

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANTIAGO AUSTERO, DEFENDANT AND APPELLANT.

G.R. No. 5072. October 27, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Santiago Austero, a police sergeant at Tiwi, a town in the Province of Albay, proposed to Barbara Cirio, a young woman 16 years of age, who was married to Gregorio Colada, that he pay the land tax for her on certain land inherited from her father, in exchange for a hog that belonged to her. The offer was accepted and Santiago Austero handed to Barbara Cirio two receipts for payment of the land tax made out in favor of Angel Cirio, Barbara's father, and thereupon obtained delivery of the hog which was valued at P45. Barbara Cirio, however, was subsequently notified by the municipal treasurer that she was delinquent in the payment of said tax, in view of which her husband, Gregorio Colada, went to the municipality with the two receipts showing the payment of the tax as delivered by Austero; but Santiago Austero, who was there, snatched them from his hand and tore them up; the pieces were, however, recovered later on and the receipts thus pieced together and offered in evidence as corpus delicti, being Exhibits A and B, demonstrated the fraud which had been perpetrated on the young woman Cirio by giving her receipts with which she could prove no payment whatever.

All of the foregoing facts have been fully proven; the silence of the defense has contributed to such proof; it has offered no evidence at all, resting its case solely on the point of law as to whether, by such acts the crime of falsification was committed or merely that of estafa.

The falsification charged in the complaint consists, according to the same, in that "the accused did falsify official public documents, to wit, two land tax receipts, Provincial Form 26, numbered * * * whereon the name of Dionisio Austero originally appeared, making on said document, which was a lawful and real one, an alteration which changed its sense, that is to say, erasing the name written thereon and substituting for it that of Angelo Cirio, the father of the injured woman."

"Counsel for the accused has admitted-it so appears apud acta-that the receipts A and B were originally made out to Dionisio Austero * * *."

Dionisio Austero was the father of Santiago Austero and held the receipts in question showing the payment made by him for the land tax in 1902. Santiago Austero erased the name of his father, Dionisio Austero, and wrote over the erasure the name of Angelo Cirio, the father of Barbara Cirio, so as to show that the latter had paid the same tax for the year 1904; he thus managed to deceive her and profit thereby to the extent of a hog, valued, as already stated, at P45.

The defense endeavored to show that the above facts constitute the crime of estafa only, not that of falsification, and in support thereof cited the decisions of this Supreme Court in the cases of *United States vs. Paraiso* (1 Phil. Rep., 66), *United States vs. Roque* (1 Phil. Rep., 372), *United States vs. Buenaventura* (1 Phil. Rep., 428), *United States vs. Leyson* (5 Phil. Rep., 447), *United States vs. Sayson* (6 Phil. Rep., 382), and *United States vs. Angeles*

(6 Phil. Rep., 435).

In this instance the Attorney-General very rightly observes that none of the above-cited decisions apply in the present case.

In the cause against Paraiso the doctrine is established that "the agent of a mercantile concern who signs false receipts with the name of a third person is not guilty of falsification under articles 300 and 304 of the Penal Code if he does not attempt to imitate the signature or mark of that person." In that against Roque: "The signing of another's name to a receipt with design to deceive does not constitute falsification unless there is an attempt to imitate the genuine signature." In that against Buenaventura: "When no attempt has been made to imitate the signature or writing of another, there can be no conviction for falsification * * *." And in that against Leyson: "Leyson did then and there counterfeit and feign the signature of J. Y. McCarty * * *." In all of the foregoing decisions the matter at issue has been the falsification of signatures.

The case at bar has not to do with the falsification of a signature, nor is it necessary to inquire whether or not an attempt was made to imitate the signature or writing which constitutes the sign of authenticity, or reason for according credit to the document. The falsified documents in question are printed ones. The blanks that are filled out in this class of documents with the name of the taxpayer, the location of the property and certain figures, need not, nor can they be imitated, inasmuch as their authenticity lies in the issue thereof by an officer authorized by law so to do, and in the stub from which the same are detached when lawfully issued. As the complaint states, the documents exhibited in the case are genuine ones, the falsification consists in that the truth therein contained has been altered.

In the cases against Sayson and Angeles, this Supreme Court has established the doctrine that the falsification of seals, or of certificates of ownership of cattle, is not punished under article 301 in connection with article 300 of the Penal Code, but by article 311, as in the case of Sayson, and 312 as in that of Angeles.

The above cases refer to special kinds of falsification, different from the eight general forms specified in article 300. In none of them has reference been made to any acts that might be qualified as estafa but to acts that purely and simply constitute the crime of falsification.

The established rule has been constantly maintained, both in Spain and in its colonial possessions, as well as by the Supreme Court in these Islands in punishing, under paragraph 1 of article 300, the counterfeiting or feigning of a signature, writing, or rubric, only when an attempt is made to imitate the signature, writing, or rubric of a person in order to induce another to accept the document as written, signed, or rubricated by the former. Counterfeiting consists in making one thing so similar to another that they can only be distinguished with difficulty. To feign a signature, writing, or rubric is to imitate the same. Where the imitation is such that anyone would mistake it for the signature, writing, or rubric that was imitated, the crime of falsification is committed as defined by paragraph 1 of article 300 of the Penal Code. Where said imitation is not complete, or, when there is no imitation, and the signature, writing, or rubric does not appear counterfeited, but the issuance or execution of a document is merely supposed to have been done by a certain person, then the case defined by article 300 does not apply.

