

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ELADIO CINCO AND EUSEBIO REDOÑA, DEFENDANTS AND APPELLANTS.

G. R. No. 12127. October 13, 1917

Ponente: STREET, J.

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STREET, J.:

This appeal is brought by the defendants Eladio Cinco and Eusebio Redoña to reverse a judgment of the Court of First Instance of the Province of Samar, finding them guilty of the falsification of a private document.

It appears that Eusebio Redoña had been deputized to conduct a sale under an execution issuing from the Court of First Instance of said province, which sale was advertised to take place at the municipal building in Borongan, Samar, on the 10th day of October, 1914. On that day the property was properly put up at auction, but according to the testimony of the witnesses for the prosecution, no bid or offer for the same, or any part thereof, was made by any person during the lawful hours of sale, and as a result the property remained unsold. On the other hand the witnesses for the defense testify that the defendant Eladio Cinco made a bid and became the purchaser of the property as sole bidder.

The theory of the prosecution is that no such sale took place and that by collusion between the defendants a false return was made showing that Eladio Cinco had become the purchaser of the property. The trial court so found, and we see no reason for disturbing this finding. At any rate the defendant Redoña, as deputy sheriff, prepared a return of the execution showing that Cinco had become purchaser at the execution sale, and that the purchase price (P160) had been paid by him to Redoña.

It further appears that prior to the day of sale the execution creditors had prepaid the estimated costs incident to the sale) and as a consequence they were entitled to be reimbursed for such costs from the proceeds of the sale, as well as to receive the principal amount to be made by execution, any surplus being payable of course to the debtors in the execution. As the principal debt to be made by the execution amounted to P156.24, it is obvious that the judgment creditors were entitled, by way of the principal debt and cost, to the entire proceeds of the sale.

In order to avoid the necessity of paying cash for the entire property, Eladio Cinco approached the judgment creditors, and made an arrangement whereby they delivered to him their joint receipt, acknowledging the payment of P160, the proceeds of the sale. This receipt was obtained by Cinco for the purpose of showing that the purchase price had been satisfied, but as a matter of fact he paid them only P50, it being agreed between him and them that he could pay the balance at his convenience.

When the deputy sheriff Redoña came to make up his return it seemed to him that what was needed was not a receipt from the judgment creditors to Eladio Cinco but a receipt from them to himself, showing that the money had been paid by him as deputy sheriff to the proper parties. Accordingly another and different receipt was prepared by Eladio Cinco under the direction of Redoña. If these proceedings had been regular the proper course would have been to surrender the first receipt and procure the judgment creditors to sign the new one in its place. Instead of this, the defendant Eladio Cinco wrote the names of said creditors, without their knowledge or consent,

at the foot of the receipt and placed cross marks between the Christian name and surname in each instance, the fact being that these people were illiterate and in any event would necessarily have signed by making their marks. The present prosecution is based upon the falsification of said receipt. The original receipt has not appeared in evidence and was doubtless destroyed or suppressed; but the false receipt was attached by Redoña to his return of the execution.

The principal victim of the scheme revealed in the record were the debtors in the execution, for as a result of the supposed sale they were dispossessed of their land and as the proof shows suffered considerable damage thereby. But as the official return to the execution is a public document, no serious effort has been made to secure a conviction of the defendant Redoña upon the charge of falsifying the return, owing to the decision of the Supreme Court of the United States in *Weems vs. United States* (217 U. S., 349); and the judgment of conviction in the lower court is exclusively based on the charge of the falsification of the private document, the receipt to Redoña, in violation of article 304 of the Penal Code.

In order to sustain a conviction for the falsification of a private document it is necessary to prove that the falsification was committed to the damage of another, or with the intent to cause such damage. That this condition is fulfilled in the present case appears obvious for two reasons. In the first place the falsification was effected for the purpose of giving the appearance of legal validity to the sale, whereby the debtors in the execution, being the owners of the land, were wrongfully dispossessed; and in the second place the receipt itself purported to extinguish an obligation which had not been in fact satisfied. It will be noted that the receipt to Redoña was not a counterfeit of the receipt originally given to Cinco but was a new receipt to Redoña. Besides as we have already seen, Eladio Cinco had paid only P50 to the judgment creditors when the first receipt was taken by himself; and consequently the debt in any event had been only in part extinguished.

Furthermore the case for the prosecution is evidently not affected by the fact that the whole transaction was probably fraudulent and that the sale could have been avoided in a proper proceeding. The falsification of a receipt may clearly sustain a conviction notwithstanding the fact that the principal debt may be voidable; for the receipt shows the absolute extinguishment of the liability to the extent of the amount stated therein.

