni razon, y ninguna de Celino").

Whether or not said conclusion of fact of the Court of Appeals that declares the contention of the defendant proven or more worthy of credit than that of the plaintiff, and reverses the decision of the lower court without considering the convictions of the defendant of certain offenses as sufficient to affect his credibility, is erroneous or not supported by the evidence, is a question of fact which this Court can not pass upon in the present case.

Petition for certiorari is therefore denied.

Moran, C.J., Bengzon, Tuason, and Montemayor, JJ., concur.

Moran, C. J.:

There being no majority in this case, the petition is deemed denied, in accordance with section 2, Rule 56, of the Rules of Court.

DISSENTING

PARAS, J.:

The deceased Dalmacio Celino in his life-time had business transactions with Spencer Kellog & Sons, Inc. His agent was Alejandro Bautista. It appears that the latter cashed ten checks for the total amount of P28,024.76, drawn by Spencer Kellog & Sons, Inc. in favor of Dalmacio Celino. Suit was brought in the Court of First Instance of Laguna (civil case No. 6200) whereby Celino sought to recover the amount from Bautista upon the allegation that the latter cashed the checks without the knowledge and consent of Celino to whom Bautista failed to deliver their value. In his answer Bautista set up a general denial and claimed that there had been a liquidation of the accounts between Spencer Kellog & Sons, Inc. and Celino in which the latter admitted having received the value of said checks.

The Court of First Instance of Laguna, on September 30, 1939, rendered judgment sentencing Alejandro Bautista to pay to Dalmacio Celino P10,022.61 as the value of four checks (Exhibits F, G, H and I), and absolving Bautista from liability as to the other checks. On Appeal (CA—G. R. No. 6988), the Court of Appeals, in its decision of June 11, 1942, reversed the judgment as regards the checks (Exhibits G, H and I) for the total sum of P10,000. The Court of Appeals, against the conclusion of the Court of First Instance of Laguna, found that the cash vouchers upon which the checks (Exhibits G, H and I) were issued, have the genuine signatures of Celino, for which reason it held that the latter had knowledge of the issuance of said checks. However, the Court of Appeals abstained from making any adjudication as to the liability of Bautista for the value of Exhibits G, H and I, or any part thereof, on the ground that no issue was raised in the trial court regarding an accounting with respect to said checks, and, in its resolution on motion for reconsideration, it merely reserved the right of Celino to institute an action for accounting against Bautista.

Upon appeal by the judicial administratrix of the estate of Dalmacio Celino (G. R. No. 48866), the Supreme Court made the following pronouncements in its decision of November 29, 1943:

"* * * We accordingly hold that it was the duty of the Court of Appeals to determine as a question of fact, upon the evidence of both parties, whether the respondent, who admittedly cashed the checks (Exhibits G, H and I) on behalf of Dalmacio Celino, has satisfactorily proved that he had accounted for their value one way or another, in full or in part. In the affirmative case, the respondent should be absolved from corresponding liability; otherwise he should be sentenced to pay what he has failed to account for.

"It is futile to contemplate the necessity of any further accounting on the part of the respondent, since in this case he had already made allegations that the amount of the checks in question was received by, or applied to the payment of the debts of, Dalmacio Celino. What remains to be done, is only to verify whether said obligations are supported by the proof, and this task properly falls under the fact-finding power of the Court of Appeals."

After the record was remanded to the Court of Appeals, upon the express directive of the Supreme Court "to pass upon and decide the question whether, under the evidence adduced by both parties in this case, the respondent is liable to Dalmacio Celino for the value of the three checks (Exhibits G, H and I), or any part thereof," the Court of Appeals, on June 25, 1948, rendered a decision reversing the judgment of the Court of First Instance of Laguna of

September 30, 1939, in so far as Alejandro Bautista was sentenced to pay to Dalmacio Celino the total amount of the checks (Exhibits G, H and I). From said decision of the Court of Appeals, the judicial administratrix of the estate of Celino has interposed the present appeal by certiorari.

It should be remembered that the Court of First Instance of Laguna sustained Celino's claim to the value of the checks (Exhibits G, H and I) not only because it found that the cash vouchers upon which said checks were issued by Spencer Kellog & Sons, Inc. did not bear the genuine signatures of Celino, but because of the following factual considerations:

Liquidation Voucher No. 46548 dated December 28, 1931, presented by the defendant as Exhibit 30, does not contain the cash advance of P3,000 represented by Check Exhibit G issued upon Cash Voucher Exhibit 11. This liquidation voucher Exhibit 30 is signed by Bautista. Why does not this liquidation voucher contain said cash advance of P3,000 made on December 19th? The reason is evident. It is because both Bautista and the company were aware that Celino did not sign the cash voucher Exhibit 11 or receive the check Exhibit F or authorize Bautista to receive and cash it. There can not be any question, therefore, and the court concludes that the plaintiff did not actually receive the checks, or authorize the defendant to sign the voucher for its issuance, or to receive it and cash it.

