

THE UNITES) STATES, PLAINTIFF AND APPELLEE, VS. BARTOLOME CH. VELOSO, DEFENDANT AND APPELLANT.*G. R. No. 10673. October 30, 1915*

Ponente: CARSON, J.

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The theory of the prosecution, upon which the appellant in this case was convicted of the crime of estafa in the court below, is that he induced the Pacific Commercial Company of Cebu to turn over to him certain goods, by the presentation of two separate orders signed by his sister, Miss Veloso, in which he had changed the wording without the knowledge of his sister, so as to make one of the orders read "18 barrels of cement" instead of "1 barrel," and so as to make the other order read "42 pieces of galvanized iron" instead of "2 pieces of galvanized iron."

It is charged that by the use of these falsified orders, he induced the Pacific Commercial Company to turn over 17 barrels of cement and forty pieces of galvanized iron, which he appropriated to his own use.

The only pertinent evidence in support of these charges is the testimony of the sister of the accused. She did not deny that she signed the orders in question, but in a somewhat vague and indefinite statement in that connection she insisted that the cement order was originally executed for "1 barril de cemento" (one barrel of cement), and that it had been changed after leaving her hands so as to read "18 barrilea de cemento" instead of "1 barril de cemento;" and that the order for "42 planchas de zinc" should have been filled out, as per her telephonic instructions, for "2 planchas" instead of "42 planchas."

An examination of the cement order clearly discloses that, as executed by her, it was an order for more than one barrel of cement, and that her testimony on this, the most important fact at issue in the court below, cannot be accepted without reserve. The order was typewritten, and the spacing of the words and letters is such as to negative the suggestion that it could have been made to read "18 barriles de cemento" by the mere insertion of the figure 8 and the plural termination of the word "barril." In order to alter the order in the manner indicated by Miss Veloso it would have been necessary to erase the number "1" and the word "barril" and to rewrite them so as to leave space for the insertion of the number "8" and the plural termination "es" after the word "barril." But the condition of the typewritten order is such that we feel justified in holding that it is in the highest degree improbable that the word "barril" was or could have been erased and rewritten without leaving some trace of the change on the face of the order, and a careful scrutiny of the order discloses no trace whatever of such an erasure and change in its wording.

On the contrary, the typewritten order appears to be perfectly regular and genuine on its face, and we are satisfied that the internal evidence furnished by the document itself is sufficient to raise at least a reasonable doubt as to the claim of Miss Veloso that it has been changed since it was signed by her.

As to the order for the galvanized iron we think we must hold that there is at least a reasonable doubt as to the truth of the charge that the accused filled out the order for "42 planchas de zinc" knowing that his sister's

telephonic order was for but "2 planchas de zinc." In its last analysis, the evidence on this charge rests substantially on the testimony of Miss Veloso as to the number of pieces of galvanized iron ordered by her over the telephone, and we do not think that, in the light of our conclusions as to the inaccuracy of similar testimony given by her in regard to the cement order, we would be justified in accepting her statements as to the galvanized iron as correct beyond a reasonable doubt.

On the whole record, we incline to the belief that if the accused was guilty of any misconduct in connection with the orders in question, it consisted not of the falsification of his sister's orders, but of the appropriation of the goods to his own use, after he had lawfully procured them in her name from the Pacific Commercial Company. If our inferences in this regard are correct, the accused may have been guilty of an estafa of the goods after they came into his possession, but he cannot be convicted of the offense of the alleged estafa committed against the Pacific Commercial Company with which he was charged, and of which he was convicted in the court below.

While on the witness stand, Miss Veloso was evidently-laboring under considerable excitement, and we think the record indicates that in testifying she was influenced in some degree by the not unnatural desire to shield her brother from the consequences of the misconduct of which she believed he was guilty, and at the same time to relieve herself from liability for payment for goods which, she alleges, were not delivered to her. However this may be, her testimony is too vague, confused and uncertain to sustain a finding as to the guilt of the defendant of the crime with which he is charged in the information, beyond a reasonable doubt.

The judgment convicting the defendant and appellant of the offense charged in the information should be reversed with the costs of both instances de officio, and he should be acquitted of the offense and his bail exonerated. So ordered.

Arellano, C. J., Johnson, Trent, and Araullo, JJ., concur.

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