

44 Phil. 544

[G.R. No. 19192. February 28, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MIGUEL G. CONCEPCION, DEFENDANT AND APPELLANT.

D E C I S I O N

STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Cagayan, finding the appellant, Miguel G. Concepcion, guilty of the offense of *estafa* by means of falsification of mercantile documents, and sentencing him to undergo imprisonment for five years, four months and twenty days, *prision correccional*, with the accessories prescribed by law; to pay a fine of P1,500; to indemnify the branch of the Philippine National Bank in Aparri in the sum of P55,000, with subsidiary imprisonment (not to exceed one year) in case of insolvency; and to pay the one-fourth part of the costs of prosecution.

In the information three other persons, to wit, Teodorico Angeles, Abelardo Crisologo, and Ricardo Paredes, were named as codefendants with this accused; but a severance was had, and the trial of the present appellant occurred at a different time than that of his coaccused, and indeed before a different judge. The present opinion will therefore be confined to the appeal of this appellant, Miguel G. Concepcion, alone.

Upon the date of the events which gave rise to this prosecution Teodorico Angeles was manager of a branch of the Philippine National Bank at Aparri, in the Province of Cagayan. At the same time Miguel Concepcion, a resident of the Province of Cagayan and representative of said province in the Philippine Assembly, was manager of a limited partnership engaged in the business of buying and selling tobacco in the Cagayan Valley, known as "Puno y Concepcion." The

mercantile operations of this firm were for a time carried on upon an extensive scale, and Miguel Concepcion was naturally therefore frequently brought into contact with Teodorico Angeles as manager of the Aparri branch of the Philippine National Bank. Moreover, it appears that Miguel Concepcion is a son of Venancio Concepcion at that time president of the Philippine National Bank at Manila; and by reason of both his social and business relations Miguel Concepcion evidently acquired an undue influence over Teodorico Angeles, with the result that the latter in a great measure surrendered his discretion as manager of the bank to the will of the former.

Now, it appears that in the month of October, 1919, Miguel Concepcion had need of funds, which could only be had from the Philippine National Bank; and as he apparently had no bankable security available, recourse was had to the expedient of getting the money upon loans from the bank upon fictitious warehouse receipts (*quedans*), with the knowledge and connivance of Teodorico Angeles.

The story of the manner in which the loans in question were obtained is told with apparent candor by Abelardo Crisologo and Ricardo Paredes, who are charged in the information as joint principals in the offense of *estafa* by means of falsification of mercantile documents but who, as we believe, were rather victims of the artifices of their coaccused than designing participants in crime.

It appears, then, that Abelardo Crisologo had long been an intimate friend of Miguel G. Concepcion; and, as Crisologo lived in Tuguegarao, it had been the custom of Concepcion on visits to that place in the past to stay in Crisologo's hospitable home. Paredes was the father-in-law of Crisologo and at the same time an employee of the firm of "Puno y Concepcion," though prior to September, 1919, he had been employed by the branch of the Philippine National Bank in Aparri as an inspector.

In the month of October of 1919, Teodorico Angeles and Miguel G. Concepcion were in Tuguegarao, and they were invited to dine at the house of Crisologo, Paredes being also present. After the meal was over, and the appropriate time had arrived for the exchange of confidences, the subject of the tobacco trade was broached, and Miguel G. Concepcion, directing himself to Angeles, said:

“Manager, I have three thousand quintals of tobacco in the *pueblos* of Enrile, Peñablanca, and Baggao, and I should like to pledge them to the bank but I should not like for my name to appear on the documents. I mean that I should not like to make the pledge myself.” To this Teodorico Angeles replied: “Whose name then would you like to have appear?” Thereupon Concepcion indicated Crisologo as a person who would perhaps be obliging enough to figure as borrower in the loan. To this Crisologo at first hesitated to give his assent, but the matter was managed with such diplomatic skill by the two principal interlocutors that Crisologo yielded, not before Concepcion, however, had pointed out that in making the pledge Crisologo would not have to appear as owner of the tobacco but merely as depositary. In addition to this Angeles gave Crisologo to understand that the proposed participation of the latter in the transaction was all a matter of the merest form. It may be stated also that the explanation given to Crisologo by Concepcion for the necessity of the intervention of some one else than himself was, in effect, that Concepcion wanted to use the money for the purchase of tobacco in competition with the firm of “Puno y Concepcion,” of which Concepcion was manager, and he thought it would look ugly for his name to appear in connection with the loan.

The way having been thus paved for the putting through of the deal, by which the bank would lend the sum of P55,000 upon the security of warehouse receipts for 3,000 quintals of tobacco, the three principals met again the next day in the house where Concepcion was then staying in Tuguegarao; and it was determined that a loan of P35,000 should forthwith be made on the purported security of a *quedan* to be signed by Crisologo for 2,000 quintals of tobacco, leaving a loan of P20,000 to be effected later upon the security of another *quedan* for the remaining thousand quintals of tobacco.

In this interview Angeles assured Crisologo that he (Angeles) had personally inspected the warehouse where that part of the tobacco supposed to be then in Tuguegarao was deposited and found it to be there as Concepcion had claimed. Upon this Crisologo indicated his readiness to proceed, and the necessary documents were accordingly prepared. These consisted, first, of four promissory notes, amounting altogether to the sum of P35,000, signed by Abelardo Crisologo, payable to the Philippine National Bank and purporting to be secured by the deposit of a *quedan* for 2,000 quintals of tobacco. Accompanying these notes was the warehouse receipt for said tobacco, in the usual commercial form, signed by

Crisologo and purporting to show that 2,000 quintals of tobacco had been deposited in his *bodegas*. This quedan was reduced to typewritten form by Concepcion himself just before the document was signed by Crisologo, its contents being dictated by Teodorico Angeles.

