

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE MOLINA AND PEDRO GALIMA, DEFENDANTS AND APPELLANTS.***G. R. No. 13641. October 08, 1918*

Ponente: FISHER, J.

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This is an appeal by the accused, Vicente Molina and Pedro Galima, from a judgment of the Court of First Instance of Ilocos Sur by which they were found guilty of the crime of estafa, and each of them sentenced to six months of arresto mayor, to pay fine of P140, to suffer subsidiary imprisonment, in case of insolvency, and to pay the costs.

The proof adduced on behalf of the prosecution establishes the following facts:

In the months of March and April, 1914, Anacleto Alnas and his family lived in the barrio of Concunig of the municipality of Santa Lucia, Ilocos Sur. About ten o'clock in the morning one day in April, 1914, while Agustin Adoc, Braulio Fabro, and Anacleto Alnas were boiling sugar in the yard of the latter's house, the defendants, Vicente Molina and Pedro Galima, dropped in and, after stating that they had received a divine inspiration greatly beneficial to the poor, asked these men if they would like to hear about it. Anacleto Alnas replied that he would, whereupon all of them went into the house. Pedro Galima then asked for a pair of scissors and a piece of paper. When Anacleto Alnas had provided him with these things, he cut from the paper one piece about the size of a peso and another oblong piece about the size of a bank note. Pedro Galima handed to Anacleto Alnas these two pieces of paper cut out by him and then Vicente Molina asked for a pillow. When they gave him the pillow he put it on the ground and spread out upon it a piece of paper on the edge of which a fanciful design had been drawn and in the center of which there was a cross. Vicente Molina ordered Anacleto Alnas to put the circular piece of paper on top of the decorated paper. Vicente then folded up the large piece of paper in such a way as to conceal the other, and after shaking it three times and muttering over it, opened it out, showing a genuine silver peso in place of the circular piece of paper which had been put in by him. Vicente then folded up the decorated paper, put it in his pocket and, displaying the peso, said: "Look at it and see if it differs from our money." When they said that it was similar, Vicente then asked: "Would you like to see something more?" to which Anacleto Alnas replied that he would. Vicente Molina again took from the pocket of his shirt the decorated paper, placed it on top of the pillow and ordered Anacleto Alnas to put upon it the oblong strip of paper which had been cut off by Pedro Galima. After Anacleto Alnas had done this Vicente folded the decorated paper over the oblong, shook it three times, muttered over it, and then opened it showing a two-peso bank note. Then Vicente Molina folded the piece of decorated paper, put it in his pocket and passed the bank note around to be examined by those present. Vicente then told them that they could make this transformation themselves if they would pray for seven successive Friday nights at midnight without permitting anyone to see them while doing so, and if they were willing to pay at least P37 which they, Vicente Molina and Pedro Galima, would cause to be sent into the presence of God, and that then the P30 would produce P300 every year and the remaining P7 would yield enough to cover their daily expenses. Anacleto answered that he would think about it, because he did not have any money available at that time. A week

afterwards the accused again found him with Braulio and Agustin busy boiling sugar, in front of his house. The accused asked Anacleto if he had succeeded in getting some money, to which he replied that he had not, as he was a man of very limited means, whereupon the accused told him that he should make an effort to get it, and if he were to do so he would, by the grace of God, soon recover it. To this Anacleto replied that he could not promise them that he would do as they suggested, whereupon the accused said that perhaps he was still unconvinced and was therefore hesitating. Vicente Molina again asked for a pair of scissors and paper and Pedro Galima again cut out a circular strip and another oblong of paper, and delivered them to Anacleto. Vicente took something out of his pocket and asked for a pillow. After the pillow was handed to Vicente he spread out upon it the decorated paper with a cross in the center, and told Anacleto to put the oblong paper on top of it. Vicente then folded the two pieces of paper, shook them three times, muttered over them, put them back upon the pillow, and when he opened them there, on top of the decorated paper, was a two-peso bank bill. Vicente folded the decorated paper, put it in his pocket, and asked them if they could see any difference between that bank note and a genuine one. The accused then proposed to Anacleto that he give them his carabao for one of those Money-producing pieces of paper. Anacleto objected to this, saying that he would have nothing with which to work if they were to take his carabao. The accused replied that they would value the carabao at P70, and that they would cause this sum to be sent into the presence of God, so that it would produce P700 every year as long as Anacleto might live, but in order to obtain this favor it would be necessary for him, during seven successive Fridays, to pray three Pater Nosters, three Avemarias, and three confiteors as well as the prayer for the relief of the souls in Purgatory. Anacleto thereupon turned his carabao over to the accused, and they gave him a piece of paper folded up so as to go inside another piece of paper, in evidence as Exhibit A. They told him to keep these papers in his trunk while he was praying during the seven successive Fridays; and that on the seventh Friday he should open the package, and if he did not find anything, he should come and inform them. Anacleto complied with the instructions of the accused, and on the seventh Friday opened the package. Upon unfolding the paper (Exhibit B), he noticed that there was something written upon it. Anacleto then went to the house of Vicente Molina to inform him of the occurrence, and Pedro Galima who had seen Anacleto going to Vicente Molina's house, joined the others there. Anacleto then told them: "When I opened the package at midnight I saw that there was something written on it, but I do not know how to read." The accused told Anacleto that the writing of the paper was the word *baluan*, which in Ilocano means "repeat," and that it meant that he should continue his devotions. The accused again gave Anacleto the decorated paper and a larger piece of paper, like that in evidence as Exhibit B, and told him to put it in his trunk while he was continuing his prayer. Anacleto again prayed devoutly for seven successive Fridays, and on the last Friday again opened the package with the same result. He returned to the house of Vicente Molina and again met Pedro Galima there. Anacleto said to the accused, "My brothers, please look into this matter well, for I never find anything but the writing, and I fear I am not worthy of the grace of God." The accused looked at the paper and told Anacleto that he should be patient and again repeat his devotions. For the third time Anacleto prayed for seven successive Friday nights, but on the seventh night he again found nothing but the writing on the paper. This time when Anacleto went to see the accused, they showed him how to play the trick, and told him that the best thing he could do was to play it on others and thus get back the value of his carabao. When Anacleto learned that he had been swindled by the accused, he reported the matter to the local authorities. After the accused had taken the carabao away, Anacleto Alnas went to the office of the president of Candon, to execute the transfer, because the accused told him that he could not expect to merit the Divine favor until after the execution of the conveyance of the carabao. Anacleto received no money whatever from the accused in consideration of the transfer of the animal.

