

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MELECIO A. REYES, DEFENDANT AND APPELLANT.

G. R. No. 34516. November 10, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The information filed in the Court of First Instance of Laguna against Melecio A. Reyes, reads as follows:

"The undersigned charges Melecio A. Reyes with the crime of 'estafa through falsification of a private document,' committed as follows:

"That during the period from July 1, 1929, to July 31, 1929, both dates inclusive, in the municipality of Calamba, Province of Laguna, Philippine Islands, and within the jurisdiction of this court, the accused above-named, being then employed as timekeeper of the Calamba Sugar Estate, wilfully, unlawfully, and feloniously, with animus lucrandi and the deliberate intent of defrauding and injuring said Calamba Sugar Estate, made it appear in the time book prepared by said accused for the aforementioned period of time, to wit, from July 1, 1929 to July 31, 1929, both dates inclusive, that the day-laborer Ciriaco Sario had worked twenty-one days, whereas he was fully aware that Ciriaco Sario had worked but eleven days only during that period of time; thereby committing a falsehood in the narration of facts in said time book, and by means of this falsification, the aforesaid defendant appropriated the sum of ten pesos to his own use and personal benefit, to the damage and prejudice of the Calamba Sugar Estate in that amount, which is equivalent to fifty pesetas,

"Contrary to law."

The accused in this case was in charge of entering the laborers' workdays in the time book of the Calamba Sugar Estate. He is accused of having falsified the time book by making it appear that the laborer Ciriaco Sario worked twenty-one days during the month of July, 1929, when in reality he had only worked eleven; and having charged the wages of said laborer for twenty-one days, at the rate of Pi a day, he prejudiced the Calamba Sugar Estate in the amount of P10.

The evidence shows the defendant's guilt beyond a reasonable doubt. But he defends himself, alleging that it was one Erquiza, who collected the wages appertaining to Sario. This individual, however, was not produced to testify in the case. At any event, it appears that the accused, knowing that Ciriaco Sario worked only eleven days, altered and falsified the time book, putting down twenty-one workdays for Ciriaco Sario, and this constitutes the crime of falsification of a private document to the prejudice of a third person. The trial court found the accused guilty of the crime of estafa through falsification of a private document, and sentenced him to four years, two months, and one day of prision correctional, with the accessories of the law, to pay a fine of 250 pesetas, and to indemnify the Calamba Sugar Estate in the sum of P11, with subsidiary imprisonment in case of insolvency with reference to the fine and the indemnity.

The Attorney-General recommends the affirmance of the judgment appealed from with the modification that the fine should be imposed in the maximum degree, i e., in the amount of 6,250 pesetas, and that the indemnity be P10, taking into account article 89 of the Penal Code, in view of the fact that the offense is estafa, as defined and

penalized in article 304 in connection with article 300, paragraphs 2 and 4, as amended, and article 535 of the Penal Code.

The accused appealed from the judgment and his assignments of error refer to the weight of the evidence, with the exception of the fifth, which relates to the penalty of four years, two months, and one day of presidio correctional, and the fine of 250 pesetas.

There is no question as to the facts. The only difficulty in this appeal lies in the interpretation to be given to article 304 of the Penal Code. This article provides:

"Any person who, to the damage of another, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in article three hundred shall suffer the penalty of presidio correctional in its minimum and medium degrees and be fined in a sum not less than six hundred and twentyfive and not more than six thousand two hundred and fifty pesetas."

This article has been interpreted by this court in several cases, apparently from different points of view.

In *United States vs. De Castro and Aragon* (18 Phil., 417), the accused was charged with the crime of estafa through falsification of a private document; he was convicted of estafa, and in imposing the penalty, the court took article 89 of the Penal Code into account. In the course of the decision, this court said:

"The information alleges and the proofs show that the appellant in this case committed two distinct crimes, one of estafa, defined and punished under subdivision 1, article 535, of the Penal Code, and, the crime of falsification of a private document, defined and punished in article 304 of said Code. Inasmuch, however, as the one crime was a necessary means of committing the other, the accused can not be punished for both offenses. Under the provisions of article 89 of the Penal Code, he must be punished in the maximum degree of the more serious crime. Falsification of a private document is the more serious of the two inasmuch as it is punished not only by presidio correctional in its minimum and medium degrees, as estafa is punished, but also by a fine of from 625 to 6,250 pesetas. The maximum degree of presidio correctional in its minimum and medium degrees is from two years, eleven months, and eleven days to four years and two months. The penalty imposed by the learned trial court is, therefore, within the law."

