

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ROMAN INFANTE AND TOMAS BARRETO, DEFENDANTS AND APPELLANTS.

G.R. No. 11449. January 25, 1917

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal taken from the judgment of the Court of First Instance of Manila, convicting the appellants, Roman Infante and Tomas Barreto, of the crime of falsification of a private document and sentencing both and each of them to be imprisoned for one year eight months and twenty-one days, to pay a fine of P1,000 each and in case of insolvency to undergo the corresponding subsidiary imprisonment, to suffer the accessory penalties prescribed by law and each to pay one-half the costs of the proceedings.

The proceedings were had by virtue of the following information filed by the assistant prosecuting attorney for the city of Manila:

"The undersigned charges Roman Infante and Tomas Barreto with the crime of falsification of a private document, committed as follows:

"That, on or about May 20, 1914, in the city of Manila, Philippine Islands, the said Roman Infante and Tomas Barreto, conspiring and confederating with each other and mutually assisting one another did, willfully, unlawfully, criminally, and fraudulently falsify a private document, to wit, a pawn ticket, No. 5158, issued by the 'Monte de Piedad y Caja de Ahorros de Manila/ an institution duly organized and doing business in the city of Manila, Philippine Islands, and did make in the said pawn ticket the following alterations or changes:

"They erased the name 'Francisco Martinez,' which had been written in the lower part of the pawn ticket and immediately below the words 'the pawner/ and substituted therefor the name of 'Eusebio Mapalag.' They changed the words 'eight pesos' (the amount for which, according to the said document, a certain gold coin was pawned) for the words 'three-hundred and fifty pesos;' the figures 'P10' (which, in the said document, indicated the amount of the valuation of the said gold coin), for those of 'P500;' and the words 'an American five dollar gold piece,' (which, in the said document, were originally inserted as a description of the pawned coin), for the following words: 'An 18 carat gold necklace, with an 18 carat gold pendent set with one large and sixteen small brilliants, and an 18 carat

gold marquise ring inset with 14 large and small brilliants;' whereby it was made to appear in the said document that an 18 carat gold necklace with a pendent of the same metal, with one large and 16 small brilliants and an 18 carat gold marquise ring inset with 14 large and small brilliants, both appraised at P500, Philippine currency, had been pawned in the said establishment for the sum of P350, Philippine currency, by a person named Eusebio Mapalag, when, as a matter of fact and as the said accused very well knew, the article pawned was only an American five dollar gold piece, valued at P10, Philippine currency, and that it was pawned for P8, not by Eusebio Mapalag, but by a person named Francisco Martinez;—acts committed with intent to injure Hugo Roseburg, to whom the said accused delivered the said pawn ticket as security for a loan, and to prejudice the said

'Monte de Piedad y Caja de Ahorros de Manila.' With violation of law."

When the case was called for hearing, counsel for the defendants moved for a separate trial, which motion was granted by the court.

It appears that on about the 20th day of May, 1914, Hugo Roseburg, the complaining witness, was the owner of the pawnshop La Insular, of which the defendant Roman Infante was the manager under a contract with Roseburg, by the terms of which he was to receive, besides his salary, a certain percentage of the gross business transacted. In his character as manager, the defendant Infante had full control of the pawnshop, the proprietor being present only at certain intervals of the day, and the greater part of the business being transacted by Infante personally and independently of any intervention on the part of Roseburg.

On or about the 3d day of November, 1914, one Alejandro Fernandez pawned in the La Insular pawnshop, for the sum of P700, three pawn tickets purporting to be pawn tickets of the Monte de Piedad, of which sum P500 was paid in cash and P200 by check. One of these tickets was Exhibit B, pawn ticket No. 5158, series of 1914, of the Monte de Piedad, which the prosecution alleges was falsified by the defendants. The theory of the prosecution, which is fully sustained by the evidence, is that Infante induced his co-accused, Barreto, to falsify these pawn tickets so that when falsified they could be used in the La Insular pawnshop, of which Infante was manager, as pledges, upon which an amount of money might be advanced with apparent propriety, far in excess of that which would be justified upon presentation as pledges of the original pawn tickets.

