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[G.R. No. 3117. December 11, 1906]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MACARIO ADRIATICO, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

The defendant in this case is charged with the crime of *estafa*. The essential part of the charge, according to the complaint, is that the defendant secured from one Felix Lopez a loan of 3,500 pesos by means of false statements, representations, and promises, without which the latter would not have made the loan, to the great prejudice of the said Lopez, who had been unable to collect the said sum up to the date of the filing of the complaint.

The defendant was convicted of the said crime in the court below and sentenced to two years' imprisonment at hard labor, from which said judgment he appealed to this court.

The Attorneys Seneral in his brief sums up the facts as follows: "The defendant, for the purpose of securing money from' Felix Lopez, for his, the defendant's personal use, deceived the said Lopez: (1) ISy representing that the transaction was made in behalf of the estate of Ramon Valencia, of which he was the administrator, by stating to the said Lopez that as such administrator he needed money for the support of the minor heirs of the deceased, and that he borrowed the same on account of the administration of the said estate, knowing that such statements were false and that he was not authorized to borrow money for the estate, and that he could not bind the same; and (2) by offering to the said Lopez, in order to induce him to lend him the money, hh option for the purchase of a house belonging to the said estate when the necessary authority therefor was secured by him, knowing that he could not make such a promise."

As to the first point, while we do not intend to hold that, were the charge true, there would be present the deceit which characterizes the crime of *estafa*, as defined and penalized in

paragraph 1 of article 585 of the Penal Code, cited by the Attorney-General as being applicable to the case at bar, there is no evidence that would justify the Attorney-General's conclusion. The only thing that Lopez, according to his own statement, was told by the accused in reference to the matter was this: *"The minors have asked me for money for their support, and I have no money behniffiny to the estate, under my administration and he (the defendant) voluntarily promised to pay interest at the, rate of ten per cent."* The two promissory notes, one for 500 and the other for 3,000 pesos, contain the statement that the defendant borrowed the money as the judicial administrator of the estate of the deceased, Roman Valencia, to pay the expenses incurred in the course of administration. Neither verbally, nor by means of the said promissory notes, did the accused state to the said Felix Lopez that he, the accused, Avas authorized to borrow money for the estate, or that the said estate would be liable for the money so borrowed, if Lopez so understood it, it was his own fault, for the defendant told him nothing; that could create such an impression in his mind. And further it has not been satisfactorily shown that the statements made by the defendant to the said Lopez were false. The only thing the defendant really told him was that he had not sufficient money belonging to the estate to meet the demands for money of the heirs of the deceased Ramon Valencia. The conversation in reference to this matter took place before the loans were secured, on the 2d and 5th of December, 1902. The defendant was appointed administrator of the estate on the 17th of October of that year, and up to the said month of December lie had only collected as revenues of the estate the sum of 200 pesos. However, in the month of December he had already paid to the widow of Ramon Valencia, one of the parties interested in the estate, with the authority of the court, the sum of 1,260 pesos, as shown by the accounts appearing on pages 46, 53, and 54 of the record. Therefore it may be that what the defendant told Lopez when he negotiated these loans on the dates aforesaid was true, particularly because, as has already been said, there is no affirmative proof to the contrary.

Whether the defendant did or did not, as a matter of fact, apply all the money borrowed from Lopez to the expenses of the estate, assuming that he borrowed that money for this particular purpose, is not necessary for us to inquire, in view of the fact that all this took place subsequent to the borrowing of the money; and whatever opinion might be entertained as to the conduct of the defendant in connection with this matter, assuming that the charge is true, it can not be said that his acts constituted a deceit in order to obtain the money, for it is obvious that in order to be considered as such, it should be prior to, or simultaneous with the loan—we refer to the deceit, that is to say, the fiction or representation alleged to be deceitful.

As to the second point, namely, that the promise made by the defendant to Lopez to give him preference in the event that he should be duly authorized to sell the house on Calle Arlegui, if they agreed on the price1, this also seems to have been made subsequent to the borrowing of the money. It at least may be so inferred from the following extract from the testimony of Lopez :

> "Q. Have you ever had a conversation with him (the accused) *since* the loan was made?
>
> "A. The only conversation we had was that when he secured the necessary authority he would sell the house, giving me preference in the sale if I wished to buy it, and we could agree on the price."

This, together with the fact that nowhere in his testimony did Lopez say that this conversation took place before the money was loaned, seems to clearly indicate that the conversation occurred after the loan was made, for the word *since* which appears in the question to Lopez refers to a time subsequent to the loan.

In any event, it seems to us that the assertion made by the Attorney-General in his brief to the effect that the defendant knew very well that he could not make such a promise, is doubtful and questionable. Section 722 of the Omlo of Procedure in Civil Actions provides, in paragraph 5 thereof, that the court may authorize the executor or administrator of an estate to sell "such part of the estate as is deemed necessary, either at public or *private sale*, as would be most beneficial to all parties concerned * * *," and we know of no provision of law which expressly prohibits the administrator, in case the property is sold at private sale, to give preference, under the same conditions, to a particular purchaser.

The judgment of the court below is accordingly hereby reversed, and the defendant acquitted, with the costs of both instances de ofivio. After the expiration of ten days let judgment be entered in accordance herewith and the case be remanded to the court below for execution. So ordered.

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

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