

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LUCIANO BARROGA Y SALGADO, DEFENDANT AND APPELLANT.

G.R. No. 31563. January 16, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Convicted of the crime of falsification of a private document, the defendant appeals from the judgment sentencing him to one year, eight months and twenty-one days of prison correctional, to indemnify the Compañia General de Tabacos de Filipinas in the sum of P10,857.11, with subsidiary imprisonment, the accessories of law, and the costs.

The errors attributed by the appellant to the trial court are:

"1, In considering the evidence of the prosecution more worthy of credit than that of the defense.

"2. In finding the defendant-appellant guilty of the crime of falsification of private documents, and in imposing upon him the penalty of one year, eight months, and twenty-one days of prison correctional., to indemnify the Compañia General de Tabacos de Filipinas in the sum of P10,857.11, and to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs of the trial, notwithstanding the insufficiency of the evidence adduced by the prosecution.

" The defendant freely admits that he prepared the falsified documents with full knowledge of their falsity; but he alleges that he did so from data furnished "by his immediate chief, the now deceased Baldomero Fernandez, and only in obedience to instructions from him.

As regards the data, we find it to be sufficiently proven that they were not supplied by the aforementioned Baldomero Fernandez, but by the head of the pressmen, Hermenegildo de la Cruz, and the defendant later collated them with the books of the daily pressings.

With respect to the alleged instructions given by said Baldomero Fernandez, even supposing that he did in fact give them, and that the defendant committed the crime charged by virtue thereof, inasmuch as such instructions were not lawful, they do not legally shield the appellant, nor relieve him from criminal liability. In order to exempt from guilt, obedience must be due, or as Viada lucidly states, it must be a compliance with "a lawful order not opposed to a higher positive duty of a subaltern, and that the person commanding, act within the scope of his authority. As a general rule, an inferior should obey his superior but, as an illustrious commentator has said, 'between a general law which enjoins obedience to a superior giving just orders, etc., and a prohibitive law which plainly forbids what that superior commands, the choice is not doubtful.'" (1 Penal Code, Viada, 5th edition, p. 528.)

We reiterate the statement that it has not been proved that the defendant committed the acts charged in the information in obedience to the instructions of a third party. But even granting, for the sake of argument, that such

was the case, we repeat that such obedience was not legally due, and therefore does not exempt from criminal liability. (U. S. vs. Cuison, 20 Phil., 433.)

There being no merit in the assignments of error, the judgment appealed from is affirmed with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

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