

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PIO ESTABAYA, DEFENDANT AND APPELLANT.

G.R. No. L-11807. January 13, 1917

Ponente: CARSON, J.

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CARSON, J.:

On the 19th of October, 1911, Pio Estabaya, the defendant and appellant in this case, who was then justice of the peace of the municipality of Bulusan, Province of Sorsogon, dismissed a criminal complaint filed by one Vicente Gutierrez charging Martin Gallano and another with estafa. In the course of the proceedings had on that complaint Gallano admitted that he was indebted to Gutierrez in the sum of P40.17, and after the criminal complaint had been dismissed, it was agreed that Gallano should pay that amount into the hands of the accused in this case, Pio Estabaya, to be by him turned over to Gutierrez. In fulfillment of this agreement Gallano paid over to the accused in small amounts the sum of ₱41, for which Estabaya gave him three separate receipts as follows:

Exhibit B, February 7, 1912

P29.00

Exhibit D, August 19, 1912

8.00

Exhibit C, June 30, 1913

4.00

Total

41.00

Estabaya retained this money in his possession and failed and neglected to turn it over to Gutierrez in accordance with the understanding entered into between the parties. Gutierrez having learned from Gallano that the total amount of the indebtedness had been paid to Estabaya, made frequent demands upon him, among others one in

writing on February 12, 1915, to which Estabaya responded by promising to see Gutierrez at an early date. On the following day Estabaya went to see Gutierrez and told him that Gallano had neglected to pay the debt (no hacia caso de pagar la deuda). Some time thereafter criminal proceedings were instituted against Estabaya charging him with the crime of estafa, committed with abuse of his office as justice of the peace, and as a result of these proceedings Estabaya was convicted of the crime with which he was charged as denuded and penalized in subsection 5 of article 535 of the Penal Code, read together with subsection 1 of article 534 and article 399 of the same Code.

The facts above set forth, which leave no room for doubt as to the guilt of the defendant and appellant of the crime of estafa, are conclusively established by the evidence of record had in the court below. The defendant Estabaya, testifying in his own behalf, swore that he never denied at any time that Gallano had paid over to him the amounts evidenced by the receipts Exhibits B, C, and D. He claimed that he was always ready and willing to pay over to Gutierrez the amount received by him from Gallano, but that at the time when demand was made upon him he did not know and could not remember the exact amount which had been paid by Gallano, and that he had told Gutierrez that he would pay him the total amount evidenced by these receipts if Gutierrez would get the receipts and turn them over to him. The trial judge very properly referred to the explanation offered by Estabaya for his failure to turn over the money in his hands to Gutierrez as a ridiculous excuse which does not merit serious attention.

We are agreed with the trial judge that the evidence sustains a finding that Estabaya, when called upon for payment after nearly two years had elapsed since he had collected the entire amount of the indebtedness, undertook to deny the payment of the amount thereof by Gallano, and that if in truth he made demand for the production of the receipts given by him before making payment, it was done merely to offer a formal excuse for his failure to do that which he well knew he was obligated to do, that is to say, to pay over the money collected by him forthwith. Moreover the lapse of time from the date of the receipt of the money to the date of the institution of these proceedings, and the repeated refusals of the accused to turn the money over to the complaining witness when demand, was made therefor leaves no room for doubt in our minds that the accused converted and misappropriated this money to his own use, and that he did not intend or expect to pay it over unless compelled to do so by the institution of legal proceedings for its recovery.

The trial judge being of opinion that the crime was committed by the defendant in the exercise of his functions as justice of the peace and in abuse of his office, sentenced the convict to two months and one day of arresto mayor, to indemnify the complaining witness Gutierrez in the sum of P40.17, with subsidiary imprisonment in case of insolvency and failure to pay the amount of the indebtedness, and, in addition, to eleven years and one day of inhabilitacion especial temporal (temporary special disqualification).

In holding that the accused was acting as justice of the peace, and had taken advantage of his official position in the commission of the crime, the trial judge relied upon the doctrine announced in the case of the United States vs. Garcia (R. G. No. 3436 [decided March 12, 1907, not reported]). In that case, however, the money which was misappropriated by the justice of the peace was the amount of a civil judgment rendered in his court, and we held that when the justice of the peace accepted the amount of the judgment, he was acting in the exercise of the functions of his office, with an obligation imposed upon him, by virtue of his office, to pay over the amount received by him to the person in whose favor judgment had been rendered. In the case at bar, however, no civil proceedings were instituted for the recovery of the money in question, and before the agreement was entered into for the payment of the amount of Gallano's indebtedness to the justice of the peace, the criminal proceedings for estafa had been dismissed. It is clear, therefore, that in entering into the arrangement by virtue of which Gallano was to pay to the accused in this case the amount of the admitted indebtedness of Gallano, to be by him paid over

to Gutierrez, the accused was acting as a private individual and not in the exercise of his functions as justice of the peace. It may be that the debtor was more punctual in making his payments to the accused because of the fact that he was justice of the peace in the community in which he lived; and it may be also that Gutierrez the more readily entered into the agreement in reliance upon, the fact that the accused held the responsible position of justice of the peace; but so far as the accused is concerned, it is clear that he acted throughout in his individual and not his official capacity.

We conclude, therefore, that the sentence imposed by the trial judge should be modified by striking out therefrom so much thereof as imposed eleven years and one day of temporary special disqualification, and by substituting three months of arresto mayor for that of two months and one day of arresto mayor imposed by the trial judge, and thus modified the judgment entered in the court below convicting and sentencing the appellant should be affirmed, with the costs of this instance against him. So ordered.

Torres, Moreland, Trent, and Araullo, JJ., concur.

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