

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ALEKO LILIUS, DEFENDANT AND APPELLANT.

G.R. No. 38774. December 23, 1933

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

In this case, the accused Aleko Lilius was charged with the crime of estafa and, upon conviction by the trial court, was sentenced to one year and one day of prision correccional with the accessory penalties prescribed by the law, and to indemnify the offended party Luneta Hotel in the sum of P1,306.29, with the corresponding subsidiary imprisonment in case of insolvency. From this judgment the accused appealed.

In the year 1931 and prior thereto, the defendant was a guest at the Luneta Hotel of which Robert L. Hobbs is the owner. The alleged offense charged consists in that the appellant issued four checks against the Jolo Branch of the Philippine National Bank in favor of the Luneta Hotel, to wit: Exhibit A for P500, issued on January 2, 1931; Exhibit B for P500, on January 9, 1931; Exhibit C for P372.17, on January 9, 1931; and Exhibit F for P340, on January 26, 1931, without having sufficient funds to cover the amount thereof either on the dates of their issuance or on those on which they were presented for payment, as a result of which they were dishonored.

Exhibit A was issued by the appellant in exchange for cash which he received from the complainant. The defendant testified that upon issuing the check in question, he was asked by the cashier of the complainant whether he had sufficient funds in the bank to cover the amount thereof, to which he replied that he was not sure, but that he believed he had and that, at any rate, if he did not have, he would cable to New York to have sufficient funds placed to his credit. The trial court mentions this defense of the appellant and does not reject it in its decision. On the other hand, the appellant's testimony is corroborated by that of Clayton who stated that he was present at the time the former made such statement. However, the trial court stated in its decision that such defense was not valid on the ground that the mere fact of the issuance of a check amounts to a positive averment that he has funds for the payment thereof. That is true. Such presumption is reasonable and justified by the nature of the transaction. However, in the case at bar, this presumption is modified by reason of the statements of the appellant from which it may be clearly inferred that there was a possibility of his not having funds in the bank at the time he issued the check. If the appellant made such statement to the cashier of the offended party upon issuing the check Exhibit A and, in spite of such statement, the said cashier accepted the check in question and delivered the amount thereof to the appellant, he did so fully aware of the risk he was running thereby. If it proved later that the appellant neither had sufficient funds on the date he issued such check nor at the time it was presented for payment, such risk was foreseen at the time of the acceptance thereof. In this sense, it may be said that the appellant did not act fraudulently. This conclusion is confirmed further by the fact that, according to the evidence of record, the appellant had a balance of P433.35 in the bank on the date of the issuance of the check in question, which would about cover the amount thereof. Furthermore, the day before the presentation of the check for payment, the appellant had a balance of P504.40 in his favor, which sum covered the full amount of the check. It may be noted that the appellant had a current account with the Jolo Branch of the Philippine National Bank

making deposits and withdrawals, his deposits during the year 1931 having amounted to P3,293.35 and his withdrawals, to P3,052.30. His deposits were made by means of money orders received from New York.

With respect to check Exhibit A, our conclusion is that the appellant, in issuing it, did not do so fraudulently and that the complainant, in accepting the same, was fully aware of the possibility that the appellant might not have funds in the bank on the date of the issuance thereof.

With respect to checks Exhibits B and C, it is admitted that they were issued by the appellant in payment of his debt at the hotel for board and lodging. With respect to Exhibit F, the appellant's evidence proves that it was issued by him at the request of Hobbs and that he received nothing in exchange therefor. Testifying in the case with reference to Exhibit F, Robert L. Hobbs stated that the appellant issued it in payment of an account. Although it is true that he corrected his testimony immediately, saying that said check was issued by the appellant in exchange for cash which the latter received, however, later during the same cross-examination, he reaffirmed that the appellant delivered it to him in payment on account of his debt. We note that on this point Hobbs could not recall the circumstances surrounding the issuance of Exhibit F, which circumstance justifies our acceptance of the appellant's testimony to the effect that he received nothing in exchange for the check in question and that it was issued by him in payment of his debt at the hotel.

Inasmuch as these last three checks Exhibits B, C and F were issued in payment of a debt, even granting that the appellant issued them without sufficient funds to cover the amount thereof, and furthermore, that he acted fraudulently in issuing them, such act does not constitute the offense of estafa. The appellant obtained nothing under said checks. His debt, for the payment of which said checks were issued, had been contracted prior to such issuance. Hence the deceit, if there was any in the issuance of the questioned checks, did not precede the defraudation. On the other hand, the record does not show that the debt had been contracted through fraud. (Decisions of the Supreme Court of Spain of December 18, 1889, June 9, 1891, and January 16, 1906.)

Wherefore, reversing the judgment appealed from, the defendant is hereby absolved from the offense with which he was charged, with the costs de oficio. So ordered.

Street, Abad Santos, Vickers, and Diaz, JJ., concur.

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