

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMILIO BEDOYA, DEFENDANT AND APPELLANT.

G.R. No. 5100. November 03, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The accused in this case is charged with the crime of estafa, in that on the 18th of May, 1908, he received on commission from The Schweiger Import and Export Company, various articles to the value of P1,312.40, to be accounted for within thirty days, at the expiration of which time he neither returned nor paid for them, keeping said goods himself.

As indirect evidence, in order to show the methods employed by the accused, and of which the company became aware after it had entrusted him with goods to the above amount, the prosecution introduced the testimony of two commercial firms.

One of these is Guamis & Co., who stated that on a certain day the accused informed them that he had received from the provinces an order for fifty dozen undershirts; samples were shown him, and he took with him a case of undershirts and another of socks. On the following day one of the firm's customers told them that a Chinaman was selling their own undershirts at far less than the customary price, and on investigation, this turned out to be true. The accused insisted that the undershirts were about to be shipped to the provinces, but was told that such was not the case, and was then required to return the said goods, and the firm recovered the undershirts from a Chinaman's store, and the socks from the house of a Señor Lara in Calle Gastambide.

On the 25th of the said month of May, 1908, Sprungli & Co. also delivered to the accused goods to the value of P5,625.30 for which he later, on the 26th, paid P4,000, taking over the balance for sale on commission. The accused stated to the above-mentioned gentlemen that he intended to open a store in San Pablo, Laguna Province, then that it was to be in Iloilo, and finally, when Sprungli & Co. sent a clerk to inspect said goods in the house at 31 Calle Santa Rosa, Quiapo, where they had delivered them, the person living in said house stated that he did not know Bedoya. The clerk then went to No. 156 where the accused lived, but was denied admission, the accused stating that the firm had nothing to do with him, and that he (the clerk) had better see his lawyer.

The direct proofs of the case at bar are an invoice and a bill of exchange.

The invoice is for goods received from the above-mentioned firm known as "The Schweiger Import and Export Company" on May 18, 1908, by Emilio Bedoya, amounting, less 5 per cent discount, to P1,812.40, which, less P500 paid on account, left a balance of P1,312.40. Bedoya himself wrote down: "Received on commission P1,312.40."

The last amount was the value of the merchandise for which the accused was indebted to the company on the 18th of May, 1908, and is the subject of the present criminal proceedings.

Hector Faini, an employee of said company, testified: "The invoice was for P1,812.40 and, as Bedoya paid in

P500, the outstanding balance was P1,312.40." Upon being questioned as to who had written the words "Received on commission," he answered that it was Bedoya, and when asked about the conditions of the contract, said that Bedoya had been allowed thirty days within which to accomplish their sale, and that if he was unable to dispose of the goods, he might return such portion thereof as were not sold, deducting the amount from the bill. He subsequently explained the matter of the thirty days time as meaning that Bedoya was instructed to account for what he sold at the expiration of that period.

The accused admits all of the foregoing except that he received the goods on commission. He claimed to have received them on credit, and attempted to prove it by means of previous transactions which need not be referred to here as they have no bearing on the decision in this case.

The bill of exchange presented by the prosecution as belonging to the complaining firm in these proceedings is of the following tenor:

"No. 107.—San Pablo, 10th of June, 1908.—P1,807.—Twenty days after sight, please pay by this sole bill of exchange, to the order of Don Emilio Bedoya, the sum of one thousand eight hundred and seven pesos, value received from said gentleman, and charge same to your obedient servant M. M. Gallegos—To Don Vicente Foz, 1 Plaza de Santa Cruz."

On the back of the document there appears:

"I accept, and the amount will be paid at maturity.—Manila, 15th of June, 1908.—Vicente Foz.—Pay to Messrs. Schweiger Import & Export Company or order, for value received in merchandise from the said gentlemen.—Manila 22d of June, 1908.—E. Bedoya.—Pay to Sr. Emilio Bedoya—p.p. The Schweiger Co.—A. Faini.—Pay to Messrs. Schweiger Import & Export Co.—E. Bedoya."

