

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. C. N. HODGES, DEFENDANT AND APPELLANT.

G.R. Nos. 22474-77. November 17, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

The defendant is charged in four separate cases with violations of section 2 of the Usury Law (Act No. 2655) in certain money lending transactions had with the prosecuting witness Leopoldo Ortiz.

In case R. G. No. 22475 it is alleged that the defendant received the sum of P1,800 from Ortiz as interest on a loan of P3,250 for the term of one year. In case R. G. No. 22477 he is charged with having received the sum of P7,344 as interest for one year on a loan of P13,856. In case R. G. No. 22476 it is alleged that the defendant received P3,984.55 as interest for one year on a loan of P15,713.63, and in case R. G. No. 22474 the defendant is charged with receiving P300 as interest for three months on a loan of P2,000.

The trial court found the defendant guilty in all four cases and sentenced him to suffer two months' imprisonment in each case and to pay the costs. In case R. G. No. 22477 the court further ordered the defendant to return to Leopoldo Ortiz the sum of P5,400 and in case R. G. No. 22474 to return the sum of P300, with subsidiary imprisonment in case of insolvency. From these judgments the defendant appeals.

Three of the cases, namely, Nos. 22475, 22476 and 22477, were consolidated and tried together and the fourth case, No. 22474 was tried immediately afterwards. The evidence for the prosecution is the same in all four cases and as they have been argued and considered together in this court all of them will be disposed of in the present decision.

At the trial of the cases a number of witnesses were called by the prosecution to testify in regard to the character and reputation of the defendant and their testimony was admitted over the objection and exception of his counsel notwithstanding the fact that his character had not been put in issue by the defense. In this the court below erred. It is an elementary rule of criminal procedure He stated that being in urgent need of the sum of P3,200 and not being a resident of Iloilo, or being well acquainted there, he asked a friend where he might obtain the money; that this friend advised him to see the defendant who was a man of money; that he then asked where the defendant was to be found, and was informed that he might be found at his office; that he called upon the defendant," stated his needs and was informed that he could get the money provided he was willing to agree to the terms proposed by the defendant, which were that the loan should be for one year, that a charge of P50 would be made for the preparation of the documents and that the sum of P1,800 would be charged as interest for one year and would be included in the note as part of the capital; that he found these conditions harsh but that due to his urgent need, he accepted the terms in the hope that he might be able to pay the loan off within two or three months, and executed a note for the sum of P5,050, but that he received only the sum of P3,200 from the defendant.

To show the character of the witness' testimony on cross-examination, we quote the following portions of the transcript :

"Q.

Where did you take the data you are using as memorandum?

—

A.

From my memory. I did not take them
from any place.

"Q.

When you tried to make collection from Mr. Hodges vor to borrow from him the P3,200, did you have any
connection with Mr. Hodges?

—

A.

I may have had.

"Q.

Did you know him well?

—

A.

May be. Yes, sir. I don't have a good memory. A long time has elapsed. I may have had other relations.

"Q.

Can you say whether on that occasion you had another transaction with Mr. Hodges, besides the one stated in
Exhibit A, the note?

—

A.

I may have had.

"Q.

Don't you remember?

—

A.

I do not remember very well. It may be.

"Q.

However, you remember, don't you, up to the last cent that Mr. Hodges has charged against you?

—

A.

That is mathematically exact. The figures speak; the documents don't.

"Q.

You did not testify, did you, in the justice of the peace court in the investigation of this case?

—

A.

I did.

"Q.

Is it not true that during the investigation you testified that as you were in urgent need of money on that occasion, that is to say, April 30, 1919, and as you did not know Mr. Hodges personally, you looked for a friend to introduce you to Mr. Hodges?

—

A.

Yes, sir; I remember that.

"Q.

And that testimony was then true, was it not?

—

A.

On that occasion I did not remember it. You know that any man has at times good memory and sometimes he has not.

"Q.

Please answer whether it is true or not.

—

A.

What?

"Q.

That you * * *.

—

A.

I cannot tell you.

"Q.

About April 30, 1919, did you know Mr. Hodges, personally or did you have any relation with him?

—

A.

I believe I did; I believe I did.

* * * * *

"Mr. BAMBERGER. (To the witness.) Outside of the transaction represented by this note Exhibit A on or about April 30th?

