

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOAQUIN QUESADA, DEFENDANT AND APPELLANT.

G. R. No. 40846. September 01, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

On February 20, 1933 the appellant was charged in the Court of First Instance with the crime of estafa, committed as follows:

"That on or about the 3rd day of December, 1932, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully and feloniously issue, make and deliver check No. D-641074 drawn against the Bank of the Philippine Islands in the amount of five hundred pesos (P500) and postdated December 7, 1932, in favor of one Marcelino Julio, for valuable consideration; that upon presentation of the said check for payment in said bank on the date appearing thereon, the same was dishonored for the reason that he had no funds therein to cover the amount thereof, his account having been previously closed, a fact which he did not disclose to the said Marcelino Julio at the time of issuing or delivering the said check, to the damage and prejudice of the latter in the said amount of P500."

He pleaded not guilty. Upon the termination of the trial he was found guilty as charged and sentenced to suffer one year and one day of prison correccional, and to pay the offended party (pagar a la ofendida) the sum of P500, with subsidiary imprisonment in case of insolvency, and to pay the costs.

The attorney for the appellant contends that the lower court erred in finding that the accused-appellant issued a postdated check in payment of an obligation, knowing that he did not have funds in the bank, without informing the seller of the land involved herein of such circumstances, and in convicting the accused-appellant.

It appears from the evidence that in Manila on December 3, 1932 Raymunda Garganilla agreed to sell to the defendant a parcel of registered land in Cuyapo, Nueva Ecija, for P500, and executed and delivered to the defendant the corresponding deed of sale, together with the owner's duplicate certificate of title; that at the instance of the defendant the consideration was stated in the deed as P1,000. On the same date the defendant issued and delivered to Raymunda Garganilla a check on the Bank of the Philippine Islands for P500, which at her request was made payable to her nephew, Marcelino Julio, who was present at the time of the transaction. The check was presented to the bank about December 14th, but payment was refused because defendant's account had been closed. In the meantime the defendant had left Manila for the provinces, and the purchase price of the land was never paid by him.

On or about July 24, 1933, subsequent to the beginning of the present case, the defendant filed a petition in the Court of First Instance of Nueva Ecija, alleging that the certificate of title delivered to him had been destroyed in a fire on July 3, 1933, and praying that a new certificate of title be issued in the name of Raymunda Garganilla. This petition was denied.

Raymunda Garganilla retained possession of the land, and shortly prior to the trial of the present case the

defendant returned to her the deed of conveyance in his favor.

An employee of the Bank of the Philippine Islands was presented as a witness. After he had identified the check in question, the attorney for the defendant stated he was ready to agree that the accused did not have any account with the bank on the date when the check was issued, but when the accused was asked to make an admission to this effect, he stated that he admitted that on December 7, 1933, his account with the Bank of the Philippine Islands had already been closed. The fiscal was satisfied with this admission, and the witness was excused. It is clear that this statement does not amount to an admission that the defendant did not have sufficient funds in the bank to cover the check when he issued it, but that may be inferred from his testimony.

Raymunda Garganilla was not called as a witness, and it will be noted that she is not mentioned in the information, although the real party in interest.

The contention of the appellant is that it was agreed between him and Raymunda Garganilla that the check would not be presented to the bank for payment until the deed was registered in the office of the register of deeds, and that he would then make a deposit in the bank to cover the check; that he presented the deed and the duplicate certificate of title to the register of deeds of Nueva Ecija about December 4th, but for reasons unknown to him the register of deeds refused to register the deed and returned the documents to him; that he then went to the provinces and could not return the deed and the certificate of title to the vendor.

Marcelino Julio testified that he did not know that the check was postdated when it was delivered to him and his aunt by the accused on December 3, 1932, but that in the lawyer's office on the same occasion when the sale was made they noticed that it was postdated; that nothing was done about it because the check was retained by Attorney Quilon, who claimed a part of the sum represented by the check. Julio stated that it was agreed by the parties that the deed should be registered before the check should be cashed; that the deed should be registered on December 7, 1932, but that it was never registered; that Raymunda Garganilla retained possession of the land.

