

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DEOGRACIAS PANES, DEFENDANT AND APPELLANT.

G.R. No. 12656. November 08, 1917

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal from a judgment of the Court of First Instance of Iloilo, finding the accused guilty of the crime of estafa, and sentencing him to two months and one day of arresto mayor, and to pay the costs.

The appellant makes the following assignment of errors: (1) The trial court erred in convicting the accused without informing him of the nature of the complaint before entering upon the trial. (2) The trial court erred in declaring that the facts constitute the crime of estafa.

All that it is necessary to say in regard to the first assignment of error is that the record shows that the accused was duly arraigned; that a copy of the information was delivered to him; and that he pleaded not guilty. Consideration of the second assignment of error requires a synopsis of the proven facts.

B. F. Hodges is a pawnbroker in Iloilo. On August 23, 1915, Hodges delivered to the accused, Deogracias Panes, jewelry of a total value of P130. Panes signed a receipt, Exhibit A, which reads as follows:

"Iloilo, Iloilo, P. I., 8/23/15.

"The undersigned has received of B. F. Hodges 2 rings, 8 pure, 4 each, small, diamonds, valued at P100—One hundred pesos, and one necklace and wristlet valued at P30—thirty pesos, total P130—one hundred and thirty pesos, to sell on commission or return on demand or the stated amount to B. F. Hodges, or order. Cedula No. F-1352891. (Signed) Deogracias Panes. Witness: Eugenio Linot."

Hodges also claims that, in addition, there was a verbal agreement to the effect that Panes was to sell the jewelry or return it within fifteen days. As this statement of Hodges is not otherwise corroborated and is denied by the defendant, we can eliminate it from consideration. However, Hodges did demand the return of the jewelry many times with the result that Panes gave into the possession of Hodges a document covering land, which Panes said he owned, worth P3,000. Hodges also had a friend write a letter in Spanish to the accused (Exhibit C), telling Panes that he must either return the jewelry or the value thereof. The accused Panes in defense admitted receiving the jewelry and signing Exhibit A. He testified that he sold the jewelry to a man in Passi, who signed a note in Panes' favor to be paid some time later. Panes said that he told Hodges of this sale on credit and that Hodges agreed to it. Hodges, however, denies absolutely that he authorized the accused to sell this jewelry on credit. We should, therefore, as to this claim, likewise eliminate it from consideration. On the day before the trial in the lower court, the accused returned the same wristlet he had received from Hodges and presented a note signed by Juan de Leon in payment of the rest of the jewelry that the defendant did not return.

It is to be emphasized that in accordance with the receipt for the jewelry, the authenticity of which is not questioned, the accused received the jewelry to sell on commission or to return on demand. to Hodges. Further,

we should emphasize that notwithstanding the plain meaning of this document, Panes repeatedly failed to return the jewelry on demand, and apparently construing the document for his own purposes, after the passage of a long interval of time, sold the jewelry to another on credit. It would seem that, soon after the first demand for the return of the jewelry was made and no attention was paid to the same, the accused must be held to have converted the property to his own use, and consequently was liable before the law. To appropriate to one's own use includes not only conversion

to one's personal advantage but every attempt to dispose of the property of another without right. (See 9 R. C. L., pp. 1275, 1276.) The fact that, on threat of criminal prosecution, Panes actually did make restitution to Hodges and the latter proclaimed himself satisfied, only affects the penal aspect of the case as to the right of the offended party to indemnification.

The Attorney-General recommends acquittal. He does so on the authority of *The United States vs. Morales and Morco* ([1910] 15 Phil., 236). In this case, it appears that the defendants received from one Hatin Cafure to sell on commission certain jewels of the value of something more than P1,000. In receiving the said articles, the defendants gave to Cafure a receipt in the following form:

"Received of Mr, Atim Kapuri goods taken on commission which amount to P1,384.10 on account of him who subscribes.

"Legaspi, 14th of March, 1905.

(Signed) "Nicomedes Morales."

The evidence produced by the prosecution was that the defendants took the property in question upon the terms and conditions mentioned in the receipt above quoted and that they failed to return either the jewelry or the value thereof, but instead sold the said jewelry on credit and took promissory notes from the purchasers for the purchase price. Thereupon, after an extensive review of the cases on the subject, this court through Justice Moreland, Justice Torres dissenting, held that—

"The crime of estafa is not committed by one who, having taken jewelry to sell on commission for cash, sells the same on credit, and who, taking promissory notes for the purchase price thereof, tenders said notes to the owner of the jewelry. Such sale on credit does not constitute a conversion of the property.

"The intent to convert the property to the use of the taker or to that of some other person is a necessary element in the crime of estafa as defined in article 535, subdivision 5, Penal Code." (Syllabus).

We are confident, on a new and fair consideration of the doctrines enunciated in the Morales case, that the opinion in the Morales case went to the farthest extreme which can be permitted in an endeavor to give to an accused every possible benefit of the law. We believe, further, even under a liberal construction of the Morales opinion, that it cannot properly be stretched to cover the present facts. We consider, finally, that the facts in the Morales case and in the present instance can be fairly distinguished. For instance, comparing the two receipts, the bases of the two complaints, it is to be noted that the receipt herein contains one additional safeguard for the owner not to be found in the receipt in the Morales case—this condition is that the jewelry is to be returned on demand to B. F. Hodges. It is also to be noted that Hodges denies categorically that he authorized the sale of the jewels on credit or that he had ever received the notes for such sale.

A case likewise nearly analogous and containing, we believe, the applicable doctrine is *The United States vs. Zamora* ([1902] 2 Phil., 582). To quote from the opinion of Justice Cooper:

"The evidence in the case shows that on the 10th day of July, 1910, the defendant received from the complaining

witness the jewelry mentioned in the complaint, for sale on commission, and though repeatedly requested by the owner to return the same, failed so to do. These facts are proven by the complaining witness and Juliana Espinosa.

"It is contended for the defense that no time was fixed within which defendant was to make sale of or return the property. It was proven that it is the custom, when jewelry is taken out for sale, that if taken in the morning it is to be returned in the evening, or at least within two or three days. Independent of any such custom, and in the absence of any time fixed for its return, it was the duty of the party so receiving it to return it upon the demand of the owner.

"The complaining witness testified that upon several occasions she demanded of the defendant the return of the jewelry; that the defendant failed to comply, on each occasion asking for two or three days longer, and up to the date of the trial, which was over one year from the date of the delivery of the property, he had failed to make a return of the jewelry or to give any account thereof.

"We think the evidence in this respect entirely sufficient to show the conversion of the property by the defendant to his own use."

In the opinion in the case of *The United States vs. Morales and Morco*, supra, the above quotation appears with the words "which was over one year from the date of the delivery of the property" (referring to the demand), "or to give any account thereof," in italics. In the present instance, although one year did not elapse from the date of the delivery of the property to the date of the trial, we do not conceive that it is to be understood that merely the lapse of a long period of time changes the penal aspect of the case. Numerous demands for the return of the property are just as efficacious in indicating unlawful conversion as the passing of a year. As to the account given constituting a proper defense, it must, of course, depend on the nature of the account, and' herein the explanation is not such as to constitute a reasonable proviso to the original receipt.

With full knowledge of the difficulty in attempting to distinguish the facts before us from the facts of other decisions of this court, and with all due respect for the recommendation of the Attorney-General, we are nevertheless constrained to hold that the accused is guilty of the crime of estafa, and that the judgment of the lower court should be affirmed. We accordingly make the statement contained in the last sentence the order of this court, with the costs of this instance against the appellant. So ordered.

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

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