

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TOMAS MANANSALA ET AL., DEFENDANTS. GALICANO ALON AND RICARDO CABRALES, APPELLANTS.

G.R. No. 38948. November 18, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

The appellants Galicano Alon (alias Grego), and Ricardo Cabrales (alias Maning), together with Tomas Manansala, Generoso Jacinto, and Isidro Mendoza, were prosecuted in the Court of First Instance of Manila for the crime of estafa, committed as follows:

"That on or about the 19th day of February, 1932, in the municipalities of Pasay and Caloocan, Province of Rizal, within two and a half miles from the city limits and within the jurisdiction of this court, and in the City of Manila proper, Philippine Islands, the said accused conspiring and confederating together and helping one another, did then and there wilfully, unlawfully, and feloniously defraud one Perfecto Abordo in the following manner, to wit: the said accused by means of false and fraudulent representations which they made to the said Perfecto Abordo to the effect that they had for sale six hundred (600) tins of opium, a prohibited drug, and that they would deliver the same to him upon paying them WOO in advance and by means of other similar deceit, induced the said Perfecto Abordo to give and deliver to them, as in fact he gave and delivered to them, the said sum of P600, in consideration of which the accused gave him a gasoline can which they represented to contain the 600 tins of opium, when in truth and in fact, as the said accused well knew, the said can contained only six small tin cans containing a black substance which was not opium, the accused thereby wilfully, unlawfully, and feloniously defrauding the said Perfecto Abordo in the sum of P600 to his damage and prejudice in said amount.

"That the accused Toxnas Manansala y Velasco and Galicano Alon y Ponce (alias Grego) have each once been convicted of the crime of estafa; and the accused Ricardo Cabrales y Pelorina (alias Maning) and Isidro Mendoza y Santos Sollo are habitual delinquents, the first having been convicted once for robbery, once for theft and three times for estafa, having served his last sentence on February 4, 1927, and the second having been convicted one of estafa and once of robbery, having served his last sentence on October 30, 1922, all of said convictions having been rendered by virtue of final judgments of competent courts."

After the prosecution had rested, the information was dismissed as to the defendants Tomas Manansala, Generoso Jacinto, and Isidro Mendoza for lack of evidence to show that they had taken part in the commission of the crime. Upon the termination of the trial, Judge Pedro Concepcion found the defendants Galicano Alon and Ricardo Cabrales guilty of estafa, in accordance with the provisions of article 354. No. 2, of the Penal Code, as amended by Act No. 3244, and sentenced each of them to suffer four months and one day of arresto mayor, with the accessory penalties prescribed by law, to indemnify the offended party, Perfecto Abordo, in the sum of P600, with subsidiary imprisonment in case of insolvency, and to pay the proportionate part of the costs.

The trial judge's findings as to the facts are as follows:

"With respect to the other accused, Galicano Alon and Ricardo Cabrales, the evidence for the prosecution sufficiently shows that about a week prior to February 19, 1932, the former, who gave his name as 'Grego' and the latter known by the name of 'Maning' in company with another person whom they called 'Pepe' offered to sell Attorney Perfecto Abordo 17,000 tins of opium at P1.50 each telling him that he could sell them for P10 a tin. Tempted with the prospect of an enormous profit, Mr. Perfecto Abordo agreed to buy the merchandise, and the accused agreed to sell it to him in lots of 1,000 tins at P600 lot. It was agreed that the delivery of 1,000 tins would take place at 5.30 p. m., at the corner of Taft Avenue Extension and Vito Cruz, within the jurisdiction of this city. Attorney Perfecto Abordo accordingly went to the place indicated with the money, and there waited for them. The accused Galicano Alon arrived alone in an automobile and invited Abordo to go with him to the place where the 1,000 tins of opium were kept. Trusting Galicano Alon, who always called Abordo 'brother' because he claimed to be a Mason like Mr. Abordo, the latter went with him in his automobile to the rotunda of Rizal Avenue Extension. Chauffer Jose Jonsay was at the wheel. It was already twilight when they arrived at the rotunda, and there they met Maning, or the accused Ricardo Cabrales, who, in company with others, was waiting for Abordo in another automobile. The accused Cabrales alighted and shortly thereafter appeared Pepe who was ordered by Cabrales to get the tins of opium. Pepe got from a lot nearby the can Exhibit A, the top of which was opened by Cabrales in order to show Abordo the six tins of opium contained in a wooden box, Exhibit B, which Abordo saw when the top of said Exhibit A was opened. Finding that said tins really contained opium, Abordo believed that the rest of the contents of the can also consisted of tins of opium. He handed the six hundred pesos to Maning, who, after receiving the money, immediately went to the automobile where his companions were waiting. At the same time Abordo returned to his car with the accused Galicano Alon and the person named Pepe, carrying the can. While proceeding towards Taft Avenue Extension Abordo noticed that the accused Cabrales was following in his automobile, and that when they were nearing the corner of Taft Avenue Extension and Vito Cruz the car in which Cabrales was riding attempted to block Abordo's way, while Galicano Alon told Attorney Abordo that those in the other automobile were constabulary men and it would be better to get rid of the can Exhibit A. The accused Cabrales, whom Attorney Abordo was able to recognize very well, and the companions of the former whom Abordo was not able to identify because it was already dark, approached his car saying that they were constabulary agents and told Abordo that he was under arrest. Knowing that they were not constabulary agents and that their purpose was to get possession of the can Exhibit A, Abordo drew his revolver and ordered his chauffeur to proceed. Cabrales and his companions again followed him in their car and for the second time tried to head off Abordo somewhere before the intersection of F. B. Harrison and Vito Cruz streets, but Abordo proceeded until he arrived at his house. There he opened the can Exhibit A and inside he found the wooden box Exhibit B, but the rest of the contents of the can was sand. He bore a hole in one of the tins and found that it only contained molasses.

