

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FRANCISCO DEL CARMEN, DEFENDANT AND APPELLANT.

G.R. No. 42609. April 24, 1935

Ponente: HULL, J.

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HULL, J.:

This is an appeal from a judgment of the Court of First Instance of Ilocos Sur, finding the appellant, Francisco del Carmen, guilty of the crime of estafa through falsification of a public document and sentencing him to undergo imprisonment for an indeterminate period running from six years, prision correccional, to twelve years, prision mayor, with the accessories prescribed by law, to pay a fine in the amount of P5,000, to indemnify the offended party in the sum of P15, and to pay the costs.

It appears from the proof that appellant was the disbursing officer of the Northern Luzon Junior College, a branch of the University of the Philippines in Vigan. As such he received from the office of the University Comptroller, in September, 1933, treasury warrant No. 510762 for P15, issued in favor of Susana Supnet. Instead of turning this check over to the payee, as it was his duty to do so, appellant signed Supnet's name on the back of the check and cashed it in the store of Go Yee Bio. Supnet never received the check or its value.

Appellant denies having had anything to do with either the receipt or cashing of the check in question. On the contrary he imputes the perpetration of the offense to some other employee of the institution. We cannot agree with appellant's contention, for it is our belief that this denial is not sufficient to destroy the probative value of the testimony of Assistant Comptroller Felix, Agustin Alonso and Go Yee Bio, as well as of the entry in Exhibit B. Upon questions of fact, therefore, we are of the opinion that the trial court committed no error.

The contention is made that the lower court erred in holding that appellant is a recidivist. This is without merit. Recidivism is present in view of the fact that, according to Exhibit D, appellant had previously been convicted of the crime of theft, which is comprised in Title X of the Revised Penal Code where estafa is included.

Under the fourth assignment of error appellant alleges that the trial court erred in withholding from him all his legal means of defense. We find no basis for this suggestion. Not only did the trial court issue subpoena or subpoena duces tecum at appellant's request, but the latter failed to utilize during the trial the witnesses, documents and articles called for by him. Neither was it reversible error for the court to refuse to recall from the Supreme Court certain exhibits.

The crime committed is that of estafa through falsification of a public document denounced by article 171, No. 2, in connection with article 315, subsection 1 (6), of the Revised Penal Code. There being one aggravating circumstance, without any mitigating circumstance, the prescribed penalty should be imposed in its maximum period.

Modifying the appealed judgment by sentencing appellant to undergo imprisonment for an indeterminate period

running from a minimum of eight years and one day to a maximum of twelve years, prison mayor, and to pay a fine of P500, the same is in other respects affirmed. So ordered, with costs against appellant.

Malcolm, Abad Santos, Vickers, and Diaz, JJ., concur.

Judgment modified.

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