

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE B. VASQUEZ, DEFENDANT AND APPELLANT.

G.R. No. 8834. September 09, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of estafa. The complaint alleged:

"That on or about the morning of December 27, 1912, in the jurisdiction Of this municipality of Iloilo, Province of Iloilo, P. I., the said accused did take and receive from Eusebio L. Garcia the sum of P300 as a deposit and under the express condition of returning it on the day he might need it; but upon being required to retrdn it the said accused did not do so and refused to return it, and did willfully, maliciously and criminally and with intent to gain and to defraud, appropriate to himself the said sum for his own use and benefit, to the prejudice of the economic interests of the said Eusebio L. Garcia; an act performed in violation of the law."

Upon said complaint, the defendant was duly arrested, arraigned, tried, found guilty, and sentenced to be imprisoned for a period of six months of arresto mayor and to pay to Eusebio L. Garcia the sum of P250, in case of insolvency to suffer subsidiary imprisonment, and to pay the costs.

After hearing the evidence, the Honorable James S. Powell, judge, made the following finding of facts:

"The facts in this case show conclusively that on the morning of the 27th of December, 1912, E. L. Garcia and this defendant were stopping at the same hotel here in Iloilo, They were both from the same town in Negros. Garcia was going into the interior to one of the towns where he had a brother living and did not want to carry so much money on his person, having P375, so. he gave to this defendant P300 to keep for him until his return. This was about 7.30 a. m. December 27, 1912. During the morning Garcia found that his brother was in Iloilo and he did not go to the interior town to visit him, so at noon he was again at the hotel and met this defendant and asked him for his money. He told him that he would pay him during the afternoon and again that night Garcia was put off, and so for weeks. Garcia had left Negros and took up his residence in Iloilo; he followed him back to Negros, tried to get the money but succeeded only in getting P50. That this sum was left as a deposit with this man is shown by his own written receipt (Exhibit A) to Garcia and the correspondence that they had about it, as appears in the record, and, it all shows that it was treated as a deposit throughout, from the time he gave the receipt for the deposit of P300 on the 27th of December, up to the date of the filing of the complaint.

"This defendant attempted to show that it was a loan, notwithstanding his own written receipt, and told a most unbelievable story and a most tangled one, convicting himself at every answer that he made. There is not the slightest doubt of the defendant's guilt."

From the sentence of the lower court the defendant appealed. In this court the only errors assigned by the appellant are ;

"First, that the court sustained the objection of the prosecution to the following question, addressed by defendant's counsel to the witness Garcia: 'Why did you not go to the bank or to somebody else to deposit this

money ?'

"Second, that the trial court sustained the objection of the prosecution to the following question addressed by counsel of the defendant to the witness Garcia: 'Why did you not take that money along with you ?'

"Third, that the trial court found the defendant guilty."

In support of, the first and second assignments of error, counsel for the appellant said:

"During the cross-examination by defendant's counsel of the complaining witness, the court sustained the objections of the prosecuting attorney to two questions, as set out in the first and second assignments of error, as appears at folio 22 of the record. It is submitted that these rulings unjustifiably restricted defendant's right to cross-examine. That the error was prejudicial to defendant will, I believe, appear from reading the testimony, as will be urged under the third assignment of error. As the prosecution's story of the deposit and the facts immediately succeeding it are somewhat remarkable, the defendant should have been allowed to cross-examine, fully as to the circumstances."

With reference to the first and second assignments of error above noted, we find on page 32 of the record brought to this court, the following questions:

" (a) Why did you not go to the bank or to somebody else to deposit this money?

" (b) Why did you not take that money along with you?"

To each of these questions, the prosecuting attorney presented the following objection.

To the first: "I object because he has explained why he did not go to the bank." And to the second: "I object because the witness has already explained that."

If it is true that the prosecuting witness had explained why he did not go the bank and deposit the money and why he did not take the money along with him, then the defendant cannot complain if the court refused him the right to have said questions answered again.

It appears from the record that the prosecuting, witness (Garcia) and the defendant had been in the pueblo of Hog in the Province of Occidental Negros prior to the 26th day of December, 1912; that the former had been acting as municipal treasurer there and that the defendant had been there for some time acting as his clerk; that they together arrived at the city of Iloilo on the 26th day of December, 1912, and both stopped at the Hotel Estrella and lived in the same room; that on the 27th of December, the prosecuting witness intended to go into the country for the purpose of visiting his brother and to start very early in the morning; that the prosecuting witness had with him the sum of ^375; that he discovered that his brother was not in the country and for that reason he did not leave the city of Iloilo; that the prosecuting witness did leave the hotel early in the morning of the 27th and did not return until the middle of the day.

