

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEE CHENG POE, DEFENDANT AND APPELLANT.

G.R. No. 13969. January 15, 1919

Ponente: MOIR, J.

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MOIR, J.:

Lee Cheng Poe was accused in this case in the Court of First Instance of Manila of the crime of estafa committed as follows:

"The undersigned charges Lee Cheng Poe with the crime of estafa, committed as follows:

"That on or about March 23, 1917, in the city of Manila, Philippine Islands, and within the jurisdiction of this court, the herein accused, Lee Cheng Poe, did willfully, unlawfully, and criminally, and by means of deceit perpetrate as follows: that said accused, alleging that he had an urgent need of the sum of P1,500, which sum, as he stated, he was unable to obtain from the banks in view of the fact that it was not then the hour for the transaction of business, delivered to one Gan Yong the following checks: No. A-287392, issued March 24, 1917, by said accused Lee Cheng Poe, on the Hongkong & Shanghai Banking Corporation, to the order of the bearer and for the sum of F200; No. A-287393, issued on March 24, 1917, by the accused Lee Cheng Poe, on The Hongkong & Shanghai Banking Corporation, to the order of the bearer and for the sum of P300; and No. 90326, issued on March 24, 1917 by one Ang Siong Pun, on The Bank of the Philippine Islands, to the order of the accused Lee Cheng Poe and for the sum of P1,000; that said three checks duly endorsed in favor of said Gan Yong and delivered in payment of the aforementioned sum of P1,500 induced said Gan Yong to deliver the said sum of P1,500, to the accused who in truth and in fact intended to defraud said Gan Yong by suspending and causing to be suspended, as in fact he did suspend and instructed the respective banks to suspend the payment of said checks, under the false pretext that he had accidentally lost these checks, for which reason the respective banks refused to pay the checks on their presentation, when, in reality and as the accused well knew, said checks had not at any time been lost, but, on the contrary, had been delivered to said Gan Yong for a valuable consideration, to wit, the sum of P1,500, the face Value of the said three checks: all of which acts were performed to the injury and prejudice of the aforesaid Gan Yong in the said amount of P1,500, the equivalent of 7,500 pesetas, and in violation of law."

The case was duly heard in the Court of First Instance of Manila and the accused was found guilty and sentenced February 1st, 1918, by the Honorable M. V. del Rosario, judge, to one year, eight months and twenty one days of presidio correctional, to indemnify the offended party in the sum of P1,500, with subsidiary imprisonment in case of insolvency and to pay the costs.

From this decision the accused appealed to this court. On November 15th, 1918, before the argument of the case in this court the attorney for Lee Cheng Poe presented a motion for a new trial based on affidavits annexed to the motion.

These affidavits are for the purpose of attacking the credibility of witnesses for the prosecution by showing that they made statements to the declarants that their testimony given at the trial was not true. The affidavit of Tan

Chee is to the effect that Tan Bau, a relative, came to his house and told him there was a question between Gan Yong and Lee Cheng Poe, because Lee had suspended payment at the banks on some checks, and that on asking him what had passed Tan Bau said Lee had lost more than one thousand at gambling with Gan Yong and as he did not have the money he paid with checks and that later he learned he had been cheated by Gan Yong and the other players and that was the reason he stopped payments on the checks; that if it was proven that the checks were given for a gambling debt Gan Yong could not recover and that Gan Yong had consulted an American secret police who had advised him to say he "bought" the check, and that he, the affiant, did not want to mix in it because Gan Yong was a very bad man.

The declaration of Sung Ket is to the same effect as to the origin of the checks, but he says he was approached by detective Christian, who was in the United States at the time of the trial and told that he and Algara would testify in favor of Gan Yong, to the effect that the checks were cashed and that they would share the money with Gan Yong and wanted Sung Ket to be a witness also for Gan Yong and he should have a share of the money.

If these rumors that the checks were given for a gambling debt were true this defense should have been presented to the lower court. The Government's witnesses should have been impeached at the trial of the case.

This court will not grant a motion for a new trial when its only object is to impeach witnesses presented by the prosecution unless the circumstances are very unusual. Trials should be terminated as speedily as possible and the solemn judgment of a trial court should not be lightly disturbed.

The motion for a new trial is denied.

On the merits of the case the defendant sets up the following assignments of error:

- "1. The court erred in declaring the accused committed the acts charged against him in the querella [complaint].
- "2. The court erred in declaring that such acts constitute the crime of estafa.
- "3. The court erred in applying article 534, paragraph 3, instead article 541 of the Penal Code."

The accused in the lower court presented the defense that the checks issued by him in the sum of P200 and P300, respectively, and the check endorsed by him in the sum of P1,000 were lost, or else they must have been stolen from his possession.

The evidence shows that the accused after the closing of the banks on the afternoon of March 23d, 1917, went to Gan Yong and presented two checks drawn by himself on the Hongkong & Shanghai Banking Corporation in the sum of P200 and P300, respectively, with payee blank, and one check drawn by Ang Siong Pun to the order of Lee Cheng Poe on the Bank of the Philippine Islands, for the sum of P1,000 which check was indorsed in blank by Lee Cheng Poe and that Gan Yong cashed the checks paying to the accused the sum of P1,500. The checks are all dated March 24, 1917. Gan Yong asked why they were dated March 24th when it was then the 23d, but was told by Lee Cheng Poe that it made no difference as the checks could not be presented to the bank till the next day, the 24th. The checks were presented to the bank for payment on the 26th a Sunday having intervened, and payment had been stopped by the drawers of the checks on the 24th. The reason the accused stated for wanting the checks cashed on Friday afternoon was that he needed the money as he had to go to the Customs House the next day before the banks would open and give a cash bond for some Chinese about to enter the Islands. These facts are vehemently denied by Lee Cheng Poe who says the checks were drawn by him for expenses of his tienda and were lost and came into the possession of Gan Yong wrongfully, and he intimates they might have been stolen by Gan Yong, who he says was in his tienda on the 24th after the checks had been drawn.

