

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN AGUAS AND LORENZO SASON, DEFENDANTS AND APPELLANTS.

G.R. No. 10149. December 02, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Pampanga convicting the accused of the crime of estafa and sentencing them each to four months and one day of arresto mayor, the accessories provided by law, to indemnify the complaining witness in the sum of P458.70, with subsidiary imprisonment in case of insolvency, and to pay the costs of the trial.

It is our opinion that the judgment must be reversed and the accused acquitted.

It appears from the evidence that Juan Aguas and Lorenzo Sason went to see Mariano Sunglao, the complaining witness in this case, and asked him to let them have fish to sell. Arrangements were made by which the two appellants were permitted to take fish from Sunglao's fishery at the rate of P16 a basket. The contention of the prosecution is that the fish were delivered to appellants for sale on commission, they being obliged, therefore, to return money or the fish. Each Tuesday was set for the day upon which the fish taken up to that time were to be paid for or delivered. The appellants, on the other hand, contend that they bought the fish on credit, that they became the owners thereof, and that there was no contract for sale on commission or for redelivery of the fish.

It appears that the accused took fish on several occasions and made certain payments on their indebtedness, reducing it finally to P458.70. The complaining witness, on the theory that the action of the appellants in refusing to deliver the money constituted the crime of estafa, laid a complaint before the prosecuting attorney of the province.

While the evidence of the appellants with respect to the contract is somewhat ambiguous and part of it may be interpreted in conformity with the contention of complaining witness, we are, nevertheless, convinced, upon the whole case, that their contention is proved by the record as a whole. After the parties had become indebted to the complaining witness in the amount already stated, an agreement was drawn up between them recognizing the indebtedness and providing for the time of payment. This agreement, after reciting, the proper facts, states, in reference to the amount specified therein, that it is "the value of the fish which we have received from said Don Mariano Sunglao for the purpose of sale;" and stipulates further as follows: "and we agree, jointly and severally, to pay to Don Mariano Sunglao the said sum of four hundred and fifty-eight pesos and seventy centavos in the month of March of the year 1913; that at this time we have no property with which to pay said sum but, as soon as we obtain the money or property of any kind, the said Don Mariano Sunglao can oblige us or either of us to pay the said sum and he may petition the court for the payment of the same and may levy upon and take our property, etc., * * *."

As is seen, this agreement contains nothing which would indicate that the contract with the complaining witness with reference to the fish was different from what the appellants claim it was; and it lacks every element which

the complaining witness would naturally have put into it if he had had the idea at the time of its execution that the appellants were guilty of a crime or that he could hold them criminally for their acts.

There is another piece of evidence in the record, however, which is decisive of the relations of the parties with reference to the fish in question. The prosecution offered in evidence during the trial at least a portion of the preliminary investigation had before the justice of the peace. The record here on appeal contains all of that investigation; and while it does not appear definitely from the record that the prosecution offered more than various parts of it, the record being here and the Government having made no objection to its presence and none to the consideration thereof by the appellants in their brief and argument before this court, we must presume that it was all offered and received and that it can be considered as evidence on the determination of this appeal. A portion of the preliminary investigation is composed of the testimony of the complaining witness given before the justice of the peace. In that he states in so many words that he sold the fish to the appellants on credit. He said:

"In the month of May, 1911, they (meaning the appellants) came to my house and asked me to sell them fish on credit. * * * On the representations of Lorenzo Sason that Juan Aguas was a good man and solvent, I agreed to let them have my fish on credit at the rate of P"16 a basket."

There being no claim in this case that the complaining witness was induced to part with his fish by reason of false representations, we must hold that the evidence establishes that the fish in question were sold to the appellants on credit and that they were not responsible to the complaining witness except civilly.

Nothing herein contained shall be interpreted as depriving the complaining witness of his right of civil action, if any he have, against the appellants; and his right to collect the sum due him, if anything, in a civil action is hereby reserved to him.

The judgment appealed from is reversed and the accused acquitted; costs de officio.

Arellano, C. J., Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

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