On the 19th of July, 1915, the Court of First Instance of Ilocos Sur rendered judgment, in cases Nos. 2278 and 2279, convicting the accused Pedro Galima for swindling Angel Salazar and Sabino Latorre in the same way in which he had swindled Anacleto Alnas.

On January 24, 1915, the Court of First Instance of the Mountain Province, in cases Nos. 447 and 448, convicted the defendant Vicente Molina for having swindled two men, named Bagnitay and Baliuas, respectively, in the same manner in which Anacleto Alnas had been swindled by him.

The trick of which the accused made use in order to swindle Anacleto Alnas appears to be in common use in Ilocos Sur and the neighboring provinces. The same trick was used by the defendants in the case of *The United States vs. De los Reyes* (34 Phil. Rep., 693) in which the court said:

"Those who obtain from a member of a wild tribe any money, property, or thing of value, without adequate consideration, by preying upon his ignorance and superstition, such as alleging and representing to him that a certain piece of paper which they delivered to him and induced him to accept as the price of a carabao was an instrument which would make and coin paper and silver money after the lapse of seven Fridays provided he would offer, upon each of said Fridays, appropriate prayers for the success of the enterprise, and that said paper would soon make him a rich man, which representations induced him to part with his carabao without other consideration than said paper, are guilty of estafa."

It is contended on behalf of the defendants that the testimony of the witnesses of the prosecution is improbable, because it is unbelievable that the accused would endeavor to swindle Anacleto Alnas in such a barefaced manner, in the presence of the witnesses who happened to be there on the two occasions upon which the accused were in Anacleto's house. When it is considered, however, that Anacleto, Agustin, and Braulio lived in the same barrio and were working together at the time that they were boiling sugar in the front yard of Anacleto's house, there is nothing extraordinary in the fact that on the two occasions on which the accused went to Anacleto's house, they found him with his two partners engaged in that work, and that they should have invited them to witness the demonstration. In sleight of hand tricks the prestidigitator relies upon his ability to cheat not only one particular person, but any other persons who, by chance or design, are present.

It is urged by the defense that the aggravating circumstance of recidivism should not be taken into consideration against the accused, because it has not been shown that the judgments upon which the accused were convicted for swindling were final judgments. This contention on behalf of the defense is without merit. The records of cases Nos. 2279 and 2298 against Pedro Galima are attached to the record, and do not disclose that any appeal was taken from the decisions therein rendered. Furthermore, the decisions of the Courts of First Instance in criminal cases become final by virtue of section 47 of General Orders No. 58, upon the expiration of fifteen days from the date upon which such decisions were rendered. (*U. S. vs. Court of First Instance of Manila*, 24 Phil. Rep., 321.) Therefore, the burden rested upon the accused to overcome the legal presumption by appropriate evidence. In the court below the accused did not allege nor prove that the judgments presented to prove their recidivism were not final. The accused are, therefore, guilty of the crime of swindling (*estafa*) penalized by article 534, paragraph 2, in connection with article 535, paragraph 1 of the Penal Code (*United States vs. De los Reyes*, 34 Phil. Rep., 693), and as they have been formerly convicted of *estafa*, on two occasions, under the provisions of article 536, the corresponding penalty is that immediately superior in degree to *arresto mayor* in its medium grade to *presidio correccional* in its minimum degree. They are therefore sentenced to six years of *prision correccional*, with the accessory penalties of article 58 of the Penal Code, to pay each one-half of the costs of the prosecution, to return the carabao to the complaining witness, or, in the event of their failure to do so, to pay him in solidum the value of the carabao, which we find to be the sum of P140, and in the event of their insolvency to suffer the corresponding subsidiary imprisonment. So ordered.

Torres, Johnson, Street, Malcolm, and Avanceña, JJ., concur.

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