In connection with the above draft the said witness Faini stated:

"On the 22d or 23d (we must suppose that it was of the month of June) I was looking for him to come and settle the account, and he told me that he was expecting a draft from a certain Gallegos * * *. After that, I went to his house once or twice and asked him for the draft that he said he was expecting: first he said he did not have it, but later on he came to the office of Schweiger bringing this same draft with him * * *. The person who signed the acceptance was D. Vicente Foz * * *. I went personally with Bedoya on the said 22d to see Attorney Foz who lives in Plaza de Santa Cruz, in order to find out whether he admitted the acknowledgment and acceptance of this draft, and see if this signature "Vicente Foz" was his own, and he answered me in the affirmative, "this is my signature." This was all in the presence of the accused. Sr. Foz said that the 5th of July was the day when this draft became due and that he had not refused to honor it, but I had no confidence and asked him for the guarantee of some commercial firm in Manila; he then asked if his guaranty was not sufficient. * * * Then, as Sr. Bedoya had indorsed the draft to me, when he came I told him that I could not accept the draft, and I indorsed it to him in order that he might collect the same. I gave Sr. Bedoya a receipt for this draft."

Said receipt reads as follows:

"Received from Sr. Emilio Bedoya draft No. 107 for one thousand eight hundred and seven pesos (P1,807) Philippine currency, dated San Pablo, Laguna, June 10th, 1908, drawn by Sr. M. M. Gallegos on D. Vicente Foz, and in favor of the said Sr. Bedoya, accepted by Sr. V. Foz on June 15, 1908, for payment on July 5, proximo, and indorsed by said Sr. Bedoya to the order of 'The Schweiger Import & Export Co.'—On the 5th day of July next, after having collected from Sr. Foz the said amount of P1,807.00, we will deliver to Sr. Emilio Bedoya the sum of four hundred and ninety-four pesos and 60/100 (P494.60) and the invoices of the merchandise received 'on commission by Sr. Bedoya; his account being thus balanced to date.—Manila 25th of June, 1908."

The testimony of the accused was entirely in accord with that of the witness for the prosecution, but he added the following. He said:

"Sr. Faini kept the draft and I returned to my house. Afterwards, on the following day, he indorsed the draft to me with the statement that it was not a regular bill of exchange and that the signature was not good because the person signing it was not a responsible one; but the date was omitted, a fact which I did not notice till later on; I called Sr. Faini's attention to the fact that no date had been put on the indorsement, and his reply was more or less as follows: 'I know very well what I have done by not dating this draft, and I have nothing more to say about it.' I then went to see a notary and arranged with him to add another indorsement in the same form and without date, which I willingly did, and handed him the draft."

Faini continued the history of the draft in his possession and said:

"On the 5th of July, the day it became due, I called at the dwelling house or law office of Sr. Foz in order to collect the draft, and was there informed that Sr. Foz had never lived in that house, but that he had happened to be there the other day, and another person who was there told me: 'he must live in Calle Centeno, No. 174 or 184;' there I found Sr. Foz who was sick, and I told him: 'I have come to collect the draft that you accepted,' and he answered 'I won't pay except to Sr. Bedoya because you have no confidence in my signature. Come with Sr. Bedoya and I will pay the draft. Thereafter I went to look for Sr. Bedoya and called at the restaurant where he eats and left word for him to come to the office, and when he came to the office I asked him to see if he could find Sr. Foz in order to get him to cash the draft and I told him that I would not give him back his receipt, nor sign it until after the draft had been cashed. After that I saw no more of Sr. Bedoya, and have come to the conclusion that he did not want to pay, and since then have seen nobody else."

Under cross-examination on this point the accused replied as follows:

"Q. Have you not received the merchandise mentioned in the invoice marked 'Exhibit A'?—A. Yes, sir.

