

[G.R. No. 339. July 18, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. DAMASO JADER,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

This case was brought before the court in consultation of the judgment of the 11th of April, 1898, rendered in case No. 112 of the Court of First Instance of Tayabas on a charge of five offenses of bribery. By it the defendant, Damaso Jader, was condemned to three months and eleven days of *arresto mayor* for each one of the said five offenses, together with special disqualification for and suspension from all public offices and from the right of suffrage during the continuation of the penalty, and to the payment of a fine of 12 pesos and the costs. The Attorney-General in this second instance asked that the judgment of the court below be reversed and that the accused be condemned to the penalty of two months and one day of *arresto mayor* for each one of the five offenses, the penalty not to exceed in its totality three times any one of the individual penalties, to the accessory penalties, to special temporary disqualification, and to the payment to the complaining witnesses of the value of the articles obtained, together with a fine of 15 pesos and the costs. In case of insolvency with respect to the fine or indemnification, it was asked that the defendant be condemned to suffer the subsidiary imprisonment and payment of costs.

The facts found by the court below, which we accept, were that the defendant, Damaso Jader, as *cabeza de barangay* and *teniente* of the *barrio* of the town of Candelaria, accepted cocks, hens, bamboo, and other articles under promise to relieve the persons from whom he had obtained them of the obligation to perform certain duties which they as citizens were required to perform. Notwithstanding the fact that the accused denied these charges and alleges that he had purchased the articles which he received, the record contains evidence which is sufficient to convince the mind of the truth of the facts, which constitute crimes of

estafa and not of bribery, as well as the guilt of the accused. Consequently the defendant should be convicted as prayed for by the Attorney-General, article 11 of the Penal Code being taken into consideration in his behalf as a mitigating circumstance.

The facts upon which the prosecutions are based constitute, in our opinion, five offenses of *estafa* and not of bribery. The articles received by the accused were not offered to him nor were they donated by the five taxpayers of his department for the purpose of corrupting him and in order to induce him to omit the performance of his duty, but were demanded by the defendant, who thereby abused his office as *cabeza de barangay* and *teniente* of the *barrio*. Therefore, instead of applying to these facts articles 383, 385, and 387 of the Penal Code, section 1 of article 534 should be applied, in connection with section 1 of article 535 and article 399 of the same Code. These facts constitute exactions committed by a public functionary by an abuse of his official position, to the prejudice and in fraud of his fellow-citizens. Taking into consideration the mitigating circumstance mentioned, therefore, we are of the opinion that the judgment below should be reversed. The five offenses committed constituting *estafa*, Damaso Jader should be condemned for each one of them to the penalty of two months of *arresto mayor*, the imprisonment to be suffered by him not to exceed in its total duration three times the length of each individual penalty—that is, six months—the remainder of the imprisonment to be remitted in accordance with rule 2 of article 88 of the Code. The accused should also be condemned to the accessories of article 61, ten years and one day of special temporary disqualification, indemnification to the complainants of the value of the articles received, and in case of insolvency to subsidiary imprisonment, and to the payment of the costs of both instances. So ordered.

Arellano, C. J., Cooper, Willard, and Ladd, JJ., concur.

Mapa, J., absent on account of illness.