

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANTONIO ASTUDILLO, DEFENDANT AND APPELLANT.

G. R. No. 40945. August 15, 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:

"Antonio Astudillo is charged with estafa through falsification of commercial documents' alleged to have been committed as follows:

" 'That on or about the 27th day of May, 1933, in the City of Baguio, Philippine Islands, and within the jurisdiction of this court, the above named accused did with intent to defraud and through misrepresentation, voluntarily, maliciously and feloniously falsify, issue and use Phil. National Bank Check No. 637030 by making it appear in said check as if same had been properly drawn and issued by the Manager and Treasurer of the Pangasinan Transportation Co. and indorsed by Jose Ramos, when in truth and in fact said accused Antonio Astudillo well knew that said manager and Treasurer of the Pangasinan Transportation Co. and Jose Ramos did not issue or participate in the making, issuing, signing and indorsing said check and by virtue of said falsification, deceit and misrepresentation, said accused Antonio Astudillo was able to cash, obtain and receive the amount of P250.75 which is the value of the check from one Ka Satoh of Baguio. The said amount of P250.75 which is the face value put on the check was appropriated by said accused Antonio Astudillo for his own use and benefit to the prejudice of said Ka Satoh in the said amount of P250.75

" 'All contrary to law.'

"When this case was tried on October 24, 1933, the accused was assisted by counsel. The trial was discontinued for the reason that some of the important witnesses for the prosecution were absent. When the trial was resumed today, the accused appeared alone and expressed his willingness to plead guilty provided the minimum penalty be imposed on him. He afterwards said that his attorney had told him to plead guilty if he were found guilty by this court in another case (closely related to this one) for malicious mischief.

"It appears from the evidence that the defendant came to Baguio from Manila on or about the 24th day of April, 1933, with Felix Valencia on a car belonging to the latter's father. Shortly after arriving here, the accused, thru the driver of the car named Simeon Zamora, bought two tires from K. Satoh, agent in Baguio for the Firestone Rubber Company, for P51 and gave a check drawn on the Philippine National Bank for the sum of P250.75. The check was accepted and the accused, through Zamora, received not only the two tires but also the change in cash in the sum of P199.75. It later turned out that the check was falsified.

"This check purported to have been issued by one Jose L. Klar as manager of the Pangasinan Transportation Company in favor of one Jose Ramos and to have been indorsed by the latter. Klar denied that he had issued that check or that the signature appearing thereon was his. Ramos did not testify as no return of the subpoena with respect to him had been made up to the date of the trial. The testimony of Ramos was not deemed necessary as the falsity of the check was admitted.

"The only question presented for the consideration of the court is whether Zamora received the check from Astudillo, the accused, and gave the change to the latter. Upon this point there is the positive and convincing testimony of both Simeon Zamora and Felix Valencia, which the defendant barely made any attempt to deny. Aside from this testimony there is the fact that while Astudillo was under detention in the city jail of Baguio for this offense, he detached from the record of the case in the justice of the peace court the check which he was accused of falsifying and concealed or destroyed it. Astudillo has been charged with malicious mischief for this act and found guilty by this court. The statements of the accused in the course of the trial regarding his desire to plead guilty upon certain conditions is another proof of his guilt. The accused, it may be noted, is an educated man and according to his testimony, was formerly the publisher and editor of the 'Philippine Motor Review'.

"The court therefore finds the defendant guilty of the complex crime of estafa committed through the falsification of a commercial document and, in accordance with article 48 of the Revised Penal Code, 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 Ka Satoh the sum of P250.75 with subsidiary imprisonment in case of insolvency, and to pay the costs."

Appellant's attorney de officio alleges that the lower court erred in finding the accused guilty of the crime of estafa by means of the falsification of a mercantile document, although not all the facts constituting the crime alleged in the information were proved.

It is the contention of the attorney for the defendant that the automobile tires in question were, not used on the automobile of Felix Valencia, jr., until he and the defendant had returned to Manila, and that the testimony of Simeon Zamora and Felix Valencia, jr., is insufficient to prove beyond a reasonable doubt that the defendant delivered the check in question to Zamora to be cashed when he bought the tires, or that the difference between the amount of the check and the price of the tires was delivered to the defendant.

