

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TRINIDAD G. DE LARA Y REYES (ALIAS TRINIDAD DE LARA Y REYES), DEFENDANT AND APPELLANT.

G.R. Nos. 21168-21170. February 29, 1924

Ponente: STATEMENT The following information was filed against the defendant in the Court of First Instance of Manila: "The undersigned accuses Trinidad G. de Lara y Reyes (alias Trinidad de Lara y Reyes) of the crime of estafa thru falsification of a commercial document, committed as follows: "That on or about the 6th day of April, 1923, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully and feloniously and with the intent to defraud, forge and falsify a commercial document, to wit, check No. 91009-C, by filling, writing and inserting on said check the words and figures underlined in the following copy of the same, to wit: (Face) [SEAL] No. 91009 C [SEAL] PHILIPPINE NATIONAL BANKMANILA, P. I. Official Depository of the Philippines Government MANILA, P. I., April 6, 1923_____ Pay to J. U.

Lim_____ or Order Pesos Five Thousand Six Hundred no/100_____ J. P. HEILBRONN CO._____ BY AMOS G. BELLIS_____ Treasurer_____ P 5,6000.00_____ (E. F.) (Back) Pay to_____ T. G. Lara_____ J. U. Lim_____ T. G. Lara_____ Identification only for the signature of Mr. T. G. Lara. M. ONGJOCO thus causing it to appear that one Amos G. Bellis, treasurer of the 'J. P. Heilbronn Co.' of said city, drew and issued said check No. 91009-C, dated April 6, 1923, against the Philippine National Bank, an institution duly authorized to transact banking business in the City of Manila, payable to one J. U. Lim or order in the sum of five thousand six hundred pesos (P5,600), when in truth and in fact, as the said accused well knew, the said Amos G. Bellis had never participated in the preparation and issuing of said commercial document; that on or about the 9th day of April, 1923, in said city and once the said check was falsified and forged the said accused, with intent to profit, willfully, unlawfully, feloniously and knowingly indorsed, uttered, negotiated and passed the said check to the said Philippine National Bank which, believing, as it did, the said check to be a genuine and true one, then and there cashed the same for the said amount of five thousand six hundred pesos which the said accused then and there received, misapplied and misappropriated for his own use and benefit to the damage and prejudice of the said Philippine National Bank in the said sum equivalent to and of the value of 28,000 pesetas, Philippine currency. "That upon the commission of the said act, the accused has already been once convicted of the crime of estafa by final judgment of a competent court. "Contrary to law." Like information was filed as to another check dated April 5, 1923, for ₱8,750, which was likewise endorsed and cashed by the defendant. The same thing is true as to another check, of date April 12, 1923, for ₱9,800. After arraignment and a plea of not guilty, by agreement of the parties, the three cases were consolidated and tried together. In each defendant was found guilty and sentenced to eight years and one day of presidio mayor, and to pay a fine of 3,000 pesetas, with the accessories of the law, to indemnify the Philippine National Bank in the amounts of the respective checks, and to pay the costs, from which judgment the defendant appeals, contending that: "I. The trial court erred in finding that the defendant forged the checks, Exhibits A, B, and C. "II. The trial court erred in finding that J. U. Lim was a fictitious and non-existing person as well as in finding that the letter Exhibit 6 had been prepared by the defendant and by him sent to Shanghai to be mailed there to him at Manila. "III. The trial court erred in not finding that

the defendant acted in good faith and in not acquitting him." JOHNS, J.

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(Face)

[SEAL]

No. 91009 C

[SEAL]

PHILIPPINE NATIONAL BANK
MANILA, P. I.
Official Depository of the Philippines Government

MANILA, P. I., April 6, 1923

Pay to J. U. Lim

or Order

Pesos

Five Thousand Six Hundred no/100

J. P. HEILBRONN CO.

BY AMOS G. BELLIS

Treasurer

P 5,6000.00

(E. F.)

(Back)

Pay to

T. G. Lara

J. U. Lim

T. G. Lara

Identification only for the signature of Mr. T. G. Lara.

M. ONGJOCO

thus causing it to appear that one Amos G. Bellis, treasurer of the 'J. P. Heilbronn Co.' of said city, drew and issued said check No. 91009-C, dated April 6, 1923, against the Philippine National Bank, an institution duly authorized to transact banking business in the City of Manila, payable to one J. U. Lim or order in the sum of five thousand six hundred pesos (P5,600), when in truth and in fact, as the said accused well knew, the said Amos G. Bellis had never participated in the preparation and issuing of said commercial document; that on or about the 9th day of April, 1923, in said city and once the said check was falsified and forged the said accused, with intent to profit, willfully, unlawfully, feloniously and knowingly indorsed, uttered, negotiated and passed the said check to the said Philippine National Bank which, believing, as it did, the said check to be a genuine and true one, then and

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Like information was filed as to another check dated April 5, 1923, for ₱8,750, which was likewise endorsed and cashed by the defendant. The same thing is true as to another check, of date April 12, 1923, for ₱9,800.

