

[ G.R. No. 2741. August 16, 1906 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCELO LEAÑO AND MARIA GONZALEZ, DEFENDANTS AND APPELLANTS.**

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

**TORRES, J.:**

In a written complaint filed on the 11th of October, 1904, the defendants in this case, Maria Gonzalez and Marcelo Leño, were charged by one Juana Licauco with the crime of *estafa*, in that on or about the 1st of July, 1904, in the city of Manila, the said defendants did then and there obtain and receive from the complainant a gold ring, set with a solitaire, of the value of 750 pesos, which sum is equal to and the equivalent of 3,750 pesetas, under obligation to sell the same on commission, and to account for the same to the owner thereof; and that subsequent thereto the said Gonzalez and Leño, with intent of profiting thereby, and to the prejudice of the said Juana Licauco, did willfully, unlawfully, and feloniously appropriate, misapply, and convert to their own use said gold ring and setting, all contrary to the statute in such case made and provided.

The case having been tried upon the said complaint, the trial court entered judgment on the 25th of October of the same year, convicting the defendant, Maria Gonzalez, as principal of the crime charged, and sentencing her to five months' imprisonment (*arresto mayor*), with the accessories provided in article 61. of the Penal Code, and directing that the said Marcelo Leño pay a fine of 1,000 pesetas, or in default thereof to suffer the corresponding subsidiary imprisonment, and each to pay one-half of the costs of the proceedings, from which said judgment and sentence the defendants appealed to this court.

It appears conclusively from the evidence of record that on the morning of the 1st of July, 1904, the defendant Maria Gonzalez and her husband, Marcelo Leño, went to the house of the complainant, Juana Licauco, who lived at the time in the district of Santa Cruz of the city of Manila, for the purpose of obtaining from the latter a gold ring set with a solitaire to sell

on commission, to the daughter of the governor of the Province of Rizal, at Pasig, who wished to buy such a ring; that the said Juana Licauco, having no objection, acceded to the wishes of the defendants and delivered to them the said ring, the value of which was 750 pesos, on condition that they should return the same within a week thereafter, or pay the value thereof, if sold, and with the further understanding that if the defendants could not realize anything over and above the price fixed, the ring should not be sold; that the week having elapsed, and the defendants having failed to live up to their agreement with the owner of the ring, the latter went to their house to inquire about it and was informed by the said Maria Gonzalez that the ring was with the daughter of the governor at Pasig and that she was then too busy to go to Pasig and get the ring, but that she, the owner, should not feel uneasy, because the ring was safe; that several days later the complainant again called on the defendant Gonzalez for the return of the ring, and the latter gave the same excuse, the complainant having been ever since unable to recover the ring, notwithstanding the fact that she had called upon the defendant some ten times to demand the return of the same; that the complainant found later that the ring had been pledged by the defendant, Marcelo Leaño, for the sum of 180 pesos with the pawnbroker Antonio Matute on the 8th of August, and that on the 7th of October of the same year the ring in question was redeemed by Leaños agent.

The facts, hereinbefore set out constitute the crime of *estafa*, as defined and punished in article 534, paragraph 2, and article 535, paragraph 5, of the Penal Code, it having been fully established that although the ring in question was received by the defendant for sale on commission to a third person with the understanding that it would be returned to its owner within a week from the date of such agreement, or the proceeds thereof paid to her, nevertheless they, the defendants, appropriated, misapplied, and converted the said ring to their own use by pledging the same with a pawnbroker, though they had secured the same under the pretext of selling it to a person desiring to buy it, something which was not proven, but on the contrary it appears that about a month later they pledged the ring as aforesaid.

The essential elements of the crime of *estafa*, as has been repeatedly held by the courts, are (1) the deceit employed to defraud, and (2) the injury thereby occasioned. Both of these elements must be present before any of the fraudulent acts defined and punished in the Penal Code can exist.

The defendants pleaded not guilty, but the evidence of record shows conclusively the guilt of the defendants as principals of the crime charged.

