

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ELENO QUINTO, DEFENDANT AND APPELLANT.

G. R. No. 40934. August 16, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from the following decision of Judge Pedro Tuason in the Court of First Instance of Benguet:

"Eleno Quinto is charged with a violation of article 168 of the Revised Penal Code it being alleged:

" 'That on or about the 13th day of July, 1932, at Balatoc, municipal district of Itogon, subprovince of Benguet, Mountain Province, Philippine Islands, and within the jurisdiction of this court, the above named accused Eleno Quinto did voluntarily, maliciously and illegally and knowingly have in his possession, and with intent to use, a false or falsified twenty-peso bank note of the Bank of the Philippine Islands.

" 'All contrary to law'

"After the prosecution had rested, the counsel for defense withdrew in behalf of their client the plea of not guilty and entered that of guilty. When, however, they saw that the penalty was rather severe, they changed their minds again and proceeded to introduce evidence upon the original plea of not guilty.

"The evidence for the prosecution discloses that in the evening of July 13, 1932, in Balatoc, municipal district of Itogon, subprovince of Benguet, the defendant was holding in his hand a twenty-peso bank note purporting to be issued by the Bank of the Philippine Islands, and wanted to play dice. Sixto Soriano, who also wanted to play dice, suggested to Quinto Jiat he (Quinto), before playing, have the bill changed, and asked one Jose Rivera, a clerk in the Balatoc Mining Company, who was standing nearby, to change it; whereupon Quinto handed the money to Soriano who, in turn, handed it to Rivera. Somebody in the crowd shouted that the bill was counterfeit and Rivera took it to the light to examine it. As Rivera was holding the bill against the light, the accused snatched it from Rivera's hands and tore it to pieces. The accused was later arrested by Salvador Empezo, a special policeman, and admitted to that officer in a written statement, that the bill in question was counterfeit and that he had tried to pass it upon the request of his cousin by the name of Tomas Quinto, to whom he said it belonged.

"The defendant made an attempt to make the court believe that the bogus money had been won by Sixto Soriano from an Igorrot. On this point Patricio Caldito, of Pozorrubio, Pangasinan, a townmate of the defendant, tried to corroborate the latter.

"The testimony of Jose Rivera and Sixto Soriano and the defendant's written confession and plea of guilty leave no room for doubt as to his guilt. The confession was written in the defendant's own words and with his own hand. He was being defended by three attorneys before this court when the plea of guilty was withdrawn and the plea of not guilty was substituted therefor. Rivera and Soriano had no cause to testify falsely against the accused and to shield the Igorrot who, according to the defendant and his witness, was the man that had uttered the false money.

"The court finds the defendant guilty of illegal possession and use of a counterfeit bank note, penalized in

article 163, in relation to article 166, paragraph 2, of the Revised Penal Code, and he is sentenced to four (4) years, nine (9) months and eleven (11) days of prision correccional, with the accessories provided by law, to pay a fine of TWO or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs."

Appellant's attorneys make the following assignments of error:

"I. Erro el Juzgado a quo al desestimar la peticion de sobreseimiento y al no declarar nulo ab initio todo lo actuado.

"II. Erro el Juzgado a quo al no absolver libremente al acusado."

After quoting section 13 of the Code of Criminal Procedure, as amended by Act No. 3040, and citing section 3 of the Act of Congress of August 29, 1916, the attorneys for the appellant make the following statement in support of their first assignment of error:

"Como se ve examinando el record, el Juez de Paz al recibir la denuncia suscrita por un tal Leoncio Esquejo, automaticamente expidio el mandamiento de arresto, sin hacer previamente qte los testigos de cargo, si han sido examinados, suscribieran bajo jtiramento sus declaraciones escritas, ni siquiera el denunciante; con infracci6n manifiesta de la Ley Constitucional y ley procesal supra-acotadas."

The foregoing statement is not sustained by an examination of the record, which shows that the complaint was filed in the justice of the peace court of the City of Baguio on July 15, 1932, after being subscribed and sworn to on the same date before the justice of the peace; that on the same date the justice of the peace issued the following order:

"It appearing from the investigation held by this court upon receiving the complaint that there is reasonable ground to believe that the offense complained of has been committed within the jurisdiction of this court and that the person charged committed it, it is ordered that a warrant for the arrest of Eleno Quinto, the person charged, be and is hereby issued to answer the complaint."

The record further shows that the appellant was arrested on July 15, pleaded not guilty on the 16th, and on the same date filed a motion, wherein he waived the preliminary investigation and asked that the case be forwarded to the Court of First Instance; that on the same date he asked that the justice of the peace of Pozorrubio, Pangasinan, be authorized to receive and accept bail bond for defendant's provisional liberty in the sum of P2,000; that the defendant furnished the bond required and was released by order of the Court of First Instance on July 30; that the case was called for trial in the Court of First Instance on July 16, when the accused appeared accompanied by his attorney, and after the information had been read to him, pleaded not guilty; that the defense admitted the falsity of the twenty-peso bill in question, marked Exhibit A; that this exhibit, together with two letters marked Exhibits B and B-1 was offered, and admitted without objection; that the fiscal then presented his first witness, and that it was only after the direct examination of this witness had been terminated that the attorneys for the accused raised the question of jurisdiction on the ground that the justice of the peace had not complied with section 13 of General Orders, No. 58, and asked for the dismissal of the case.

