

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BUENAVENTURA ISLETA, AND JOSE TOPACIO NUENO, DEFENDANTS.

G.R. No. 41873. March 28, 1935

Ponente: HULL, J.

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HULL, J.:

This is an appeal from a judgment of the Court of First Instance of Manila finding the appellant, Jose Topacio Nueno, guilty of the crime of estafa and sentencing him to undergo imprisonment for an indeterminate period running from a minimum of one month and one day *arresto mayor* to a maximum of one year and one day *prision correccional*, with the accessories prescribed by law, and requiring him to indemnify the offended party in the amount of P260, with subsidiary imprisonment in case of insolvency, and with costs. Buenaventura Isleta was named in the information as a *codef endant*, but as a separate trial was granted to the present appellant, we are now concerned only with the case against the latter.

The proof for the prosecution in substance tends to show that prior to May 25, 1933, the appellant and Buenaventura Isleta were friends. In the evening of the date mentioned, while the two were in the premises of the Pasay Cabaret, appellant requested Isleta to issue against the Philippine National Bank a check (Exhibit A) for P260, payable to cash, alleging that appellant would merely show it to the manager of the cabaret. Isleta at first attempted to refuse to do it, on the ground that he had no funds in the bank, but, upon the insistence of appellant, Isleta was prevailed upon to draw the check as requested.

On the afternoon of May 27, 1933, appellant bought from the offended party, Quing Chuan, cigars and cigarettes worth P74 and in payment of these goods he tendered the check in question. Quing Chuan, believing it to be good, accepted the same and gave the appellant P86 to cover the full face value of the check. Quing Chuan deposited the check in the bank, but it was returned for lack of funds.

Appellant admits having received the check from Isleta but alleges that it was received in good faith in payment of a debt owing by Isleta to the appellant. There is no question that the signature appearing on the questioned check is that of Isleta.

The vital question, therefore, in this case is one of fact and is whether or not the appellant received the check in good faith and without knowledge of the fact that Isleta had no funds in the bank. The trial court in effect found adversely against the contention of appellant.

After a careful perusal of the proof we are unable to find any reversible error in the judgment of conviction. It is true that the testimony of Isleta should be carefully scrutinized as there is reason to believe that he was not such an innocent drawer as he pretends to be, but we are of the opinion that, apart from the weight which may be given to said testimony, the bad faith of appellant has been clearly demonstrated. Whether a conspiracy existed between appellant and Isleta, we do not need here to decide. The fact remains—and this is sufficient to support the conviction of appellant—that the latter had guilty knowledge of the fact that Isleta had no funds in the bank when

he negotiated the check in question.

Appellant testified that he knew Isleta to be an unscrupulous person and that he had information that Isleta was dealing in opium contraband and making shady transactions, such as selling other persons' property. If this is a fact, it was certainly unusual that appellant would not have hesitated in accepting Isleta's check, or would not at least have inquired from the bank if it was good before negotiating it.

Not only were Isleta and appellant good friends, but the intimate relations of attorney and client existed. Appellant knew that Isleta had not collected the sum of P2,000 referred to in the litigation, and there was no reason for him to believe that Isleta was in funds.

In the appellant's brief it is stated that the check was in part payment of legal fees, of a debt of P30 which had arisen because appellant paid for a bad check which had been issued by Isleta, and of another debt of P80, together with a P50 I. O. U., and "other additional expenses of miscellaneous nature which appellant had given and advanced to Mr. Isleta in the hope that the gentleman would pay his debts." None of these items are very definite, and it is not clear why the check was not for P160 or P360, or any other sum, rather than for P260 as issued.

Appellant contends that the check was issued to him by Isleta in payment of a debt and fees for professional services. It is noteworthy, however, that no documentary proof has been adduced to show that Isleta was indebted to him. Moreover, if there was really such an obligation on the part of Isleta, the most natural thing for the latter to do would be to ask the appellant to wait until he could collect a judgment for P2,000 from one Echarri, of which appellant had personal knowledge, and not to issue a check without funds.