The voluntary confessions of both the defendants and appellants to the witness Nelson, read together with the other evidence of record, leave no room for reasonable doubt as to their guilt of the crime of falsification of the private document of which they were convicted in the court below.

Counsel for Infante contends that the confession of Infante should not have been admitted in evidence over his objection, because, as counsel, insists, it does not affirmatively appear that it was made voluntarily. Nelson testified in substance that Infante voluntarily confessed that he had directed his co-accused Barreto to falsify the particular pawn ticket in question in this action, in the same way as he, Infante, had explained to Nelson at a former interview that a number of other tickets had been falsified. The undisputed evidence of record discloses that this statement was made voluntarily, but counsel contends that it does not appear that the statements made at the former interview were made voluntarily, and that all reference thereto should have been stricken out of the record. We cannot agree with counsel in this regard. There is nothing in the record to suggest that the statements made at the former interview were not made voluntarily; and even if they were, the evidence clearly discloses that the statement made at the latter interview was not made under any form of duress; and on that occasion this accused voluntarily admitted the truth of certain facts, which taken together with the other evidence of record, conclusively establish his guilt of the crime of which he was convicted. Whatever were the conditions under which the statements made at the former interview were made, there can be no doubt as to the voluntary character of the statement made at the latter interview. The accused incorporated into his statement made at the latter interview the substance of what he had said at the former interview, and in doing so there can be no doubt that he was acting voluntarily and of his own free will.

As to the contentions made on behalf of Barreto that he should not be convicted of the crime of falsification because it does not appear that he personally profited thereby, it is sufficient to indicate that the gravamen of the offense of falsification of a private document consists of the damage done to another or the intent to damage another by the commission of the falsification, and that under the terms of the law defining and penalizing the offense, proof that the accused profited or hoped to gain or profit by the falsification is not necessary to sustain a conviction. The language of the statute is as follows:

"Any person who, to the damage of another, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in article three hundred shall suffer the penalty of presidio correctional in its minimum and medium degrees and be fined in a sum not less than six hundred and twenty-five and not more than six thousand two hundred and fifty pesetas." (Article 304, Penal Code.)

The evidence clearly discloses that the physical changes on the face of the pawn ticket were made by Barreto and that he was induced to commit the falsification by his co-accused Infante. There can be no question, therefore, that both were guilty as principals.

The evidence clearly sustains the finding of the trial court that the appellants conspired together to commit the crime with which they were charged, and further that they actually committed the crime. They were convicted in the court below of the commission of the consummated crime, not of a mere conspiracy to commit it. There is no merit, therefore, in the contention of counsel that the court erred in finding the existence of a conspiracy. Counsel's contention is based on the provisions of article 4 of the Penal Code which declare that a conspiracy to commit a crime is punishable only when the law specifically prescribes a penalty therefor. While it is true that penalties cannot be imposed for the mere act of conspiring to commit a crime unless the statute specifically prescribes a penalty therefor, nevertheless the existence of a conspiracy to commit a crime is in many cases a fact of vital importance, when considered together with the other evidence of record, in establishing the existence of the consummated crime and its commission by the conspirators.

What has been said disposes of the numerous assignments of error by counsel for these appellants other than those based upon alleged error by the trial judge in making certain findings of fact with relation to Infante, which, although they are sustained by the evidence adduced at the separate trial of Barreto, are not sustained by the evidence admitted at the trial of Infante. It appears that the trial judge did in fact include in his findings of fact with relation to Infante's participation in the crime, a number of details which were not formally developed by the evidence adduced at his separate trial; but a careful examination of the whole record satisfies us that the inclusion of these findings in the record in no wise affected the final result, and that it was error without prejudice which does not justify or require a reversal of the judgment convicting and sentencing this appellant.

We find no error in the proceedings prejudicial to the substantial rights of either of these appellants, and the judgment entered in the court below should, therefore, be affirmed, with one-half of the costs in this instance against each of them. So ordered.

Torres, Trent, and Araullo, JJ. concur.

Moreland, J., concurs in the result.

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