

1 Phil. 428

[G.R. No. 928. October 18, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRANCISCO BUENAVENTURA, DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

A check drawn in favor of P. San Buenaventura was indorsed by Francisco San Buenaventura, he signing the indorsement "P. San Buenaventura." The check was for \$25, gold.

The accused pleads guilty to having signed and collected the check in the name of P. San Buenaventura, saying, to use his own language, "my name is Francisco San Buenaventura, and as on several occasions I have collected my own checks which, in my presence and for the payment of my fees, have been issued to me by my American employers, they confusing the 'F' of my name with 'P,' as they usually do, and as the rest of my surname is exactly the same as that expressed in the check I took and indorsed the check upon which this prosecution is based as my own, and in consequence made the collection in good faith."

An unbroken line of decisions interpreting section 1 of article 300 of the Penal Code in force holds that when no attempt has been made to imitate, counterfeit, or simulate a signature the crime of falsification is not committed, but possibly that of *estafa*. The decisions of this court have followed this line of cases. (United States vs. Paraiso and United States vs. Roque, cases Nos. 91 and 895.)

In this case the Government cites three decisions of the supreme court of Spain, dated the 24th of November, 1882, the 24th of January, 1883, and the 31st of January, 1884, in which the doctrine is laid down that the person who signs a receipt on a bill of exchange with the name of another, he not being the lawful owner thereof, and signs the name of the true holder of the bill, is guilty of the falsification of a mercantile document, because of having

falsely caused it to appear on the face of the document that some one who did not really sign it was a party thereto; that is to say, in the present case Francisco Buenaventura made it appear by the indorsement that the real P. San Buenaventura had indorsed the check, the fact being that he did not do so.

It is difficult to imagine how a case could arise in which one person's signature is substituted for another, whether simulated or not, without it being made to appear by the person making the substitution that some person who did not actually sign had done so. Neither is it easy to understand how a case could arise which would fall within paragraph 1 of article 300 of the Code without at the same time falling within paragraph 2 of the same article. Upon this theory, in all those decisions in which the court held that there was no falsification because there was no attempt to imitate, counterfeit, or simulate the true signature, the court omitted to consider, as in the three judgments cited, that the person accepting the signature had feigned the participation of a person who did not actually participate.

It may, perhaps, be attempted to rest the distinction upon the fact that in the last three, judgments and some others which might be cited the documents referred to are commercial, whereas in the former judgments, as well as in some others rendered in recent years which might also be cited, the questions concern private documents. But the fact remains that this differentiation must fall to the ground upon an examination of another judgment rendered July 1, 1890. This was a case of a clerk in a commercial firm who had presented a check to a bank for collection, having signed his principal's name and indorsed the check "Received," signed by himself with the name of another person. The check was not paid on presentation by reason of the fact that the signature appended thereto was not recognized as authentic.

The criminal branch of the court of Havana held that these facts constituted the crime of frustrated *estafa*, but the Government took the case up on cassation for infraction of law, assigning as error the failure to hold that these facts constituted the crime of falsification, urging that this offense consists not only in counterfeiting the handwriting or signature of another but also in simulating the participation in an act of a person who did not so participate, or in perverting the truth in a narration of facts. Nevertheless the supreme court held that the court of Havana had not erred in its determination as to the crime resulting from the facts upon which the appeal was based, holding that the facts found by the judgment, to the effect that the defendant signed a check and signed the receipt with another's name but without counterfeiting the handwriting, signature, or rubric of thje

supposed signer, the case did not constitute any one of the falsifications covered by article 310 of the Penal Code of Cuba and Porto Rico (art. 300 of the Philippine Penal Code), but constituted an integral part of the deceit which, together with the intent to defraud, constituted the essence of the crime of *estafa*; that orders for payment known as *mercantile documents* in the Code of Commerce in force acquire their validity from the signature of the person who issues them, and when the supposititious signature has been written in such a way that the difference between the true and supposititious signature is observed as soon as the check is presented for payment, and the difference is such as to avoid all possibility of error on the part of the person called upon to pay the check, it simply shows an intention on the part of the criminal to commit the crime of *estafa*.

Therefore the judgment below, by which the defendant was condemned to eight years and one day of *prision mayor* and to pay a fine of 5,000 pesetas, is reversed, and the defendant is acquitted of the charge of falsification. The crime committed is that of *estafa*.

Cooper, Willard, Smith, Ladd, and Mapa, JJ., concur.

DISSENTING

TORRES, J.:

Francisco Buenaventura was accused of the crime of the falsification of a mercantile check on the Hongkong-Shanghai Banking Corporation in favor of P. S. Buenaventura, a copy of which appears on folio 3, He had made the signature of the latter to appear on the indorsement in favor of Segundo Madera, and after two subsequent indorsements the check was presented and paid by the bank. A prosecution was commenced and the defendant, a young man 19 years of age, having been called upon to plead to the charge, plead guilty, and stated that he had signed the check with the name of P. S. Buenaventura, and that he had collected the amount thereof, because his name was Francisco San Buenaventura, and as on other occasions his American employers had issued checks to him in which the first letter of his Christian name was confused with the letter "P," and as the rest of his surname is exactly the same as that which appears on the check, he indorsed the same in the belief that it was his and collected it in good faith.