All the foregoing and elemental doctrine does not apply in the present case; the question is not whether the accused counterfeited or feigned the signature, writing, or rubric of some person, nor had he any necessity to imitate another's writing. By substituting the name of Angelo Cirio for that of Dionisio Austero he did not counterfeit or feign any signature, writing, or rubric whatever. What he did do was to foist a printed document as a receipt to Angelo Cirio for the payment of the land tax for 1903; it was not a false one by reason of the fiction of the signature, writing, or rubric appearing thereon, but a real and authentic one issued in favor of Dionisio Austero

as a voucher of a payment made by him in 1902 for his land tax. He who shall feign the handwriting of a document, thereby attempting to cause others to believe that it was written by a given person, or imitates the signature or rubric of said person in order to induce the belief that it was drawn by him, utters a false document. But a document genuine in every respect, made out in favor of Dionisio Austero, but which subsequently turns out to be false because in lieu of said name, that of Angelo Cirio has been inserted, is not a false document by reason of the counterfeiting or feigning of the signature, writing, or rubric of any person, but by reason of the alteration made thereon and which is punished under paragraph 6 of article 300 above cited.

The Attorney-General has therefore in this instance very properly applied the doctrine set up by two decisions of this court, and by another of the supreme court of Spain which, and especially the latter, are conclusive in defining the responsibility of the culprit, the extent and the manner of applying the penalty.

In the case of the United States vs. Victoria (9 Phil. Rep., 81) although it deals with the crime of falsification of a private document, while in the present case the falsification of a public one is involved, the fundamental doctrine is the same. Victoria had altered an account which called for the sum of P10 by substituting a "3" for the "1" so as to make it appear "P30" instead of "P10," and had collected P30 from the payor of the account; he was a clerk in a commercial firm to which he, however, only handed P10, profiting thereby to the extent of P20. "The fact," as this court said, "involves the characteristics of the crime of estafa, besides that of falsification, which served as the means for its commission, because by adopting deceitful means he obtained a price which he would not otherwise have secured by telling the truth."

The above decision has nothing to do with the previous ones even as paragraph 6 of article 300 of the Penal Code has nothing to do with paragraph 1 thereof. A document is not falsified in one manner only; according to the said article there are eight; each paragraph indicates 'a different species, and clearly the various species within the class must necessarily differ from each other, as each is a specific variation in the class, or type of crime.

In the decision rendered in the case of the United States vs. Llames (1 Phil. Rep., 130), the court held: "The writing of a false receipt by an employee of the revenue department for the purpose of embezzling the amount is a necessary means for the commission of the latter offense and the penalty is that of the higher offense, to wit, that of falsification."

The decision rendered by the supreme court of Spain on the 14th of December, 1888, reads as follows:

"An employee of a city government (Ayuntamiento) who alters the figures in a warrant officially issued for the payment of municipal obligations, and by said means unlawfully appropriates a certain sum of money, commits the crime of estafa defined by paragraph 1 of article 547 of the Penal Code of Spain (art 534 of that of the Philippines), through the falsification of an official document as included in article 315 (301 of that of the Philippines). Since the falsification was a necessary means to commit the estafa, article 90 of the code (89 of that of the Philippines) must of necessity be applied to the case in order to impose, in strict compliance therewith, the penalty for the more serious crime in its maximum degree."

The estafa committed by this accused consisted of the gain which, by deceitful means, he obtained from a hog valued at P45, a sum less than 250 pesetas. This is punished by the code with the penalty of arresto mayor in its minimum and medium degrees.

The deceit consisted in the delivery of a true printed official document, which was a land-tax receipt issued to Dionisio Austero for the year 1902; the accused changed the name written thereon to that of Angelo Cirio so as to make it appear as a receipt for the land tax due by the latter, as if he had paid it for the year 1903 or 1904; he thus committed the falsification defined in paragraph 6 of article 300, which consists of making any alteration or interlineation in a genuine document which alters its meaning, and "which is punished with presidio mayor and a

fine of from 1,250 to 12,500 pesetas."

But inasmuch as under article 89 where one of the crimes is the necessary means for committing the other, only the penalty corresponding to the more serious crime shall be imposed in its maximum degree, and as the maximum degree of presidio mayor is from ten years and one day to twelve years, the penalty of eleven years and one day of presidio mayor should be imposed on the accused herein.

The Court of First Instance of Albay which tried the case sentenced the accused to eight years and one day of presidio mayor, to the accessory penalties, to pay a fine of 1,250 pesetas, to make restitution of the hog to Barbara Cirio or otherwise pay P45, the value of the same, and to pay the costs.

From the said judgment the accused has appealed.

It being understood that the main penalty shall be eleven years and one day of presidio mayor the judgment appealed from is otherwise affirmed, with the costs of this instance against the appellant.

Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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