

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BERNABE VILLAPANDO, DEFENDANT AND APPELLANT.

G. R. No. 33224. September 04, 1931

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 28th day of January, 1930, the defendant was charged in the Court of First Instance of the Province of Tayabas with the crime of estafa, in violation of article 534, No. 2, of the Penal Code, as amended by Act No. 3313. The information alleged:

"Que en o hacia el dia 27 de julio de 1928, en el Municipio de Lucena, Provincia de Tayabas, Islas Filipinas, y dentro de la jurisdiccion de este Juzgado, el referido acusado Bernabe M. Villapando, con el proposito de defraudar y con animo de lucro, voluntaria, ilegal y criminalmente, firmo y expidio el cheque No. 36085, por la suma de P200, contra el Philippine National Bank, de Lucena, Tayabas, en pago a cuenta de su deuda con Tan Chuaco, sabiendo dicho acusado que al tiempo de expedirlo no tenia suficientes fondos en dicho banco, para satisfacer su importe, en perjuicio del citado Tan Chuaco en la referida suma de P200, equivalentes a 1,000 pesetas.

"Con infracci6n de la ley."

Upon arraignment the defendant pleaded not guilty, was tried, found guilty of the crime charged, and sentenced by the Honorable Anastasio R. Teodoro, judge, to suffer four months and one day of arresto mayor, with the accessory penalties of the law, to indemnify the offended person in the sum of P200 and to pay the costs. From that sentence the defendant appealed, and now contends, in effect, that the evidence is not sufficient to show beyond a reasonable doubt that he is guilty of the crime charged.

The pertinent facts of this case, as disclosed by the evidence, may be stated as follows:

The appellant is a physician, and at the time he issued the check in question (Exhibit A) he was engaged in the practice of his profession in Lucena, Tayabas; that on June 30, 1928 he issued said check in favor of Tan Chuaco for the sum of P200 to apply on his account with the latter; that he postdated the check "July 27, 1928"; that on the date he issued the check (June 30th) he did not have sufficient funds in the bank, but he expected to collect from his clients sufficient amount to pay said check on July 27, 1928; that a few days before this date, foreseeing his inability to raise the amount of the check, the appellant went to see Tan Chuaco and asked him not to present the check at the bank for collection on June [July] 27, 1928, and at the same time offered to pay the amount thereof in installments, to which Tan Chuaco agreed; that in accordance with said arrangement, the appellant made several payments to Tan Chuaco on account of said check, amounting to P90.

We are of the opinion that the appellant cannot be convicted of the crime of estafa on the facts above stated. He issued a postdated check, believing in good faith that he would be able to deposit in the bank sufficient funds to pay said check when presented for collection. He was justified in expecting that he could raise the necessary amount from his fees as a physician, before the check fell due. Then later, foreseeing his inability to pay said

check at maturity, he made an arrangement with his creditor to pay it little by little.

In view of the foregoing, we find that the appellant is innocent of the crime of which he was convicted. Therefore, the sentence appealed from is hereby reversed; the information is dismissed and the appellant is acquitted and ordered released from the custody of the law, with costs de oficio. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Villa-Real, and Imperial, JJ., concur.

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