

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LORENZO ESPINO Y SORIANO, DEFENDANT AND APPELLANT.

G.R. No. L-22139. August 20, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The accused attacks the judgment of the Court of First Instance of Manila rendered in this case, sentencing him to four years, two months and one day of presidio correctional, to pay the offended party P110, with subsidiary imprisonment in case of insolvency, and to pay the costs, as recidivist of estafa.

The defense contends that the facts herein proven do not constitute estafa.

Such facts are: In May, 1923, the defendant made negotiations with Julian de Leon, who had and operated an automobile for hire, for the use of said vehicle. They agreed that the defendant should pay P25 a day for the use of the automobile between Manila and Binangonan, Rizal, and that such rent was payable daily. The accused then occupied said vehicle and caused himself to be taken to Binangonan. On the following day, Julian de Leon required the defendant to pay the rent for the first day, but the defendant gave the excuse that he had a check which he was to change for coin. Julian de Leon believed him and the defendant continued to use the car for four days more, at the end of which, and Julian de Leon seeing that the defendant did not pay him anything, notwithstanding his demands, he took the defendant to Attorney Lazaro Pormarejo to whom, among other things, he said that he had no money. From the evidence as a whole we find it sufficiently proven beyond a reasonable doubt that he did not then have, nor did he ever have, the check he mentioned.

We consider the doctrine laid down by the supreme court of Spain on February 16, 1881, and May 6, 1892, to be applicable to this case, for the reason that, as in those cases, it appears in the one at bar established by sufficient indicia that the defendant in hiring the automobile had no intention to pay for the use thereof, but deceitfully simulated that he had such intention.

The deceit became more positive and indubitable when the accused, being required to pay the rent for the first day, said that he had a check with the value of which he assured that he would pay as soon as the same was changed, when as a matter of fact he had no such check nor money. As to whether or not the information is sufficient as to the allegation of deceit, it is said therein that the defendant defrauded. Furthermore no objection was made to the information.

We find no error in the judgment appealed from, which is hereby affirmed with the costs against the appellant. So ordered.

Johnson, Malcolm, Avancena, Villamor, and Ostrand, JJ., concur.

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