

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MANUEL B. ASENSI, DEFENDANT AND APPELLANT.

G.R. No. 11159. August 07, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of estafa. The first complaint was presented on the 31st of March, 1915. Later, on the 10th of April, 1915, an amended complaint was presented, which alleged:

"That on or about October 1, 1914, in the city of Manila, Philippine Islands, the said accused, being an employee of the Compañia General de Tabacos de Filipinas, a corporation duly organized and established in the said city, did, in the following manner, willfully, unlawfully and criminally, defraud the said corporation Compañia General de Tabacos de Filipinas, of which he was an employee, to wit: the said accused, being an employee of the said corporation Compañia General de Tabacos de Filipinas, and, by reason of his employment having obtained and received, at and in the aforesaid time and place, from the cashier of the said corporation, the sum of three thousand, four hundred and eighty-seven pesos and fifty centavos (P3,487.50), Philippine currency, belonging to the said corporation, for the purpose of employing it in the purchase of internal-revenue stamps for the use of the said company in its mercantile transactions in its distillery La Clementina, did spend in the acquisition and purchase of the said stamps only the sum of P3,087.50, Philippine currency, retaining, appropriating to himself and diverting the sum of P400, Philippine currency, from the sum aforementioned, to the harm and prejudice of the said corporation Compañia General de Tabacos de Filipinas, to the extent of the said sum of P400, Philippine currency, equivalent to 2,000 pesetas; an act committed with violation of law."

Said complaint was duly sworn to. Upon said complaint the defendant was duly arraigned and tried. After hearing the evidence adduced during the trial of the cause, the Honorable James A. Ostrand, judge, found that the same showed that the defendant was guilty of the crime charged in the complaint beyond a reasonable doubt and sentenced him to be imprisoned for a period of four months and one day of arresto mayor, in accordance with the provisions of paragraph 2 of article 534 of the Penal Code, in relation with paragraph 5 of article 535 of the same Code, to indemnify the offended corporation in the sum of P400, in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of the law, and to pay the costs.

From that sentence the defendant appealed to this court. The appellant alleges that the lower court committed the following errors:

- "1. The court erred in admitting in his decision the existence of any person injured by the commission of the crime under prosecution, when in fact no evidence whatever was presented tending to show the personality of the company alleged to have been prejudiced.
- "2. The court erred in holding that the defendant appropriated to himself the difference between the sums received by him for the purchase of stamps and the sums spent for this purpose.
- "3. The court erred in holding that the defendant appropriated to himself the difference aforementioned,

notwithstanding the contradictory evidence of record of the defendant's having an open current account in which the sums he received were charged, the court failing to give due legal consideration to such debit charges.

"4. The court erred in admitting in evidence against the defendant, Exhibit E, the same having been obtained by insidious machinations consisting of a promise of exemption from punishment."

With reference to the first assignment of error, the appellant cites many provisions of the various Codes in support of his argument that there was no proof showing that the offended corporation was legally constituted. From an examination of the record we find:

First: That the defendant recognized the existence of the offended corporation by having been in its employment for a period of twenty to twenty-five years.

Second: He further recognized the existence of the of fended corporation in a letter signed by him and directed to said corporation, dated the 19th day of March, 1915, a few days before the complaint in the present cause was presented.

Third: The defendant further recognized the existence of said offended corporation by a certain receipt marked Exhibit C, in which he acknowledged that he had received from said corporation the sum of P3,487.50.

Fourth: The existence of the corporation is further supported by the testimony of Damian Urmeneta, who swore positively that the offended corporation is "a corporation duly registered in the mercantile register of the Philippine Islands; that it resided in Manila, with its head office in Barcelona; that it had existed and had done business in the Philippine Islands for a period of thirty years."

