

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. J. BRAGA, DEFENDANT AND APPELLANT.

G.R. No. 4682. December 09, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The document in the case is as follows:

"MEMORANDUM.

"Philippine Products Co., manufacturers, New York and Manila, 95 Anloague.

"MANILA, P. I., Oct. 29/07.

" TO SON CO SING:

"Receipt for one hundred and fifty pesos, in currency. (This money will be returned)—to the account of the office.

"(Rubber stamp) PHILIPPINE PRODUCTS CO., INCORPORATED,

"By (signed) J. BRAGA.

"P150.00

"Delivered P50.00 o/a

"Nov. 4/907.

"11-12 P50."

The defendant, who was chief clerk in the office of the Philippine Products Company, placed with a rubber stamp the words "Philippine Products Co., Incorporated, By ———" upon the document and signed his own name thereto. He then sent it by messenger to Son Co Sing, who delivered to the messenger P150, which the messenger in turn delivered to the defendant, who used it for his private purposes. The defendant had authority to use this rubber stamp for the purpose, among others, of buying articles of small value for the company, but he had no authority to use it for the purpose of securing money for the company, and, of course, no authority to use it for the purpose of securing money for himself.

The defendant was prosecuted in the court below for the falsification of a private document and was convicted of the crime of estafa. From that judgment he has appealed.

Article 300 of the Penal Code is in part as follows:

"The penalties of cadena temporal and a fine of from 1,250 to 12,500 pesetas shall be imposed on a public official who, taking advantage of his authority, shall commit a falsification—

"1. By counterfeiting or feigning any writing, signature, or rubric.

"2. By including in any act the participation of persons who had no such participation.

* * * * *

"4. By perverting the truth in the narration of facts."

Article 304 is as follows:

"He who, to the prejudice of a third person or with intent of causing it, shall, in a private document, commit any of the falsifications specified in article 300, shall be punished with the penalties of presidio correccional in its minimum and medium degrees and a fine of from 625 to 6,250 pesetas."

We think it very clear that the defendant is guilty of the crime of estafa, but the question is, is he also guilty of the greater crime of falsification of a private document? It is apparent that, if by means of the falsification, the money is actually secured, the crime of estafa is always included in article 304. The defendant can not be convicted of a violation of paragraph 1 of article 300, because he did not counterfeit any signature. The document in question, so far as the rubber stamp and the signature are concerned, was a genuine document; the stamp used was the genuine stamp of the company and the signature was the defendant's own. Passing the question as to whether he violated paragraph 4 of the article, in that he stated that the money was for account of the office when it was for his own personal account, we come to paragraph 2, which, in our opinion, was violated in this case. If he had signed the document with his own name and had not used the rubber stamp, he would not have obtained the money. Son Co Sing testified that he paid the money because he saw the rubber stamp thereon, and that he believed that the money was for the benefit of the company for that reason. By using the rubber stamp the defendant made it appear that the Philippine Products Company was a party interested in the transaction when, in fact, it was not, and the case falls clearly within paragraph 2.

It is the constant doctrine of this court that, where a person signs the name of another to a document without attempting to imitate his signature, he can not be convicted under paragraph 1 of article 300; because he has not counterfeited the signature and has made no attempt to imitate it. We moreover held in the case of *The United States vs. Buenaventura* (1 Phil. Rep., 428) that, where the name of another was signed to the document without any attempt to imitate the genuine signature of such person, the defendant could not be convicted either under paragraph 1 or under paragraph 2. If in this case the defendant, without using the stamp, had signed the name of Heliis, the manager of the company, to the document, without attempting to imitate the genuine signature of Heliis, he could not have been convicted under either paragraph 1 or 2. But the case at bar is very different from the supposed case, and from the case of *The United States vs. Buenaventura*. In this case the only name signed was the name of the defendant, and it was his genuine signature. The falsification consists in his using the rubber stamp for the purpose of making Son Co Sing believe that the company had something to do with the transaction when, in fact, it had nothing to do with it.

It is said by counsel for the defendant in his brief that the court below acquitted the defendant of the crime of falsification of a private document and that that acquittal, whether right or wrong, is final and conclusive. It was however, held in the case of *Trono vs. The United States* (199 U. S., 521)[1] that, notwithstanding such acquittal in the court below, if the defendant appealed, he could, in this court be convicted of the offense of which he had been acquitted in the court below.

