

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LINO EGUIA LIM BUANCO (ALIAS LIM BUANCO) AND LUCIANO DE LOS REYES, DEFENDANTS AND APPELLANTS.

G.R. No. 5241. November 19, 1909

Ponente: ELLIOTT, J.

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ELLIOTT, J.:

The defendants, Lino Eguia Lim Buanco (alias Lim Buanco) and Luciano de los Reyes, were charged with and convicted of the crime of estafa. The information is identical in language with that on which the same defendants were convicted in the case of *The United States vs. Lino Eguia Lim Buanco (alias Lim Buanco) and Luciano de los Reyes, No. 5240* (filed herewith)[1], except that it charges the obtaining of the sum of 1,000 pesos upon a check for that amount, bearing date of October 6, 1906. In the other case the money was obtained on a check for 2,000 pesos.

In this case the demurrers to the information were overruled, and separate trials were granted to the defendants. They were both convicted, and on January 16, 1909, were sentenced to six months of *arresto mayor* in the public carcel of Bilibid, in the city of Manila, the sentence to become operative and to take effect at the expiration of the sentence imposed the same day in the case entitled *The United States vs. Lino Eguia Lim Buanco, (alias Lim Buanco) and Luciano de los Reyes, No. 5240* above referred to, and that they jointly and separately indemnify the Banco Español-Filipino in the sum of P1,136.50, equivalent to 5,682.50 pesetas, and in case of insolvency to suffer subsidiary imprisonment for the time and in the manner and place prescribed by law, and that each defendant pay one-half the costs of this case.

The facts as found by the trial court and justified by the evidence, are as follows:

For at least three and a half years prior to the 6th day of October, 1906, Luciano de los Reyes was employed in the Banco Español-Filipino, and there served and acted as bookkeeper and check registry clerk. During that time he was in charge of certain current account books of the bank, and it was his duty to inspect certain checks presented to the bank for payment, including those drawn by Lim Buanco; to examine the account of the maker of each of said checks, and to determine whether or not the drawer of the check had a sufficient balance to his credit to require the payment of the check. In the performance of these duties Reyes was required to indorse upon each check, if it was entitled to payment, the words "Corriente, P. O. Luciano de los Reyes." After the check was marked in this manner it was passed to the cashier of the bank, who, in reliance upon the indorsement, paid or ordered the same to be paid.

During the period referred to the defendant Lim Buanco had an account with the bank, and drew large sums of money therefrom, by means of checks signed by him, and inspected and indorsed as above by Reyes. During this time a conspiracy existed between the defendants Lim Buanco and Reyes for the withdrawal of funds from the bank by Lim Buanco, regardless of whether he had any funds in the bank to his credit, and in furtherance of this conspiracy, the entries in the accounts of Lim Buanco on the books of the bank were fraudulently and illegally

manipulated by Reyes in such a manner as to make the books show an apparent credit balance, when in fact Lim Buanco was owing to the bank a large sum of money.

On the 6th day of October, 1906, Lim Buanco drew a check on the Banco Español-Filipino for the sum of 1,000 pesos, and this check was through the agency of another bank in which it was deposited by Lim Buanco, presented in due course of business to and paid by the Banco Español-Filipino. Before the check was thus paid, Reyes, acting in his capacity as an employee of the bank, indorsed thereon the words "Corriente. P. O. Luciano de los Reyes," although at the time this indorsement was made, Lim Buanco had no actual credit balance in the bank, and no permission had been given him by any officer or officers in authority of said bank to overdraw his account. In this manner the defendants Lim Buanco and Reyes, in furtherance of the conspiracy to cheat, deceive, and defraud the bank, secured the payment of said check, although they both knew at the time that the defendant Lim Buanco had no credit balance in said bank, but was in fact indebted to the bank in the sum of more than 300,000 pesos, which had previously been withdrawn from the bank by means of similar checks drawn by Lim Buanco, and fraudulently indorsed as correct by Reyes. The amount of money thus fraudulently obtained from the bank by means of the check as aforesaid, with interest thereon at the rate of 6 per cent per annum from the date of the check to the date of the decision in the court below, to wit, January 16, 1909, amounted to the sum of P1,136.50, Philippine currency, equivalent to 5,682.50 pesetas, which the court determined to be the damage occasioned to and suffered by the bank by reason of the aforesaid fraudulent conduct of the defendants acting together in furtherance of said conspiracy. No part of the said sum has been returned or paid back to the Banco Español-Filipino by Lim Buanco, or by Reyes, or by any person acting for or in his or their behalf. The trial court also found that Lim Buanco and Reyes each had voluntarily admitted the crime as charged against him.