"The accused tried to give, by their testimony and that of Miguel Rosales, who had been convicted twelve times of estafa, a long story to the effect that Abordo engaged the accused Cabrales, through the intervention of Miguel Rosales, to prepare 1,000 tins of molasses resembling tins of opium, and that on the afternoon agreed upon for the payment of the value of said tins, Abordo refused to deliver the money on the pretext that the purchaser of said tins had not arrived, and invited the accused to his house in Pasay in order to make the payment inasmuch as they insisted upon collecting from him; but before arriving in Pasay Cabrales stopped Abordo's automobile and required the latter to hand over the money, at the same time placing at the side of Abordo's automobile a sack which he said contained the 1,000 tins of molasses asked for by Abordo.

"It is hardly necessary to state that this story is a sheer fabrication."

The attorney for the appellants makes the following assignments of error:

"I. El Juzgado incurrio en error al declarar que las pruebas demuestran que Ricardo Cabrales y Galicano Alon, en compañía de otro individuo llamado 'Pepe', vendieron al abogado Perfecto Abordo mil latas de opio falsificado por el precio de P600.

"II. El Juzgado incurrio en error al no declarar que el supuesto ofendido, Perfecto Abordo, por medio de

Miguel Rosales, encomendo a Ricardo Cabrales la confeccion de mil latas de opio al precio de P0.60 cada lata poniendo como contenido melaza, para venderlas como opio legitimo.

"III. El Juzgado incurrio en error al no declarar que aun en el supuesto de que en realidad Ricardo Cabrales vendio a Perfecto Abordo dichas mil latas de opio por el precio de P600, el acusado Galicano Alon nada tiene que ver con dicha venta.

"IV. El Juzgado incurrio en error al no absolver a los acusados apelantes, apreciando cuando menos en favor de los mismos y sobre todo en favor del apelante Galicano Alon, el beneficio de la duda racional."

The assignments of error raise only questions of fact, depending on the credibility of the witnesses. No reason has been adduced that would justify us in disturbing the findings of the trial judge. As to the contention of the appellants, the trial judge found it to be a mere fabrication and worthy of no credit. The witnesses for the defense were Miguel Rosales and the appellants themselves. The evidence shows that Miguel Rosales had been convicted of the falsification of commercial documents in twelve cases. The appellant Galicano Alon had been convicted of estafa, and the other appellant, Ricardo Cabrales, had been convicted once of robbery, once of theft, and three times of estafa. The trial judge was fully justified in disbelieving the improbable story of said witnesses.

The crime committed by the appellants is that of estafa as defined in article 315, paragraph 1 (a) of the Revised Penal Code, which provides that any person who shall defraud another through unfaithfulness or abuse of confidence by altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration. The amount of the fraud being P600, the penalty applicable is arresto mayor in its maximum period to prision correccional in its minimum period, and it appearing that the appellant Galicano Alon has already been convicted of estafa, he is therefore a recidivist, and the penalty applicable to him should be imposed in the maximum degree.