The judgment of the court below is reversed, and the defendant is convicted of the crime defined in article 304 of the Penal Code and is sentenced to one year, eight months and twenty-one days of presidio correccional, and a fine of 025 pesetas, and suffer subsidiary imprisonment at the rate of P2.50 for each day in case of nonpayment of

the fine, not to exceed, however, one-third of the imprisonment hereby imposed, with the right to an allowance of one-half the time for which he has been imprisoned prior to the date of the judgment to be rendered herein with the costs of the first instance and of this instance against the appellant, and the accessories of the law. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

DISSENTING

JOHNSON, J.,

In my opinion the sentence of the lower court should be affirmed. The complaint presented against the defendant in the court below was as follows:

"That on or about the 29th day of October, 1907, in the city of Manila, Philippine Islands, the accused, J, Braga, did then and there willfully, unlawfully, feloniously, falsely, and fraudulently, to the prejudice of a third person and with intent of causing it, and by counterfeiting and imitating the signature of another, by including in the act the participation of persons who had no such participation, and by perverting the truth in the narration of facts, falsify the following document, to wit:

"MEMORANDUM.

" 'From Philippine Products Co., manufacturers, New York and Manila, 95 Anloague.

" 'MANILA, P. L, Oct. 29/07,

" 'TO SON CO SING.

" 'Vale por ciento cincuenta pesos en metalico. (Se devolvera este) dinero—a/c de la oficina,

"P150.00 (Rubber stamp.)

""PHILIPPINE PRODUCTS CO. (INCORPORATED),

""By..... J. BRAGA.'

"which, translated into the English language, reads as follows:

" 'MEMORANDUM.

" 'From Philippine Products Co., manufacturers, New York and Manila, 95 Anloague.

" 'MANILA, P. I., Oct. 29/07.

" 'TO SON CO SING.

" 'Beceipt for one hundred and fifty pesos, in currency. (This money will be returned) to the account of the office.

" 'P150.00 (Rubber stamp.)

""PHILIPPINE PRODUCTS CO. (INCORPORATED),

" 'By..... J. BRAGA.'

"That the rubber stamp reading 'Philippine Products Co., Incorporated, by.....' was the rubber stamp then and there used by the Philippine Products Co., of which the accused was then and there an employee, a corporation duly organized under the laws of the State of New Jersey, then and there engaged in the business of manufacturing cocoanut oil in the said city of Manila; that the accused was not then and there authorized to use the said rubber stamp for the purpose of borrowing any money whatsoever, and that the accused did then and there willfully, unlawfully and feloniously, and falsely and fraudulently, place the impress of said rubber stamp on the said document, with the sole purpose of causing it to appear on the said document, and did thus cause it to appear on the said document that the amount of money, to wit: one hundred and fifty (P150) pesos, set out in said document, was then and there received by the accused for the account of said company; whereas in truth and in fact, the said sum was not then and there received for the account of the said company, as was then and there made to appear by the accused by the use of said rubber stamp, together with the signature of the said accused, but was received for the sole use and benefit of the accused; that the said Philippine Products Co., took no participation in the execution of said document, or in the acts connected with the execution thereof, as was falsely, fraudulently, and feloniously then and there caused to appear in the said document by the accused, as the accused then and there well knew; that the statement then and there contained in said document thus willfully, unlawfully, and feloniously falsified by the accused, reading as follows, to wit: 'To the account of the office' was a false and fraudulent perversion of the truth in the narration of facts then and there contained in the said document, in this: That the sum mentioned in the said document, to-wit: one hundred and fifty (P150) pesos, Philippine currency, was not then and there received by the accused for the account of the office of the Philippine Products Co., but was then and there obtained by the accused, simply and solely for the benefit and use of him, the said accused, in his capacity as a private individual, and not in his capacity as the servant or employee of the company, as the defendant then and there well knew; that the said falsification was then and there made by tire accused for the purpose of deceiving and prejudicing one Son Co Sing, in that it was done for the purpose of inducing the said Son Co Sing to deliver to the said accused, J. Braga, the said sum of one hundred and fifty (P150). pesos, Philippine currency, set out in said document; that the said Son Co Sing did then and there rely on the false and fraudulent representations made in the said document by the accused, and did then and there deliver to the accused the sum of one hundred and fifty (P150) pesos, Philippine currency; that by virtue of, and on account of the falsification of the said private document by the accused, the said Son Co Sing has been prejudiced in the sum of one hundred and fifty (P150) pesos, Philippine currency, which is equivalent to the sum of seven hundred and fifty (P750) pesetas, Philippine currency.

"Contrary to the statute in such case made and provided."

This complaint is clearly one for the crime of estafa. The lower court convicted the defendant for the crime of estafa. The evidence clearly supporting the facts set out in the complaint, the sentence of the lower court should be affirmed.

A statement in the title of a complaint that the crime charged is of one or of another class is of no importance in determining the crime with which the defendant is charged. An examination of the body of the complaint must be made in order to determine what the real offense charged is.

[1] 11 Phil. Rep., 736.

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