

[G.R. No. 3379. March 19, 1907]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ELIGIO TORRERO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

This defendant was arrested and tried in the municipal court of the city of Manila for the crime of *estafa* and was there found guilty and sentenced to be imprisoned for a period of nine months. From this decision the defendant appealed to the Court of First Instance of the city of Manila, which latter court, after hearing the evidence, found the defendant guilty of the crime charged and sentenced him to be imprisoned for a period of nine months of *presidio correccional*, with the accessory penalties mentioned in article 58 of the Penal Code, and to indemnify the offended party, Angel Ortiz, in the sum of 137.12 pesos, or in case of insolvency to suffer subsidiary imprisonment, and to pay the costs.

This decision of the Court of First Instance was rendered upon the 21st day of April, 1906. On the 4th day of May of the same year, the defendant presented a motion in said Court of First Instance for a new trial. On the 14th day of May the lower court denied said motion. On the 16th day of May the defendant appealed from the decision of the court. On the 18th day of May said appeal was duly admitted, against the protest of the prosecuting attorney of the city of Manila.

This court has repeatedly decided that a defendant in a criminal case must give his notice of appeal within fifteen days (sec. 47, General Orders, No. 58^[1]), and that a motion for a new trial will not extend the period within which the defendant must appeal (U. S. vs. Flemister, 1 Phil. Rep., 317), and that if the appeal is not made within fifteen days it will be dismissed upon motion in the Supreme Court.

The defendant, therefore, not having made his appeal within the time prescribed by the law, the cause was improperly brought to this court and the same is therefore dismissed, and the

case is hereby ordered to be returned to the lower court for the execution of the sentence rendered in that court. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

^[1] I Public Laws, 1087.

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