After arraignment and a plea of not guilty, by agreement of the parties, the three cases were consolidated and tried together. In each defendant was found guilty and sentenced to eight years and one day of presidio mayor, and to pay a fine of 3,000 pesetas, with the accessories of the law, to indemnify the Philippine National Bank in the amounts of the respective checks, and to pay the costs, from which judgment the defendant appeals, contending that:

"I. The trial court erred in finding that the defendant forged the checks, Exhibits A, B, and C.

"II. The trial court erred in finding that J. U. Lim was a fictitious and non-existing person as well as in finding that the letter Exhibit 6 had been prepared by the defendant and by him sent to Shanghai to be mailed there to him at Manila.

"III. The trial court erred in not finding that the defendant acted in good faith and in not acquitting him."

JOHNS, J.:

There is no dispute as to any one of the material facts. April 3, 1923, an application for a book of checks Nos. 91001-C to 91150-C was received by the Philippine National Bank, with the purported signature of the firm of "J. P. Heilbronn Co., By Amos G. Bellis, Treasurer." Apparently the bank issued the check book as requested. April 5th, 6th, and 12th, the defendant presented the checks, known in the record as Exhibits A, B, and C, Nos. 91007, 91009, and 91011, respectively, to the Philippine National Bank for payment. They were drawn payable to the order of J. U. Lim, and upon their face purported to have been drawn and signed by Amos G. Bellis, Treasurer of J. P. Heilbronn Co. They were all cashed by, and the money paid to, the defendant by one of the paying tellers of the bank. The signature, appearing upon each of the checks of the drawer, was a forgery, although it purported to be, upon its face, the genuine signature of Amos G. Bellis, the treasurer of the company.

During the trial it appeared that prior to the filing of the information, the defendant had been previously convicted of the crime of estafa. The total amount of the three forged checks was ₱24,150, all of which was paid to the defendant.

The important question presented is whether or not the defendant is guilty of the crime of forgery. There is no evidence that any one saw the defendant forge either of the checks. Neither is there any evidence of a confession or that the defendant was the person who applied for, and obtained, the check book from the bank. But the evidence is conclusive that all three of the checks were forgeries.

It will be noted that the first check, April 5th, is for ₱8,750, the second, April 6th, is for ₱5,600 and the last check, dated April 12th, is for ₱9,800. That is to say, on and between April 5 and April 12, 1923, the bank paid to the defendant ₱24,150 on forged checks.

The defendant admits the receipt of all of the money evidenced by the forged checks, and, as a defense, claims that he was in the employ of J. U. Lim, who indorsed and gave the checks to him personally, with instructions to cash them at the bank, and that he either delivered the money to Lim personally or to Suaco upon the written order of Lim.

Quoting from appellant's brief, it is—

"The theory of the defense is, in general terms, that it was J. U. Lim, his employer, who ordered him to present said checks and collect their value, that he presented and collected them in the fulfillment of his duties without any knowledge or suspicion that they were forged and that he delivered all the sums collected by him to said J. U. Lim."

According to the testimony of the defendant, J. U. Lim was stopping at the Hotel de France in the City of Manila, and the three checks in question were drawn by Lim and delivered to the defendant, with instructions to cash them and bring back the money. Except as to the transactions in question, there is no evidence of any confidential relations existing between the defendant and Lim, or that there had ever been any previous business dealings between them. The evidence shows that the defendant was formerly an employee in the N. & B. Stables, and it was as an employee there that he first met Lim in a casual way and in the ordinary course of business. A short time before the transactions in question, the defendant was out of employment, and incidentally met Lim on the street and told him of his situation. It was finally agreed that defendant should enter the employ of Lim for which he would be paid P150 per month for his services. Within a few days the checks were drawn and the money paid to the defendant. After it was ascertained that the checks were forgeries, the defendant undertook to show that he did not know that they were forgeries; that he was an innocent victim of circumstances; and that he had accounted in good faith to Lim for all the money which he received. His explanation does not carry conviction. In fact his account of the transactions is so unusual and unreasonable as to carry conviction, that he either was a party to the forgery or knew the checks were forgeries.

