

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ANDRES C. GALSIM, DEFENDANT AND APPELLANT.***G.R. No. 14577. February 29, 1960*

Ponente: BAUTISTA ANGELO, J.

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Charged and convicted of estafa by the Court of First Instance of Manila, Andrea C. Galsim was sentenced to suffer the penalty of 2 months and 1 day of arresto mayor, with the accessory penalties prescribed by law, to pay a fine of P2,500.00, to indemnify the offended party in the same amount, with subsidiary imprisonment in case of insolvency, and to pay the costs. After appealing from this decision, the Court of Appeals certified the case to us on the ground that only questions of law are involved.

On September 4, 1953, the accused obtained a loan from one Maura Magno in the amount of P2,500.00 payable within a period of five years, and to secure its payment the former executed in favor of the latter a deed of chattel mortgage assigning and conveying by way of first mortgage a two-story house located in the City of Manila. One month after the transaction, Mauro Magno tried to insure the property mortgaged with the Central Surety & Insurance Company for the sum of P3,000.00 and on that occasion the company informed Magno that the house in question had already been previously mortgaged by its owner to a certain Dela Torre. Upon verification of the matter made by Magno in the office of the register of deeds, he found that the information was correct and that the accused had not yet redeemed the first mortgage nor paid the obligation covered by it which was still subsisting. As a result, the deed of mortgage executed by the accused in favor of Magno was refused registration by the register of deeds. Magno demanded the return of his money from the accused but the latter failed to do so.

Appellant does not deny having received from the complainant the sum of P2,500.00 by way of loan and that to secure the same he executed in his favor a deed of chattel mortgage on a two-story house expressly warranting therein that the same was free from any lien or encumbrance. It developed however that such warranty is not true for it was later discovered that the same property had already been previously mortgaged by appellant in favor of spouses Alejandro Anatolio and Juliana dela Torre which mortgage was still subsisting. It is evident that the appellant obtained the loan from complainant through false representation or deceit which is one of the elements constituting the crime of estafa. It is apparent that the complainant had granted the loan to appellant in the belief that the security offered was good and sufficient to guarantee his investment because it was free from any lien or encumbrance. Had he known that it was already encumbered, the likelihood was that he would not have granted the loan, which proves the fraud of which he was a victim.

But appellant contends that under the facts proven he cannot be guilty of estafa for there is nothing to show that complainant has suffered any damage or injury as a result of the execution of the second mortgage. This contention is untenable. While the mortgage executed by appellant in favor of complainant is for a period of five years and that period has not yet expired, it does not follow that complainant has not suffered any damage or injury as a consequence of the fraud for indeed he has been deprived of the use of his money because of such fraud while he stands to lose it in view of his failure to obtain the registration of the deed of mortgage. It must be

noted that when complainant tried to register the mortgage in the office of the register of deeds the latter refused registration for the apparent reason that the same could not be registered as first encumbrance on the property. In the circumstances, the damage or injury that such failure of registration has caused the complainant is apparent and constitutes one of the elements of estafa under the law (U.S. vs. Goyenechea, 8 Phil, 117; U.S. vs. Malong, 36 Phil., 821).

The decision appealed from being in accordance with law and the evidence, the same is hereby affirmed, with costs against appellant.

Paras, C. J., Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

Bengzon, J., took no part.

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