In our opinion the testimony of Zamora and Valencia duly proves that the defendant ordered Simeon Zamora to buy two tires and gave him the check in question to be cashed, and left him in front of the store of Iwama; that Iwama did not have the tires, and suggested that Zamora go to the store of Ka Satoh, the offended party; that Zamora bought the tires in question for P51 from Satoh, delivered to him the check for P250.75, and received in cash the difference between the amount of the check and the cost of the tires, or P199.75; that the tires were delivered to Zamora at the Vallejo Hotel, where the defendant and Valencia were staying; that Valencia returned to the hotel ahead of the defendant, and Zamora handed the P199.75 to Valencia, who delivered it in turn to the defendant when he returned to the hotel.

The testimony of these witnesses is corroborated by the offer of the defendant prior to and during the trial to plead guilty to a charge of simple estafa.

The only difficulty which the case presents is whether or not the evidence is sufficient to sustain the conviction of the defendant for the falsification of the check in question. We are constrained to think that the evidence is not sufficient to sustain that finding. The check in question, No. 637030 of the Philippine National Bank, purported to be issued by Jose L. Klar as manager of the Pangasinan Transportation Company in favor of Jose Ramos. Jose L. Klar testified that no such check had been issued by him, and that his company was not using checks of that series. Jose Ramos, in whose favor the check was drawn, and by whom the check purported to be indorsed, was not presented as a witness.

No evidence was presented to prove that the check in question was in the handwriting of the defendant. The check could not be exhibited at the trial, because it disappeared from the record while the case was pending in the justice of the peace court.

The Solicitor-General states in his brief that according to the testimony of Jose L. Klar the defendant obtained the check book, from which the check in question was taken, from the Philippine National Bank by falsifying the signature of Klar and by ordering a seal similar to that of the Pangasinan Transportation Co., and argues that this testimony, coupled with the fact that the defendant cashed the forged check, is sufficient proof of his guilt of the forgery. An examination of the record, however, does not seem to bear out this statement. It appears that the check in question was not included among the checks to which Klar was referring. His testimony related to certain forged checks amounting to a little more than P800 which were charged to the current account of the Pangasinan Transportation Company with the Philippine National Bank. It was then found that said checks had not been issued by the Pangasinan Transportation Company. When the check in question was described to the witness, he stated that he had never seen it; that the amount thereof had not been deducted from the current account of the Pangasinan Transportation Company; and 'that he had never heard of the check in question until he was subpoenaed as a witness in this case (pp. 7 and 8, steno. record).

The Solicitor-General cites in support of his contention *People vs. De Lara* (45 Phil., 754) and *People vs. Domingo* (49 Phil., 28). The facts of those two cases are materially different from the facts of the present case, and the decisions in those cases are not controlling in the case at bar.

In the *De Lara* case a forged check, dated April 5, 1923 and drawn to the order of J. U. Lim for P8,750, and another on April 6 for P5,600, and a third on April 12 for P9,800, were presented to the bank by the defendant on the respective dates of issue, and the amount thereof paid by the bank to the defendant on the purported indorsements of the checks by J. U. Lim to the defendant. The defendant admitted the receipt of all the money evidenced by the forged checks, and as a defense said that he was in the employ of J. U. Lim, who indorsed and gave the checks to him personally, with the instructions to cash them at the bank, and that he either delivered the money to Lim personally or to one Suaco upon the written order of Lim.

Rejecting defendant's explanation as unworthy of credit, this court held that the facts brought the case within the rule laid down in the case of the *United States vs. Castillo* (6 Phil., 453, 455), where it was said:

"For the purposes of this case it is not necessary to hold, and we do not hold, that the mere fact that the accused uttered the check in question is proof of the fact that he also forged it or caused it to be forged, but we do hold that the utterance of such an instrument, when unexplained, is strong evidence tending to establish the fact that the uttered either himself forged the instrument or caused it to be forged, and that this evidence, taken together with the further evidence set out above and brought out on the trial of the case, establishes the guilt of the accused of the crime with which he was charged beyond a reasonable doubt."

The evidence in the *Castillo* case showed that the blank upon which the forged check was written was stolen from a book of blank checks between the hours of 12 noon on the 1st of December, 1903 and 11 a. m. of the 2d of December, 1903 when the check was presented for payment; that this blank check book was kept in a drawer in the office of James J. Watkins, by whom the check was purported to be drawn, and that the defendant was one of three clerks employed by Watkins in his office; that the defendant was in the office on the evening of December 1st, and that he locked the office after all the other clerks had gone. The defendant testified that he had never seen the forged check prior to the trial; that he was not at the business place of Lim Ponso, who cashed the check on December 2, 1903; and that he never received the proceeds of the check. The trial court found, however, that defendant's statements were false, and convicted him of knowingly using with intent to gain a falsified mercantile document, but this court reversed the judgment and convicted the appellant of the crime of falsification of a mercantile instrument.

