

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CO PAO (ALIAS JOSE R. MATEO, ALIAS JOSE CO TINGPO, ALIAS ONG BUN), DEFENDANT AND APPELLANT.*G.R. No. 38329, October 10, 1933*

Ponente: VICKERS, J.

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This is an appeal from the following decision of Judge Francisco Santamaria of the Court of First Instance of Manila:

"Oidas las pruebas el Juzgado encuentra probado que en la noche del 3 de agosto de este año, el acusado en esta causa compro de la tienda de Cheng Dy, situada en la calle Lavezares No. 913, Manila, carne de cerdo y huevos por valor de P0.30 y pago su compra con el papel moneda, Exhibit A, falsificado y aparentando ser un papel moneda de P10 de los expedidos por el Banco de las Islas Filipinas, y el dueño de la tienda Cheng Dy entrego al acusado el cambio del Exhibit A, o sea la suma de P9.70, y el chino, dueño de la tienda, sin sospecha alguna, guardo el Exhibit A en su cajon. El 5 del mismo mes de agosto de este año, otra vez el acusado volvio a la tienda de Cheng Dy trayendo otro billete de P10 y, despues de hacer su compra, recibio del dueño de la tienda la suma de P9.50 como cambio del billete de P10. Como despues y en la misma fecha el dueño de la tienda necesitara dinero para cambiar, envio a uno de sus dependientes para que el papel moneda de P10 entregado por el acusado el mismo dia 5 de agosto se cambiara en otra tienda y el empleado volvio con la informacion de que el papel era falsificado. Entonces el dueño de la tienda busco al acusado y le devolvio el billete diciendole que era falsificado y el acusado prometio que el dia siguiente devolveria el cambio de P9.50. Suponiendo el dueño de la tienda que el primer billete entregado a el por el acusado, el Exhibit A, que lo tenia guardado, fuera tambien falsificado, dicho dueño de la tienda se enfado y denunció a la policia el hecho, entregando el papel moneda Exhibit A, el cual resulta ser un papel moneda falsificado, segun la declaracion de Adriano Rodenas, cajero auxiliar de la Tesoreria Insular. Denunciado por el dueño de la tienda Cheng Dy, el policia Maneja, a indicacion de Cheng Py, arresto al acusado y estando informado de que el acusado tenia en su poder otro billete falsificado de P10, procedio a su registro y solamente encontro el Exhibit B, que es la suma de P7.05 en papel moneda y monedas, todos legitimos.

"En su defensa el acusado en esta causa nego haber ido a la tienda de Cheng Dy y pagado las compras que hizo en dicha tienda con el papel moneda Exhibit A, y para enervar de algun modo las declaraciones de los dos chinos, los primeros testigos de la acusacion en esta causa, el acusado dijo que el 1.º de agosto de este año, estuvo comiendo en la tienda de Cheng Dy y entonces llegaron policias con el fin de arrestar a dos chinos de la tienda, acusados de servir al publico sin estar vestidos de acuerdo con la ordenanza, y entonces el acusado dijo a los de la tienda que no debian esperar ser arrestados, sino que debieron haber comparecido en el Juzgado Municipal, y con este motivo los de la tienda se enfadaron diciendole que el acusado no debia meterse en lo que no le importaba.

"Aunque negado por el acusado es para el Juzgado hecho cierto lo declarado por los testigos de la acusacion Cheng Dy y Kao Tay Tee, y estos hechos declarados por los mencionados testigos constituyen una infraccion del articulo 168 del Codigo Penal Revisado, y de esta infraccion el Juzgado declara culpable al acusado en esta

causa, a quien condena a dos años (2), cuatro meses (4) y un día (1) de prision correccional, a pagar una multa de P1,000, con la correspondiente prision subsidiaria, en caso de insolvencia, a indemnizar al chino Cheng Dy en la suma de P19.20, sufriendo tambien la correspondiente prision subsidiaria, en caso de insolvencia, y al pago de las costas.

"Se declara el decomiso del papel moneda falsificado de P10, Exhibit A, y la suma de P7.05, Exhibit B, decomisado por la policia en poder del acusado, debera ser aplicada a la indemnizacion concedida al chino Cheng Dy, cuando esta sentencia adquiriera caracter firme."

Appellant's attorney de oficio makes the following assignments of error:

"I. The lower court erred in finding that the accused-appellant passed Exhibit A, a supposed counterfeit P10 Bank of the Philippine Islands note, to the complaining witness, Cheng Dy (Cheng Li).

"II. The lower court erred in convicting the accused-appellant of the crime charged in the information in spite of the fact that the evidence for the prosecution is utterly insufficient to sustain such a conviction and is honeycombed with material contradictions and glaring inconsistencies.

"III. The lower court erred in not considering that the prosecution failed to prove that the accused-appellant knowingly used or had in his possession, with intent to use, the alleged false bank note Exhibit A.

