

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VALENTIN VELAZCO, DEFENDANT AND APPELLANT.

G. R. No. 16966. August 24, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Valentin Velazco, Guy Bian Ym, Co Banling were charged in the Court of First Instance of Manila with the crime of estafa under the following information:

"That on or about August 23, 1919, in the city of Manila, P. I., the said accused conspiring conniving with each other mutually assisting one another swindled the Philippine National Bank in the following manner: the accused Valentin Velazco, by means of the false statement fraudulent misrepresentation made on said date at said place to the Philippine National Bank to the effect that he had sufficient funds in the Bank of the Philippine Islands, that his coaccused, the said Guy Bian Ym Co Banling also had sufficient funds in the International Banking Corporation also of this place, induced the agents, representatives employees of the Philippine National Bank to believe said statement to cash the following checks:

Name of the maker.

Number of check.

Date.

Amount.

Bank.

{A 354870

Aug. 23, 1919

P6,500

}

Valentin Velazco-

{B 354871

---do-----

5,000

}Bank of the Philippine Islands.

{C 354872

---do-----

5,500

}

{D56599-D

Aug. 22,1919

5,000

}

Guy Bian Ym-----

{E56598-D

---do-----

4,000

}

{F56600-D

---do-----

3,000

}

{G48658-D

Aug. 23,1919

6,200

}International Banking

{H48659-D

---do-----

5,000

}Corporation.

Co Banling-----

{I 56602-D

---do-----

4,000

}

{J 56603-D

---do-----

3,800

}

making a total of P48,000, when in reality, as the accused Valentin Velazco well knew, he did not have any funds in the Bank of the Philippine Islands with which to pay or cover the amount of the said three checks issued by him, his two coaccused, the said Guy Bian Ym Co Banling neither had any funds in the International Banking Corporation with which to pay or cover the amount of the checks above described; that in the commission of this offense the other accused Guy Bian Ym Co Banling directly effectively assisted by means of an act without which the offense could not have been consummated, that is, with knowledge of the criminal plans of the accused Valentin Velazco of the fact that they did not have sufficient funds in the International Banking Corporation, they subscribed issued the checks against the International Banking Corporation, in order that the accused Valentin Velazco might be able fraudulently to negotiate said checks, as was in fact done, in the Philippine National Bank, in this manner defrauding injuring the said institution in the said sum of P48,000, equivalent to 240,000 pesetas."

Before the commencement of the trial, the accused Valentin Velazco asked for a separate trial, which was granted by the court. The prosecuting attorney on the other h asked for the dismissal of the cause as to the accused Guy Bian Ym Co Banling, alleging that the testimony of said accused was essential necessary to secure the conviction of the principal defendant, Valentin Velazco, that the latter was more guilty than his two coaccused. The trial court, in view of these statements of the prosecuting attorney, dismissed the case with respect to the accused Guy Bian Ym Co Banling, ordered the trial to proceed against the present appellant Valentin Velazco, who was afterwards found guilty of the offense with which he is charged was sentenced by the trial court to suffer imprisonment for one year, eight months twenty-one days of presidio correccional to pay the costs, but without imposing upon him the penalty of indemnifying the offended party for the reason that the accused Guy Bian Ym Co Banling paid the amount fraudulently obtained, one month after the filing of the information.

It appears from the evidence that in the morning of August 23, 1919, Valentin Velazco, upon the pretense that it was necessary for him to secure the confidence of the National Bank obtain from it a credit to finance a business which he intended to establish, asked Guy Bian Ym Co Banling for the three checks (Exhibits K, L, M) issued by him against the National Bank, representing a total of P31,000, that they be changed with personal checks of the said Guy Bian Ym Co Banling. The latter, by reason of their confidence in Velazco, issued several checks, the first issuing five checks which are Exhibits D, E, F, I, J, the second, two checks Exhibits G H, that is, in all seven checks against the International Banking Corporation amounting to a total of P31,000; but with the warning not to negotiate them until the following Monday, because they (the two makers) did not have on said day, August 23, 1919, sufficient funds to meet said checks. Valentin Velazco received the checks but notwithstanding the warning made to him by the makers, on the same morning of August 23, 1919, he deposited in his current account in the National Bank the five checks of Guy Bian Ym the two checks of Co Banling together with three checks issued by him (Velazco) against the Bank of the Philippine Islands (Exhibits A, B, C) in all ten checks representing a total of P48,000. Due to the confidence which the employees of the National Bank had in Velazco as client, the National Bank accepted the said checks credited them in his current account. On the same morning, August 23, 1919, Valentin Velazco drew from the National Bank P48,000 by means of the checks drawn by him attached to the record of this case.