There can be no doubt that the evidence fully sustains the conclusion of the trial court that Lee Cheng Poe gave the checks to Gan Yong and received the money represented by them, and that on the next day he stopped payment on the checks and did not return the money to Gan Yong.

The attorney for the defendant argues at great length that if the facts in the case are as testified to by Gan Yong still there is no crime involved, but that it was simply a business transaction, and the checks are evidences of debt in favor of Gan Yong who can, if he desires, bring a civil action for the recovery of the money.

There can be no doubt that there are times in business transactions which completely justify a person in stopping the payment of checks issued by him, and that he incurs no criminal responsibility by so doing. But if these checks were issued by the accused and he received the money for them, as charged in the querella [complaint] and as found by the lower court, from the offended party, Gan Yong, and if at the time the accused cashed the checks he had the intention of stopping payment on them, these facts would constitute the crime of estafa. The facts set up are not the ordinary ones of business where goods or effects are bought and then payment stopped on checks given for goods. These checks were given for money, and after getting the money the defendant stopped payment on them. He made no explanation to Gan Yong. He did not return the money, but pretended the checks had been lost by him and were not lawfully in the possession of Gan Yong. When the witness Chicote and the notary Lacson went on March 26th to Lee Cheng Poe to demand payment of the checks, the defendant refused payment, but said nothing about the checks having been lost. Exhibits E and F do not make any mention of the checks having been lost or stolen. These after acts and failure to act force the conclusion that at the time Lee Cheng Poe cashed the checks he intended to stop payment on them at the banks.

In a similar case, the supreme court of Spain held as follows:

"A certain person to whose order some bills of exchange were drawn, due to the commercial and friendly relations which he had with the holder of the bills, requested of the latter the delivery of the bills so that he might include them among those of the previous month, assuring him that he had the money ready to pay them on the following day; the holder acceded to this request, and the former, having obtained a written acknowledgment of receipt on the bills, delivered these to the drawee, who afterwards refused to pay them, claiming that his accounts with the holder had been settled. The defendant having been convicted of estafa filed an appeal, which was dismissed by the supreme court, on the following grounds, to wit: that the crime of which the defendant was convicted did not consist in the mere failure of payment of the bills against him, which he duly accepted, but in the abuse of confidence of which he availed himself to obtain the bills, provided with the holder's acknowledgment of receipt, not under a generic promise to pay their value, but a concrete and specific promise, inductive to the accomplishment of the crime to deliver on the following day to the Banco de España, as an item in the creditor's account current, the sum in silver which the defendant said he had, and in the further fact of his not having made such delivery, nor effected such subsequent payment, and afterwards denying, without proof in his support, that he was owing said sum; that if such acts do not, in reality, constitute an imaginary or fictitious transaction like those referred to in No. 1 of article 548 of the Penal Code, they contain all the elements of the crime described in this provision, as they show that the defendant defrauded his creditor by dispossessing him of his certificate of credit, and naturally to the latter's prejudice, inasmuch as he rendered difficult the expeditious means of making a collection, which was still pending, and availed himself for this purpose of a deceit similar to that employed by one pretending to have property that he had not." (Decision of May 26, 1891; the Penal Code, Hidalgo, vol. 2, p. 770).

In the present case the accused had the money in the bank, and, instead of setting up any valid excuse for stopping payment on the checks, pretends he had lost them and for that reason stopped payment. If the pretended defense that the checks were lost or stolen had been the true defense, undoubtedly the accused would have taken action to recover the checks or to have them cancelled by the court after he knew that they were in the possession of Gan Yong, and he would have stated in his notices to the banks that they had been lost.

This court cannot hold that such a transaction constitutes only a commercial transaction, and that the liability of the accused is simply a civil liability. The acts constitute a criminal offense, and he is liable criminally.

The third assignment of error applies simply to the application of the penalty if the court finds that the accused is guilty as charged.

Article 534 of the Penal Code provides that the penalty of presidio correctional in its minimum and medium degrees shall be imposed upon those who are guilty of estafa of a sum the value of which exceeds 6,250 pesetas.

The value in this case is 7,500 pesetas.

Section 1 of article 535 says;

"Any person who shall defraud another by the use of any fictitious name, or by falsely pretending to possess any power, influence, qualification, property, credit, agency, or business, or by means of any similar deceit other than those hereinafter enumerated."

The facts in this case constitute a deceit similar to those mentioned in said article.

Article 541, which the accused invokes in his behalf, provides that he who shall defraud or prejudice another by using any deceit not found expressed in the foregoing articles shall be punished with a fine equal to double that of the loss occasioned. If article 535 is applicable, as is clear, then article 541 is not. The accused was properly sentenced under articles 534 and 535.

The penalty applied by the lower court is the minimum of the medium degree prescribed by the third paragraph of article 534. The judgment is correct and must be affirmed, with costs of both instances against the accused. So ordered.

Arellano, C.J., Torres, Carson, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

Johnson, J., did not take part.

Judgment affirmed.

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