

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGATON NER, DEFENDANT AND APPELLANT.

G.R. No. 6493. March 09, 1911

Ponente: CARSON, J.

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CARSON, J.:

The evidence of record fully sustains the findings of fact by the learned trial judge as set out in his opinion in this case, which is as follows:

"Agaton Ner and Valeriano Reus, the above-named defendants, are charged with having committed fraud in order to insure their winning a cockfight which took place in the pit in the barrio of Concepcion, Atimonan, Tayabas, on the 10th day of April, 1910.

"The trial was had at Atimonan on the 24th of August, 1910.

"From the proofs submitted by the prosecution the court finds and declares to have been duly proven the following facts: That Valeriano Reus and Agaton Ner, without authority from Florentina Ledin, the owner of a gamecock, giraw in color, which was matched against another, mayahin in color, and pretending to be authorized by the said owner and while she was absent, some moments before the fight, removed the knife-edged gaff from the bird belonging to Florentina and replaced it in an entirely different manner from that in which it was before, which act only became known to Florentina after the fight.

"That Florentina Ledin especially charged Quirico Saniel with the duty of attaching the gaff to her gamecock, but that after he had put it on Valeriano Reus and Agaton Ner came up to him, and after Valeriano had taken off the gaff, Agaton Ner then replaced it in his own way. According to Saniel, witness for the prosecution, the accused placed it with the point very much elevated, which made it necessary to increase the heel, and with the blade far out, which fact was called to the attention of the said Agaton Ner, but he paid no attention to it.

"It was proven that Quirico Saniel, as well as the accused, are professional gaff-placers for fighting cocks. And it was also shown to the satisfaction of the court that in view of the way the gamecock belonging to Florentina Ledin was fixed, it could not inflict mortal wounds and could not kill its opponent; and that the gamecock of Florentina Ledin was a good one, a fighter, and that in the fight it struck the mayahin first several times without being able to inflict any serious wound, and that the mayahin when it attacked the bird belonging to Florentina succeeded in killing it, for which reason the latter and her son, Jose Laureo, lost their respective bets of P100 and P82.

"The witness, Fortunato Acuña, astonished at the way the giraw struck home so many times without mortally wounding its opponent, examined the gaff after the fight and found that it was badly placed and inquired who put it on that way. Then it was that the act of the accused became known and was communicated to Florentina. She, although she paid the bets, made a protest to the betting master (casador de apuestas).

"It was further proven that Fortunato Acuña is also a gaff-placer, although he does not now work at the trade because two of his fingers are useless. It was also satisfactorily shown that the placing of the gaff is a matter of capital importance and that, according to the way in which they are put on, they are either effective or of no

service whatever. That when the point is much elevated and the blade turned out, only slight wounds can be inflicted. (Declaration of the accused Agaton Ner.)

"The witness Francisco Diaz, who testified for the defense, stated that he has been putting on such gaffs for twelve years, and that when the gamecocks were turned loose the gaff on the giraw was much elevated. He was the man who let fly the birds.

"It was also proven that Agaton Ner, at the moment the fight began, crossed his bets and laid a wager on the mayahin against the giraw whose gaff had been taken off and replaced by him, and it is to be noted that when the bets were first being made they were in favor of the giraw, because he was the favorite, but the moment the birds were let fly at each other, the other one, the mayahin, became the favorite, although his owner, Camilo Vice, had only backed him with P15.

"From the facts as proven, the court finds and declares that Agaton Ner is guilty of the crime defined and penalized in paragraph 2 of article 534, read together with paragraph 8 of article 535 of the Penal Code.

"But the cause is otherwise with respect to Valeriano Reus, for, although there are some indications, the evidence is insufficient to prove his guilt, there being no proof of his intention or direct participation, nor with respect to his bets, and he is entitled to the benefit of reasonable doubt.

"The defendant, Agaton Ner, endeavored to prove his innocence by witnesses, but the latter contradicted themselves and testified in such a manner that they were unable to change the opinion formed by the court with respect to preponderance of the evidence adduced by the prosecution over that of the defense.

"Therefore, and taking into consideration the abovementioned articles and others applicable, the court is of the opinion that the accused Agaton Ner should be sentenced to four months and one day of arresto mayor, to the accessories of the law, and to indemnify Florentina Ledin in the sum of P100 and her son, Jose Laureo, in the sum of P82, and in case of insolvency to suffer one month and ten days more of subsidiary imprisonment, and to pay one-half of the costs of this instance.

"The other defendant, Valeriano Reus, is acquitted, with the other half of the costs de oficio, and the bond given to insure his liberty shall be canceled.

"The clerk of the court will notify the accused, in the absence of the court, and shall make entry thereof on the record. And, in case of an appeal, he is authorized, with the concurrence of the fiscal, to approve the bond required to assure the liberty of the appellant, which is hereby fixed at P800."

Article 534 of the Penal Code is as follows:

"A person who shall defraud another in the substance, quantity, or quality of things he may deliver to him, by virtue of an obligation, shall be punished:

"1. With the penalty of arresto mayor in its minimum and medium degrees if the fraud should not exceed 250 pesetas in amount.

"2. With that of arresto mayor in its medium degree to presidio correccional in its minimum degree if it should exceed 250 pesetas and not be more than 6,250 pesetas.

"3. With that of presidio correccional in its minimum and medium degrees if it should exceed 6,250 pesetas."

Article 535, subsection 8, of the Penal Code is as follows: "The following shall incur the penalties of the preceding articles:

"8. Those who shall employ fraud in gaming (juego), in order to insure winning."

The gentle art of cockfighting, and the elusive game of backing one's judgment therein with coin of the realm not

being prohibited in these Islands, when indulged in under prescribed conditions and in duly licensed cockpits, the facts as found in the opinion of the trial judge undoubtedly sustain his conclusion that the appellant in this case was guilty of that kind of sharp practice which constitutes the crime of estafa, defined and penalized in the above set out provisions of the Penal Code.

We find no errors in the proceedings prejudicial to the rights of the accused. The judgment of conviction and the sentence imposed in the court below should, therefore, be affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Mapa and Trent, JJ., concur.

Moreland, J., dissents.

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