6 Phil. 453

[G.R. No. 2829. September 19, 1906]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PIO CASTILLO, DEFENDANT AND APPELLANT.

D E C I S I O N

CARSON, J.:

It was proven at the trial of this case that on the morning of the 2d of December, 1905, the appellant, Pio Castillo, presented a check for the sum of 56 pesos, Philippine currency, to a Chinese merchant named Lim Ponso; that the said check was made payable to bearer and purported to be drawn by one James J. Watkins; that the amount of the check was paid to Pio Castillo; that the signature of the drawer upon said check was a forgery made in imitation of the genuine signature of James J. Watkins, sheriff of the city of Iloilo, and that, in fact, the said James J. Watkins never signed or issued the said check; that the blank upon which the check was written was stolen from a book of blank checks between the hours of 12 noon on the 1st of December, 1903, and 11 a. m. on the 2d of December, 1903, when the check was presented for payment; that this blank check book was kept in a drawer in the office of the said James J. Watkins, and that Pio Castillo was one of three clerks employed by Watkins in his office; that Castillo was in the office on the evening of December 1 and early in the morning of December 2, and that he was the last person left alone in the office on the evening of December 1, he having locked the office after all the other clerks had gone.

Castillo went on the witness stand in his own behalf and swore that he had never seen the forged check prior to the trial; that he was not at the business place of the Chinese merchant; Lim Ponso, on the 2d of December, 1903; and that he never received the money which it is alleged was paid him upon the .check; but the falsity of all these statements, in every particular, was conclusively established by the testimony of a number of disinterested witnesses for the prosecution.

Upon this evidence the trial court held that the prosecution had failed to establish the

charge of falsification, but found the accused guilty of the crime of knowingly using with intent to gain a falsified mercantile document as defined and penalized in article 302 of the Penal Code, and sentenced him to five months' imprisonment (*arresto mayor*) with the accessory penalties.

We think the evidence in this case was sufficient to sustain a finding that the accused was guilty of the crime of falsification as charged. The question involved is stated as follows in Wharton's Criminal Law (vol. 1, par. 726):

> "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."

See, as in the main substantiating this view, U. S. *vs*. Britton (2 Mason, 464,1826); Spencer *vs*. Com. (2 Leigh, 751, 1830); State *vs*. Morgan (2 Dev.& Bat, 348, 1837); State *vs*. Outs (30 La. An., Pt. II, 1155, 1878); Cohn *vs*. People [(Colo.) 2 West Coast Rep., 528, 1884].

In Massachusetts, wherein it has been held that the mere fact of uttering is not proof of forgery (Com. *vs*. Parmenter, 5 Pick., 279, 1827), it has been decided, nevertheless, that possession of a forged, instrument by a person claiming under it is strong evidence tending to prove that he forged it or caused it to be forged." (Com. *vs*. Talbot, 84 Mass. (2 Allen), 161.) In several jurisdictions it has been held that one found in the possession of a forged order issued in his own favor is presumed either to have forged it or procured it to be forged. (Hobbs *vs*. State, 75 Ala., 1; State, *vs*. Britt, 14 N, C. (3 Div.), 122.)

For the purposes of this case it is not necessary to hold, and we do not hold, that the mere fact that the accused uttered the check in question is proof of the fact that he also forged it or caused it to be forged, but we do hold that the utterance of such an instrument, when

unexplained, is strong evidence tending to establish the fact that the utterer either himself forged the instrument or caused it to be forged, and that this evidence, taken together with the further evidence set out above and brought out on the trial of the case, establishes the guilt of the accused of the crime with which he was charged beyond a reasonable doubt.

It is urged on appeal that the information filed in this case is fatally deficient because it charges the accused with falsification and further alleges that he received the sum of money realized as a result of said falsification, and it is contended that the accused was thus charged as principal and as accessory after the fact. It is sufficient answer to this contention to say that no objection was raised on this ground at the trial; and it is further to be observed that this allegation was not in fact or intention a charge against the accused as accessory after the fact, and appears to have been set out in the information merely to fix the civil responsibility upon which the court is required to pass, under the provisions of the Spanish Penal Code.

The trial court was of opinion that the aggravating circumstances of premeditation and abuse of confidence should be taken into consideration in fixing the penalty to be imposed, but we agree with the Solicitor-General that premeditation is inherently involved in crimes of this nature, and since it does not appear that the check book was under the control or intrusted to the care of the accused, the crime can not be said to have been committed with "abuse of confidence" within the meaning of circumstance 10 of article 10 of the Penal Code.

We therefore reverse the judgment and sentence of the trial court and find the accused, Pio Castillo, guilty of the crime of "falsification of a mercantile instrument," as charged, and it appearing that the accused, at the time of the commission of the crime, was less than 18 though more than 15 years old, we impose upon him the penalty immediately inferior to that prescribed for that offense, and there being no aggravating or extenuating circumstances, we sentence the said Pio Castillo to four years' imprisonment (*presidio correccional*) with the accessory penalties prescribed by law, and to the payment of the costs in both instances and the indemnification of the injured party in the sum of 56 pesos, Philippine currency.

After the expiration of ten days let judgment be entered in accordance herewith and at the proper time let the case be remanded to the court below for proper action. So ordered.

Arellano, C. J., Torres, Johnson, Willard, and *Tracey, JJ.,* concur.

Date created: May 02, 2014