

[ G.R. No. 1874. January 18, 1905 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ANGEL ONGTENGCO,  
DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**TORRES, J.:**

On February 26, 1904, a complaint was filed by Rufina del Rosario against Angel Ongtengco, charging him with *estafa*, in that on or about June 26, 1902, said Ongtengco received in this city from the complainant some jewelry, the value of which amounted to 1,510 pesos, Mexican; that this jewelry was given on the condition that the defendant should sell it on commission and return the same or the value thereof on July 31 of the same year, but that the defendant willfully and feloniously misapplied, embezzled, and appropriated to himself the said jewelry and the value thereof without the consent and to the prejudice of the complainant.

It has been proven in this case that on the date aforesaid the defendant received from Rufina del Rosario, at her house, the jewelry mentioned in the complaint, with the agreement that he would sell it in Camarines and should pay her the price thereof or else return the jewelry on July 31, 1902; the nephew of the said Rufina made a list of the said jewelry; that Rufina afterwards heard that the defendant had returned to this city from Camarines, whereupon Rufina sought him and demanded from him the price of the jewelry or the return of the same; that Ongtengco told her then that he had left it with a son of his in Nueva Caceres, and promised to send one of his other children to bring the same, though he did not comply with his promise; that in spite of all the efforts and demands she had made to recover the jewelry or the

price thereof she did not succeed; that in April of the next year she got from the defendant the sum of 300 pesos, Mexican; that the defendant then promised to pay the value of the jewelry to Perfecto Gabriel, but he did not do it; that later the defendant delivered to the owner of the jewelry some other jewelry consisting of two diamond necklaces valued at 700 pesos, Mexican, as a guaranty for the value of the former. This jewelry was returned to the defendant in exchange for the sale price of a parcel of land situated in Antipolo which Margarita Valenzuela had bought for the sum of 1,500 pesos, and which land was afterwards offered by the said Margarita to the complainant.

The witness Perfecto Gabriel, a nephew of the complainant, said that he learned these facts only when, in spite of all the demands his aunt had made on the defendant to pay the price of the jewelry or to return the same, she did not succeed; that it was then that he intervened in the matter and tried to make the defendant comply with his promise, but that it was of no avail; that the jewelry given by the defendant as guaranty was returned to him, together with the instrument which the defendant had made; that this was done because the instrument transferring the property in Antipolo had already been signed in favor of Margarita Valenzuela, who had offered to pay the price of the jewelry to the complainant.

It can not be doubted that the crime of *estafa*, provided for and punished by paragraph, article 534, and paragraph 5, article 535, of the Penal Code, has been committed, since the defendant asked for and received the jewelry, to sell it on commission, and with the obligation to return either the price or the jewelry itself; instead of doing this he appropriated to himself the said jewelry by false pretenses and in bad faith, thus deceiving the owner of the jewelry, to her prejudice.

The guilt of the accused is evident, since up to the time the complaint was filed he had neither returned the jewelry nor given any account of the same or of the price thereof. The fact that he pleaded not guilty; that he gave the owner of the jewelry part of what he embezzled, 300 pesos; that he delivered some jewelry (which was

afterwards returned to him) as a guaranty for his obligation; and, finally, the fact that he made a third person offer to reimburse the amount embezzled do not exempt him from liability, since neither the jewelry was returned nor the price thereof was paid to the owner of the same, and whatever acts the defendant did, they all prove that he embezzled the jewelry or the value thereof.

The two essential elements for the crime of *estafa* are deceit or false pretenses and the prejudice resulting from it; these two elements concur in this case. Ongtengco took the jewelry under pretext of selling it, contracting the obligation to either return it or pay the value of the same to its owner; he did not do so; whereby he occasioned Rufina del Rosario a great prejudice, which, even if repaired, would not have prevented the existence of the crime of *estafa*.

Neither the subsequent reparation of the damage nor the reimbursement of the money embezzled nor the compromise which might subsequently be entered into between the parties can condone the crime or exempt the defendant from the penalty which he has incurred. Such is the doctrine established by the decisions of June 12, 1882; February 15, 1884; February 9, 1885; June 23 and December 15, 1888.

No extenuating or aggravating circumstances appear in connection with the commission of the crime nor that established in article 11 of the Penal Code, therefore the proper penalty should be imposed in its medium degree, and not in its maximum degree, as has been done by the court below.

Therefore, by virtue of the foregoing considerations, we are of the opinion that the judgment of the court below rendered on March 10, 1904, should be affirmed, it being understood that the defendant, Angel Ongtengco, is sentenced to six months of *arresto mayor* with the accessory penalties provided for in article 61 of the Penal Code; to return the jewelry embezzled or to pay the value thereof, less 300 pesos, and in case of insolvency to suffer the corresponding subsidiary imprisonment—provided, however, that it shall not exceed one-third of the term of the principal penalty—and to pay the costs in both

instances, the case to be returned to the court below with a certified copy of this decision and of the judgment entered in accordance herewith. So ordered.

*Arellano C. J., Mapa, Johnson, and Carson, JJ., concur.*

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