

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PILAR JAVIER ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 3416. August 31, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the 4th of May, 1905, Pilar Javier, the wife of Juan Goyenechea, called at the establishment of McCullough & Co., situated at the foot of the Santa Cruz Bridge, this city, for the purpose of hiring a typewriter for a friend of hers who was about to take an examination, engaging to return it fifteen days thereafter. Accordingly a No. 5 Remington typewriter, bearing the number 10208, was at once delivered to her, and she promptly paid the rent corresponding to fifteen days, namely, 5 pesos, and bound herself to pay rent for further fifteen days if at the expiration of the first term the typewriter was not returned as agreed to.

When the term had expired and the typewriter had not been returned, the firm of McCullough & Co. ordered one of their collectors to proceed to the house of the said Javier in order to recover the machine, but she was not found there nor did she call at the office of McCullough & Co. to explain the reason therefore; and from the investigation made upon the information which the stenographer, George I. Frank, employed by said firm, filed with the police department, it resulted that the typewriter had been pawned for 40 pesos by Alejandro Trinidad by order of Juan Goyenechea, the husband of the aforesaid Javier, at the pawnshop of Finnick Brothers. This latter declaration was made by Alejandro Trinidad when arrested by the police, and he subsequently testified thereto under oath upon the trial of the case. In view of the foregoing facts a written information was filed with the Court of First Instance, of the following tenor:

"The undersigned accuses Pilar Javier and Alejandro Trinidad of the crime of estafa, committed as follows :

"That on or about the 5th day of May, 1905, in the city of Manila, Philippine Islands, the said Pilar Javier and Alejandro Trinidad did then and there willfully, unlawfully, and feloniously defraud and prejudice E.C. McCullough & Co., a corporation organized, existing, and registered under the laws of the Philippine Islands, to the extent of 550 pesetas, in the following manner: That the said Pilar Javier and Alejandro Trinidad falsely and fraudulently stated to the said E.C. McCullough & Co. that they had a school of stenography and typewriting and desired to hire typewriters for use in said school; believing their statement, the said E. C. McCullough & Co. were induced to deliver to said Pilar Javier and Alejandro Trinidad, under contract of hire, a Remington typewriter, No. 10208, valued at fifty-five dollars, United States currency, equivalent to 550 pesetas; that then and there the said Pilar Javier and Alejandro Trinidad willfully, unlawfully, and feloniously, with intent of gain, did misappropriate and misapply the typewriter received by them and in their hands, from E. C. McCullough & Co., to the damage and prejudice of the latter in the sum of 550 pesetas. All contrary to law."

The judge, in view of the proceedings of record, rendered judgment on the 17th of July, 1905, and sentenced Alejandro Trinidad to imprisonment for six months with hard labor and to pay one-half of the costs, and Pilar Javier to imprisonment for two months and one day. The other half of the costs were declared de oficio. Decision

as to the return of the typewriter was reserved, and on the 4th of August following its restitution to E. C. McCullough & Co. was ordered by the court. Pilar Javier alone appealed, and this decision shall only refer to her, judgment having become final as regards Alejandro Trinidad.

Assuming that the crime of estafa was committed, as defined and punished by articles 534 and 535, No. 5, of the Penal Code, because of the disposal and pawning of the machine No. 10208, without the knowledge or consent of the owners, the machine having been delivered to Pilar Javier for her use for a term of fifteen days upon the condition that it should be returned at the end of the period, yet the complicity of the accused has not been established.

As a matter of fact, it has not been proved that, when Pilar Javier hired the typewriter for fifteen days, any false or fraudulent statements were made by her to the firm of McCullough & Co. or to any of their clerks, inasmuch as she stated that she needed the machine for fifteen days, and paid the corresponding rent for the same. Nor has it been proven that she appropriated the machine or disposed of it to the prejudice of the owners thereof, since it was clearly shown that Alejandro Trinidad pawned it for 40 pesos, at the pawnshop of Finnick Brothers, by order of Juan Goyenechea, who is not a party to this case, at a time when Pilar Javier was absent from her house, and, therefore, without her knowledge or consent as to such pawning, which was executed by Alejandro Trinidad.

The statement made by Trinidad to Patrolman George R. Hartpence, in the absence of Javier, and the fact that Trinidad had been once accompanied by the accused Pilar when visiting the pawnshop of Finnick Brothers, are not sufficient to establish her culpability, for the reason that it has not been ascertained whether this was upon the occasion when Trinidad pawned the machine, prior thereto, or after the transaction.

When sufficient proof is lacking to establish the liability of an accused person, although his innocence may appear doubtful, his acquittal should be ordered. Therefore, for the reasons hereinbefore set forth, we hereby reverse the judgment appealed from, and, as regards the appellant Pilar Javier, she is acquitted with one-half of the costs in both instances de oficio. So ordered.

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

Tracey, J.; dissents.

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