United States vs. Victoria (9 Phil., 81) was decided otherwise. The accused was charged with falsification of a private document with prejudice to a third person, according to article 304 of the Penal Code, and was convicted and sentenced to the penalty fixed in said article, i. e., one year, eleven months, and twenty-one days of presidio correctional and a fine of 625 pesetas, to indemnify the offended party in the amount of P20, and to pay the costs. In the course of the decision, the court said:

"The fact that the agent informed his employer that the cost of the installation was P10, while he told the person desiring the installation that it would cost P30, subsequently altering the former's bill in order to recover a larger sum from the latter in pursuance of his deceitful purpose, involves the characteristics of the crime of estafa, besides that of falsification which served as the means for its commission, because by adopting deceitful means he obtained a price which he would not otherwise have secured by telling the truth." However, the offense was not considered to constitute the complex crime of estafa through falsification of a private document, nor was the rule contained in article 89 applied, so as to impose the penalty for the more serious offense in its maximum degree.

In *United States vs. Chan Tiao* (37 Phil., 78), the accused was prosecuted for the crime of estafa through falsification of a private document and sentenced to two years, eleven months, and ten days of presidio correctional (maximum of the medium degree) the accessories of the law, a fine of 2,000 pesetas, to indemnify the offended party in the amount of P315, which is the value of twenty-three sacks of sugar not recovered, and to pay the costs.

Chan Tiao, desiring to profit in the amount of P2,055, which is the value of one hundred and fifty sacks of sugar belonging to the firm Smith, Bell & Co., forged the document Exhibit A, purporting to be signed by the manager of the Chinese firm Ortiga Hermanos, presenting it with an authentic document of guarantee to the vendor firm, which would undoubtedly have refused to deliver the sugar on ten days' time, but for said forged document, for it was not issued by the manager of Ortiga Hermanos, and the signature appearing on it is not legitimate or genuine, which act certainly constitutes the crime of falsification of a private document, to the prejudice of the firm Smith, Bell & Co., the owner of the sugar, a crime defined and penalized in article 304 of the Penal Code. In the course of the decision, the court said:

"The crime committed should be classified only as that of falsification of a private document, for the reason that the fraudulent gain obtained by the falsifier is involved in the harm caused—an essential and indispensable ingredient for the existence of the crime of falsification of a private document; and it cannot be classified as estafa with falsification, nor may the penalty for a more serious crime be applied, pursuant to the provision of article 89 of the Penal Code, inasmuch as the harm occasioned or intended by the perpetrator of the crime does not constitute estafa,"

And in *People vs. Rosales* (G. R. No. 19723, not reported)[1], the accused was prosecuted for the crime of estafa through falsification of a private document. The court convicted him of the crime of estafa, but without applying the rule established in article 89 of the Penal Code. In the course of the decision, the court said:

"The Attorney-General contends that the foregoing facts constitute the crime of falsification defined in article 305 (should be 304) and that of estafa defined in article 535 of the Penal Code, the first as a necessary means for committing the second. Although the facts may constitute one or the other of these crimes, they cannot constitute both. As falsification according to article 305, an essential element of which is the animus lucrandi or the prejudice to a third person, it involves the crime of estafa. (Decision of the Supreme Court of Spain, April 10, 1889.) As estafa, of which deceit is the essential element, it also involves falsification under article 305, as the determinant of this deceit.

"The foregoing facts only constitute the crime of estafa defined and penalized in article 535, paragraph 1, in connection with article 534, paragraph 3, of the Penal Code, because the appellant appropriated the 2,500 electric light bulbs specified in this forged order, the value of which is 6,798.75 pesetas.

"Wherefore, the judgment appealed from is modified, and the appellant sentenced to one year, eight months, and twenty-one days of presidio correctional, to indemnify the offended corporation in the amount of P1,359.75. or to undergo the subsidiary imprisonment in case of insolvency, and to pay the costs of the trial."

