

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BERNARDO ALAMEDA, DEFENDANT AND APPELLANT.

G. R. No. 3397. July 27, 1907

Ponente: TRACEY, J.

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TRACEY, J.:

The defendant, convicted of estafa in the Court of First Instance of Iloilo, had been cashier and bookkeeper of the branch of Warner, Barnes & Co. in that city. He alone kept the books and had custody of the cash. Such money as came in during his occasional absence from the office was delivered to the temporary manager, who appears to have usually left it upon the desk of the defendant who took possession of it upon his return.

In June, 1905, when the semi-annual statement of the books was made up, it was discovered that there was a shortage of over 10,000 pesos, which afterwards proved to amount to P11,006.13 and which had been covered up by false entries in the books. This amount was the total of twenty-one checks, all drawn by the defendant and entered by him on a slip which he carried, although not appearing in the books of the firm, in which, on the contrary, their amount was covered by various false entries. Besides this memorandum on a slip of paper, he also kept a private daily statement of the cash, in which allowance was made for the aggregate of these checks as money paid out, so that when asked by his superior for the amount in bank, he could at once correctly state it. It is admitted that all these entries and papers were in his handwriting, except that the checks were signed by the manager.

The defense rests upon the claim that the various entries were made by the manager's direction and that the money realized from the checks had gone to him, and not to the defendant who had no knowledge that the checks had in fact been cashed. There is absolutely nothing in this case to sustain this claim, other than the testimony of the defendant, which is inconsistent with the length of time, about four months, through which the entries ran, as well as with his private memoranda. The pretence that he did not know that the checks had been cashed, conflicts with the memoranda, as well as with the declarations of the messengers, who cashed them at the bank.

On two occasions, in the presence of the manager, the chief of police, and at least one other person, the defendant admitted the defalcation and he later signed a confession of his guilt. He now claims, that he did so under a misunderstanding of its meaning and actuated by fear and by the hope of immunity. It appears that he at first refused any admission, which he was finally induced to make by the expectation of not being prosecuted. The chief of police testified that the manager had said that if the defendant would not sign that paper he would be taken to the calaboose. The manager himself, while denying any threat, violence, or intimidation, admitted that he promised Alameda that if the money was repaid he would not prosecute him.

"Alameda said to me 'How do I know if I refund the money and sign the paper you would not prosecute me?' I told him he could take the paper or my word, as he liked. I gave him my word."

We think that the words of the manager, under the circumstances of the case and in the presence of the chief of police, amounted to a menace, as well as a promise of leniency, so as to render the confession inadmissible.

There is by no means a concord of authority in English and American cases as to what constitutes a promise or threat, rendering inadmissible the testimony of a detained person induced thereby. In the Philippine Islands the matter is regulated by section 4 of Act No. 619, which, although occurring in a law of special application to the Constabulary, is yet so general in its terms and scope as, in the opinion of this court, to apply to all cases of voluntary confession, (U. S. vs. De la Cruz, 5 Phil. Rep., 24.)

This confession was properly admitted under general proof that it was voluntary, the defendant's specific evidence to the contrary being offered only at a later stage of the trial. The defense could have protected itself by a request for a preliminary examination and proof as to the character of the confession at the time when it was offered, or if such examination had been refused by the judge or had been for any reason omitted, then by a motion to strike out the confession, following the testimony of the defense. No such motion having been made, the trial judge did not feel himself at liberty to reject it.

In reviewing and retrying the case we do not meet the same obstacle, but give the defendant the benefit of his objection and exception, and we discard the confession. Nevertheless, for the reasons first stated, there remains other abundant proof of the defendant's guilt.

The judgment of the lower court is modified in respect to subsidiary imprisonment, and the defendant is sentenced to presidio correccional for a period of two years and nine months, the payment of the costs of both instances, and the indemnification of P11,006.13 to Warner, Barnes & Co., with subsidiary imprisonment, in case of insolvency, limited to the amount of the indemnification and the third part of the principal penalty, not including the costs. So ordered.

Arellano, C.J. Torres, Johnson, and Willard, JJ. concur.

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