—

A.

Yes; I had other transactions before that date.

"Q.

No, sir. (To the stenographer.) Please repeat the question. (The stenographer does so.)

—

A.

I do not remember very well, but I believe that I have had transactions which have terminated. That is to say, I am not very sure, I do not remember very well.

"Q.

It may be that on April 30, 1919, you did not receive the P3,200, is that it?

—

A.

I did receive.

* * * * *

"JUDGE. When you say 'I do not remember,' you admit that there may have been another transaction on a date different from the one appearing on the note for five thousand * * *?"

—

A.

I do not remember.

"Mr. BAMBERGER. Being in need of money on April 30, 1919, why is it that you went to Mr. Hodges, asking him only for P3,200, if there were other needs on that occasion?"

—

A.

Because I did not need any more than that.

"Q.

Then you can positively say that on that occasion you did not borrow any other sum than the one represented by this transaction, is that it?

—

A.

I do not know.

"Q.

I exhibit to you a document marked Exhibit I, or which I ask be marked Exhibit I for identification.

"Judge. Let it be marked. (The clerk does so.)

"Mr. BAMBERGER. (Proceeding.) I ask you whether you know the signature appearing on the back of the same, the name L. Ortiz?"

—

A.

For what amount is that?

"JUDGE. The question is whether you know the signature

—

A.

Yes, sir; my signature appears here."

As will be seen, the evasiveness and uncertainty of the answers of the witness in the portion of his testimony quoted is quite striking and the same may be said of the rest of his testimony covering over sixty pages of the record.

Exhibit I referred to in the testimony quoted as being shown to the witness Ortiz, is the check for P4,990.44, which was given him upon the execution of the note for P5,050. The check is dated April 30, 1919, but is stamped as cashed on May 2. Before being shown the check Ortiz insisted that he received only P3,200 from the defendant on April 30, though he did not remember in what form the money was paid. But two days after the check had been shown to him he was recalled to the witness-stand by the prosecution and then explained that he was unable to get the money on April 30, 1919, but had to go to the defendant several times, although he did not remember the excuses given by the latter for failing to pay over the money; that on May 2, 1919, he was still unable to get the money but that the accused handed him a check and told him to get it cashed at the bank and to return to the defendant all of the amount over and above the sum of P3,200; that to this he had no objection and asked the defendant if he would wait for him in his office and the defendant stated he would; that there was some delay at the bank in getting the check cashed as he was not known there and that finally he asked a friend, Teodoro Benedicto, to assist him; that Benedicto endorsed the check and got it cashed and that he then paid Benedicto P130 which he had owed the latter for a long time; that Benedicto thereupon went away, leaving him at the bank, and that when he turned around he found the accused immediately behind him; that he tendered all of the money to the defendant but was told to retain P3,200 and to deliver only the excess over that amount to the defendant. The witness further stated that Raymundo Melliza was present in the bank at the time and saw Hodges talking to him.

Benedicto was called by the prosecution and admitted that he had endorsed the check for identification purposes, but said nothing about having seen Hodges or Melliza in the bank. Melliza testified that about three years ago (the testimony was given in September, 1923), he met Ortiz at the bank and saw that he had money in his hands and that he also saw the defendant in the bank at some distance from Ortiz. He says nothing about seeing Benedicto there. In view of the fact that the transaction here in question took place in April or May, 1919, and that Melliza testified to an incident occurring in 1920, it is quite likely that his testimony had reference to one of the several subsequent transactions between Ortiz and the defendant during the year 1920.

The rather unusual story told by Ortiz at his second appearance as a witness therefore stands practically uncorroborated and aside from its inherent improbability, is also in direct conflict with the testimony given by him at the beginning of the trial. Moreover, Ortiz appears to be a man of intelligence and education and it seems highly improbable that if the defendant had adopted the strange procedure above described, the matter should have escaped his memory so completely that he did not recall it until he was confronted with the cancelled check. It is also improbable that a man of Hodges' alleged business acumen and experience would have trusted a

comparative stranger such as Ortiz with nearly P1,800, without a scrap of paper to show that this amount was to be returned to him.