The testimony of Damian Urmeneta was admitted without objection. If the appellant was not satisfied with the character of the proof presented, he should have presented his objection in the court below and thereby have given the prosecution an opportunity to have presented other and additional proof. The proof adduced was sufficient to satisfy the lower court upon that question. In view of the admission of the defendant, in the manner indicated above, we are not now inclined to modify the conclusion of the lower court, by reason of the said alleged error. When the existence of a corporation is alleged in a complaint in a criminal action, it is not necessary to present its articles of incorporation for the purpose of proving the legal existence of said corporation. It is sufficient ordinarily to prove that said corporation existed and had been doing business as such. After the defendant had recognized the existence of the corporation for a period of twenty to twenty-five years, and had received money from it in large sums, he should not be heard to dispute the existence of said corporation. When it is proven that an individual has dealt with a corporation, thereby recognizing its existence, he will be, under facts such as are proved in the present case, estopped to deny the corporate existence of said corporation. (*Tipton Fire Company vs. Barnheisel*, 92 Ind., 88; *Lakeside Ditch Company vs. Crane*, 80 Cal., 181; *Skinner vs. Richardson, etc., Co.*, 76 Wis., 464.)

The appellant insists, under the provisions of the various Codes which he cites, that the law requires the said corporation to do many things before it was authorized to exist and to do business within the Philippine Islands. Admitting that the law does require it to do many things which were not proved during the trial of the cause, yet there is a presumption in favor of the corporation that all of the requirements of the law had been complied with. (Par. 31, sec. 334, Code of Civ. Proc.) The presumption is that the provisions of law have been complied with by the corporation. (*Sargent vs. Webster*, 13 Metcalf (Mass.), 497; *Ashtabula, etc., R. R. Co. vs. Smith*, 15 Ohio St., 328; *Bank of Minneapolis vs. Griffin*, 168 111., 314.)

Taking into consideration the proof adduced during the trial of the cause, together with the fact that the defendant himself had dealt with the offended corporation as such, we are not inclined to modify the sentence of the lower

court by reason of the first assignment of error.

With reference to the second assignment of error the appellant contends that the lower court committed an error in its finding of facts in holding that he appropriated the difference between the sum of money received from the offended corporation for the purchase of stamps and the amount which he actually used in the purchase of stamps. The evidence shows that the defendant represented to the offended corporation that he needed the sum of P3,487.50, for the purpose of purchasing internal revenue stamps. Upon his representation the offended corporation executed and delivered a check payable to the Collector of Internal Revenue, in the sum of P3,487.50 (Exhibit D) on the 1st of October, 1914. On the same day (October 1, 1914) the defendant signed a receipt (Exhibit C) acknowledging that he had received from the offended corporation the sum of P3,487.50 to be used for the purchase of internal-revenue stamps. It was a part of the duty of the defendant to purchase internal-revenue stamps for the offended corporation, and in order to do that it became his duty to make a report to the proper officers of the offended corporation, from time to time, showing the number of stamps which were necessary. By reference to Exhibit A it will be found that he made a representation to one of the officers of the corporation, on October 1, 1914, upon a blank furnished by the internal-revenue department, showing the number of stamps which were necessary. Exhibit B is a stub in the book from which Exhibit A was taken, and shows exactly the same facts with reference to the number of stamps necessary to be purchased, as represented by the defendant. The amount which the defendant claimed was necessary in both Exhibits A and B was P3,087.50. On the reverse side of said Exhibit C the defendant indicated again the number of stamps which were necessary to be purchased. In his representation concerning the number of stamps necessary to be purchased, as it appears on the back of Exhibit C, it will be noted that in that representation he claimed that he needed the sum of P3,487.50 instead of P3,087.50, as he had theretofore represented in Exhibit A. Comparing the two statements, with reference to the number of stamps which he claimed were necessary, as represented by Exhibits A and B and that which appears upon the back of Exhibit C, it will appear that in the second item on Exhibit A the sum was represented as P800, while the second item on the back of Exhibit C is P1,200; in other words, when he made his representation to the officer of the corporation who delivered to him the check, he represented that he needed the sum of P3,487.50, whereas he had theretofore represented to other officers of the corporation who had nothing to do with the delivery of the money to the defendant that he needed the sum of P3,087.50, and the fact is that he purchased stamps amounting to P3,087.50 only. The record further shows that the defendant presented Exhibit A to the receiving teller of the Bureau of Internal Revenue, together with the check Exhibit D, and received the number of stamps represented by Exhibit A, amounting to the sum of P3,087.50, and received from said receiving teller the difference between the amount paid for the stamps and the amount of said check (P3,487.50), or the sum of P400, in bank notes. The record further shows that the stamps thus purchased were delivered to the offended corporation, but no account is given or explanation made, except that which is found in the confession made by the defendant in his letter Exhibit E concerning the P400 in cash which he received as change from the receiving teller. So far as the record shows the P400 is still in his possession. He has neither offered to return the same to the offended corporation nor to account for it.

