

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LORENZO ADOR DIONISIO, DEFENDANT AND APPELLANT.

G.R. No. 11589. October 26, 1916

Ponente: CARSON, J.

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CARSON, J.:

From the evidence of record in this case the trial judge held, in his finding of facts, that the defendant and appellant rented a bicycle from the complaining witness, Liberato Garcia, on the 14th of February, 1915, agreeing at the same time to return it in four days and to pay hire for its use at the rate of P1.50 a day; that defendant had failed and refused to return the bicycle; and that he had denied having rented or received it, falsely insisting that the bicycle had been rented to another, and that his only connection with the transaction was to guarantee the payment of the hire and the return of the bicycle by the party to whom, as he claimed, it had been rented.

Giving due weight to the findings of the trial judge as to the credibility of the various witnesses who testified before him, we are of opinion that the evidence of record fully sustains the finding of facts as above set forth, and leaves no room for reasonable doubt as to the guilt of the defendant and appellant of the crime of estafa of which he was convicted in the court below.

The trial judge properly imposed the penalty of four months and one day of *arresto mayor* upon the convict, and, in addition, required him to return the bicycle or to pay the owner the sum of P67, the amount which it was worth at the time when it was rented by the defendant, and to suffer subsidiary imprisonment as prescribed by law in the event of failure so to do.

The judgment, however, further requires the defendant to pay hire for the use of the bicycle at the rate of P1.50 a day from the 14th of February, 1915, the date when the defendant received it, until it should be returned or until the date when defendant should begin to serve sentence under the judgment of the court.

We are of opinion that this latter provision cannot be sustained. Estimating the sum thus found due the owner of the sixty-seven peso bicycle for hire alone, at the date of the judgment, December 29, 1915, it amounts to over P300; and estimating the amount of indebtedness at the date of final judgment on this appeal, if this provision were affirmed, the total would not fall far short of double that sum.

It was understood between the parties that the bicycle was to be returned in four days; so that, upon the failure of the accused to return it at the end of that period, all that the complaining witness was entitled to was the return of his bicycle or its value, and four days' hire which the accused had agreed to pay for its use during the period for which it had been hired.

But the amount of the hire cannot be recovered by way of civil damages in these proceedings. The amount due under the rental contract may properly be recovered in a separate civil action; but it cannot be held to be included in the civil damages (*perjuicios*) arising out of the crime of estafa of which the accused is convicted in this criminal action. (Art. 119, Penal Code.)

Had the accused returned the bicycle at the end of the four days for which it was hired and failed or refused to pay for its hire, he could not have been held criminally liable for his failure to pay the amount of his indebtedness. The fact that he failed and refused to return the bicycle in no wise changed the nature of that indebtedness. It did not arise or result from the commission of the crime of which he is convicted. It was not "consequential damages" (perjuicios), as that term is used in the above-cited article of the Code. The indebtedness under the rental contract was and is a thing wholly apart from and independent of the crime of estafa committed by the accused. No direct causal relation can be traced between them, and in the absence of such a relation, a judgment for the amount of the indebtedness, with subsidiary imprisonment in case of insolvency and failure to pay the amount of the judgment, cannot properly be included in a judgment in the criminal action for the civil damages (perjuicios) arising from or consequent upon the commission of the crime of which the accused is convicted.

The judgment convicting and sentencing the appellant should be modified by striking out therefrom so much thereof as requires the accused to pay P1.50 a day for the use of the bicycle from the 14th day of February, 1915, until it is returned or until the defendant begins serving sentence, and, thus modified, the judgment should be and is affirmed, with the costs of this instance against the appellant. So ordered.

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

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