On the next day, which was October 24, 1919, in Aparri, Angeles discounted the four notes and placed the proceeds nominally to the credit of an individual account then opened in the name of Abelardo Crisologo. Of the amount thus placed to the credit of Crisologo, the sum of P30,000 was forthwith remitted to Concepcion in Tuguegarao by telegraph through the provincial treasurer and was by the latter paid to Concepcion in due course. The amount of P5,000 remaining to Crisologo's credit was used either to pay the charges incidental to the making of the loan or to defray interest upon the loan.

Three or four weeks later the remaining portion of the sum of P55,000, originally agreed upon as the total amount of the loan, was advanced by the bank upon two promissory notes of P10,000 each, signed by Crisologo, and purporting to be secured by a quedan for the other thousand quintals of tobacco, supposedly in Baggao, likewise signed by Crisologo.

The making of this second loan brings Ricardo Paredes into contact with the criminal transaction, and it is necessary here to explain his relation to the affair. In this connection it appears that at about this time the firm of "Puno y Concepcion," for which Paredes was acting as buyer, had need of money, and of this fact Paredes had duly informed Concepcion. The latter therefore instructed Angeles to pay Paredes the proceeds of the second loan; and accordingly when Angeles discounted the two notes of Abelardo Crisologo for P20,000, on November 19, 1919, he delivered to Paredes the sum of P500 in currency and a draft for P18,000, making P18,500 in all, which was charged to Crisologo's account. The remainder of the proceeds of the notes was consumed in the payment of charges incidental to the loan and in the payment of interest. From this it will be seen, and it is an undeniable fact, that although Crisologo signed the notes and quedans, as above stated, he in no wise profited by the transaction and never so much as saw the gleam of a single copper proceeding from the loan.

In concluding our sketch of the facts connected with the making of these two loans, we may state that at the time the quedans referred to were signed and

delivered to the bank neither Crisologo nor Concepcion possessed the tobacco which was purported to be on deposit with Abelardo Crisologo; and, although the evidence on this point is purely circumstantial, we feel certain that Angeles knew that the tobacco was non-existent. In favor of Crisologo is the circumstance that Angeles assured him that Concepcion had the tobacco and that the signing of the documents by Crisologo was a matter of pure form.

The sequel to the transactions above narrated may be told in a few words. The notes, as might have been anticipated, have not been paid by Abelardo Crisologo; the tobacco has been found to be non-existent, as Angeles and Concepcion all along knew; Concepcion denies all responsibility for the transaction, as if he were a total stranger thereto; and since December 23, 1921, Angeles occupies the grave of a suicide.

In our opinion the trial judge committed no error in finding the appellant, Miguel G. Concepcion, guilty of the complex offense of *estafa* by means of the falsification of mercantile documents. The *estafa* here involved consists in the fact that Teodorico Angeles, as manager of the Aparri branch of the Philippine National Bank, and as such having charge of the funds of said institution, converted, misappropriated, and misapplied the sum of about P55,000 of the bank's money, upon security that was known to him to be wholly fictitious, for the benefit of the appellant Concepcion and to the prejudice of the bank, all in contravention of subsection 5 of article 535 of the Penal Code. To the accomplishment of this *estafa* the falsification of two warehouse receipts was a necessary prerequisite; and the appellant Concepcion participated in the falsification of those documents not only as author by induction as to both, but in the fact that he was the mechanical author of at least the first, having himself reduced the document to proper form upon his own typewriting machine at the dictation of Teodorico Angeles.

This appellant is therefore subject to punishment under article 301 of the Penal Code, as amended, in relation with article 89 of the same Code. The trial judge was therefore not in error in sentencing him to imprisonment for a period within the limits of maximum degree of *prision correccional*; but a precise estimate of the penalty to be imposed shows that the period fixed by his Honor falls short of the true legal requirement by one day.

In order that the point may not be supposed to have passed unperceived we will say that the information charges an *estafa* founded upon deceit, it being alleged that the money of which the bank was defrauded was obtained by means of the false representation on the part of the accused Abelardo Crisologo that he was the owner of the tobacco covered by the quedans to which reference has been made, a form of *estafa* defined in subsection 1 of article 535 of the Penal Code. However, in view of the fact that the responsible manager of the bank, who let the money out, knew that the tobacco was non-existent, the *estafa* committed cannot be considered to have been of the precise form alleged; and the offense is more properly to be considered as falling under subsection 5 of the same article, that is, as consisting of fraudulent misapplication of the funds of the bank by its manager. Moreover, we note that the facts set forth in the information are sufficient to sustain the charge in this aspect; and we have no hesitancy in holding, in conformity with the analogy of numerous precedents, that where the facts are sufficiently set forth in the information, a conviction can be had under subsection 5 of article 535, although the information expressly charges only an infraction of subsection 1.

In the light of the foregoing discussion it becomes necessary to modify the period of imprisonment imposed by the trial judge by adding one day thereto, thus placing the penalty within the maximum of the maximum degree of *prision correccional*; and it being understood that the appealed decision is thus modified, the judgment is affirmed, with costs. So ordered.

Araullo, C.J.,

Malcolm, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ.,
concur.