As against the unsatisfactory and uncorroborated testimony of the prosecuting witness, we have the, on its face, reasonable testimony of the defendant corroborated by documents and by the testimony of the witness Iguara on most of the essential points. The defendant may be guilty but under the circumstances we could at most render a Scotch verdict; we cannot convict him on mere suspicion.

The other charges against the defendant are no better supported by the evidence. They are links in a chain of transactions of which the one we have discussed was the first. Notes fell due and were renewed with interest added ; additional amounts were borrowed from time to time, and the total sum owed finally ran up to over twenty thousand pesos.

It may here be observed that interest not actually paid but simply added to the capital from time to time and included in new notes cannot be regarded as "taken or received" by the defendant, within the meaning of section 2 of the Usury Act and cannot serve as a basis for criminal prosecution under section 10 of that Act. (Brown vs. Marion National Bank, 169 U. S., 416; Haseltine vs. Central Bank No. 2, 183 U. S., 132; Driesbach vs. Second National Bank of Wilkesbarre, 104 U. S., 52.)

The defendant admits that he actually received the sum of P2,400 in payment of interest on the sum of P20,600 for one year. As to the other payments of P3,000 and P300 alleged to have been made for interest in cases R. G. Nos. 22477 and 22474, respectively, we have only Ortiz' testimony against that of the defendant. The former's testimony is self-contradictory, exhibits the same uncertainty of memory which characterized his testimony in regard to case R. G. No. 22475 and when analyzed and summed up, the figures he gives do not agree with the admitted facts. The defendant's testimony, on the other hand, is consistent and plausible, figures tally with the documents in evidence, and his statements are corroborated by the witness Iguara. Here again we are confronted with the same difficulty as that encountered in case No. 22475; the defendant may be guilty, but his guilt has not been proven.

The court is anxious to enforce the provisions of the Usury Law, but if we were to convict persons of violations of the law upon evidence as unreliable as that of the uncorroborated testimony of the complaining witness in the present cases, it would merely tend to encourage the repudiation of debts whether just or unjust, and serve no useful purpose.

The judgments appealed from are hereby reversed and the defendant will stand acquitted of the offenses charged, with the costs de oficio. So ordered.

Avancena, Johns, and Romualdez, JJ., concur.

Johnson, Acting C. J., took no part.

STREET, J., with whom concurs VILLAMOR, J., concurring and dissenting:

The prosecution in this case proceeds in part along erroneous lines, and I concur in the acquittal in so far as relates to the prosecution in G. R. No. 22475 and in G. R. No. 22476; for, although in these cases the usurious agreements were in my opinion undoubtedly made, no usurious interest was actually taken or received by the appellant, a thing which is always necessary to sustain a criminal conviction for the unlawful taking of usury. In both of these cases the money which was agreed to be paid as usury was not in fact paid but the amounts representing said usury were accumulated successively in the different notes, and the mere renewal of a usurious contract or the involution of the usury in a note of later date does not constitute a violation of the criminal

provisions of the Usury Law. Of course the mere participation of the appellant in the making of a usurious contract does not constitute a criminal act. In case G. R. No. 22476 the appellant appears to have foreclosed a chattel mortgage given to secure a usurious note, and while this act should doubtless be considered as a taking of usury within the meaning of the criminal provision nevertheless the information does not charge this fact as the basis of prosecution.

For the rest I am convinced that we are confronted with a gross case of usurious practices and the convictions in cases G. R. Nos. 22474 and 22477 are in my opinion fully sustained by the evidence. It is true that the line of action pursued by the appellant was cunningly devised for the purpose of concealing his unlawful practices, but when the evidence is attentively considered the truth can I think be made out beyond a reasonable doubt; and, instead of saying, as is said in the opinion, that "the defendant may be guilty, but his guilt has not been proven," I do not hesitate to say that in my opinion his guilt in the two cases mentioned is fully established.

