

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOAQUIN CELIS, DEFENDANT AND APPELLANT.

G. R. No. 3363. August 17, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the 6th of February, 1906, an information was filed with the Court of First Instance of Manila, of the following tenor:

"The undersigned accuses Joaquin Celis of. the crime of estafa, committed as follows;

"That on or about the 4th day of January, 1906, in the city of Manila, Philippine Islands, the said Joaquin Celis did then and there willfully, unlawfully, and feloniously, with intent of gain, and without the consent of the owner thereof, appropriate, misapply, and convert to his own use check No. 160708, of E. C. McCullough & Co., on the International Banking Corporation, payable to Findlay & Co. or bearer, for six hundred and seventy-five pesos and thirty-six centavos (P675.36), Philippine currency, and of the value of 675.36 pesos, Philippine currency, the property of Findlay & Co., a co-partnership duly registered under the laws of the Philippine Islands, then and there received by and in the hands of the said Joaquin Celis under the duty and obligation to deliver the same to the said Findlay & Co.; and to the damage and prejudice of the said Findlay & Co. in the sum of 675 pesos and 36 centavos, Philippine currency, equivalent to 3,376 pesetas. All contrary to law."

The case having been tried upon the said complaint, judgment was rendered on the 12th of March, 1906, and the accused sentenced to five months of arresto mayor with the accessories of article 61 of the Penal Code, to refund to the firm of Findlay & Co. the sum of 675 pesos and 36 centavos, Philippine currency, and, in case of insolvency, to subsidiary imprisonment not to exceed one-third of the principal penalty, and to pay the costs of the proceeding. From this judgment the accused appeals to this court.

According to the evidence introduced at the trial it appears that, on a certain day in the month of January, 1906, Joaquin Celis, the accused, being then employed as bookkeeper by the firm of Findlay & Co., a co-partnership duly established in this city, and in charge of the insurance department of said firm, it being his duty to enter in the corresponding books all payments on account of premiums for insurance, stating the amount paid in, and the policy to which it pertained, and to deliver the check or money received to the cashier of the firm. Upon receiving check No. 160708 drawn on January 3, by E. D. Elser, on behalf of McCullough & Co., against the International Banking Corporation, in favor of Findlay & Co. or bearer, for 675 pesos 36 centavos, the premium on policy of insurance No. 4850421, made payable to Matias Saenz de Vizmanos, the accused simply entered the same in the books of the firm without, however, delivering the check to the cashier, and on the same or on the following day he took the check to E. M. Bachrach, the owner of an establishment on the Escolta, and out of the proceeds thereof paid 350 pesos which he, the accused, owed the latter, and received from him the balance of the amount of the check, which the accused had indorsed with his signature. Bachrach afterwards delivered the check to the International Bank, and the said establishment credited the account-current of the bearer with the total amount of the check.

Considering that the accused appropriated to his own use and disposed of the value of the check in question, which amounted to P675.36, to the damage and prejudice of Findlay & Co., it is evident that the crime of estafa, defined by article 535, No. 5, and punished under article 534, No. 2, of the Penal Code, was committed by him, inasmuch as he defrauded the said firm, violating the confidence placed in him by the company, by which he was authorized to receive money by checks for the purposes already stated.

The accused did not plead guilty; but no exculpation was offered in his defense, and the facts specified in the case prove his culpability in a conclusive manner as being the sole and direct author of the crime of estafa for which he was prosecuted and convicted, since it has been shown that the said firm had not authorized anyone but him to receive payments on account of premiums for insurance, and the entry made in the book in connection with said check is in his own handwriting. It is therefore beyond doubt that he converted to his own use. the amount stated in said document, thus incurring the penalty imposed by the code in its medium degree, in view of the fact that in the commission of the crime no extenuating or aggravating circumstance is present.

In regard to the nullity of the judgment appealed from as alleged by the defense, the mere perusal of the charge suffices to show the want of ground for such an allegation. It appears by the complaint or information, and from the evidence introduced in the case, that the accused committed the crime within the territory of the city of Manila, wherein are located the places at which the crime was consummated, and for said reason the jurisdiction of the Court of First Instance to take cognizance and pass on these proceedings is beyond question.

By judgment No. 2045 rendered on the 20th of September, 1905, in the case of Mortiga vs. Serra and Obleno (5 Phil. Rep., 34), it is laid down that "objections to the complaint based upon an insufficient statement of facts constituting the offense will not be considered by this court when they were not presented to the court below. (Following U. S. vs. Sarabia, 3 Off. Gaz., 403.[1]) This decision was subsequently affirmed by the Supreme Court of the United States in its ultimate decision of the case of Mortiga vs. Serra and Obleno.

Therefore the judgment appealed from, being in accordance with the law and the merits of the case, is hereby affirmed, provided, however, that Joaquin Celis is hereby sentenced to six months of imprisonment (arresto mayor), to the accessory penalties of article 61 of the Penal Code, and to pay the costs of this instance. So ordered.

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

[1] 4 Phil. Rep., 566.

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