The two defendants secured the ring from its owner by representing to her that they were to take it to the daughter of the governor at Pasig, the capital of the Province of Rizal, but failed to return the same within a week as agreed, or at any time thereafter, notwithstanding the repeated demands made upon them; and contrary to this agreement the husband pledged the said ring about a month thereafter with the pawnbroker, Antonio Matute, for the sum of 180 pesos.

The conduct of the defendants and the methods by them employed to secure the ring clearly show their fraudulent intentions. There can be no doubt that when they asked for and obtained the ring, they were even then acting in bad faith and with fraudulent intent to pledge the same, or otherwise dispose of it, to the prejudice of the owner, the agreement to sell it on commission being a mere pretext on the part of the defendants to secure the ring. Therefore the two essential elements of the crime of *estafa* above referred to were present in this case.

On the 23d of July, and while the complainant, Juana Licauco, was endeavoring to recover the ring, a certain document was executed wherein the defendants acknowledged to be indebted to the complainant in the sum of 750 pesos, the value of the ring, payable in installments.

The complainant accepted the document thus executed by the defendants as evidence of the fact that they had received and retained the ring in question. The instrument, however, did not constitute a novation of the original contract of commission entered into by the defendants in, bad faith and with fraudulent design, owing to the criminal character with which is clothed the first contract entered into by means of fraud on the part of those who obligated themselves for the payment of the second contract.

The acknowledgment of the debt which represented the damage caused to the complainant and the promise on the part of the defendants to pay the same in installments, as appears from the document in question, do not affect the nature or essence of the crime of *estafa*. An agreement or compromise between the aggrieved party and offender to guarantee the civil liability of the latter does not affect the criminal liability to the extent of blotting out or destroying the existence of the crime, which should be punished by the courts of justice even though the offended party has been indemnified in full. Such is the settled doctrine of our jurisprudence.

Article 1813 of the Civil Code provides that a civil action arising from a crime may be

compromised, but the public action for the imposition of, the legal penalty shall not be extinguished thereby, for the reason that it is a matter of social and public interest that every crime should be punished, and even where the offended party expressly waives indemnification, it is the duty of the public prosecutor to institute criminal proceedings for the punishment of the offender. (Arts. 17, 23, and 133 of the Penal Code; arts. 234 *et seq.* of the reformed Compilation of 1880, and arts. 100 *et seq.* of the Code of Criminal Procedure.) These last two laws are cited as not conflicting with the provisions of General Orders, No; 88. This court has made the same ruling in the cases of the United States vs. Guzman<sup>[1]</sup> and the United States vs. Zamora,<sup>[2]</sup> both of which were for *estafa*.

The defendant Marcelo Leaiio participated in the commission of the crime as a principal. Both husband and wife went to the house of the complainant and with fraudulent intent asked and obtained from her the ring in question, falsely representing to her that they were to sell it to a third person, and the said Leñaño, acting in collusion with his wife, pledge the ring in a pawnshop for the sum of 180 pesos. It is true that the woman alone asked for and obtained the ring by deceit, but it is none the less true that the husband by his silence consented and took a direct part by his presence in the deceit practiced upon the complainant and cooperated with his wife in the consummation of the fraud. He is therefore jointly liable, with his wife for the crime charged.

The commission of the crime was not marked by any aggravating or extenuating circumstances, and for this reason the penalty should be imposed in the medium degree.

Wherefore we are of the opinion that the defendants, Maria Gonzalez and Marcelo Leñaño, should be punished with the penalty of five months<sup>7</sup> imprisonment (*arresto mayor*), with the accessories provided in article 61 of the Penal Code, each to pay one-half of the costs of both instances. As the ring has been recovered by the owner, no provision is herein made for indemnification. The judgment of the court below, thus modified, is affirmed. After the expiration of ten days from the date of final judgment let the case be returned to the court below for execution of the said judgment. So ordered.

*Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.*

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<sup>[1]</sup> 1 Phil. Rep., 138.

<sup>[2]</sup> Phil. Rep., 582.

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