

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RAFAEL BALMORES Y CAYA, DEFENDANT AND APPELLANT.

G.R. No. L-1896. February 16, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

Appellant, waiving the right to be assisted by counsel, pleaded guilty to the following information filed against him in the Court of First Instance of Manila:

"The undersigned accuses Rafael Balmores y Caya of attempted estafa thru falsification of a security, committed as follows:

"That on or about the 22nd day of September, 1947, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously commence the commission of the crime of estafa thru falsification of a security directly by overt acts, to wit: by then and there tearing off at the bottom in a cross-wise direction a portion of a genuine 1/8 unit Philippine Charity Sweepstakes ticket thereby removing the true and real unidentified number of same and substituting and writing in ink at the bottom on the left side of said ticket the figure or number 074000 thus making the said ticket bear the said number 074000, which is a prize-winning number in the Philippine Charity Sweepstakes draw last June 29, 1947, and presenting the said ticket so falsified on said date, September 22, 1947, in the Philippine Charity Sweepstakes Office for the purpose of exchanging the same for the corresponding cash that said number had won, fraudulently pretending in said Office that the said 1/8 unit of a Philippine Charity Sweepstakes ticket is genuine and that he is entitled to the corresponding amount of P359.55 so won by said ticket in the Philippine Charity Sweepstakes draw on said date, June 29, 1947, but the said accused failed to perform all the acts of execution which would have produced the crime of estafa thru falsification of a security as a consequence by reason of some causes other than his spontaneous desistance, to wit: one Bayani Miller, an employee to whom the said accused presented said ticket in the Philippine Charity Sweepstakes Office discovered that the said ticket as presented by the said accused was falsified and immediately thereafter he called for a policeman who apprehended and arrested the said accused right then and there.

"Contrary to law.

(Sgd.) "LORENZO RELOVA

"Assistant City Fiscal"

and was sentenced by Judge Emilio Peña to suffer not less than 10 years and 1 day of prision mayor and not more than 12 years and 1 day of reclusion temporal, and to pay a fine of P100 and the costs.

From that sentence he appealed to this court, contending (1) that the facts charged in the information did not constitute an offense and (2) that the trial court lacked jurisdiction to convict him on a plea of guilty because, being illiterate, he was not assisted by counsel.

In support of the first contention, counsel for the appellant argues that there could be no genuine 1/8 unit Philippine Charity Sweepstakes ticket for the June 29, 1947, draw; that this court has judicial notice that the Philippine Charity Sweepstakes Office issued only four 1/4 units for each ticket for the said draw of June 29, 1947; that the information does not show that the true and real unidentified number of the ticket alleged to have been torn was not and could not be 074000; that the substitution and writing in ink of the said number 074000 was not falsification where the true and real number of the ticket so torn was 074000.

This contention is based on assumptions not borne out by the record. The ticket alleged to have been falsified is before us and it appears to be a 1/8 unit. We cannot take judicial notice of what is not of common knowledge. If relevant, it should have been proved. But if it is true that the Philippine Charity Sweepstakes Office did not issue 1/8 but only 1/4 units of tickets for the June 29, 1947, draw, that would only strengthen the theory of the prosecution that the 1/8 unit of a ticket which appellant presented to the Philippine Charity Sweepstakes Office was spurious. The assumption that the true and real unidentified number of the ticket alleged to have been torn was the winning number 074000, is likewise not supported by the record. The information to which appellant pleaded guilty alleged that the appellant removed the true and real unidentified number of the ticket and substituted and wrote in ink at the bottom on the left side of said ticket the figure or number 074000. It is obvious that there would have been no need of removal and substitution if the original number on the ticket was the same as that which appellant wrote in ink in lieu thereof.

The second contention appears to be based on a correct premise but wrong conclusion. The fact that appellant was illiterate did not deprive the trial court of jurisdiction to convict him on a plea of guilty although he was not assisted by counsel. The decision expressly states that appellant waived the right to be assisted by counsel, and we know of no law against such waiver.