The National Bank presented the checks drawn against the Bank of the Philippine Islands the International Banking Corporation for collection, but said checks were refused returned to the National Bank owing to the lack of funds of the makers.

The facts stated proved in the case were correctly considered by the trial court as constituting the crime of estafa defined penalized in article 535, case No. 1, of the Penal Code.

The appellant imputes two errors as having been committed by the trial court to wit: (a) The error consisting in the order dismissing the case as to the accused Guy Bian Ym Co Banling; (b) that consisting in finding that the accused Valentin Velazco guilty of the offense of estafa with which he is charged.

With respect to the first error, it suffices to say that the power to dismiss criminal cases is discretionary with the court. What the law requires is that the dismissal shall be ordered before the accused commences to introduce evidence, that is, at any time before the presentation of evidence for the defense, this is just what the court did. This court in interpreting article 2 of Act No. 2709 in the case of *United States vs. Abanzado* (37 Phil., 658, 664, 665), says:

"Examining the terms of these statutory enactments, it is clear that it was not the intention of the legislator, by the enactment of Act No. 2709, to deprive the prosecution the state of the right to make use of accomplices informers as witnesses, but merely to regulate the exercise of that right by establishing the conditions under which it may properly be exercised. It is clear, furthermore, that the legislator intended to rest the manner of the enforcement of these conditions in the sound judicial discretion of the courts. This discretion, in the very nature of the things, must, as a general rule, be exercised prior to the trial, in all cases before the accused have entered upon their defense. Under the circumstances, it may well be expected that the court will err at times in its exercise. A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible there would be little need for the formality of a trial. He must rely in large part upon the suggestions the information furnished by the prosecuting officer in coming to his conclusions as to the 'necessity for the testimony of the accused whose discharge is requested;' as to the availability or nonavailability of other direct or corroborative evidence; as to which of the accused is 'most guilty,' the like. If he errs in the exercise of his discretion discharges a guilty person who should not have been set at liberty, the error, as a general rule, cannot be cured any more than any other error can be cured which results in an acquittal of a guilty defendant in a criminal action (*U. S. vs. De Guzman*, 30 Phil., 416); but no sound reason has been suggested in support of a ruling that the commission of such an error of discretion should have the effect of discharging from criminal liability the accused persons who were not discharged that they might be used as witnesses; there is nothing in the law which indicates that it was the intention of the legislator to provide for their discharge under such circumstances."

In view of the evidence presented by the prosecuting attorney, our opinion is that the trial court correctly ordered the dismissal of the case with respect to the accused Guy Bian Ym Co Banling.

As to the second error, after a careful review of the evidence before us, we are of the opinion so hold, that the evidence for the prosecution establishes the guilt of the accused beyond a reasonable doubt. Without question the means employed by the appellant to obtain money from the National Bank was fraudulent, for he very well knew that the checks which he deposited had no value because through an abuse of the confidence which the employees of the bank had in him, by means of false representation, he obtained from that banking institution the amount fraudulently represented by said checks, air to the injury prejudice of the National Bank which has been deprived for one month of the possession use of the amount of which it was swindled. (*U. S. vs. Escalante*, R. G. No. 13178, decided March 1, 1918, not reported; *U. S. vs. Egnia Lim Buanco De los Reyes*, 14 Phil., 472; *U. S. vs.*

Berry, 5 Phil., 370; U. S. vs. Valdeo, R. G. No. 8796, decided December 2, 1913, not reported.)

The fact that Guy Bian Ym Co Banling had repaid the amount embezzled to the National Bank does not affect the criminal responsibility of the accused Velazco for the crime. The crime was committed by him for it he is criminally liable. The reimbursement of the amount embezzled exempts the accused only from civil liability (U. S. vs. Escalante, supra).

Taking into account the extent of the injury produced by the offense which, in a certain degree, disturbed the economic life of a banking institution, we hold it proper, in accordance with article 81, rule 7 of the Penal Code to impose upon the accused the maximum of the medium degree of the penalty fixed by article 534, case No. 3 of the same code, that is, two years, eleven months, ten days of presidio correccional; the judgment, as thus modified, is affirmed with costs against the appellant. So ordered.

Johnson, Araullo, Street, Avancena, JJ., concur.

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