

5 Phil. 370

[ G.R. No. 2273. December 13, 1905 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRANCIS J. BERRY,  
DEFENDANT AND APPELLANT.**

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

**TORRES, J.:**

It appears from the record in this case and from the motion by counsel for defendant that Francis J. Berry and another were charged in the same complaint with the crime of *estafa*, by fraudulently inducing one Cornelio Finohermoso to execute a deed of transfer of a tract of land planted with coconut trees, and that the defendants, having been duly arraigned, pleaded not guilty.

When a complaint does not in terms charge the defendant with a frustrated offense or with an attempt to commit the same it must be presumed that it alleges a consummated offense. As a general rule, the penalty to be imposed shall be that prescribed for the consummated crime. The reduction of the penalties to be imposed upon those guilty of a frustrated offense or of an attempt to commit the same is especially provided for in articles 63, 65, and 66 of the Penal Code.

The complaint in this case does not allege a frustrated offense or an attempt to commit the same. It must therefore be presumed that the defendant, Francis J. Berry, was charged with the crime of consummated *estafa*. This rule applies to all complaints drawn in a similar form.

The trial court found the defendant guilty of frustrated *estafa*. This finding of the court below does not, however, affect the nature of the complaint. Upon a review of the case on appeal we held with the Solicitor-General that the defendant was guilty of consummated *estafa*. (See the decision

*ante.*)

The judgment of the lower court does not contain a word or a finding which could be construed as an acquittal. The defendant can not therefore allege that he was once in jeopardy.

If a trial court finds, against the contention of the public prosecutor, that the defendant is guilty of a frustrated offense and sentences him accordingly, this action on the part of the court can not be construed as an acquittal at all. The court in such a case merely punishes the defendant for a frustrated and not for a consummated offense, but in either case the defendant is found guilty.

This court, following the theory of the Penal Code, held that the judgment of the trial court in this case was erroneous, reversed the same, convicted the defendant of consummated *estafa*, and sentenced him accordingly.

So long as the present Penal Code is in force the judgments rendered by the various courts of these Islands must be in strict accordance with the provisions and rules contained therein, and in case of any violation of such rules and provisions it will be the duty of this court to enforce the law by reversing the judgment of the trial court and imposing upon the accused such penalty as the facts and circumstances of each particular case may require. The enforcement of the law, and its proper and just application, does not constitute a trespass upon the rights of a defendant who by the willful commission of the offense has incurred the punishment prescribed by the penal law.

For the foregoing reasons and for those contained in the opinion rendered by this court upon the merits of the case, the exception of the defendant thereto is hereby disallowed and his motion for a rehearing upon said decision is denied:

*Johnson, Carson, and Willard, JJ., concur.*

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