In the *Domingo* case it appears that under the pretext of trying to find a purchaser for a fishpond belonging to the estates of two deceased sisters, the defendant obtained from the administrator the possession of the certificate of

title on the condition that she should return it the next day. She failed to return the certificate, and shortly afterwards a deed of sale of the fishpond was executed by two women that represented themselves to be the registered owners. The forged deed and the certificate of title were presented to the register of deeds, who cancelled the original certificate of title and issued a new certificate in the name of the vendee. At the trial the defendant denied having received the original certificate of title from the administrator and offered no further explanation. This court held that the evidence was conclusive that the defendant had obtained possession of the certificate as alleged in the information; that the crime could not have been committed if the perpetrators had not been in possession of the certificate of title; that not having offered any explanation as to what she did with the certificate, the position of the appellant was analogous to that of a person who immediately after a larceny has been committed is found in possession of the stolen goods and offers no explanation; and that the possession of the certificate of title being one of the necessary means of committing the crime in question, she was guilty as principal.

In the present case the defendant denied having the forged check in his possession, and as the testimony of Jose L. Klar does not refer to the check in question, there is nothing in the record to show how the defendant obtained possession of the check.

The defendant undoubtedly knew the check in question to be false. If he had believed it to be authentic, he would not have destroyed it after the complaint was filed, as the evidence shows he did, or denied ever having it in his possession.

Is the fact that the accused uttered the check in question, knowing it to be false, proof that he forged it or caused it to be forged? We think it is not. The decisions cited do not go that far, and this is the answer given in Wharton's Criminal Law (vol. 1, par. 726), where it is said:

"Does the uttering of a forged instrument by a particular person justify a jury in convicting such a person of forgery? This question, if nakedly put, must, like the kindred one as to the proof of larceny by evidence of possession of stolen goods, be answered in the negative. The defendant is presumed to be innocent until otherwise proved. In larceny this presumption is overcome by proof that the possession is so recent that it becomes difficult to conceive how the defendant could have got the property without being in some way concerned in the stealing. So it is with the uttering. The uttering may be so closely connected in time with the forging, the utterer may be proved to have such capacity for forging, or such close connection with the forgers that it becomes, when so accomplished, probable proof of complicity in the forgery."

In the Castillo case the uttering was so closely connected in time with the forging, and the utterer was proved to have such capacity for forging as to constitute probable proof of complicity in the forgery.

The forgery in the Domingo case could not have been accomplished without making use of the certificate of title that was in the possession of the defendant.

In the De Lara case, although some of the language used might lead one to believe that the writer of the opinion regarded the mere uttering of the forged checks as proof of their falsification, the conviction of the defendant does not rest upon that fact alone, because at least one of the circumstances mentioned by Wharton as constituting probable proof of the utterer's complicity in the forgery was present. The uttering was closely connected in time with the forging. The application for the check book was received by the Philippine National Bank on April 3d. The checks, which were issued on April 5th, 6th, and 12th, and purported to be indorsed by the payee to the defendant, were promptly cashed by the defendant at the bank. This court found that the defendant had confederates, and that one of them was an employee of the bank.

The defendant claimed that he was employed by J. U. Lim, the person in whose favor the checks were drawn; that

Lim, who was staying at the Hotel de France in Manila, delivered the checks to him, with instructions to cash them and bring back the money. If that be true, it shows that the defendant had a close connection with the forger of the checks, if not an opportunity of forging them himself.

In the case at bar none of the circumstances mentioned by Wharton as showing the utterer's complicity in the forgery is present. As already pointed out, the evidence does not show how or when the defendant came into the possession of the check in question, the date of which was not alleged in the information or proved at the trial.

Article 172 of the Revised Penal Code reads as follows:

"Art. 172. Falsification by private individuals and use of falsified documents.—The penalty of prison correccional in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

"1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

"2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

"Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree."

The acts of the defendant constitute a violation of the second paragraph under No. 2 of the foregoing article, because the defendant knowingly made use of the false document in question to the damage of the offended party. The penalty applicable to the offense committed by the defendant is *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree, and there being present no aggravating or mitigating circumstance the defendant is sentenced to suffer one year and 8 months of *prision correccional*, and to indemnify the offended party in the sum of P250.75, with the corresponding subsidiary imprisonment in case of insolvency; and in accordance with Act No. 4103 the minimum sentence of the defendant is fixed at four months of *arresto mayor*.

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

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

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