

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DIEGO AN, DEFENDANT AND APPELLANT.

G.R. No. 24099. October 20, 1925

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The defendant appeals from the judgment of the Court of First Instance of Marinduque, sentencing him to ten years, eight months and one day of prision mayor, fine of 250 pesetas, and to indemnify the provincial government of Marinduque in the sum of P3 with subsidiary imprisonment in case of insolvency of the fine and indemnity, and with the costs, for the crime of estafa through falsification of public document.

The evidence does not show the estafa. The P3 alleged stated against the truth in the document Exhibit A, which is the one said to be falsified, was in fact justly and duly paid by the defendant, according to uncontradicted testimony. The fraud was not established, which is an essential element of the crime of estafa alleged in the information.

As to the falsification alleged to have been used as a means to commit the estafa which was not proven, the only testimony of Melecio Lagatoc, contradicted by the defendant and Cesar Marifosqui, is not, in our opinion, sufficient to hold the defendant guilty of evil intent in making Melecio Lagatoc subscribe the document Exhibit A, having delivered to him the P3.50, of which P0.50 was for said Lagatoc, and the P3 to be delivered to Cesar Marifosqui. Such a fact is consistent with good faith, there being no proof sufficient to show criminal intent. In cases of falsification, as the one at bar, where the presumption of arising from the illegal act is overthrown, a conviction cannot be sustained. So it was held by this court in the cases of *United States vs. San Jose* (7 Phil., 604) and *United States vs. Arceo* (17 Phil., 592).

The judgment appealed from is reversed, and the appellant is acquitted with the costs de oficio. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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