"IV. The lower court erred in giving preponderance to the evidence for the prosecution over that of the defense.

"V. Finally, the lower court erred in declaring the accused-appellant guilty of the crime charged in the information and in sentencing him to suffer two years, four months and one day of prision correccional and to pay a fine of P1,000, to indemnify Cheng Dy for the sum of P19.20, and costs."

We find no merit in the errors assigned. A careful examination of the record convinces us of the guilt of the accused. The assumptions of the appellant's attorney as to the facts are not sustained by the evidence, and his conclusions are naturally erroneous. The evidence fully sustains the findings of the trial judge. We shall discuss only one question, which is whether or not the accused knew that the bank note in question was a counterfeit when he made use of it. As the Solicitor-General points out, two days after the defendant used the counterfeit ten-peso note in question to pay the amount of 30 centavos and got as change P9.70, he delivered another counterfeit bill of the same denomination to the offended party in payment of an account of 50 centavos and received the difference of P9.50 in lawful money. The transaction was clearly a scheme to change counterfeit bank notes for lawful money.

When patrolman Medina tried to investigate the defendant, he refused to make any explanation of his possession of the counterfeit note, but stated that he would know what to say in court. If the accused had been unaware that Exhibit A was false, he would undoubtedly have immediately explained to the policeman the circumstances under which it came into his possession. The burden was on the defendant in the trial to explain satisfactorily his possession of the counterfeit note. This he failed to do.

The evidence shows further that the defendant had no occupation except that of acting as agent for Chinese accused in the municipal court of Manila to secure lawyers for them. It is not likely that a person depending on such uncertain means of livelihood would proffer a ten-peso bank note every time he had occasion to pay the petty sum of 50 centavos or less.

The trial judge sentenced the defendant to suffer two years, four months, and one day of prision correccional, or the minimum of prision correccional in its medium period. The Solicitor-General recommends the penalty of prision mayor in its medium period (from eight years and one day to ten years) in accordance with article 168, in relation to subparagraph 2 of article 166, of the Revised Penal Code.

The appellant is guilty of a violation of article 168 of the Revised Penal Code, which provides that a violation of it shall be punished by the penalty next lower in degree than that prescribed in articles 166 and 167 (sera castigado con la pena inmediatamente inferior a la señalada en dichos artículos). Article 167 is not applicable to the case at bar. For forging treasury or bank notes or other documents payable to bearer, importing and uttering such false or forged notes and documents, article 166 provides the following penalties:

"1. By reclusion temporal in its minimum period and a fine not to exceed P10,000, if the document which has been falsified, counterfeited, or altered is an obligation or security of the United States or of the Philippine Islands;

"2. By prision mayor in its maximum period and a fine not to exceed P5,000, if the falsified or altered document is a circulating note issued by any banking association duly authorized by law to issue the same;

"3. By prision mayor in its medium period and a fine not to exceed P5,000, if the falsified or counterfeited document was issued by a foreign government;

"4. By prision mayor in its minimum period and a fine not to exceed P2,000, when the forged or altered document is a circulating note or bill issued by a foreign bank duly authorized therefor."

The penalty applicable in the present case is that next lower than that provided in case 2 of article 166. Is it prision mayor in its medium period, as recommended by the Solicitor-General, or prision correccional in its maximum period, as stated in one of the leading commentaries on the Revised Penal Code, in accordance with the decision of this court in the case of the United States vs. Fuentes (4 Phil., 404) ? In the present case the proper penalty is prision mayor in its medium period. The rules for graduating penalties are found in article 61 of the Revised Penal Code. Rule 4 provides that when the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and of the two next following, which shall be taken from the penalty prescribed, if possible; otherwise, from the penalty immediately following in the above mentioned scale.

If, for example, the penalty is prision mayor in its medium period to reclusion temporal in its minimum period, the penalty next lower in degree will be prision correccional in its medium and maximum periods to prision mayor in its minimum period.

Rule 5 provides that when the law prescribes a penalty for a crime in some manner not specially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories.

If the penalty is prision mayor in its medium and maximum periods, the penalty next lower in degree will be prision correccional in its maximum period to prision mayor in its minimum period.

Reasoning by analogy, we hold that the penalty immediately inferior to prision mayor in its maximum period is prision mayor in its medium period. There appears to be no justification for jumping over the two penalties between prision mayor in its maximum period and prision correccional in its maximum period.

On the other hand the decision of this court in the case of Fuentes, mentioned above, based on the decisions of the Supreme Court of Spain, is not applicable.

In all those decisions the crime was robbery in an inhabited house, committed without arms, the value of the property being less than 1,250 pesetas (500 pesetas in Spain), with the further circumstance that in one of these cases the robbery was frustrated and in the others the accused was less than eighteen and over fifteen years of age.

