

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMIGDIO NOBLEZA, DEFENDANT AND APPELLANT.*G.R. No. 3301. September 10, 1907*

Ponente: JOHNSON, J.

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This defendant was accused of the crime of estafa in the Court of First Instance of the Province of Iloilo, was sentenced to be imprisoned in the provincial prison for a term of two and a half months and to pay the costs, and also to pay an indemnity to Salvador Nofre in the sum of P30, and, in case of insolvency, to suffer subsidiary imprisonment. From this sentence the defendant appealed to this court.

From the record it appears that early in the month of April, 1905, Victoriano Fornia and Silverio Mondido stole a horse from Salvador Nofre and butchered and used it for food. A few days later Nofre ascertained the facts and made a complaint to the teniente of his barrio, who conveyed the information to the president of the pueblo of Miagao, who caused the arrest of the two accused parties and on the 8th day of April of the same year turned them over to the custody of the defendant in this cause, who was then and there justice of the peace of said pueblo. The persons charged with the theft of the horse did not deny the facts and at once attempted to effect a settlement with the owner of said horse.

It was finally agreed that if the persons charged with stealing said horse should pay the sum of P40 each the complaint against them would be withdrawn by the said Nofre, the only complaint which had been presented against them by Nofre being a verbal complaint presented to the teniente of his barrio. The sum of P40 was later paid to the defendant herein. Nofre, having received information of the fact, went to the defendant herein and requested that the said 1M0 be turned over to him. The defendant, after making some excuse and alleging that the papers in said cause had not been completed, turned over to the said Nofre P10 of the money which he had received. Nofre made subsequent requests for the balance of the said deposit and each time the defendant herein, made some excuse for not turning the money over. Nofre sent his mother to the defendant for the purpose of securing the balance of said deposit, but the defendant herein made some excuse for not turning over the balance of said money to her. Later, the record does not disclose exactly when, a complaint was made to the fiscal of the Province of Iloilo against the defendant herein, and upon order of the fiscal, Victoriano Fornia and his companion were ordered released from imprisonment.

On the 24th day of June, 1905, Salvador Nofre presented a complaint against the defendant herein before the justice of the peace of the pueblo of Iloilo and the defendant herein was duly arrested and brought before the justice of the peace of said pueblo and was given a preliminary investigation. At the close of the preliminary investigation, the justice of the peace of the said pueblo on the 28th day of July, 1905, remitted said cause and the defendant to the Court of First Instance of the Province of Iloilo, upon the ground that he did not have jurisdiction of the case. No objection was made to this ruling of the justice of the peace by the defendant. The defendant gave a bond in the sum of P200 for his appearance before the said Court of First Instance.

On the 6th day of September, 1905, the fiscal of the Province of Iloilo presented a complaint against the defendant for the crime of estafa; the defendant was brought before the court and was duly tried and sentenced as above stated. The defendant nowhere denied the receipt of the P40 and his refusal to turn over the balance to Nofre. He admitted that at the time of the trial in the Court of First Instance, which took place on the 6th day of October, 1905, he had not yet turned over the said P30 to Nofre.

The defendant in this court assigned the following errors:

"(1) That the Court of First Instance of the Province of Iloilo did not have jurisdiction of said cause; and

"(2) That the evidence adduced during the trial was not sufficient to convict him of the crime of estafa."

Under the first assignment the defendant argues that in no case could the imprisonment under the complaint exceed that of *arresto mayor* and therefore the Court of First Instance did not have jurisdiction. In reply to this objection of the defendant the Attorney-General says that, in addition to the penalty of *arresto mayor* which the court might have imposed for the crime charged in said complaint, the lower court might also have imposed the penalty provided in article 399 of the Penal Code and cites the case of *Legarda vs. Valdez* (1 Phil. Rep., 146) in support of his contention. In that case this court held that although the minimum penalty for the crime is less than the minimum limit of its jurisdiction, the court has jurisdiction if any degree of the penalty falls within its limits.

The contention of the Attorney-General is that the defendant, if he is guilty at all, is guilty as justice of the peace, or, in other words, that he committed the crime charged against him as justice of the peace.

Article 399 of the Penal Code provides that the public official who, taking advantage of his office, shall commit any of the crimes specified in articles 534 to 541 of the Penal Code shall incur, in addition to the penalties provided for therein, that of temporary special disqualification in its maximum degree to perpetual special disqualification. Therefore, admitting the contention of the Attorney-General that the defendant was a public official and took advantage of his office for the purpose of committing the crime charged against him, we are of the opinion and so hold that the Court of First Instance had jurisdiction over the said offense, for the reason that the punishment provided for in article 399 is an additional punishment to that provided for in paragraph 1 of article 534 of the Penal Code. It was evidently upon this theory that the justice of the peace of the pueblo of Iloilo held that he did not have jurisdiction over said cause. Of course, the question still remains open whether the defendant is responsible as justice of the peace or if said crime was committed by the defendant as justice of the peace. The defendant himself evidently believed that in law he acted as justice of the peace because he gives as his excuse for not turning over the balance of the money deposited with him, to Nofre, the fact that he had not yet completed his record. He did not believe that he was acting in his individual capacity. Therefore, we are of the opinion, and so hold, that the said Court of First Instance had jurisdiction in said cause.

Upon the second question, to wit, the sufficiency of the evidence adduced during the trial, the defendant admitted practically all of the facts charged in said complaint, during the trial of the cause in the court below, and the only question is whether the facts charged in the complaint are sufficient to justify the conviction of the defendant.

It is our opinion, and we so hold, that the evidence adduced during the trial of said cause was sufficient to justify the conclusion of the lower court. Therefore it is the judgment of this court that the sentence of the lower court be modified and that the defendant be sentenced to be imprisoned for a period of two and a half months, to indemnify Salvador Nofre in the sum of P30, and to suffer, in accordance with article 399 of the Penal Code, temporary special disqualification for a period of eleven years and one day, and subsidiary imprisonment in case of insolvency, and to pay the costs. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

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