The prosecuting witness swore that he did not think it was safe to carry all of his money to the country and for that reason he gave to the defendant, early in the morning of the 27th, P300 to keep until his return. In the cross-examination of the prosecuting witness, the attorney for the defendant, in his endeavor to find out why he had given the money to the defendant, asked:

"And what did you say before giving the money to him?" And the prosecuting witness answered: "I was in doubt as to whether I should carry that money along with me and I requested him (the accused) whether I could leave this money with him as a deposit and get it back on my return."

During the direct examination by the prosecuting attorney, in answer to the question: "Why did you give it to

him?" (the accused), the prosecuting witness said: "For security, because on that morning I had to leave for an interior town; I left it with him for safe-keeping."

In the foregoing questions and answers it appears why the prosecuting witness left the money with the defendant. The prosecuting witness, while he explains that the "defendant had some immoral practices that Were not altogether in accordance with his notions, yet, at the same time, he had treated him with confidence and had been treating him with confidence for some time before the morning of the 27th of December.

The appellant argues that there were other means of safe keeping for his money besides depositing it with the defendant. That is true; but the mere fact that the prosecuting witness might have deposited his money in the bank or with somebody else, does not in any way show that the defendant is not guilty of the crime with which he is charged when it is proven that the money was deposited with him for safekeeping under a promise to return the same upon request.

While the lower court might have permitted the prosecuting witness to answer the two questions above indicated, yet, in view of the fact that the witness had already given his reasons for depositing the money with the defendant, we are of the opinion that no prejudicial error was committed in this ruling.

With reference to the third assignment of error, to wit, that the trial court found the defendant guilty of the crime charged, it may be said that the record shows that the prosecuting witness, Garcia, on the morning of the 27th of December, 1912, deposited, for safe-keeping with the defendant, the sum of P300, upon a promise to return the same upon request. At the time the money was delivered to the defendant, one Telesforo Gargantiel was in the room with the defendant and the prosecuting witness. It appears that Gargantiel went to the room of the prosecuting witness and the defendant early, about 7.15 in the morning, for the purpose of taking the prosecuting witness for a ride and that it was at that time the money was delivered to the defendant.

Gargantiel also gives the reason that was given at the time why the prosecuting witness gave the money to the defendant. This witness gave the following as the reason:

"At the time I came, Eusebio (the prosecuting witness) was preparing to go to Guimbal. A short time after he pulled out his pocketbook and said: 'I think it is dangerous to carry this money along with me.' Then he asked Vasquez as a favor to him to keep that money as a deposit as he had to go to Guimbal on a short trip to see his family. The first time Jose Vasquez did not accede to Garcia's request but the second time he did, saying: 'All right; when you come back from your trip you ask me and I will deliver it to you.'"

This witness swore that he saw the prosecuting witness deliver to the defendant the sum of P300. The money was delivered to the defendant in the morning. Some time after the middle of the day, the prosecuting witness returned to the hotel and requested that the money be returned to him. The defendant promised to deliver it to him in the afternoon or evening; whereupon the prosecuting witness insisted that the defendant should give him some evidence of the deposit and the defendant then and there executed Exhibit A, which reads as follows:

"Deposited in my possession the sum of three hundred pesos (P300) of Mr. Eusebio L. Garcia, to whom I promise to deliver said sum when he so requests of me. ,

"Signed in Iloilo, Iloilo Province, this twenty-seventh day of December of nineteen hundred and twelve, A. D.

(Sgd.) "JOSE B. VASQUEZ.

"Witness:

(Sgd.) "F. P. RAMOS."

The fact that the defendant received from the prosecuting witness the sum of P300, on promise to return the same,

is also evidenced by the fact that he later paid to the prosecuting witness the sum of P50, as well as by the fact that he recognized his obligation on several occasions.

The defendant attempted to show, while he admitted that he executed the document above referred to, showing that he had received on deposit the sum of P300 from the prosecuting witness; that it was not for money actually received on that date, but as evidence simply of an existing indebtedness in favor of the prosecuting witness. The prosecuting witness swore positively that the defendant was not indebted to him in any amount whatever. With reference to the alleged indebtedness of the defendant to the prosecuting witness, we find that the statement of the lower court, after examining his testimony, is fully sustained. The lower court said that the defendant "told a most unbelievable story and a most tangled one, convicting himself at every answer that he made."

After a careful examination of the record brought to this court, we find no escape from the conclusion that the defendant is guilty of the crime charged. The sentence of the lower court is, therefore, hereby affirmed, with costs.

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

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