According to article 508 of the old Penal Code (521 Penal Code of Spain) the penalty provided for robbery in an inhabited house, committed without arms, when the value of the property taken exceeds 1,250 pesetas (500 pesetas in Spain), or when committed with arms and the value of the property taken is less than 1,250 pesetas (500 pesetas in Spain), is presidio correccional in its medium degree to presidio mayor in its minimum degree, said penalty to be imposed in the minimum degree if the robbery is committed without arms and the value of the property taken is less than 1,250 pesetas. According to article 65 of the same Code (art. 66 of the Code of Spain), if the robbery is frustrated or if the accused is less than eighteen and over fifteen years of age, pursuant to article 85 (art. 86 of the Code of Spain), the next lower penalty should be imposed. Thus this penalty of presidio correccional in its medium degree to presidio mayor in its minimum degree had to be modified for two reasons, to wit, because the next lower penalty should be imposed on the ground that the robbery was frustrated, or that the author was less than eighteen and over fifteen years of age, and because it should be imposed in its minimum degree for the reason that the robbery was committed without arms and the value of the property taken was less than 1,250 pesetas.

What penalty should then be imposed under such circumstances? In the case of Fuentes this court said: "There is some conflict in the decisions of the Supreme Court of Spain as to what that penalty is, but it is now settled by the more recent decisions that the penalty immediately inferior to the medium grade of presidio correccional is the medium grade of arresto mayor." A review, however, of the decisions of the Supreme Court of Spain referred to in the decision of this court in the Fuentes case does not justify said pronouncement.

In the first decision rendered on the subject (June 13, 1872) of the Supreme Court of Spain it was held:

"1st. That pursuant to the provisions of art. 521 of the Penal Code in force, robbery in an inhabited place, committed without arms, when the value of the property taken does not exceed 500 pesetas, is punished with the medium degree of presidio correccional; and that when this offense is frustrated, the corresponding penalty is the next lower in degree, in accordance with article 66 of said Code; and

"2d. That if the facts stated in the decision and established by the evidence show that the accused is the author of a frustrated robbery involving less than 500 pesetas, committed without arms and without any aggravating or mitigating circumstances, the trial court in imposing the penalty of 14 months of presidio correccional, acts in accordance with the provision of said Code; because, inasmuch as it prescribes as a penalty for the consummated crime only the medium degree of said presidio correccional, and the penalty for frustrated robbery being the next lower in degree this penalty must be the minimum degree of presidio correccional and not the penalty composed by this and the two other degrees of the next lower penalty, because this combination must be adopted when the penalty prescribed for the offense is composed of various degrees as provided in article 76, Rule 4, of said Code, and not when composed of only one degree as in the present case."

However, in the subsequent decision of December 20, 1872 (as well as in the decisions of July 5, 1872, September 26, 1872, and October 15, 1872) it was held:

"1st. That article 521 of the Penal Code in force punishes consummated robbery, committed with arms, when the amount involved is less than 500 pesetas, with presidio correccional in its medium degree to presidio mayor in its minimum degree;

"2d. That the penalty next lower in degree to that imposed by law for consummated crime is prescribed, under article 66, when the crime is frustrated, which in the present case is arresto mayor in its medium degree to presidio correccional in its minimum degree;

"3d. That inasmuch as the accused carried no arms for the perpetration of said frustrated robbery, and the value of the property taken does not exceed 500 pesetas, his penalty should be limited to the minimum degree resulting from the graduation of the penalty, because otherwise a difference would arise, to the prejudice of the

author of the frustrated crime, should the law adopt it for consummated offense in the latter part of said article 521; and

"4th. That the trial court, in applying this rule and in imposing upon the accused four months of arresto for such crime, committed no error or violation of law to justify a reversal."

As may be seen, the difference between the decision of June 13, 1872, and those rendered thereafter consists in that in the former the penalty was first reduced to its minimum degree, and then the penalty immediately inferior to it was imposed, whereas in the other decisions the penalty immediately inferior in degree was determined and then imposed in its minimum degree.

Pursuant to the foregoing, the Supreme Court of Spain in imposing, in its decisions subsequent to June 13, 1872, the penalty of arresto mayor in its medium degree, did so not because this penalty was the next lower than presidio correccional in its medium degree, but because that is the minimum degree of the penalty of arresto mayor in its medium degree to presidio correccional in its minimum degree, which is the next lower penalty than presidio correccional in its medium degree to presidio mayor in its minimum degree.

The penalty of prision mayor in its medium period must be divided into three equal parts, and the medium thereof is from eight years, eight months and one day to nine years and four months.

For the foregoing reasons, the defendant and appellant is sentenced to suffer eight years, eight months and one day of prision mayor, to pay a fine of P10 and to indemnify the offended party in the sum of P10, without subsidiary imprisonment in case of insolvency, and to pay the costs of both instances.

As thus modified, the decision appealed from is affirmed.

Avanceña, C. J., Street, Abad Santos, and Butte, JJ., concur.

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