

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MIGUEL BENITO, DEFENDANT AND APPELLANT.

G. R. No. 36979. November 23, 1932

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from a decision of Judge Benito Natividad of the Court of First Instance of Davao, finding the defendant guilty of the crime of estafa through the falsification of commercial documents and sentencing him to suffer five years, four months, and twenty-one days of prison correctional and the accessory penalties provided by law, to pay a fine of 8,000 pesetas, 'and to indemnify the International Harvester Company of the Philippines in the sum of P15,000.01, or suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs.

The appellant makes the following assignments of error:

"I. The court a quo erred in finding that as cashier of the International Harvester Company it was the duty of the accused to deposit at the Davao branch of the Philippine National Bank all the money received by him belonging to the said company. "II. The court a quo erred in not finding that persons other than the accused also deposited money of the company at the said bank. "III. The court a quo erred in declaring that the accused falsified the 'reconciliation statements' and the 'monthly statements' of the Davao branch of the Philippine National Bank corresponding to the month of August by making it appear at the foot of Exhibit C-1 that the total was P29,674.45 instead of P15,024.45 which was alleged to have appeared on the said exhibit. "IV. The court a quo erred in declaring that the accused had caused the disappearance of the 'pass book' corresponding to the period from November, 1930 up to September, 1931, and also the monthly statements that the Philippine National Bank, Davao branch, sent to the International Harvester Company with the object of hiding the fact that he did not deposit the money that he received for the company. "V. The court a quo erred in finding that the accused had appropriated the sum of P15,000.01 belonging to the said International Harvester Company for his own use and benefit. "VI. The court a quo erred in not granting to the accused the benefit of reasonable doubt. "VII. The court a quo erred in holding that the accused has committed the crime of estafa thru falsification of commercial document. "VIII. The court a quo erred in not absolving the accused from the crime charged in the complaint."

The defendant was charged with the crime of estafa through the falsification of commercial documents, committed as follows:

"Que en diferentes fechas y ocasiones que comprenden el periodo de tiempo desde el mes de noviembre de 1930 al mes de septiembre de 1931, en el Municipio y Provincia de Davao, Islas Filipinas, y dentro de la jurisdiccion de este juzgado, el referido acusado, siendo cajero de la 'International Harvester Co. of the Philippines', una casa comercial debida y legalmente establecida en dicho Municipio de Davao, y siendo su deber y obligacion, como tal cajero, depositar en la Agenda del Banco Nacional Filipino, en dicho Municipio de Davao, todas las cantidades que llegaran en su poder, pertenecientes a dicha 'International Harvester Co. of the Philippines', y habiendo recibido por razon de su cargo varias cantidades que ascienden a la suma de P15,000.01 correspondientes a los

fondos de dicha compa a que debian ser ingresadas y depositadas por el mismo acusado, en dicha Agenda del Banco Nacional Filipino, y con abuso de confianza y de su cargo, voluntaria, ilegal y criminalmente, por medio de engano, estratagema y con animo de lucro, dejo de depositar en la mencionada Agencia del Banco Nacional Filipino la referida cantidad de P15,000.01, equivalentes a 75,000 pesetas, habiendose apropiado de la misma cantidad para su uso y beneficio personales, en per-juicio de tercero, principalmente 'de la referida 'International Harvester Co. of the Philippines'; y que el mismo acusado, para cometer el delito de estafa, arriba expuesto, voluntaria, ilegal y criminalmente, con animo de lucro y por medio de engano y con abuso de confianza y de su cargo, alterd y falsifico los 'reconciliation statements' y algunos 'statements' de dicha Agencia del Banco Nacional Filipino, haciendo1 constar y figurar en los mismos cifras y cantidades completamente falsas, haciendo desaparecer en los archivos de dicha compa a y ocultandolos los 'statements' de la Agencia del Banco Nacional Filipino sobre los depositos de la referida 'International Harvester Co. of the Philippines', asi como tambien el 'pass book' donde se anotaban los depositos diarios de la misma compania, cuyos 'statements' y 'pass book' estaban y debiaji estar en poder del acusado por razon de su cargo.

"Hecho cometido con infraccion de la ley, especialmente de los articulos 534 y 535, tal como fueron reformados por la Ley No. 3244, y 301, en relacion con el articulo 89 delCodigo Penal."

It appears from the evidence that the defendant was the cashier of the Davao branch of the International Harvester Company of the Philippines, and that it was his duty to receive and receipt for the money paid to the company and to deposit it in the Philippine National Bank at Davao. During the period from November 1, 1930, to September 6, 1931 the defendant received P59,486.06, but deposited only P44,486.05, leaving a balance of P15,000.01 unaccounted for. The sums received by the defendant are evidenced by the "cash files", and the sums deposited by the deposit slips. Both the "cash files" and the deposit slips were prepared by the defendant. Exhibit A shows how the defendant from time to time manipulated his receipts and deposits. The difference between the total amount collected and the total amount deposited, or P15,000.01 was appropriated by the defendant to his own use.

The evidence further shows that the defendant falsified the bank reconciliation statements (Exhibits E-1 to E-11) and the statement of the Philippine National Bank for August, 1931, in order to cover up the fact that he had misappropriated certain sums and to prevent discovery thereof.

We find no merit in the assignments of error.

The information clearly charges two crimes, estafa and the falsification of certain commercial documents. A demurrer to the information was filed, but it was withdrawn before it was submitted to the court, and the defendant went to trial on the information as presented. The defendant should therefore be convicted of both estafa and the falsification of commercial documents. The two offenses committed by the defendant 'cannot be regarded as a complex crime, because the falsification of the commercial documents was not a means for the commission of the crime of estafa, but for the purpose of concealing it.

It was held by this court in the case of *People vs. Miana* (50 Phil., 771, 777), that when the defendant in a criminal cause goes to trial under a complaint or information which contains a description of more than one offense, he thereby waives the objection and may be found guilty of, and should be sentenced for, as many offenses as are charged in the complaint and proven during the trial.

We find the defendant guilty of the crime of estafa, and sentence him to suffer five years, five months, and eleven days of prision correctional and the accessory penalties provided by law, and to indemnify the International Harvester Company of the Philippines in the sum of P15,000.01, or to suffer the corresponding subsidiary imprisonment, which shall not exceed one-third of the principal penalty. We also find the defendant guilty of the crime of the falsification of commercial document in violation of article 301 in relation with article 300 of the

Penal Code, as amended by Act No. 2712, and giving the accused the benefit of article 172 of the Revised Penal Code sentence him to suffer three years, six months, and twenty-one days of prision correctional and the accessory penalties provided by law, and to pay. a fine of P100, with subsidiary imprisonment in case of insolvency, which shall not exceed one-third of the principal penalty, and to pay the costs.

Avanceña, C. J., Street, Malcolm, Ostrand, Villa-Real, Abad Santos, Hull, Imperial, and Butte, JJ., concur.

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