It was alleged in the information that Ricardo Cabrales was a habitual delinquent because he had been convicted once of robbery, once of theft, and three times of estafa, and that the last penalty for estafa was extinguished by him on February 4, 1927. These prior convictions were admitted by him in open court. He is therefore a habitual delinquent, but his prior convictions can not be taken into consideration also as an aggravating circumstance for the purpose of increasing the principal penalty, which should therefore be imposed in the medium degree.

As to the additional penalty, the Solicitor-General recommends the medium degree of prision mayor in its minimum and medium periods, or from six years and one day to seven years and four months. This is erroneous. It is apparently based upon the mistaken idea that only the prior convictions of this appellant for estafa are to be taken into account. The correct interpretation of the law is that all prior convictions of any of the crimes of theft, robbery, estafa, or falsification should be taken into account when a person is convicted of any one of these crimes and of being a habitual delinquent. To hold otherwise, a person might be twice convicted of each of these four crimes, and still not be a habitual delinquent.

For the foregoing reasons, the appellant Galicano Alon is sentenced to suffer one year, eight months, and one day of prision correccional, and the appellant Ricardo Cabrales is sentenced to suffer one year and one day of prision correccional, and said defendants are jointly and severally sentenced to indemnify the offended party in the sum of P600, with the corresponding subsidiary imprisonment in case of insolvency. The appellant Ricardo Cabrales having been previously convicted five times of theft, robbery, or estafa, he is sentenced as a habitual delinquent to suffer an additional penalty of eleven years, six months, and twenty-one days of prision mayor.

As thus modified, the decision appealed from is affirmed, with the costs against the appellants.

Street, Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

CONCURRING IN PART, AND DISSENTING IN PART

ABAD SANTOS, J., with whom concurs BUTTE, J.:

I am of the opinion that the judgment should be reversed in so far as it requires the appellants to indemnify the offended party, Perfecto Abordo, in the sum of P600. I take this stand for the same reasons set forth in my dissenting opinion in *People vs. Aglahi* (G. R. No. 37421)[1], wherein I said:

"The right of the injured party in a criminal case, to be indemnified, is predicated on article 100 of the Revised Penal Code which provides 'Every person criminally liable for a felony is also civilly liable.' (U. S. vs. *Guy-sayco*, 13 Phil., 292; U. S. vs. *Heery*, 25 Phil., 600.) It requires no demonstration that the civil liability thus created is subject to the same conditions, limitations, and exceptions affecting obligations in general. It presupposes the existence of a good cause of action in favor of the injured party.

"In the instant case, whether we regard the liability as arising *ex contractu* or *ex delicto*, no recovery by way of damages or indemnification should be allowed the complaining witness. On the one hand, we have the legal maxim, '*Ex turpi causa non oritur actio*'; on the other, '*Ex dolo malo non oritur actio*,' and also '*In pari delicto potior est conditio defendentis*.' The rule is that an agreement contrary to law or morals can give rise to no right of action in any party to it, either for the enforcement of it, or for the recovery of property parted with in pursuance of it.

"In *McMullen vs. Hoffman* (174 U. S., 639, 654; 19 Sup. Ct., 839; 43 Law ed., 1117), the Supreme Court of the United States, after reviewing the authorities on the subject, said: 'There are several old and very familiar maxims of the common law which formulate the result of that law in regard to illegal contracts. They are cited in all law books upon the subject, and are known to all of us. They mean substantially the same thing and are founded upon the same principles and reasoning. They are: *Ex dolo malo non oritur actio*; *Ex pacto illicito non oritur actio*; *Ex turpi causa non oritur actio*. * * * The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract.'

"In *Abbe vs. Marr* (14 Cal., 210, 212), an action was brought against the members of a gang of swindlers who, by false representations and promises that they had arranged to fix a horse race so that the plaintiffs' horse would surely win, induced the latter to bet their horses, cows, wood, and money on the race, and then they so fixed the race that the plaintiffs lost. The action was to recover back plaintiffs' property. In passing upon the case, the Supreme Court of California said: 'No Court of Justice can listen to such a case. When the plaintiff asserts his own turpitude in this way, he sends his case out of court. If, in attempting, by way of reprisal or otherwise, to swindle another, he becomes the victim of his own arts, it may become a question in morals or in honor, which party is the more culpable; Courts of Law entertain no discussion on the subject, but terminate the controversy by shutting their doors in the face of the intruder.'