In brief the testimony for the prosecution shows that on or about April 30, 1919, the appellant let Leopoldo Ortiz have the sum of P3,250, from which Ortiz was required to pay P50 for the documentation of the contract. For this loan Ortiz executed a note for P5,050 for one year, secured by a mortgage of real property. Practically all above the amount of P3,250 was stipulated interest for the loan, representing a usurious rate of interest. At the expiration of the loan Ortiz needed more money and instead of paying off the existing loan he executed a new note for the sum of P20,600, secured by a mortgage on real and personal property. In this loan was included the amount of the prior note (P5,050) and, in addition, Ortiz was advanced money to the amount of P10,600. This note provided for interest at the rate of one per centum per month. The balance represented the amount that the appellant charged for the accommodation. At the same time the mortgage securing the original note for P5,050 was cancelled. At the end of the year specified in this contract Ortiz was again unable to satisfy the debt, and in order to secure indulgence from the appellant and another year of extension on the contract he was required to pay the sum of P2,400. In addition to this the sum of P3,000 was delivered by one Kramer to the appellant on account of Ortiz, making altogether P5,400, which was paid by Ortiz to the appellant for indulgence. The indebtedness now amounting up to over P23,000, including both loans and usury, was next split up into two notes, one of which was made for about P11,000 and the other for about P12,000. The first of these contracts was secured by a mortgage on herd of ninety-two carabaos, and the other by a mortgage on real property. In the independent transaction which is made the subject of prosecution in case G. R. No. 22474 the appellant required Ortiz to pay the sum of P300, as interest on P2,000 for the period of three months, secured by a contract of sale of land with pacto de retro.

The opinion of the court makes the case turn upon certain supposed inconsistencies in the testimony of Ortiz and a lack of credibility attributed to his testimony. I cannot agree with this appreciation of the evidence; and it may be worth while to state the facts as I consider them established relative to the first transaction, which the opinion treats as the keystone of the whole case. Ortiz has claimed at all times that he received a loan of only P3,250, for which he was required to give his note for P5,050. As it was important for the appellant to cover up his tracks the following device was used: The appellant issued a crossed check on one of the local banks for the sum of P4,990.44 which Ortiz was required to cash. Ortiz got a friend (Benedicto) to identify him at the bank; and Sr. Melliza, an elderly and well-respected person, a member of this court under the former regime, happened to be in the bank when the money was drawn. Meanwhile the appellant, who had followed Ortiz to the bank, took over the money and retained all but the sum of P3,200, which he turned over to the appellant.

The statements of Ortiz as to this transaction are corroborated at material points by the two witnesses referred to, and it is impossible for me to withhold credit from their testimony. In addition to this it is proved by Kramer that he paid P3,000 over to the appellant out of the proceeds of a property which he had purchased from Ortiz. I

submit that the appellant's explanations of all these transactions are artificial and unconvincing. When his interest in disproving the charge is considered, in connection with other matters affecting his credibility, I am constrained to give credit to the proof for the prosecution, and I believe that a conviction of the accused in two of the cases mentioned at the beginning of this opinion was proper.

In conclusion I will say that I cannot dismiss as lightly from consideration as does the court the proof relating to the character of the appellant. It is shown by the record that he was once convicted of the offense of stealing wagon wheels from the United States quartermaster, and while conviction of crime does not render a person incompetent to testify in court, it is nevertheless a matter that affects his character for truth and honesty and is admissible in evidence against him. (U. S. vs. Mercado, 26 Phil., 127; sees. 282 and 342, Code of Civ. Proc; sec. 55, G. O. No. 58.) It is true that this proof was submitted by the fiscal as part of the original case for the prosecution, and its admission at that stage of the case was technically incorrect; but no error has been assigned to said action of the trial court in the lengthy brief filed here, and as this proof would have been admissible at any rate in rebuttal, no error was committed by the court in considering it, if it did so consider it, as bearing on the credibility of the appellant as a witness. The proof also shows that the appellant is a notorious usurer, and a number of unexceptionable witnesses who have suffered at his hands or had direct knowledge of his usurious practices testified as to this. The introduction of this proof was erroneous, but no error has been assigned in this court to the action of the trial court in admitting it, and its admission supplies no ground for the reversal of the judgment; for, ignoring such inadmissible proof, the case is in my opinion made out beyond a reasonable doubt.

MALCOLM, J., concurring and dissenting:

My vote is to acquit in cases Nos. 22475 and 22476 and to affirm in cases Nos. 22474 and 22477. My views of the Usury Law are set out in *United States vs. Constantino Tan Quingco Chua* ([1919], 39 Phil., 552).

Judgment reversed.

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