

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PACIANO AÑONUEVO, DEFENDANT AND APPELLANT.

G.R. No. 1261. November 21, 1905

Ponente: TORRES, J.

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TORRES, J.:

Paciano Añonuevo was charged with the crime of estafa by the provincial fiscal of Sorsogon, in a complaint dated the 7th of November, 1902, as follows: In that the accused employing deceit, fraud, and false representations, demanded from Daniel Jasmin, who with others was then being prosecuted before the justice of the peace of Sorsogon for the crime of theft, the sum of 50 pesos, Mexican, and a horse valued at 50 pesos, Mexican, and the said Jasmin delivered to Añonuevo the "said horse under the latter's promise to secure favorable decision in a criminal case brought against him for the crime of theft; all contrary to law.

After the case was tried, the court, in view of the evidence adduced, found the defendant guilty of estafa with two aggravating circumstances, and sentenced him to one year and six months' imprisonment (presidio correccional), to return the horse to Daniel Jasmin, and to pay the costs.

From the evidence adduced at the trial it appears that in July, 1902, Daniel Jasmin was arrested and charged with the crime of theft by the justice of the peace of Sorsogon, and Paciano Añonuevo, who was then a clerk in that court, approached the former, while he was standing on the stairs of the building, and told him that the justice of the peace had given him instructions to demand from Jasmin the sum of 100 pesos, for which amount he would be acquitted and would be set free; and, as in spite of his wishes to give the said amount he could not obtain it, and offered to deliver a horse, for which he had an offer of 65 pesos, and accordingly, the accused through his son took the said horse from his house and from his wife's possession, and notwithstanding the latter delivered the horse to the defendant's son, Jasmin was convicted by the justice of the peace, and sentenced to six months' imprisonment without having taken any exception or appealed from the judgment of the justice of the peace. The witness, Jorge Dolilla, who was present and heard the defendant when the latter demanded the sum of 100 pesos from Jasmin, confirmed the injured party's statements, that he delivered the horse on account of his having no money, adding that the defendant, on demanding the above amount under the promise that the then accused Jasmin would be acquitted, did not express that this exaction was made in the name of the justice of the peace.

The above fact, fully proved in the trial shows the characteristics of the crime of estafa, provided for by article 535, paragraph 1, of the Penal Code and punished by article 534 of the same code, since through simulation of powers, influence, and false representation he succeeded in getting a horse by means of deceit and fraud, to the prejudice of the owner of the same, to whom acquittal was offered in the cause brought against him in the court of the justice of the peace of Sorsogon, in which the defendant was a clerk.

Paciano Añonuevo pleaded not guilty, and notwithstanding his denial and exculpatory allegations stating that he had tried to buy the horse from Daniel Jasmin, and as they could not agree regarding the price (because the latter wanted 65 pesos for his horse and the former offered to pay only 50 pesos), the owner of the said animal left the

same in Añonuevo's possession so he could make use of it but with the right, however, to take it back should he need it; and when he expected that Daniel Jasmin would take his horse back, the same was taken by the policemen at the time the defendant was arrested.

The statements of the three witnesses presented by the attorney for the defendant do not affirm the latter's allegations and they are different, if not contradictory, and opposed to the testimony of the defendant, for which reason they could not destroy or weaken the strength of the evidence against the said defendant.

Paciano Añonuevo is, therefore, the principal fully convicted of the said crime of estafa, the amount of which is 65 pesos, and has in consequence incurred the penalty prescribed in paragraph 2 of article 534 of the Penal Code, which penalty must be imposed in the medium degree, since there is no aggravating or extenuating circumstance to be considered, inasmuch as the defendant, as a clerk, has not the character of a public functionary, nor is there to be appreciated the concurrence of the circumstance of paragraph 16 of article 10 of the code, on account of the crime not having been committed with contempt of or insult to public authorities, and the fact of simulation or false representation constituting the deceit, is an inherent element of the crime of estafa.

For the above-stated reasons we are of opinion that the defendant, Paciano Añonuevo, must be sentenced to six month's imprisonment (*arresto mayor*), with the accessories provided for in article 61, to return the horse to its owner, Daniel Jasmin, should the latter not yet have received it, and to pay the costs of both instances, thus modifying the judgment appealed from. The case will be remanded to the trial court with a certified copy of this decision and of the judgment which shall be entered in accordance herewith for the execution thereof. So ordered.

Arellano C.J., Mapa, Johnson, and Willard, JJ., concur.

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