"Q. Have you not paid for them yet?—A. Not in cash.

"Q. Have you paid for them in any way?—A. I have paid money for them, P500 in cash.

"Q. And have you paid the balance?—A. Yes, sir.

"Q. How?—A. With a draft for P1,807.

"Q. Is this the draft [Exhibit B]?—A. Yes, sir.

"Q. Has it been paid?—A. I am unable to say whether it has been paid or not.

"Q. You are now testifying under oath, and you know very well that this draft is still unpaid, and that Sr. Foz does not intend to pay it.—A. I am not aware of that.

"Q. Don't you know that Sr. Foz has not even half money enough with which to pay this draft?—A. I have no reasons to know it.

"Q. Is it not true that Sr. Foz has no money to even pay for the house in which he is living, and that he has to move from one house to another because he does not pay his rent?—A. I have no knowledge of that.

"Q. Is it not true that Sr. Faini asked you to go along with him to the house of Sr. Foz in order to collect this draft?—A. No, not in order to collect.

"Q. Is it not true that what you wanted to do with this draft, which you knew very well was worthless, a piece of waste paper, was to get Messrs. Schweiger to accept it as good so that you might evade a charge of estafa?—A. No."

The Court of First Instance of the city of Manila that tried the case, rendered judgment sentencing the accused to two years and three months of prison correccional in the public prison of Bilibid, to restore to The Schweiger Import and Export Company, or indemnify it in the sum of P1,312.40, Philippine currency, equivalent to 6,562 pesetas, and in case of insolvency to suffer subsidiary imprisonment, and to pay the costs. From this judgment the accused has appealed.

The appeal, together with what has been alleged by the appellant and the Attorney-General, having been heard before this court it appears:

That the Attorney-General, in rebuttal of the allegations of the defense, wherein it is claimed that the accused received the goods in question as sold to him and not on commission, maintains conclusively that the contract between the appellant and the above-mentioned company was not one of purchase and sale on credit, but, as shown by the invoice signed by the appellant (Exhibit A), on commission. This point is unquestionable; the accused himself, with his own hand wrote: Received on commission. He can not go back on his own act.

That, such a contract existing, under the terms of which the appellant really appears to have received goods which belonged to another; and the whole question consisting in whether or not the commission agent had returned the goods or paid for them after thirty days from the time of receiving them, the Attorney-General claims the contrary, that is to say, that no such payment has been made as pretended by the accused for the following reasons:

1. Because the delivery of a draft in payment of an obligation can only produce the effects of such payment when collected. (Art. 1170, Civil Code.)
2. Because the draft was delivered to the company in interest on the 22d of June, 1908, a date subsequent to the 18th, on which date the thirty days allowed the accused within which to return the unsold goods, or to pay for those that were sold, expired.
3. Because the accused knew the said draft to be valueless, and that it would never be paid at maturity.
4. Because the goods were not sold to Gallegos, their value, in fact, having previously been received from Andres Frois, and same was not delivered to the complaining company.
5. Because the draft was not adversely affected through any fault of the company, as shown by the efforts made by Mr. Faini after the 22d of June to collect the same.

After a careful examination of the above claims it appears that the facts alleged in No. 4, that is that Andres Frois, a witness for the defense, had delivered to the accused the value of the goods which the accused kept for himself instead of turning the same over to the complaining company, has not been proven; the only thing that said witness declared was, that the accused had leased from him the entresuelo of the house in Calle Santa Rosa of which he occupied the upper part, and that he kept the goods there, and that he had received goods in said house, on mortgage from Bedoya in his capacity as a broker; that those goods on which the mortgage had been foreclosed had been sold, and those on which there had been no foreclosure had been removed.

