

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE MONTAÑEZ, DEFENDANT AND APPELLANT.

G. R. No. 16394. September 25, 1920

Ponente: VILLAMOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-16394/>

VILLAMOR, J.:

The appellant in this cause was convicted by the Court of First Instance for the city of Manila of the crime of frustrated estafa and was sentenced to four months and twenty-one days of arresto mayor, with the accessories prescribed by law, and to pay the costs.

The information upon which the appellant was brought to trial and found guilty is as follows:

"That on or about the first day of March, 1919, in the city of Manila, P. I., the said accused, Jose Montañez, willfully, unlawfully and feloniously intended to defraud the firm of Lutz & Co. of this city, having performed the following acts of execution which should have produced the crime of estafa as a consequence, to wit: He issued and drew upon the National Bank of the Philippine Islands and in favor of the firm Lutz & Co., aforesaid, in payment of 100 bales of white cloth (dril) of the trademark Rana, which the said Jose Montañez had bought from Lutz & Co., aforesaid, check No. 1095917 for the sum of P1,750, Philippine currency, equivalent to 8,750 pesetas, notwithstanding the fact that said accused very well knew that he did, not have any deposit of money in said bank; but the said Jose Montañez did not succeed in defrauding said firm, not by reason of his voluntary desistance, but because the firm Lutz & Co. discovered on time that the said accused did not have any fund in the aforesaid National Bank of the Philippine Islands.

That the accused is a rescidivist having been once previously convicted and sentenced in a final judgment of a competent court for the crime of estafa."

Appellant's brief having been filed, the fiscal in his motion of September 14, 1920, prays for the dismissal of the cause for the reason that the Court of First Instance had no jurisdiction to try the crime alleged in the information. With the said motion the appellant agreed.

In order to determine the jurisdiction of the court in criminal cases, the information must be examined for the purpose of ascertaining whether or not the facts alleged therein and the penalty provided by law for such acts fall within the jurisdiction of the court. If in the information facts are alleged sufficient to show that the court in which the information is filed has jurisdiction, then the court shall have jurisdiction. (U. S. vs. Mallari and Cueson, 24 Phil., 366.)

A careful examination of the information herein quoted shows that according to article 535, No. 1, in connection with article 534, case 3, of the Penal Code, had the estafa been consummated, the facts set out therein would be punished with the penalty of presidio correccional in its minimum and medium degrees, for the amount intended to be embezzled exceeds 6,250 pesetas. If the crime was frustrated, as is alleged in the complaint, then, according to article 65 of said Code, the penalty that must be imposed upon the author thereof is that next lower in degree to that prescribed by law for the consummated felony of estafa, that is, arresto mayor. It follows that the penalty

prescribed by law for the felonious act alleged in the information can not exceed six months of *arresto mayor*; and therefore the Court of First Instance, according to section 56, paragraph 6, of Act No. 136, was without original jurisdiction to take cognizance of the cause by reason of the subject-matter thereof.

The accused did not object to the jurisdiction of the court. His silence, nevertheless, can not produce any effect, for when the jurisdiction has not been conferred by law, the accused can not confer it by express waiver or otherwise. (U. S. vs. De la Santa, 9 Phil., 22; U. S. vs. Jayme, 24 Phil., 90.)

For the foregoing reasons the present cause is dismissed without special finding as to costs; and the fiscal may institute before the competent court the action which he may deem necessary for the prosecution of the same crime. So ordered.

Mapa, C. J., Johnson, Araullo, Malcolm, Avanceña and Moir, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.