With respect to the other checks Exhibits H and I, there is no evidence on record, in view of the finding that the purported signatures thereof of D. Celino are not authentic, to prove that the plaintiff has ever admitted having received them or their value. No liquidation voucher having been shown which has been signed by the plaintiff, just as it had happened with checks Exhibits A, B, C, D and E, there is no admission on the part of the plaintiff that the value of said checks H and I has been received by him.

The only competent evidence to show that Celino has received their value is the testimony of the defendant Bautista to the effect that he had received them in payment of supposed debts which Celino owed him. But his credibility as a witness is conclusively set at naught by the fact that he has been convicted five times for illegal importation of opium, for illegal possession of lottery tickets and for bribery. There is no documentary evidence to corroborate the alleged debts of Celino to him, in spite of the bigness of the amounts involved. If Celino needed money to invest in the purchase of copra, he certainly would have secured it from Spencer Kellog and Sons, Inc., as he was a copra purchaser for them and as he had in fact been doing. Without going any further the court holds that the uncorroborated assertion of a five-time convict is certainly insufficient to overcome the burden of proof imposed upon him by law to prove his claim that the checks were paid to him in payment of supposed debts.

It should be remembered also that Mr. Justice Ozaeta, in concurring in and dissenting from the decision of the Supreme Court of November 29, 1943, had already gone as far as holding that said Court should therein sentence Alejandro Bautista to pay to Dalmacio Celino the value of the checks (Exhibits G, H and I). To quote from Mr. Justice Ozaeta's opinion:

"Second, as to my dissent with regard to the checks Exhibits G, H, and I. These checks for P3,000, P3,000, and P4,000, respectively, were admittedly cashed by the respondent for Dalmacio Celino, and the question is limited to whether or not the latter had received the proceeds thereof from the respondent. Unlike the case as to Exhibits A, B, C, D, and E, there was not a single liquidation voucher signed by Celino wherein the amounts of these checks were debited against him. On the contrary, as the trial court found with regard to Exhibit G, this bears the date December 19, 1931, but it was not included in the subsequent liquidation voucher Exhibit 30 bearing the date December 28, 1931. It was therefore incumbent upon the respondent Bautista to prove that he had paid to Celino the amounts of said checks, or that he had the right to keep them. He attempted to prove the latter. Upon that phase of the case Judge Labrador, in his well-prepared decision, said:

"The only competent evidence to show that Celino has received their value is the testimony of the defendant Bautista to the effect that he had received them in payment of supposed debts which Celino owed him. But his

credibility as a witness is conclusively set at naught by the fact that he has been convicted five times for illegal importation of opium, for illegal possession of lottery tickets, and for bribery. There is no documentary evidence to corroborate the alleged debts of Celino to him, in spite of the bigness of the amounts involved. If Celino needed money to invest in the purchase of copra, he certainly would have secured it from Spencer Kellog & Sons, Inc., as he was a copra purchaser for them and as he had in fact been doing. Without going any further the Court holds that the uncorroborated assertion of a five-time convict is certainly insufficient to overcome the burden of proof imposed upon him by law to prove his claim that the checks were paid to him in payment of supposed debts.' (Pages 27-28, bill of exceptions.)

"That finding of the trial court was not reversed by the Court of Appeals, which in resolving petitioner's motion, for reconsideration reserved to her the right to bring a separate action against the respondent for an accounting of the proceeds of said checks. The only reason why the Court of Appeals did not render judgment against the respondent for the amount of said checks was that in its opinion the question as to the accounting had not been properly raised in the first instance. The majority having correctly overruled that opinion of the Court of Appeals, I believe this Court is justified in terminating this long-drawn out litigation by modifying outright the judgment of the Court of Appeals in the sense that instead of only P22.61 the respondent should pay to petitioner P10,022.61."

It should, furthermore, be remembered that in the decision of the Court of Appeals of June 16, 1942, supplemented by its resolution on motion for reconsideration, Dalmacio Celino was held to have signed the cash vouchers upon which the checks (Exhibits G, H and I), were issued; that despite said finding, the Court of Appeals reserved to Celino the right to file the proper action for accounting against Alejandro Bautista; and that, again despite said finding, the Supreme Court on appeal directed the Court of Appeals to decide whether Bautista was liable to Celino for the value of said checks. In other words, the logical inference is that the mere signing by Celino of the cash vouchers and his knowledge of the issuance of the checks did not, and should not, release Bautista (who had admittedly cashed said checks) from his liability to account for their value. Indeed, in its decision of November 29, 1943, the Supreme Court, in view of Bautista's allegation that said checks were delivered to, and cashed by, him in payment of Celino's debts, addressed to the Court of Appeals the specific directive that "what remains to be done, is only to verify whether said obligations are supported by the proof."

