

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. RAFAEL FERNANDEZ, DEFENDANT AND APPELLANT.*G. R. No. 37602. March 07, 1934*

Ponente: STREET, J.

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This appeal has been brought to reverse a judgment of the Court of First Instance of the City of Manila, finding the appellant, Rafael Fernandez, guilty of the offense of estafa and sentencing him to undergo imprisonment for six years and one day, presidio mayor, with the accessory penalties prescribed by law, and requiring him to indemnify the Compania General de Tabacos de Filipinas in the amount of P112,450, without subsidiary imprisonment in case of insolvency, and requiring him to pay the costs.

In May, 1931, the appellant, Rafael Fernandez, contracted to supply the Malabon Sugar Company 1,000 tons of sugar a month during June and July of that year, in addition to what he had previously agreed to supply. In order to meet this engagement it was necessary for him, towards the end of June, to make a large purchase, or purchases, of the same commodity. This he effected through F. C. Laing & Co., Ltd., of which he himself was president. Finding that the Compania General de Tabacos had available a large quantity of sugar, the appellant entered into negotiations with this company, and a contract was made by which he agreed to buy, and the Companfa General agreed to sell, sugar in the aggregate amount of 16,000 piculs, at P8.50 per picul, payable upon delivery of the transfer documents. The contract was closed on July 3, 1931, upon which date the appellant caused to be delivered to the Compania General de Tabacos a check for the sum of P112,450 drawn on the National City Bank of New York. The check was delivered on behalf of Laing & Co. by Manuel F. Reyes, and at the same time Reyes received a delivery order covering the sugar involved in the transaction. When Reyes delivered the check he requested Enrique Gonzalez Diaz, chief of the sugar department of the Compania General, who received the check, not to deposit or cash the same for a few days, for the reason that the appellant had not yet collected the proceeds of the sale of the same sugar from a purchaser to whom it had already been sold. In view of the fact that the sale was made as a cash sale and the sugar had not yet been delivered, Diaz agreed to hold the check for a few days and until he should be notified that it could be presented at the bank. As a matter of fact, the check was held until the morning of July 9, 1931, when, upon presentment at the bank, payment was denied for lack of funds.

The proof further shows that on July 3, when the transaction above-mentioned occurred, the appellant had on deposit, subject to check, with the National City Bank in Manila, the amount of only about P10,911.40, though the drawer of the check had on deposit in the same bank the amount of P200,000, which was not subject to check. On the same day, July 3, 1931, the appellant sold in Manila to the Malabon Sugar Company the sugar which he was that day buying from the Compania General, and he received from his vendee a check on the Hongkong and Shanghai Banking Corporation for the amount of P140,000. This check was at once deposited by him in his own account with the Hongkong and Shanghai Banking Corporation, and on July 7, 1931, he made a deposit by check of P160,000 with the National City Bank. This deposit, with the amount of P10,911.40, already in the account,

supplied more than enough to meet the check for P112,450 then held by the Compania General de Tabacos. But the latter was never destined to get any part of that money, for the reason that this check was not presented for payment until July 9, and before banking hours on the preceding day, the National City Bank had discovered that the quedans which the appellant had deposited with it to secure an open credit of about P915,000 were forged. Upon making this discovery the bank at once stopped payment of appellant's checks and notified him of the action taken. On the afternoon of the same day the appellant directed Reyes to notify the Compdnia General de Tabacos that the check held by it could be presented. There is conflict in the proof as to the time in which this notification was given, but this is unimportant. It is pretended by the appellant that the message was sent before the close of banking hours on July 7, but Diaz says it was not received until the afternoon of July 8, when it was already too late to present the check that afternoon. This is most probable since the check was not presented until July 9, and it would have been unnatural for the holder of the check to have omitted presentment of a check in this amount for more than a day after receiving notice to present it. Of course the check was never paid.

At the time the supposed estafa was committed, Act No. 3313 was in force, amendatory of article 535 of the old Penal Code. In the part here material to be noted said article makes guilty of estafa:

"10. Any person who in his own name or as an officer or member of a corporation, entity, or partnership shall issue a check or any other commercial document against a bank established or that may hereafter be established in these Islands in payment of a debt, or for any other valuable consideration knowing that he does not have at the time of its issuance sufficient provision of funds in the bank to cover its amount, or, having such funds, shall maliciously and feloniously sign his check differently from the signature registered at the bank as his authentic signature, in order that the bank shall refuse to pay the same; or shall issue a postdated check and at the date set for the payment of it, the drawer of the check does not have sufficient deposit in the bank to pay for the check. * * *"

This provision was carried into article 315, No. 2 (d), of the Revised Penal Code, in the following form:

"ART. 315. Swindling (estafa).—Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

* * * * *

"2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

* * * * *

"(d) By postdating a check, or issuing such check in payment of an obligation, the offender knowing that at the time he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check, and without informing the payee of such circumstances."

Upon this provision we observe that the word "such", as used in the first line of subsection (d), is an error in the English translation, and the provision does not apply exclusively to postdated checks, as is suggested in the argument for the appellant. The Spanish original of this provision does not countenance the interpretation suggested, and we are of the opinion that the fraud there contemplated can be committed either upon the issuance and delivery of a postdated check or upon the issuance and delivery of any check.

It will be noted that Act No. 3313, which was in force when the act with which we are here concerned was done, does not use the expression "without informing the payee of such circumstances", which is found at the close of subsection (d) of No. 2 of article 315 of the Revised Penal Code. But it is quite obvious that the meaning conveyed by these words is really incorporated in the substance of Act No. 3313. The law is dealing, it must be remembered, with the law of estafa, and if the delivery of a check is accompanied by a revelation of the fact that

the drawer's account lacks funds to meet it, no estafa is committed.

Now, as we have already stated, when the appellant caused the check to be delivered, he caused the payee of the check to be informed in effect that the appellant's account did not contain the money necessary to meet the check. These exact words were of course not used, but Diaz, who acted for the Compañia General de Tabacos, was told that he should not deposit, or cash, the check for a few days because the defendant had not collected or received the proceeds of the sale of the same sugar. This could not fail to carry to the mind of the person to whom that statement was made the idea that the account upon which the check was drawn was not then in funds, and that it would not be prepared to meet the check until replenished with the proceeds to be received from the actual sale of the sugar by the appellant. It results, in our opinion, that the sanction of the penal law cannot be given to this obligation. It was reduced to the character of a mere civil obligation by the act of the creditor in agreeing to hold the check for a few days without presentment, and until word should be received from the debtor authorizing its presentment.

We note that the only controverted question in connection with the transaction is whether notice for the encashment of the check was given on the afternoon of July 7, as the appellant contends, or of July 8, as the prosecution claims. The determination of this point is not really material to this case, for the information charges an estafa committed on July 3, when the check in question was delivered, and the case must be determined with respect to the situation as it stood on that date. Upon that phase of the case, we find that at the time of the delivery of the check the payee was informed that the account was not then in funds and the check therefore not then collectible.

It results that the appellant was improperly convicted. The judgment must therefore be reversed and the accused absolved from the complaint. So ordered, with costs de oficio.

Malcolm, Imperial, Butte, and Diaz, JJ., concur.

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