But even though it were proven that Frois had delivered to the accused the value of the goods which the latter received on commission from the interested firm, and that he kept the same, inasmuch as the essence of the crime charged herein consists in the nonpayment of the value of the goods sold or the nonreturn of such as were not sold, and as the accused maintains that he had paid the value of said goods, and that the form of payment was accepted by the interested firm, the fourth as well as, the second contention of the Attorney-General has absolutely no bearing on this point in the case; the last-mentioned, because what-ever may have been the time when payment

was made, even after the lapse of the thirty days, which are supposed, though erroneously, to be the time fixed for the payment or the return, once the creditor accepted the same, the commission of a crime can not be alleged, but, at most, the violation of some of the conditions of the contract consisting of delinquency or some other liability of a civil nature.

The accused states that his obligation to pay P1,312.40 has been fulfilled through delivering to the creditor, by means of an indorsement, a bill of exchange for P1,807.

The courts of justice can not go outside of the following limitations: either the commission agent paid and the obligation was fulfilled, or he did not pay, and the obligation still stands to return the goods received on commission, or otherwise clear himself of the responsibility for the crime of estafa that is involved in appropriating to himself money or personal property received only on commission, and pertaining to another.

Nor is it of the least consequence, for the proper consideration of the only fact which the courts are called upon to pass, whether the indorsement of the draft by the payee to a third party was in collusion, or whether the drawer Gallegos, the payee Bedoya, and Foz, who accepted the draft, were in combination or collusion for the purpose of deceiving a creditor, the third party. The law has clearly defined the effects of every judicial act, and the respective rights and obligations of each of the persons who directly or indirectly take part in the execution of a contract; therefore, this court must ignore the third contention.

Only the first and fifth points in the above argument of the Attorney-General can be considered in deciding the case.

As to the pretended payment on the part of the accused debtor, what took place and is fully proven is: First, the delivery, by the accused to the complaining firm, of a bill of exchange drawn by Gallegos in favor of Bedoya and accepted by Foz (for the amount already stated), delivery being accomplished by means of an indorsement in proper form; second, the return of the bill of exchange by the complaining firm to the debtor or payee, Bedoya, by means of an imperfect indorsement in improper form, that is to say not dated; third, another imperfect indorsement without date, made by Bedoya to the complaining firm; fourth, the presentation and demand for payment made by the said complaining firm on the drawee, Foz, and the failure on the part of the latter to pay; and fifth, the holding of the draft in the hands of the complaining firm until the moment when the information was given and the complaint filed.

No protest whatever was made against either the acceptor, the indorser, or the drawer, for said failure to pay.

"The ownership of a draft shall be transferred by indorsement." (Art. 461 Code of Commerce.)

"If the statement of the date is omitted in the indorsement, the ownership of the draft shall not be transferred, and it shall be understood as simply a commission for collection." (Ibid, 463.)

By the indorsement in proper form made by the payee, Bedoya, on the 22d of June, 1908, in favor of the complaining firm, the latter became the owner of the draft.

But, by the imperfect indorsement made in turn by the complaining firm to the payee, Bedoya, the ownership of the draft was not returned to the latter; he was only commissioned to collect it.

By the indorsement, also an imperfect one, made by the payee, Bedoya, to the complaining firm, no alteration was made in the legal status of affairs beyond the material return of the draft and the maintenance thereby of the position of the complaining firm, which was that of holder or bearer of the draft up to the moment when an action was brought before the courts.

According to article 469 of the Code of Commerce—

"Drafts which are not presented for acceptance or payment within the period fixed shall be affected thereby, as well as when they are not protested at the proper time.

"If the holder of a bill of exchange should not present it for collection on the day it falls due, or, in the absence of payment, does not have it protested on the following day, he shall lose his right to be reimbursed by the indorsers; and with regard to the drawer, the provisions of articles 458 and 460 shall be observed." (Code of Commerce, 483.)

In accordance with article 1170 of the Civil Code—

"The delivery of promissory notes to order or drafts or other commercial paper shall only produce the effects of payment when collected or when, by the fault of the creditor, their value has been affected."