The motion for dismissal was denied. The attorneys for the appellant relied on the decision of this court in the case of *People vs. Red* (55 Phil., 706).

We find no merit in the contention of appellant's attorneys. The facts in the present case are quite different from the facts in the *Red* case. In that case the fiscal filed the information, did not appear before the justice of the peace, and this court found that the record affirmatively showed that the summary examination prescribed in section 13 of General Orders, No. 58 had not been made. In the present case the policeman, who filed the complaint, appeared before the justice of the peace and made oath to the complaint; and the record affirmatively

shows that an investigation was made by the justice of the peace before issuing the warrant of arrest. Furthermore, the defendant waived the preliminary investigation, furnished bond and was released, was arraigned in the Court of First Instance and pleaded not guilty, and did not raise the question as to the alleged failure of the justice of the peace to make a preliminary examination until after the first witness for the prosecution had finished his testimony on direct examination. Our conclusion is that the record not only affirmatively shows that a preliminary examination was made in accordance with section 13 of the General Orders, No. 58, as amended, but that if said section was not complied with the defendant waived his right to complain.

With respect to the second assignment of error, the evidence of record fully sustains the findings of the trial judge and proves the guilt of the defendant beyond a reasonable doubt.

The acts of the defendant constitute a violation of article 168 of the Revised Penal Code, in relation to article 166, which provides that any person who shall knowingly use or have in his possession, with intent to use, any false or falsified circulating note issued by any banking association duly authorized by law to issue the same shall suffer the penalty next lower in degree to prision mayor in its maximum period and a fine not to exceed P5,000. The penalty next lower in degree to prision mayor in its maximum period is prision mayor in its medium period. This question was considered at length in the case of *People vs. Co Pao* (58 Phil., 545).

In the absence of any aggravating or mitigating circumstance, the penalty to be imposed in the present case is the medium period of prision mayor in its minimum degree, or from eight years, eight months, and one day to nine years and four months.

The penalty next lower than prision mayor in its medium degree is prision mayor in its minimum degree, or from six years and one day to eight years.

Article 26 of the Revised Penal Code provides that a fine, whether imposed as a single or as an alternative penalty, shall be considered an afflictive penalty, if it exceeds 6,000 pesos; a correctional penalty, if it does not exceed 6,000 pesos but is not less than 200 pesos; and a light penalty, if it be, less than 200 pesos; and article 75 that whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced, respectively, for each degree, by one-fourth of the maximum amount prescribed by law, without, however, changing the minimum.

As already stated, the falsification of a bank note is punished under No. 2 of article 166 with prision mayor in its maximum period and a fine not to exceed P5,000, and a violation of article 163 is punishable by the penalty next lower in degree. The maximum of the fine authorized by article 166 being P5,000, the question arises as to whether or not the court may impose in the present case any fine that it deems proper within the range authorized by law, or whether it must impose a correctional fine of not less than P200 and not more than P3,750, in pursuance of articles 26 and 75 of the Revised Penal Code.

It will be noted that whereas the Penal Code specified in each case the minimum as well as the maximum fine, the Revised Penal Code in some cases fixes the minimum and the maximum and in others only the maximum. In articles 114, 115, 129, 135, 136, 140, 141, 142, 146, 147, 149, 151, 153, 155, 163, 164, 166, 167, 170, 171, 172, 174, 176, 178, 180, 181, 182, 193, 195, 197, 199, 226, 227, 228, 229, 230, 231, 233, 234, 235, 237, 239, 242, 243, 244, 259, 265, 266, 267, 269, 271, 272, 273, 276, 277, 278, 280, 281, 282, 285, 286, 289, 290, 291, 292, 313, 318, 331, 347, 351, 358, and 364 the minimum of the fine that may be imposed is not fixed; while in articles 143, 144, 150, 154, 186, 187, 188, 189, 190, 191, 192, 194, 196, 201, 209, 210, 213, 215, 216, 217, 218, 219, 220, 221, 236, 287, 288, 311, 312, 316, 317, 319, 321, 329, 355, 356, and 357 the minimum as well as the maximum is stated; and in article 198, for example, illegal betting on horse races is punished by *arresto menor* or a fine not exceeding P200, or both, while a person maintaining a totalizer is punished by *arresto mayor* or a fine ranging

from P200 to P2,000, or "both. Similar provisions are found in articles 202,359, and 365.

It must be assumed that the Legislature acted advisedly in fixing the minimum as well as the maximum of the fine in some cases and in not fixing any minimum in other cases. Therefore, when the minimum is not fixed, we are of the opinion that the determination of the fine to be imposed is left to the sound discretion of the courts, provided, of course, that it shall not exceed the maximum authorized by law.

For the foregoing reasons, the defendant is sentenced to suffer an indeterminate sentence of not less than six years and one day of prision mayor and not more than eight years, eight months, and one day of prision mayor, and to pay a fine of P50, without subsidiary imprisonment in case of insolvency. As thus modified, the decision appealed from is affirmed, with the costs against the appellant.

Avancena, C. J., Street, Hull, and Diaz, JJ., concur.

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