

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANGEL MARIN, DEFENDANT AND APPELLANT.*G.R. No. 3975. March 21, 1908*

Ponente: CARSON, J.

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CARSON, J.:

On the 27th of April, 1906, in the municipality of Bacolod, Occidental Negros, the defendant received a watch from one Maximo K. Engel, under an agreement whereby it was understood that the defendant was to try to raffle the watch, and to pay to Engel P150 out of the proceeds, retaining for himself all he could realize upon the undertaking in excess of that amount. It was also understood that the watch was to be returned to Engel every night until the necessary tickets were sold and the sum of paid to Engel in accordance with the agreement. On the 3d day of May the defendant pawned the watch to one Jose Atienza for P52, stating at the same time that it was his property, and on the following day he left Bacolod and went to Victorias where he stayed for several weeks, until he learned that a complaint had been filed by Engel charging him with estafa, whereupon he returned to Bacolod, redeemed the watch and turned it over to the justice of the peace, at the same time protesting that it was his property, purchased by him from the complainant.

The accused admitted the truth of the foregoing facts, but alleged that on the morning of the 3d of May and before he pawned the watch, he returned it to Engel informing him that he could not sell the necessary tickets for the raffle; and that Engel then sold him the watch on credit for P125, payable during the month of May, or at latest on the feast day of Bago.

In support of his allegations, the defendant called to the stand Felipe Gepulco, Jose Atienza, and Francisco Geolingo; Gepulco swore that he was present when the sale was made; Atienza, with whom the watch was pawned, testified that Engel, when he discovered that the witness had the watch, offered to pay the amount which had been loaned upon it, if it were returned to him, and said that he had sold it on credit to the defendant, but was afraid that the defendant would not pay for it; Geolingo testified that one day early in May, 1906, he met Engel on the street and asked him when he expected to leave town, and that Engel replied that he could not get away at that time because he had sold a watch to the defendant on credit, and would have to wait until the end of the month for payment.

The trial judge did not believe the testimony of the witnesses for the defense, and convicted the defendant of the crime of estafa with which he was charged.

We are agreed that if the accused and his witnesses are to be wholly disbelieved the judgment of conviction should be sustained, but while we are strongly inclined to agree with the trial judge, and the inherent weakness of the story of the accused stamps it with an air of improbability, nevertheless a review of all the record does not disclose a particle of evidence in contradiction of the testimony of the accused and his witnesses; under such circumstances we are not prepared to hold that it is false beyond a reasonable doubt. Engel, the owner of the watch, who might have contradicted the testimony of the witnesses for the defense, was not called to the stand,

and appears to have been out of the province at the time of the trial.

The trial judge reviewing the testimony of the witnesses for the defense makes the following observations on which he bases his rejection of the defendant's story of the purchase of the watch:

"Felipe Gepulco, who states that he witnessed the supposed sale on credit of the aforesaid watch, testified before the court that the owner of said article was named Marcos, when, as a matter of fact, in the court of the justice of the peace he called him by his real name, Maximo, and also alleged that the latter was a Spaniard and wore a thin mustache, which is not true, because Maximo K. Engel, as may be recognized from his speech is not a Spaniard, and wears a very thick mustache; this shows that the said witness could not have been present at the transaction, as he declares. The witness Gepulco is a person who speaks good Castilian, and for this reason he could not have made a mistake when relating the personal circumstances regarding Maximo K. Engel, if he had actually witnessed the sale.

"The witness Francisco Geolingo, an educated person, declares that on an afternoon of a day in the early part of the month of May, 1906, he met Maximo K. Engel on the street and asked him when he was going away, to which the latter replied that he could not leave because he was waiting for the value of the watch sold to Marin for 125, payable at the end of the said month of May. It should be noticed that notwithstanding the intelligence of this witness, he has been unable to recall the date, or the day of the week when the conversation took place.

"From the extract of the declarations of the defense, the improbability of the testimony of Felipe Gepulco appeal's, as also the declaration of Geolingo and the accused, since it is not possible to suppose nor believe that Maximo K. Engel, who had already stated his desire to leave at once for Manila (Exhibit A), should have sold on credit the said watch to Marin, and wait for payment until the end of May, and that Engel, being a merchant, could afford to stay one month in Bacolod in order to await the payment for the watch; nor is it reasonable to believe that he should have sold it for 125 when it was known that, when trying to raffle the watch, it was made a necessary condition that Engel should receive 150 as the value thereof, and that in the supposed sale on credit a smaller sum was demanded. The improbability of the simulated sale also becomes evident when it is considered that, at the time when the raffle was contemplated, Engel imposed on Marin the condition that the watch should be returned to him every evening, a condition which discloses lack of confidence; it is therefore incredible that he should have afterwards sold it on credit, and for a smaller sum without even demanding a receipt in case of sale.

"Such a sale as alleged can not, therefore, be believed, and the allegation thereof by the accused was undoubtedly made in order to avoid the criminal liability he has incurred."

There is nothing in the record of the trial in the Court of First Instance, save the findings of the judge, to show what Engel's true nationality was, nor whether he wore a beard (mustache) or not; and in any event we do not think that a mistake of the witness Felipe Gepulco as to Engel's nationality, and his failure to recall correctly Engel's facial peculiarities after having seen him but once, nearly eight months before the trial, are conclusive of the falsity of his statements. It is not improbable, judging from his name, that he is a European, and it appears from his letters in the record that he wrote fair Spanish, so that it may, perhaps, be presumed that he also spoke the language. Under such circumstances the mistake of the witness as to his nationality, if it was a mistake, does not seem to be remarkable, and the finding of the trial judge that Engel wore a heavy beard, even if it could be taken into consideration when it does not appear that he was present at the trial or that any of the witnesses testified as to this fact, is not of much importance without a further finding that Engel wore a beard at the time when the witness Gepulco testified that he saw him. It is not at all surprising that the witness, Francisco Geolingo, was unable to remember the day of the week or the month in which he happened to have a casual conversation with the owner of the watch, as such conversation, if it occurred, must have occurred seven or eight months before the date of the trial. Nor can we agree with the trial judge that a sale on credit under the conditions and at the price alleged by the defense was so extraordinary as to justify us in branding the whole story as false beyond a

reasonable doubt.

It may be admitted that the story of the defendants and his witnesses is improbable, but its falsity is not proven beyond a reasonable doubt, and a judgment of conviction can not be sustained.

The judgment and sentence of the trial court should be and are hereby reversed, and the appellant acquitted of the crime with which he is charged, with the costs of both instances de oficio. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.

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