

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MIGUEL GERVACIO, DEFENDANT AND APPELLANT.

G. R. No. L-7705. December 24, 1957

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Manila, finding the appellant guilty of the crime of estafa and sentencing him to imprisonment for a period of six months and one day of prison correctional, to indemnify the Philippine Charity Sweepstakes Office in the sum of P9,060, with subsidiary imprisonment in ease of insolvency, and to pay the costs. Only the following questions of law are raised in the appeal:

"I. The lower court error in not considering this ease as civil, particularly because of a partial payment admitted in the decision; and

"II. The lower court erred in imposing on the accused the penalty prescribed in the 2nd paragraph of Article 315 of the Revised Penal Code, instead of that prescribed in Article 316 (B) or that in Article 818." (p. 1, Appellant's Brief)

It is contended in support of the first assignment of error that the Philippine Charity Sweepstakes Office accepted partial payment; that according to the information the relation between the offended party and the appellant is one of agency, which cannot be the basis of criminal responsibility; and that the information does not charge an offense. It is not true that the information does not charge an offense because allegation is made that appellant received sweepstakes tickets from the offended party for the purpose of selling the same under the express obligation of making an accounting thereof and turning over the proceeds of the sale to the offended party, and that the appellant failed to comply with his obligation within a reasonable length of time and misappropriated, misapplied and converted the tickets or their value to his own personal use and benefit, to the damage of the offended party. Neither is it true that the obligation contracted by the appellant is a civil one; under the allegations the act of the appellant is characterized by abuse of confidence. The act of the appellant consists in misappropriating, misapplying or converting the tickets or their value with unfaithfulness or abuse of confidence, which is an offense defined in the law (Article 315, paragraph 1 (6), Revised Penal Code). Acceptance of partial payment by an offended party is not one of the means for extinguishing criminal liability (*Camus vs. Court of Appeals, et al.*, 92 Phil., 85; 48 Off. Gaz., 3898). A criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense.

In support of the second assignment of error, it is argued that the penalty is too strict and in accordance with general principles of law which demand a liberal application of criminal laws, the amount of P9,060 misappropriated should be considered only as falling under paragraph 3 of Article 315 of the Revised Penal Code, because the value of money since the fixing of the penalty in the Revised Penal Code in the year 1930 has considerably decreased. The argument is indeed novel, although there seems to be some reason therefor. It is true that about 27 years ago the value of the peso was very much more than its present value. However, courts are not

authorized to adjust penalties according to the changing value of the legal currency, as this clearly falls within the province of the Legislature.

However, the penalty imposed by the trial court, which is that of six months and one day of prision correctional, is not in accordance with the provisions of law. The proper penalty is the indeterminate sentence running from 2 months and 1 day to 6 months as minimum, and from 1 year, 8 months and 21 days to 2 years, 11 months and 10 days as maximum.

The judgment appealed from is, therefore, hereby affirmed, but the penalty imposed is hereby modified and the appellant sentenced to 6 months of arresto mayor as minimum to 1 year, 8 months and 21 days as maximum. In all other respects the penalty imposed by the trial court is affirmed. Costs against appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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