

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GERVASIO SANTIAGO, DEFENDANT AND APPELLANT.

G.R. No. 32455. August 06, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Gervasio Santiago from the judgment of the Court of First Instance of Manila convicting him of estafa, in accordance with the information, and sentencing him to two years, four months, and one day, presidio correctional, with the accessories of law, plus an additional penalty of twenty-one years' imprisonment, as an habitual criminal, with costs.

In support of his appeal, the appellant assigns the following alleged errors as committed by the court below in its decision, to wit:

"1. The trial court erred in convicting the defendant-appellant of the crime of estafa in accordance with the proofs presented by the prosecution.

"2. The trial court erred in not acquitting the defendant-appellant."

The following facts were proved beyond a reasonable doubt at the trial of the case:

On March 13, 1929, the defendant, Gervasio Santiago (alias R. R. Revilla), appeared at the house of Jesus Pereira, the offended party, located at 507 Sto. Sepulcro Street, Manila, and pretending to be an agent of the Radium Ore Ravigator Co., offered to sell him a filter of said company. As Jesus Pereira did not need it, he at first refused to purchase, but as the accused repeatedly urged him to do so, stating that he had already sold 499 filters and he needed to sell only one more in order to win a prize P500, besides which the filter he offered was worth P40, Pereira agreed to purchase it. As he only had P20 on hand, the defendant said he was willing to accept that sum as the first installment. The offended party then made out check No. 394664 against the Bank of the Philippine Islands for P20, and when about to write Gervasio Santiago's name on it, the latter asked him to put in the word "cash" instead. The defendant, in turn, made out receipt marked Exhibit A, promising to return that same day in order to deliver the filter. The offended party in turn said he would complete the payment when he returned. A few hours later the defendant returned to the offended party's store asking for a recommendation to one Guerra, who keeps a store at M. H. del Pilar, in order to sell him a filter. As that was the first time the offended party had met the defendant, he said he could not give him a recommendation, but instead he would give him a letter stating he had purchased a filter of him. The defendant repeated that he would return that afternoon to deliver the filter which the offended party had purchased. As the afternoon drew on and the accused did not show up, the offended party became suspicious and telephoned the office of the Radium Ore Ravigator Company inquiring for R. R. Revilla. Upon being informed that there was no employee by that name in the office, Jesus Pereira went to the police station and reported the case, turning over the receipt Exhibit A which the defendant had given him. He was asked to look over the photographs in the rogues' gallery and upon doing so, he saw among the photographs that of the defendant Gervasio Santiago (alias R. R. Revilla), who had several aliases. In view of this discovery,

the offended party notified the Bank of the Philippine Islands to suspend payment upon the check he had issued to the accused. The check was never presented at the bank for payment.

The appellant contends that as the check was not cashed by the Bank of the Philippine Islands, and no attempt was made to cash it, no crime has been committed. The check issued to the defendant by the offended party was payable to "cash," and therefore, negotiable. While the defendant had said check in his possession, the offended party could not dispose of the amount for which it was made out, and this was, at least, temporary prejudice sufficient to constitute estafa, (U. S. vs. Goyenechea, 8 Phil., 117; U. S. vs. Malong, 36 Phil., 821).

The defendant had already been previously convicted of estafa nine times, having completed service of his last sentence in April, 1927.

Testifying in his own behalf, the accused denied everything the offended party had testified against him, and declared that on March 13, 1929, he was employed by the Robert Dollar Company as checker.

Taking into account the offended party's testimony, and the defendant's criminal record, this court is convinced beyond a reasonable doubt that the accused is guilty of the act imputed to him by said offended party on the date stated.

The foregoing facts, established beyond a reasonable doubt, constitute the crime of estafa set forth in article 535, number 1, and penalized in article 534, number 1, of the Penal Code, as amended by Act No. 3244, with *arresto mayor* in its minimum and medium degrees, the amount in question not exceeding 250 pesetas. As the defendant has been twice (at least) convicted of the same crime, the proper penalty to be imposed upon him is one degree above *arresto mayor* in its minimum and medium degrees, that is, *arresto mayor* in its maximum degree, to *presidio correccional* in its minimum degree, in accordance with article 536 of said Code. There being no modifying circumstance, this penalty must be imposed in its medium degree, that is, one year and one day *presidio correccional*.

As the defendant has been previously convicted of estafa nine times, completing the service of his last sentence in the month of April, 1927, he is an habitual criminal and must suffer twenty-one years' additional imprisonment in accordance with section 1, subsection (d) of Act No. 3397.

By virtue whereof, with the sole modification that the appellant is sentenced to undergo a principal penalty of one year and one day *presidio correccional*, in accordance with the recommendation of the Attorney-General, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Johns and Romualdez, JJ., concur.

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