It may be that appellant was either reckless or foolish in believing that a falsification as patent as that which he admitted to have perpetrated would succeed; but the recklessness and clumsiness of the falsification did not make the crime impossible within the purview of paragraph 2, article 4, in relation to article 59, of the Revised Penal Code. Examples of an impossible crime, which formerly was not punishable but is now so under article 59 of the Revised Penal Code, are the following: (1) When one tries to kill another by putting in his soup a substance which he believes to be arsenic when in fact it is common salt; and (2) when one tries to murder a corpse. (Guevara, Commentaries on the Revised Penal Code, 4th ed., page 15; decision, Supreme Court of Spain, November 26, 1879; 21 Jur. Crim. 343.) Judging from the appearance of the falsified ticket in question, we are not prepared to say that it would have been impossible for the appellant to consummate the crime of estafa thru falsification of said ticket if the clerk to whom it was presented for payment had not exercised due care.

The penalty imposed by article 166 for the forging or falsification of "treasury or bank notes or certificates or other obligations and securities" is reclusion temporal in its minimum period and a fine not to exceed P10,000, if the document which has been falsified, counterfeited, or altered is an obligation or security of the United States or of the Philippine Islands. This being a complex crime of attempted estafa thru falsification of an obligation or security of the Philippines, the penalty should be imposed in its maximum period in accordance with article 48. Taking into consideration the mitigating circumstance of lack of instruction, and applying the Indeterminate Sentence Law, the minimum cannot be lower than prision mayor in its maximum period, which is 10 years and 1 day to 12 years. It results, therefore, that the penalty imposed by the trial court is correct.

The alteration, or even destruction, of a losing sweepstakes ticket could cause no harm to anyone and would not constitute a crime were it not for the attempt to cash the ticket so altered as a prize-winning number. So in the ultimate analysis appellant's real offense was the attempt to commit estafa (punishable with eleven days of arresto menor); but technically and legally he has to suffer for the serious crime of falsification of a government

obligation. We realize that the penalty is too severe, considering all the circumstances of the case, but we have no discretion to impose a lower penalty than that authorized by law. The exercise of clemency is vested by the Constitution in the Chief Executive and not in this court.

We are constrained to affirm the sentence appealed from, with costs against the appellant

Moran, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

PARAS, J.: dissenting:

The accused-appellant, instead of being the victimizer, has become the victim. He was accused of having falsified a genuine 1/8 unit of the Philippine Charity Sweepstakes ticket for the June, 1947, draw by tearing off at its bottom in a cross-wise direction a portion, thereby removing the true and unidentified number of said ticket and substituting and writing in ink at the bottom on the left side the number 074000, thus making said ticket bear a prize-winning number. He was convicted of attempted estafa thru falsification of an obligation or security and sentenced to an indeterminate penalty of from 10 years and 1 day of prision mayor to 12 years and 1 day of reclusion temporal, and to pay a fine of P100 plus the costs. He waived the right to be assisted by counsel and merely pleaded guilty to the information.

The appellant is admittedly an illiterate and, in my opinion, had committed only an impossible crime now punishable under paragraph 2, article 4, in relation to article 59, of the Revised Penal Code. I say impossible, because in the way the alleged falsification was done, it was inherently inadequate or ineffective and accordingly certain to be detected. Stated otherwise, the appellant could not have succeeded in cashing the ticket. For who would cash a ticket which, in the first place, has a missing portion and, in the second place, contains a number written in ink. Not even boy-agents who conduct their trades on street sidewalks, and much less the employee of the Sweepstakes Office to whom it was presented. As a matter of fact, the falsification was readily detected by said employee. The crime is just as impossible as passing a counterfeit paper bill concocted in regular newsprint and in ordinary handwriting.

A doubt also arises from the fact that the ticket is a 1/8 unit, in the face of the contention of attorney for appellant in this instance that the tickets for the June, 1947, Sweepstakes draw consisted of only four units. Of course, this may not be a matter of judicial notice, but the point remains that if appellant was assisted by competent counsel in the trial court, the fact might have been duly proven. It is true that the appellant waived his right to be assisted by counsel, but we cannot help pointing out that a miscarriage of justice may sometimes result by force of circumstances. In such cases, any capital doubt should be resolved in favor of the accused.

My vote, therefore, is to reverse the appealed judgment and to release the appellant immediately as he has been in prison since November 11, 1947.

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