The register of deeds of Nueva Ecija was not called as a witness, and we do not know for what reason he refused to register the deed, if it was in fact presented to him, as claimed by the defendant.

Raymunda Garganilla retained possession of the land, and the deed was not registered. The amount of damage, if any, sustained by her is not shown. The most that could be said is that she was disturbed in her property rights.

Whether the defendant did or did not inform Raymunda Garganilla and Marcelino Julio when he issued the check that he did not have sufficient funds in the bank to cover the check, the testimony of Julio shows that it was agreed that the check should not be presented for payment until December 7, 1932, in order to give the defendant an opportunity to secure the registration of the deed. So far as the record shows, the defendant presented the deed for registration about December 4, 1932, but the register of deeds refused to register it. The testimony of Julio tends to corroborate the declaration of the defendant that the check was issued under the condition that if the deed could be registered he would deposit in the bank a sum to cover the check; in other words, if the deed could not be registered, the check would not be cashed, but returned to the defendant.

Under these circumstances we are of the opinion that the lower court erred in finding the defendant guilty of estafa.

As to the agreement between the parties, the lower court said: "Lo convenido, segun el testimonio satisfactorio de Marcelino Julio, fue que se registraria la escritura antes de cobrarse el cheque, o sea, antes del 7 de diciembre, sin duda para que el acusado pudiera depositar fondos en el Banco antes de esa fecha; pero el acusado era el que tenfa que presentar la escritura en el Registro para el traspaso del titulo a su nombre, y no lo ha hecho ni el 7 de diciembre, ni antes ni despues de esa fecha, pues el dia 17 de dicho mes, Marcelino Julio se informo en la oficina

del registra de que no se habia presentado aun la escritura por el acusado, y puesto que el cheque no fue pagado, pidio al Registrador de Titulos que no inscribiese la escritura de venta.

"La condicion, pues, de que se registrara el titulo antes del 7 de diciembre, dependia enteramente del acusado, pero este voluntariamente no cumplio con esa condicion, ni poseia fondos en el Banco para que el 7 de diciembre, fecha del cheque, o el 14 del mismo mes, fecha en que fue" a cobrarlo Marcelino Julio, pudiera hacerse efectivo el referido cheque."

Since the parties agreed that the deed should be registered before the check should be cashed, that is, on or before December 7th, and if this agreement was made, as we think the trial judge rightly concluded, for the purposes of giving the accused an opportunity of depositing funds in the bank to cover the check, it is clear that the failure of the defendant to present the deed for registration, if that were proved, and to deposit the funds to cover the check constitute merely a breach of his contract, a civil obligation, and not the crime of estafa.

Under the Revised Penal Code postdating a check, or issuing it 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 (Posfechando un cheque, o Librandolo contra un banco en pago de una obligacion, sabiendo que al tiempo de hacerlo no tenia fondos, o no los tenia suficientes en dicho banco, sin advertir de tales circunstancias al tomador) is not a crime in itself. It is a part of article 315, which defines and punishes various forms of estafa or swindling. The payee or the person receiving the check must be defrauded by the act of the offender (article 315, No. 2 [d], Revised Penal Code). To defraud is to deprive of some right, interest, or property by a deceitful device, and No. 2 of article 315 provides that the false pretenses or fraudulent acts therein mentioned must be executed prior to or simultaneously with the commission of the fraud.

In the case at bar, the check itself showed that it was postdated. The trial judge found in accordance with the evidence that the person taking the check agreed to hold it for four days to allow the defendant to deposit the funds to cover the check. This clearly implied that the defendant did not have sufficient funds in the bank to cover the check when he issued it, and the parties undoubtedly so understood it. The defendant promised to register the deed and deposit the funds by December 7th, but that was merely a promise to perform an act in the future, a promise to pay, and the non-fulfillment thereof gives rise to only a civil action.

For the foregoing reasons, the decision of the lower court is reversed and the appellant is acquitted of the charge, with the costs de oficio.

Avancena, C. J., Street, Abad Santos, and Hull, JJ., concur.

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