Appellant alleges that the check was given to him in payment, in part, of a debt of P30 which he had to pay to cover a check issued by Isleta without then having funds in the bank. In spite of this fact, appellant would have this court believe that he readily accepted the check now in question from Isleta in good faith and without being aware of the fact that the latter had no funds. In the normal course of things appellant would have first ascertained whether Isleta had funds in the bank before negotiating it, for the reason that appellant knew that Isleta had previously drawn a check without funds. Again, if it is true that he had no guilty knowledge, it is indeed surprising why he did not attempt to pay his obligation to the offended party after he was informed that the check had been dishonored. And if it is true, also, that appellant acted in good faith, he should have been the first to denounce Isleta before the proper authorities.

Another circumstance which tends to show appellant's bad faith is the fact that, although he had sufficient time within which to cash the check himself in the bank, he did not do it. Instead he elected to negotiate it to the Chinese victim at a time when it was not possible to verify from the bank whether the check was good.

Appellant's explanation that he bought these cigars and cigarettes for a political meeting that night does not of itself carry conviction. Without being well acquainted with the political activities in the Islands, we are surprised to see such display of cigars and cigarettes by an ordinary party worker at such a meeting. Not only was P174 worth of cigars and cigarettes claimed to have been disposed of at that meeting, but appellant also stated that he spent the balance of P86 for the same purpose. The experienced trial judge who saw appellant testify did not believe him.

Neither do we. Affirmed, Costs against appellant. So ordered.

Vickers, Imperial, Butte, and Goddard, JJ., concur.

Malcolm, J., concurs in the result.

I certify that Justice Villa-Real voted in favor of the judgment.—AVANCENA, C.J.

DISSENTING

ABAD SANTOS, J.,

Appellant and one Buenaventura Isleta were jointly charged with the crime of estafa committed, according to the information, as follows:

"That on or about the 25th day of May, 1933, in the City of Manila, Philippine Islands, the herein accused Buenaventura Isleta, well knowing that he did not have sufficient funds in the bank, did then and there willfully, unlawfully and feloniously issue and make out check No. 1717623 D in the sum of P260, drawn against the Philippine National Bank and payable to cash, after which he delivered it to his coaccused Jose Topacio Nueno who, in pursuance of the conspiracy he had with the drawer of the check and knowing that his co-accused Buenaventura Isleta did not have sufficient funds in the said bank to meet the said check and without informing this fact to Quing Chuan, did then and there willfully, unlawfully and feloniously give it to said Quing Chuan in payment of some merchandise purchased from him valued at P174, and receiving from him the change amounting to P86; that upon presentation of the said check to the said bank for payment the same was dishonored and refused payment, for the reason that the drawer thereof, the accused Buenaventura Isleta, did not have sufficient funds therein, thereby both accused willfully, unlawfully and feloniously defrauding the said Quing Chuan in the sum of P260, to the damage and prejudice of the said Quing Chuan in the said amount of P260, Philippine currency."

Appellant was granted a separate trial, after which he was found guilty chiefly on the testimony of Buenaventura Isleta, who was presented as a witness for the prosecution. The record clearly shows that, without the testimony of this witness, there was no sufficient evidence to convict the appellant. On the other hand, even without the testimony of the appellant, there was at least a prima facie case of, estafa against Buenaventura Isleta.

In *United States vs. Manabat and Simeon* (42 Phil., 569, 573), this court quoted with approval the following from Bishop's Criminal Procedure, 2d ed., section 1169: "So manifest is the danger of convicting men on evidence from a source confessedly corrupt and delivered by the witness to shield himself from merited punishment, that the judges, while explaining to the jury their right to convict on it alone, by way of caution advise them not to return a verdict of guilty unless it is corroborated by evidence from a purer source. Yet they are not as of law required to give this advise."

By his testimony, Isleta would have this court believe that he was merely an ignorant tool of the appellant herein. If we are to believe his testimony, Isleta was as innocent as a new born babe, and that the appellant alone was guilty of the charge.

I can not vote to convict the appellant upon testimony coming from such a polluted source.

AVANCEÑA, C.J.:

I concur in this dissenting opinion of Justice Abad Santos.

Judgment affirmed.

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