Even after the Court of First Instance of Laguna had expressed several factual reasons for sentencing Bautista to pay the value of the checks (Exhibits G, H and I); even after the Supreme Court was specific in telling the Court of Appeals to determine whether there was evidence to support the alleged indebtedness of Celino in favor of Bautista, and even after Mr. Justice Ozaeta in his separate opinion, hereinabove quoted, had already concluded that Bautista should be sentenced to pay. the value of said checks, the Court of Appeals, in the decision now the subject of review, contented itself in reversing the judgment of the Court of First Instance of Laguna upon the following grounds:

"Bautista asevera que ha recibido los expresados cheques en pago de cantidades tomadas de el en prestamo por Celino. Como no es lo natural que se entreguen cheques, sobre todo de las cantidades que representan los Exhibits G, H e I, sin causa ni razon, y ninguna de Celino, fuerza es aceptar la alegacion de Bautista, de que se los dio en pago. (Decision of June 25, 1943.)

"Una defensa debil es mas fuerte que una reclamacion inconsistente, como es este caso, por el arraigo en nuestro enjuiciamiento del principio:

"4. PLAINTIFF MUST RELY ON HIS EVIDENCE.—The evidence of the plaintiff may be stronger than that of the defendant. But if it is not sufficient in itself to establish his cause of action, there is no preponderance of evidence on his side. Plaintiff must rely on the strength of his own and not upon the weakness of the defendant's evidence." (Resolution on motion for reconsideration of July 27, 1948.)

In my opinion, the Court of Appeals has utterly failed to show that the alleged obligations of Celino are supported by the proof. It could not rely solely on the bare allegation of Bautista that the three checks were given to him in payment of Celino's debts because that is the very issue which required proof. It could not rely on the inference that might be drawn from the delivery of the checks of Bautista, because all the other checks involved in the complaint in this case had been delivered to Bautista, and if the latter was not held liable for said other checks, it was not because of the presumption *juris tantum* "that a negotiable instrument was given or indorsed for a sufficient consideration," but because there were liquidation vouchers signed by Celino. Neither could the Court of Appeals invoke the rule that the "plaintiff must rely on the strength of his own and not upon the weakness of the defendant's evidence," since, as Mr. Justice Ozaeta correctly held, "it was incumbent upon the respondent Bautista to prove that he had paid to Celino the amounts of said checks, or that he had the right to keep them."

To justify the reversal of the judgment of the trial court, the Court of Appeals should have at least exerted itself in refuting the following factual considerations taken into account by the trial court: (1) Whereas in the case of the other controverted checks, there were corresponding liquidation vouchers (in addition to cash vouchers) signed by Celino, in the case of the checks (Exhibits G, H and I) similar liquidation vouchers are conspicuous by their absence. (2) Bautista is incredible as a witness, in view of his repeated convictions for illegal importation of opium, illegal possession of lottery tickets, and bribery. (3) There is no documentary evidence of the alleged debts of Celino, in spite of the big amounts involved. (4) If Celino needed money, he would have secured it from Spencer Kellog & Sons, Inc., as Celino was the company's copra purchaser.

The Court of Appeals wasted time and space when, in the decision now the subject of review, it dwelt at length upon the cash vouchers covering the checks (Exhibits G, H and I) and upon the testimony of Jose Sison to the effect that Celino signed said cash vouchers, because that fact had already been admitted when the Court of Appeals reserved to Celino the right to bring an action for accounting, and when the Supreme Court directed the Court of Appeals to verify whether the alleged obligations of Celino are supported by the proof. In other words, the signing by Celino of said cash vouchers had previously been held, in effect, as failing to *ipso facto* wipe out Bautista's liability for the value of the three checks.

This is not a situation in which the Court of Appeals has simply made an erroneous finding of fact which is beyond review in an appeal by certiorari, but it is a case in which said court has laid down a factual conclusion virtually unsupported by any evidence. In my opinion, in view of the circumstances of the case, this Court should give due course to the present petition for certiorari.

OZAETA, J.:

I concur in this dissent.

PABLO, M.:

Concurro con esta disidencia.

PERFECTO, J.:

We agree with this opinion.

BRIONES, J.:

I strongly adhere to this solid and elaborate dissenting opinion. There being at least four members of this Court who firmly believe that there are in this case substantial merits for review, the traditional practice should be followed by giving due course to the appeal.

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