

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DOMINGO REYES, DEFENDANT AND APPELLANT.

G.R. No. 12743. August 25, 1917

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal from a judgment finding Domingo Reyes guilty of estafa and sentencing him to four months and one day of arresto mayor, to the accessory penalties of the law, and to indemnify R. B. Blackman in the sum of P118, with subsidiary imprisonment in case of insolvency, and to pay the costs.

Marked discrepancies in connection with the evidence, particularly that which concerns the figures, are to be noted. Accepting the findings of the trial court, we can summarize the facts as follows:

R. B. Blackman is a surveyor in the Province of Pangasinan. Domingo Reyes, the accused, also lives in that province. Blackman employed Reyes to collect certain amounts due from twelve individuals for Blackman's work in connection with the survey of their lands. The total amount to be collected by Reyes was P860. He only succeeded in collecting P540. He delivered to Blackman P368. He retained the balance, or P172. So far so good. The difficult point concerns the exact terms of the contract. It was merely an oral agreement between Blackman and Reyes. Blackman claims that he agreed to pay Reyes a commission of 10 per cent. Reyes claims that he was to receive a commission of 20 per cent. The trial court, in its decision, states that—"R. B. Blackman, agrimensor, dio al aqui acusado el encargo de cobrar algunas cuentas de honorarios devengados por mediciones practicadas por el como agrimensor, concediendole un 10 por ciento sobre todas las cobranzas." (R. B. Blackman, the surveyor, ordered the said accused to collect certain debts due for surveying and offered a 10 per cent commission on all accounts collected.)

To return to the figures again, it will be noticed that if we accept the statements of Blackman, Reyes was entitled to 10 per cent of P540 (or P530), or P54, making P172 misappropriated, or, if we deduct his commission, P118. On the other hand, if we accept the statements of Reyes, then 20 per cent of the total amount to be collected, P860, is exactly P172, the amount claimed to have been misappropriated.

There are a number of reasons which impel us to the conclusion that the defendant and appellant is guilty as charged. In the first place, in view of the discrepancy in the evidence we are not disposed to set up our judgment as superior to that of the trial court. In the second place, conceding that Reyes was to receive 20 per cent, this, unless some contrary and express stipulation was included, would not entitle him in advance to 20 per cent of the total to be collected, but only to 20 per cent of the amount actually collected. In the third place, the right to receive a commission of either 10 or 20 per cent did not make Reyes a joint owner with Blackman so as to entitle him to hold out any sum he chose. (Campbell vs. The State [1878], 35 Ohio St., 70.) In the fourth place, under the oral contract Reyes was an agent who was bound to pay to the principal all that he had received by virtue of the agency. (Civil Code, article 1720; U. S. vs. Kiene [1907], 7 Phil. Rep., 736.) And, lastly, since for all practical purposes, the agency was terminated, the agent was under the obligation to turn over to the principal the amount

collected, minus his commission on that amount. (U. S. vs. Schneer [1907], 7 Phil. Rep., 523.)

All the requisites of estafa as punished by article 535, paragraph 5, of the Penal Code, and as construed by the commentators, are here present. The assignment of error relative to the nonproduction by the fiscal of the transcription of the preliminary investigation is not particularly important as secondary evidence was admitted and the substantial rights of the accused were not affected.

The judgment of the trial court being in accord with the facts and the law is hereby affirmed with the costs. So ordered.

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

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