"In *Babcock vs. Thompson* (20 Mass., 446, 449; 15 Am. Dec, 235), the plaintiff brought an action to recover from the defendant money lost in gaming by foul play. The Supreme Court of Massachusetts, through Chief Justice Parker, said: 'Here is a case of gaming accompanied with cheating. Clearly if the gaming had been fair, the law would give no remedy. The only question then is, whether the fraud will alter the case. We think it will not. If a man thus voluntarily puts himself in a condition to be cheated, through his illegal act he cheats the government, and the other person cheats him, and they must be left to settle the affair between themselves.'

"In *Holman vs. Johnson* (1 Cowp., 348), a leading English case, Lord Mansfield said: "The objection, that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may so say. The principle of public policy is this; *ex dolo malo non oritur actio*. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise *ex turpi causa*, or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it; for where both are equally in fault, *potior est conditio defendentis*."

"In this jurisdiction, the rule that an agreement contrary to law or morals can give rise to no right of action, is expressly sanctioned in article 1306 of the Civil Code, which reads as follows:

" 'Art. 1306. If the act which constitutes the illicit consideration is neither a felony nor a misdemeanor, the following rules shall be observed:

" '1. When both parties are guilty, neither of them can recover what he may have given by virtue of the contract, or enforce the performance of the undertaking of the other party;

" '2. When only one of the contracting parties is guilty he cannot recover anything, which he may have given by virtue of the contract, or enforce the performance of any undertaking in his favor. The other party, if he has had nothing to do with the illicit consideration, may recover anything which he may have given without being obliged to perform any undertaking he may have assumed.'

"Commenting on this article, this court in *Perez vs. Herranz y Caceres* (7 Phil., 693, 695, 696), said: 'It is a familiar principle that the courts will not aid either party to enforce an illegal contract, but will leave them both where it finds them; but where the plaintiff can establish a cause of action without exposing its illegality, the vice does not affect his right to recover. The American authorities cited by the plaintiff fully sustain this doctrine. The principle applies equally to a defense. The law in these Islands applicable to the case is found in articles 1305 and 1306 of the Civil Code, shutting out from relief either of the two guilty parties to an illegal or vicious contract.'

"Again, in *Bough and Bough vs. Cantiveros and Hanopol* (40 Phil., 209, 216), this court said: It is rudimentary that contracting parties may not establish pacts, clauses, and conditions, which conflict with the laws, morals, or public order; "public order" signifies "the public weal" public policy. (Article 1255, Civil Code; Manresa, *Comentarios al Código Civil*, Vol. 8, p. 574.) It is further well settled, that a party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out. The rule is expressed in the maxims: "*Ex dolo malo non oritur actio*," and "*In pari delicto potior est conditio defendentis*." The law will not aid either party to an illegal agreement; it leaves the parties where it finds them. (Article 1306, Civil Code; *Perez vs. Herranz* [1907], 7 Phil., 693.) Where, however, the parties to an illegal contract are not equally guilty, and where public policy is considered as advanced by allowing the more excusable of the two to sue for relief against the transaction, relief is given to him. Cases of this character are, where the conveyance was wrongfully induced by the grantee through imposition or overreaching, or by false representations, especially by one in a confidential relation. (13 C. J., 497-499; *Pride vs. Andrew* [1894], 51 Ohio State, 405.)"

The principles above discussed apply with singular force to the facts of the present case. The offended party, Perfecto Abordo, is an attorney-at-law—an officer of the court.

He was in duty bound to defend and uphold the law. As stated by Justice Malcolm, in his standard work on legal

ethics, page 209: "One point which is repeatedly emphasized and reenforced in the ethical summary of a lawyer's duties, is to the effect that an attorney as such is obliged to follow and defend the law. He should act and advise action only in accordance with the law and due process of law, and not in violation thereof. 'Of all classes and professions,' the Supreme Court of the United States has said, 'the lawyer is most sacredly bound to uphold the law.' "

Instead of keeping faith with his profession and in flagrant violation of his oath of office, the offended party conspired with the appellants in this case to cheat the law. As a result of his iniquitous acts, he lost some money which he now seeks to recover. I know of no principle, either legal or moral, that would justify a court of justice to grant him aid under such circumstances.

[1]Promulgated October 26, 1933, p. 966, post.

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