The case against Eusebio Redoña, as coauthor in this crime, is not quite so well made out as that against Eladio Cinco. We have it on Redoña's own testimony that the receipt in question was written by Eladio Cinco under Redoña's directions and in his presence. He also testified that the names of the three purported subscribers were also written by Cinco upon the same occasion and likewise in Redoña's presence. But Redoña says that the marks of the three subscribers (who were illiterate) were really and truly made by themselves respectively at the same time, they being then and there present. This testimony if true would show that no falsification was committed and that the marks accompanying the signatures were genuine. Other proof, however, which is conclusive, shows that the marks were made in the absence of the parties whose names were signed to the receipt; and the following peculiarity of the signatures was proved by a competent expert, namely, that in each case the defendant Cinco first wrote the Christian name, then the mark, and finally the surname, instead of making the mark after the full name was written. If the marks had been made by the purported subscribers they would naturally have been written after the full names had been written by Cinco. This peculiarity of the signatures, namely, that the marks were written immediately after the Christian names were written and before the surnames were written was fairly apparent to the eye of any person reasonably familiar with the art of writing. Now if we accept as proved the fact that the marks were thus written, it necessarily follows that upon his own testimony Redoña was present at the act and was guilty as one of its authors. Redoña says that he immediately carried the receipt away, and it was used by him for the purpose for which it was intended. There is also ample proof that the whole fraudulent transaction regarding the sale, of which the fabrication of this receipt was a feature, was the result of collusion and conspiracy between

the two defendants.

With reference to the legal aspects of the offense, it is clear that there can be no conviction under article 304 of the Penal Code in relation with subsection 1 of article 300, since it is not shown that the marks, which were intended to impart the appearance of authenticity to the false signatures were made in imitation of the genuine marks of the parties whose names were signed. It has been the uniform ruling of this court that where a person signs the name of another to a document without attempting to imitate his signature, he cannot be convicted under paragraph 1 of article 300. (U. S. vs. Paraiso, 1 Phil., 66; U. S. vs. Roque, 1 Phil., 372; U. S. vs. Buenaventura, 1 Phil., 428; U. S. vs. Balmori, 1 Phil., 661; U. S. vs. Castro, 6 Phil., 10.)

It is, however, the opinion of the court that the offense in this case is punishable under article 304 of the Penal Code, in relation with subsection 2 of article 300, notwithstanding statements to be found in some of the cases tending to a different conclusion. (U. S. vs. Buenaventura, 1 Phil., 428.) In *United States vs. Braga* (12 Phil., 202), the accused had used a rubber stamp bearing the name of the company by which he was employed, signing his own name in connection therewith. He had authority so to use the stamp for the purpose of buying goods for the company, but not for the purpose of obtaining money. It was held that in so signing an order by which he obtained money he was guilty of falsification under article 304 of the Penal Code, in connection with subsection 2 of article 300, for the reason that in effecting the transaction in question he made it appear that the company was a party thereto when, as a matter of fact, it did not participate therein.

In the court below, the defendant Cinco was sentenced to two years, eleven months and ten days, presidio correccional in its minimum and medium degree, while the defendant Redoña was sentenced to one year, eight months and twenty-one days, presidio correccional in its minimum and medium degree. We believe that the discretion of the judge in imposing a more severe penalty upon Eladio Cinco was properly used. Each defendant was also sentenced to pay a fine of P125 and to undergo the accessory penalties and subsidiary personal liability in case of insolvency as provided by law, and to pay one-half of the costs.

As we find no error prejudicial to the defendants in the action of the court below the judgment of said court should be affirmed with costs. So ordered.

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

DISSENTING

Malcolm, J.:

I dissent. The crime charged is falsification of a private document. As all know, the Supreme Court of the United States in *Weems vs. United States* (217 U. S., 349), handed down in 1910, at least made article 300 of the Penal Code a nullity, and possibly had the same effect on other articles of the Penal Code, because of their imposing a cruel and unusual punishment. In 1915, when this prosecution was initiated, the *Weems* case still being effective and the Legislature having taken no further action, the only provision of law which could be applied was article 304 of the Penal Code. But article 304 could not exist alone without article 300. It relates back to "the acts of falsification enumerated in article three hundred,"—that is, to an article previously determined by the highest tribunal to be void. In other words, article 304, in accordance with the rules of statutory construction, cannot be severable from article 300 so that it may be read and stand by itself. As said by this court "the language used in the invalid part of a statute can have no legal force or efficacy for any purpose whatever, and, what remains must express the legislative will independently of the void part, since the courts have no power to legislate." (*Barrameda vs. Moir* [1913], 25 Phil., 44. See also *Pollock vs. Farmers' Loan & Trust Co.* [1895], 158 U. S., 601.)

The effect of the majority decision is to approve of a prosecution begun in 1915 under a law which did not exist. The defendants and appellants, should be released from custody.

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