These facts do not constitute a misdemeanor as contended by the defense, but the crime of

falsification of a mercantile document, defined and punished by article 301, in connection with article 300, paragraphs 2 and 4 of the Penal Code. The fact that the defendant wrote an indorsement with the letters "P. Sn." and the surname "Buenaventura" on a check issued to the latter, simulating the signature of the owner of the check and transferring it to a third person, from whom he received its value, \$25, it follows that the crime of falsification has been committed, because in the operation of indorsement he simulated the participation of P. S. Buenaventura, and perverted the truth in the narration of the facts, *lucri causa*, and with the malicious intent to defraud the person from whom he received the value of the check.

It is of no importance that in the substitution of the signature of P. Sn. Buenaventura in the indorsement of the check to Segunda Madera no attempt was made to imitate the handwriting and signature of the real owner of the check. This requisite of imitation with respect to the crime of forgery by substitution of signature is only applicable when the falsification is of a private document, such as the simulation of a letter, duebill, or receipt. With respect to public, official, or mercantile documents the crime of falsification is present whenever any one of the offenses enumerated in article 300 of the Penal Code is committed, and even a case falling under paragraph 1 of that article, where no attempt has been made to imitate the handwriting and signature of the person whose signature has been substituted.

It is a general principle, established by articles 301 and 304 of the Penal Code, that a private individual who, in a public or official document or in a mercantile document or in a private document, commits any of the falsifications enumerated in article 300 shall suffer the penalties respectively prescribed in each one of these articles, according to whether the falsified document is public or mercantile or merely private. It is to be observed, however, that with respect to private documents the falsification of the latter can only be brought within one of the first six paragraphs of article 300, inasmuch as the last two paragraphs refer to the falsification of public instruments.

There is an essential difference between the falsification of a public or mercantile document and that of a private document. In order that the latter be punishable as a crime it is an indispensable condition that a third person be prejudiced thereby or that the crime was committed with the intent to cause such prejudice. With respect to the falsification of public documents, it is a matter of indifference whether it has or has not caused damage to a third person by reason of the fact that the falsification of public documents is controlled by other principles distinct from those applicable to private documents. In the latter the prejudice or

damage suffered by a third person is the principal element. With respect to the public documents it is the public interest which it is principally sought to protect, and, with respect to mercantile documents, credit, the principal element of commerce. (Judgment of June 3, 1873, of the supreme court of Spain.)

As long as the present Penal Code is in force it is indispensable, for a proper application of its principles, to follow the doctrine established by the decisions of the supreme court of Spain.

This high tribunal, applying the general principle referred to, has laid down the proposition which has now the force of law, that the crime of falsification of documents is committed when any one of the falsifications narrated in article 300 of the Penal Code, equivalent to article 314 of the Spanish Code, is committed. With respect to a mercantile document, the falsification of which exists in the substitution of the signature of its lawful owner, the crime of falsification exists even if no attempt has been made to imitate the handwriting, signature, or rubric of the true owner of the document. (Judgments of November 24, 1882; January 24, 1883; January 31, 1884; April 21, 1897.)

As an exception to this rule the court has held that the mere simulation of the receipt, letter, or duebill, or of any private document made or committed for the purpose of *estafa*, does not constitute the crime of falsification of a private document unless an attempt is made to imitate the handwriting and signature of the person by whom such documents purport to be made. (Judgments of October 18, 1873; January 15, 1874; December 27, 1882; April 15, 1885; May 20, 1886.)

The guilt of the defendant appears from his own spontaneous and express confession of what he did for the purpose of consummating the crime. It can not be considered that he acted in good faith, as his own statements demonstrate that by availing himself of similarity which he alleges—and which has not been proven—between the letters “P” and “F” and the identity of his surname with that of the owner of the check, he substituted the signature of the latter with the malicious intent to convert to his own use the amount of the check, to the prejudice of the person paying him its value, he well knowing that he had no right to collect the same.

In the commission of the crime no mitigating or aggravating circumstance appears to be present, and certainly not that set up by the defense with respect to the age of the defendant, because the latter is over 18 years of age. He stated himself (p. 4) that he was

19.

In view of these considerations I am of the opinion that the judgment below by which the defendant was sentenced to eight years and one day of *presidio mayor* and to pay a fine of 5,000 pesetas should be affirmed with the costs of both instances to the defendant, although the ruling of the court below as to subsidiary imprisonment should be omitted, in view of the character of the penalty imposed and in accordance with article 51 of the Penal Code.

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