In the third assignment of error the appellant contends, in fact, that the defendant had an open account with the offended corporation and that there was still due him on said account certain sums of money. The fact that there was an account between the offended corporation and the defendant is not denied. It is asserted, and the record sustains the contention, that there was no account between the offended corporation and the defendant with reference to the "stamp account." The record shows that the offended corporation, from time to time, upon the representation of the defendant, delivered to him certain sums of money for the purpose of purchasing the necessary internal-revenue stamps; that the checks issued to him from time to time were always for the exact number of stamps necessary and that the delivery of the stamps always balanced the particular account. There was

no open account with reference to the "stamp account" between the defendant and the offended corporation. The "stamp account" was closed when the check was made to the Collector of Internal Revenue and the stamps were delivered. The check was made out to pay for a certain number of stamps, which number the defendant had theretofore represented as necessary. The defendant was not charged with that amount nor with any other amount relating to the stamps. It was his duty simply to ascertain the number of stamps required from time to time, to obtain a check for the amount necessary, payable to the Collector of Internal Revenue, and to use the same in their purchase. Thereafter his responsibility was to purchase the necessary stamps. When he, by the method adopted by him in the present case, appropriated to his own use any of said amount or sum he committed a crime against his employer, the offended corporation.

With reference to the fourth assignment of error, it may be noted that the sentence of the lower court is not based upon the confession of the defendant, as found in Exhibit E. The lower court was convinced that the defendant was guilty of the crime charged, without reference to said confession. The alleged confession is found in Exhibit E. Exhibit E is a long letter written and signed by the defendant directed to the offended corporation. The letter bears date of the 19th of March, 1915, and was written several days before the complaint in the present case was presented. The complaint was not presented until nearly twelve days after said letter was addressed to the employer of the defendant. In said Exhibit E the defendant admits that he and another employee had from time to time, from the 12th of July, 1911, until the 8th of March, 1915, appropriated money belonging to the offended corporation, in the sum of more than P40,000. Said Exhibit E contains a description of the method by which said illegal appropriations were made. If his statements in said letter are true, the method adopted in the present case by which he appropriated the sum of P400 is substantially the same method which he had adopted in the illegal appropriation of the other large sums.

The appellant alleges that said confession was given under a promise of immunity. The record does show that some subordinate employees of said offended corporation did suggest to the defendant that an open confession from him, together with a return of the funds misappropriated, might relieve him from prosecution on the part of the offended corporation. Perhaps the confession was made under the hope that it would relieve him from criminal responsibility. There is nothing in the record, however, which shows that the inducement offered was sufficient to estop the offended corporation from asking for the prosecution of the defendant for his crime. Neither was it made by any person having authority sufficient to bind said corporation. We are fully persuaded that the confession found in Exhibit B was made freely and without a promise or a hope of reward, and is therefore admissible as evidence against him. Moreover, we find from a careful examination of the entire record that the evidence adduced during the trial of the cause, without considering said Exhibit E, is sufficient to show that the defendant is guilty of the crime charged in the complaint in the manner and form therein described.

Having found that none of the alleged errors assigned by the appellant were committed by the lower court and that the evidence is sufficient to show the guilt of the defendant beyond a reasonable doubt, we are of the opinion and so hold that the sentence of the lower court should be and is hereby affirmed, with costs. So ordered.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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