Separate trials were granted to the defendants, but the court, after both were convicted, embodied its finding of facts and conclusions in one decision, and one joint sentence was pronounced upon the defendants. Thereafter each defendant separately moved for a new trial, which was denied, and an appeal was taken to this court, where, as in the court below, they appear by separate attorneys. Although separate briefs are filed, the various assignments of errors raise essentially the same questions.

The questions here presented as to the sufficiency of the complaint, the nature of the crime, the right to separate trials, and the fact of the reference by the trial court to the fact that neither defendant testified in his own behalf, were raised in the case of *The United States vs. Lino Eguia Lim Buanco (alias Lim Buanco) and Luciano de los Reyes*, No. 5240, and determined against the defendants. What was said with reference thereto in the opinion in that case need not be here repeated. The rulings made are adhered to and followed. It remains to be determined whether the defendants have been once before in jeopardy for the same offense charged against them by the information in this case.

The defendants each interpose the plea of former jeopardy, and contend that the acts charged in this information were done in furtherance of the conspiracy which was alleged in the information in case No. 5240, entitled "*The United States vs. Lino Eguia Lim Buanco (alias Lim Buanco) and Luciano de los Reyes*," which was tried on the day previous to that on which the present case was tried. This contention rests upon the assumption that the crime for which the defendants were in the first case convicted consisted of obtaining the entire sum of more than 300,000 pesos from the Banco Español-Filipino by means of a fraudulent conspiracy between the defendants, and that their acts done in furtherance of said conspiracy constituted a single continuing offense. In the former case the defendants were charged with having defrauded the bank by means of a certain check for 2,000 pesos. In the present case they are charged with having defrauded the bank by means of a certain other check for 1,000 pesos, and in another case which was submitted herewith, they are charged with having defrauded the same bank by means of another check for the sum of 3,500 pesos. The first two checks bore date of October 6, 1906, and the

other, April 2, 1906. In the information in each case it is alleged in substance that the defendants and each of them conspired to defraud the bank; that the defendant Lim Buanco falsely represented that there were funds in the bank to pay the check in question; that the check was fraudulently marked "Corriente, P. O. Luciano de los Reyes," by Reyes, who knew at the time that Lim Buanco had no money to his credit to pay the check, and that the fraud was effected in furtherance of a conspiracy between the two parties. But in each case the defendants and each of them are charged with having defrauded the bank of a specific sum of money by means of a specifically mentioned and identified check, and the particular check described in the information and introduced in evidence in each case is for a different amount from that referred to in the information and introduced in evidence in the other cases. The check referred to in one information could not therefore have been properly offered in evidence to prove the allegation in either of the other cases. These informations do not charge the defendants with the technical crime of conspiracy. The substance of the allegation in each case is that the money was obtained from the bank by means of the fraudulent cooperation of Lim Buanco and Reyes under circumstances which constitute the deceit necessary to constitute the crime of estafa, and of that crime only the defendants were convicted. (U.S. vs. Lino Eguia Lim Buanco (alias Lim Buanco) and Luciano de los Reyes, No. 5240.) It is true that by the same methods, and by means of other checks drawn, certified, and their payment secured in the same fraudulent manner, a large sum of money in the aggregate was withdrawn from the bank, but nevertheless each act constituted a separate crime. The preparation, approval, and payment of numerous checks under such circumstances can not be considered as one continuing offense. Each separate fraudulent obtaining of money from the bank by means of such methods constituted a distinct crime, and a conviction of one of such crimes can not be pleaded in bar to a prosecution for another.

It may be noted, however, that even if it were true that the defendants had been charged and convicted of conspiracy, the plea of former jeopardy would not be good as against a prosecution for one of several crimes, each distinct from the other, committed in furtherance of the conspiracy. In a monographic note in the case of *People vs. McDaniels* (92 American State Reports, 81), it is said that [p. 134]:

"Where several acts are done in pursuance of a conspiracy, each act being distinct from the other, the fact that they are in fact done in pursuance of a conspiracy does not make one act the 'same offense' as the other."

This statement is sustained by the case of *Wallace vs. State* (41 Fla., 547, 26 South., 713), where it was held that—

"While the conspiracy may be single, and therefore subject to one indictment only, yet the felonies accomplished by means of the conspiracy were separate and distinct, depending upon different acts, provable by different evidence, and accomplished by distinct though similar means. The evidence essentially necessary to sustain one indictment would not sustain either of the others, nor could defendant be convicted upon one information upon the evidence necessary to sustain either of the others."

We find no material errors in this record. The defendants were properly convicted and sentenced, and the judgment is therefore affirmed. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Moreland, JJ., concur.

[1] Page 472, *supra*.

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