Viada, in his *Commentaries on the Spanish Penal Code*, article 318 (related to 304 of our Code), 5th ed., vol. 4, p. 130, propounds the following question:

"When a private document is forged to defraud a third person, is the crime FALSIFICATION under article 318, and also ESTAFA under article 548?—The Supreme Court answered the question in the negative, when it quashed a judgment of the Audience of Barcelona, holding the contrary : 'Whereas, considering the offense at bar as falsification of a private document, article 90 of the Code, in connection with No. 1, article 548, is not applicable, because the falsity and the fraud, or intent to prejudice another, are elements of the crime defined in article 318 so indispensably and precisely conjoined that they cannot be segregated, considering the falsification as a means to commit the estafa, and thereby raising the penalty to the maximum degree, etc.' (Decision of February 18, 1891, Gaceta of August 22.)

"The same doctrine appears in a subsequent case:

"Whereas, in view of the falsification of a private document with the intent to prejudice a third person, the offense committed by German Gonzalez is merely the crime defined and penalized in article 318 of the Code,

which in itself combines the two elements of falsity and prejudice to a third person; whence the trial court, holding that there are two crimes: falsification and estafa, one being the means of committing the other, has erred in point of law, etc., (Decision of November 22, 1893, Gaceta of August 17, 1894.)" (See also, the decision of April 19, 1905.)

A careful examination of the cases cited will show that in the De Castro case, *supra*, the court considered the accused guilty of two different crimes: Estafa, defined and penalized in paragraph 1, article 535 of the Penal Code; and falsification of a private document, defined and penalized in article 304 of said Code. And, applying article 89 of the Penal Code, the court imposed the penalty fixed in article 304 in the maximum degree. In the Victoria case, article 304 of the Penal Code was applied, without taking into account the complex nature of the crime, or the provisions of article 89 of the Penal Code. In the Chan Tiao case, the penalty provided in article 304, Penal Code, was imposed but without taking article 89 into account, and in this case it was held that the prejudice occasioned or intended by the offender, does not constitute the crime of estafa. And in the Rosales case, the accused was sentenced to the penalty fixed in article 534 of the Penal Code, but without applying article 89 of the Code.

Therefore, where the defendant is accused of estafa with falsification of a private document, or falsification of a private document with prejudice to a third person, the weight of authority favors the doctrine that there are not two distinct crimes committed, estafa and falsification, and that article 89 of the Penal Code is not applicable. And this is the doctrine followed by the Supreme Court of Spain in construing article 318 of the old Spanish Penal Code (art. 304 of ours). But it should be observed that although articles 304 and 534, paragraph 3, of our Penal Code, provide the same personal penalty, i. e., presidio correctional in the minimum and medium degrees, the first of these articles further provides a fine ranging from 625 to 6,250 pesetas; and that article 534 was amended, on November 28, 1925, by section 2 of Act No. 3244, which adds paragraph 4, providing the penalty of presidio correctional in the maximum degree to presidio mayor in the minimum, if the fraud exceeds fifty thousand pesetas. In view of this amendment, we are of the opinion that if an information is filed charging the accused with the crime of estafa through falsification of a private document, and the value of the fraud exceeds 50,000 pesetas, all of which is proved at the trial, the proper penalty would be that fixed in paragraph 4, article 534, of the Penal Code.

By virtue of the foregoing considerations, we are of opinion and so hold that the defendant's falsification of the time book, with the intent of gain at the expense of the Calamba Sugar Estate constitutes the crime of falsification of a private document with prejudice to a third person, defined and penalized in article 304 of the Penal Code. Wherefore, the judgment appealed from is modified, and the accused sentenced to one year, eight months, and twenty-one days of presidio correctional, with the accessories of the law, a fine in the amount of 2,501 pesetas, and to indemnify the Calamba Sugar Estate in the amount of P10, with subsidiary imprisonment in case of insolvency with reference to the fine and the indemnity, not to exceed one-third of the principal penalty, and to pay the costs. So ordered.

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

[1] Promulgated September 20, 1923.

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