Exclusive of the testimony of the defendant himself, there is no evidence that such a person as J. U. Lim ever existed. Yet, according to his testimony, Lim was stopping at the Hotel de France in the City of Manila where he had some kind of a room or office in which the checks were drawn and delivered to him. The attempt of the defendant to prove his innocence is the very strongest evidence of his guilt. It conclusively shows that he either personally forged the checks or that he knew they were forged at the time he cashed them at the bank. The drawing of three checks amounting to ₱24,150 within such a short period of time by one firm and each payable to J. U. Lim, all of which were forgeries, and the cashing of them by the defendant, under the circumstances shown in the record, was not an usual or ordinary transaction. Business is not done that way among persons who are comparative strangers. No prudent businessman would ever deliver or endorse checks for that amount of money to a comparative stranger with authority to cash them and return with the money.

According to the defendant's theory, the check of April 6th was delivered to him by Lim, who "told him to collect it at the Philippine National Bank and to deliver the money to his cousin Suaco if the defendant could not find him (J. U. Lim)." The defendant cashed the check, and upon his return to the Hotel de France "he met Suaco who delivered to him a note of J. U. Lim in which it is stated that the money should be delivered to Suaco," to whom he delivered the money.

To say the least, the court does not believe that evidence is true. It has all of the earmarks of a fictitious and manufactured defense.

People who have checks for that amount of money do not do business that way.

We agree with the trial court that J. U. Lim was a fictitious person, and that the attempt of the defendant to throw the responsibility for the forged checks upon Lim is a manufactured defense.

The appellant's counsel have filed a very able and adroit brief, but in the final analysis the stubborn fact remains that the checks were forged, and that the defendant either forged them or knew that they were forged at the time he cashed them.

The facts bring the case square within the law laid down by this court in *United States vs. Castillo* (6 Phil., 453), where the following statement in *Wharton's Criminal Law* (vol. 1, par. 726) is quoted with approval:

" 'Does the uttering of a forged instrument by a particular person justify a jury in convicting such a person of forgery? This question, if nakedly put, must, like the kindred one as to the proof of larceny by evidence of possession of stolen goods, be answered in the negative. The defendant is presumed to be innocent until otherwise proved. In larceny this presumption is overcome by proof that the possession is so recent that it becomes difficult to conceive how the defendant could have got the property without being in some way concerned in the stealing. So it is with the uttering. The uttering may be so closely connected in time with the forging, the utterer may be proved to have such capacity for forging, or such close connection with the forgers that it becomes, when so accomplished, probable proof of complicity in the forgery.'" In numerous decisions, this court has held that the unexplained possession of recently stolen property is sufficient to sustain a conviction for the crime of larceny. Here the facts are much stronger. There were three forgeries of checks within a period of seven days, each of which was for a considerable amount of money, and all of which were paid to the defendant, and his attempt to prove his innocence not only fails to carry conviction, but is strong evidence of his guilt. From the nature of the transactions, it is very apparent that the defendant had confederates, and that one of them was an employee of the bank. A detailed analysis of all of the evidence would not serve any useful purpose. Suffice it to say that upon each charge, it is sufficient to prove the guilt of the defendant beyond a reasonable doubt.

The Attorney-General points out that the penalty for the forgery or falsification of checks as provided by article 301 of the Penal Code, as amended by Act No. 2712, is prision correccional in its maximum degree, which is from four years, two months and one day to six years. Because of the fact that there was present the aggravating circumstance of the defendant's being a recidivist without any mitigating circumstance, that the maximum period for the penalty should be imposed under article 81, paragraph 3, in connection with article 82 of the Penal Code, which is from five years, nine months and seventeen days to six years.

Following the recommendation of the Attorney-General, the judgment of the lower court will be modified and reduced, and the defendant sentenced to six years of prision correccional in each case, or eighteen years in the three cases, with subsidiary imprisonment in case of insolvency, and in all other respects, the judgment of the lower court is affirmed, with costs. So ordered.

Araullo, C. J., Johnson, Malcolm, Avancena, Ostrand, and Romualdez, JJ., concur.

DISSENTING

STREET, J.:

A careful perusal of the evidence submitted in this case leads me to believe that this appellant is not the person who forged the checks upon which money was taken from the Philippine National Bank upon the three occasions set forth in the information, and it does not appear by any positive proof that he cooperated as a principal in the commission of the forgery. It is highly probable that the chief criminal, or criminals, whoever he or they may have

been, would have used, as they probably did in this case, as a tool to get the money out of the bank, a person who did not have complete knowledge of all the facts and who did not in fact participate in the commission of the forgery.

On the other hand I consider it certain that this appellant was not innocent of the knowledge of the falsity of the three checks which he cashed; and for this reason he is justly amenable to punishment for the crime of estafa in each of these three cases, with the aggravating circumstance that he is a recidivist in the commission of this offense. Upon this estimate of the crime, he should be sentenced to imprisonment for a period ranging in each case from two years, eleven months and eleven days to four years and two months.

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