

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SANTIAGO SUÑGA (ALIAS PEDRO QUIAMBAO, SANTIAGO SANTOS, EMILIO REYES), DEFENDANT AND APPELPANT.

G.R. No. 31916. December 28, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Information was filed for estafa of P100, with habitual criminality, in that the defendant had been previously convicted of sixteen similar crimes and once of qualified theft.

Charged and convicted in the municipal court of Manila, the accused appealed to the Court of First Instance which, after trial, found him guilty and sentenced him to four months and one day of arresto mayor under article 534 of the Penal Code, amended by section 2 of Act No. 3244, to indemnify Domingo Vital in the sum of P100 and costs, plus twenty-one years' imprisonment for habitual criminality under subsection (d) of section 1, Act No. 3397.

The defendant again appeals and counsel now makes the following assignments of error:

"1. The trial court erred in finding and concluding that the accused-appellant is an habitual delinquent and in imposing upon the accused-appellant the additional penalty provided for in Act No. 33,97 of the Philippine Legislature.

"2. The trial court erred in not holding that there is no evidence to prove beyond reasonable doubt that said accused-appellant is an habitual delinquent".

We believe, taking into consideration all the facts of the case, that the act committed by the defendant constitutes the crime of estafa as alleged in the information. It appears of record that the defendant only tried in vain to look for money after having used the automobile; therefore he knew that he had no funds with which to pay for the trip when he contracted for it, and he succeeded in making the offended party believe that he paid his debts punctually, because he had done so a few days previous. These facts indicate the fraud and deceit which constitute the elements of estafa. Furthermore, the defendant's guilt of the crime of estafa is not discussed in this instance.

What counsel contends is that the evidence of the defendant's habitual criminality is insufficient, inasmuch as the documents marked B and from D to M, were not admitted in evidence by the trial court. It appears, however, that Exhibits N, O and P were also offered in evidence and were admitted, since the trial court, in rejecting Exhibits B, D to M stated that the rest could be admitted (page 15, parol evidence), and Exhibits N, O and P, which were admitted, consist, according to their presentation (pages 14 and 15, parol evidence), in the following:

"Fiscal. I present also as part of the evidence for the prosecution, the decisions rendered in criminal cases of this court: No. 21497, marking it Exhibit N; as Exhibit O, the decision rendered in criminal cases Nos. 24617, 24618, 24619, 24620, 24621, 24622, 24623, 24624 and 24625, all for the crime of estafa; as Exhibit P, the decision entered in criminal case No. 30803 of this court, reserving the right to substitute later for these,

Exhibits N, O and P, which are certified copies thereof."

Taking these documents into account, the trial court held in the decision appealed from that the defendant "has been convicted of and sentenced for the crime of estafa eleven times, having begun to serve the sentence of four years' imprisonment on August 3, 1925." Notwithstanding the fact that neither the original nor the certified copies of Exhibits N, O and P have been forwarded to this court, there is sufficient evidence of record to accept the conclusions of the trial court in regard to the appellant's habitual criminality.

Accepting the Attorney-Generals correct recommendation that the judgment appealed from be modified so that the indemnity of the amount of the estafa be given to Felipe Vital instead of to Domingo Vital, and that the accessory penalties be added to the arresto mayor, said judgment is hereby affirmed, with costs against the appellant. So ordered.

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

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