

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PATRICIO EUSTAQUIO, DEFENDANT AND APPELLANT.

G.R. No. 10428. July 29, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendant was charged with the crime of estafa. The complaint charges that on or about the 9th day of May, 1914, in the city of Manila, he received from Crescencio Rebullida various pieces of jewelry, alleged to be of the value of P850. The complaint further charges that the defendant received said jewelry upon a promise to sell the same on commission, or to return it, together with the price therefore agreed upon. The defendant refused and failed either to return all of the jewelry in question, which is particularly described in the complaint, or the price thereof. Before and during the trial said jewelry was all returned, except certain pieces amounting in value to P232.

Upon said complaint the defendant was duly arrested, arraigned, tried, found guilty of the crime charged, and sentenced by the Honorable Jose C. Abreu to be imprisoned for a six months of arresto mayor, to indemnify Crescencio Rebullida in the sum of P232, and in case of insolvency to suffer subsidiary imprisonment. The lower court further ordered that the jewelry which had been pawned by the defendant and his wife to Filomena Concepcion and Ignacio de Asis be returned to the offended person.

From that judgment the defendant appealed to this court and made several assignment of error.

An examination of the evidence clearly shows that the defendant is guilty of the crime charged. The proof shows that he received the goods on commission to sell, and to return either the jewelry or the value thereof. The proof further shows that he misappropriated a portion of said jewelry, amounting to 232, to the prejudice of Crescencio Rebullida. The defendant attempts to excuse his criminal liability by alleging that a portion of said jewelry had been pawned by his wife, against his knowledge and consent. The facts is that a portion of said jewelry. Whether she did so with or without the consent of her husband, the defendant herein, in no way affects his criminal liability. When merchandise is received for sale on commission, under the obligation to return the same, or its value, and is thereafter delivered to a third person without the knowledge or authority of the owner, the two elements which constitute the crime of estafa exist: (a) The deceit by which it was intended to defraud; and (b) the damage caused the owner. (U.S. vs. Alabanza, 11 Phil. Rep., 475.)

A careful examination of the evidence disclose no reason why the judgment of the lower court should be modified or reversed. The same is therefore hereby affirmed, with costs.

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

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