Hence, the delivery of a bill of exchange shall produce the effects of payment when, by the fault of the creditor, its value has been affected.

The value of the draft in question, received and held by the creditor, the complaining firm, was adversely affected by reason of its not having been protested on the following day after the drawee, Foz, refused to pay the bearer, the complaining firm, the value thereof.

Protest should be made by the possessor of the draft, and the possessor of the draft in this case was the complaining firm; therefore, the value of the draft was adversely affected through the fault of the creditor.

All the steps taken by said creditor did not go beyond a demand for payment; it failed to take the very one whereby the draft while in his hands would not become adversely affected, and if collusion was suspected, and persons of doubtful honesty and even of notorious insolvency were concerned, one can not conceive—unless it was through ignorance of the law, which is no excuse—why the draft was held and retained, being, in the opinion of the holder or bearer, worthless, and why he failed to take a step the omission of which, besides probably affecting him adversely, might engender another manifest injury, previously covered by a law which is of universal application in all civilized nations.

As the courts must hold under the civil aspect of the case, that, as no protest was made the draft was adversely affected; that the obligation to protest rested upon the holder of the draft, in this case the creditor; and that from the fact that the draft was adversely affected through the fault of the creditor, it produces the effects of a payment to him, the courts can not, under the criminal law, decide or hold that the commission agent had not made payment, and that for the lack thereof he committed the crime of estafa.

All the incriminations contained in the questions put by the prosecution as to just how much the indorser knew about the insolvency of the person who accepted the draft, inasmuch as he owned no property, and did not meet his obligations, must perforce recoil upon the holder or bearer of the same, who, suspecting that it would not be paid, nevertheless retained it, and in addition, through his inactivity and procrastination destroyed the possibility of collection from the drawee or from the indorser.

Had protest been made, the nonpayment of the draft would have become proven in the only manner in which the law requires proof to be made; and then, apart from the civil action—and probably a criminal one also, if it is true that collusion existed and can be proven or shown—the delivery of the draft by the commission agent to the constituent firm would not have produced the effects of a payment, because it was not adversely affected by the fault of the creditor; rather on the contrary, it would have been clearly shown that payment had not been made, and that consequently these proceedings for estafa could have been instituted.

That a draft or document which one has accepted by indorsement is worthless because it is the result of collusion between the drawer, drawee, and the indorser, and the supposition that all of them are insolvent, does not warrant

a person, under the law, to remain absolutely inactive, allowing fixed periods to elapse, and ignoring legal precepts which must necessarily be observed-when a juridical act is accomplished such as the transfer of a draft which is subject thereto; for juridical acts involve not only rights, but also obligations.

When the creditor firm in its turn indorsed the draft back to the party who indorsed it to them, they could have relieved themselves of the ownership and possession thereof by indorsing it in proper form, and they would then have had nothing to do with a draft which, in their opinion, was of no value, would have severed connection with people of doubtful solvency, and might at once have taken action in connection with the commission; but instead of that they made an imperfect indorsement, not dating it, thus continuing to be the owners of the draft; and when questioned by the new indorsee as to why it was not dated, as if to find out whether the draft was returned to him, or whether he was merely commissioned to collect it, the creditor replied "I know what I have done," and demanded a fresh indorsement in their favor in identical form, as if to recover the draft and ratify the ownership and possession thereof; that is, to maintain the previous status of the draft.

Against a series of acts so well defined as the above, each of which has its corresponding juridical effect, there is nothing to be gained by insisting upon the status of creditor ship (something that might have been done without them) in order to clearly set forth before the courts of justice that the debtor has not paid, that he has embezzled the money of another, and has committed estafa. Consequently the charge of estafa herein has no legal foundation.

The judgment appealed from is hereby reversed, with the costs of both instances declared de oficio.

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

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