2 Phil. 580

[G.R. No. 1238. October 09, 1903]

THE UNITED STATES AND MANUEL PARDO, COMPLAINANTS AND APPELLANTS, VS. MARCELO DOMINGUEZ, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

We find it necessary to pass upon only one of the questions presented by the record. The appellant makes the following statement in his brief, in this court :

> "There is no doubt that the defendant has the character of a receiver, consequently it is his duty to return what he has received in trust. This being the case, the punishable act involved in a refusal to so return implies a damage to the depositor or his assignee, inasmuch as the latter is illegally deprived of something which belongs to him; and this refusal and damage is covered by the fifth clause nf article 535 of the Penal Code."

This is not the law. The paragraph cited from the Penal Code says that the depositary shall be guilty of *estafa*, not if he refuses to return the thing deposited but if he denies that he ever received it. In this ease the defendant has never denied that he received the rice as a deposit; on the contrary, when the demand was made upon him by the private prosecutor on December 7, 1901, he said that he had delivered it to Alejandro Cornejo a few days before the death of Borras, the bailor, by the written order of the latter. The defendant never having denied that he received the deposit, he can not be convicted unless it is proved that he has appropriated or diverted it. The mere refusal to return the article is not in itself sufficient to prove this. In addition to this refusal, there must be evidence in the case from which the court can see that the depositary has appropriated it to his own use or to that of another. There is no such evidence. On the contrary, it is entirely probable that, after the

departure of the defendant from Libmanan on September 20,1898, two days after the uprising of the civil guard in Nueva Caceres, the rice was seized by the revolutionists and appropriated to their own uses.

The brief of the appellant is devoted almost exclusively to establishing the civil liability of the defendant. With such liability we have nothing to do in this case. Whatever may be the fact in regard thereto, it is plain that no criminal liability has been proved.

The judgment is affirmed, with the costs of this instance against the private prosecutor, the appellant.

Arellano, C. J., Torres, Cooper, Mapa, and *McDonough, JJ.,* concur.

Johnson, J., did not sit in this case.

Date created: April 15, 2014