

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN MONTANER, DEFENDANT AND APPELLANT.

G.R. No. 3439. September 27, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the 17th of February, 1905, Jose Pichel filed under oath with the Court of First Instance of this city an information of the following tenor:

"The undersigned, Jose Pichel, member of and contributor to the collective association, society, or company [regular general co-partnership] organized and existing under the laws of the Philippine Islands for commercial or mercantile purposes, under the name of 'Montaner and Company,' accuses Juan Montaner of the crime of estafa committed as follows:

"That on or about the 8th day of February, 1905, in the city of Manila, Philippine Islands, United States of America, the said Juan Montaner, being then and there a person of full legal age and not under, any legal disability, and being then and there the manager, director, or administrator of Montaner and Company, a collective association, society, or company [regular general co-partnership] organized and existing for commercial or mercantile purposes under the laws of the Philippine Islands (sociedad mercantil regular colectiva), did, by virtue of his said employment, then and there, and whilst he was manager, director, and administrator of said association or company as aforesaid, receive and take into his possession certain moneys to a large amount, in the sum of twenty-five thousand (25,000) pesos, Philippine currency, of the value of twenty-five thousand (25,000) pesos, Philippine currency, which said sum is equal and equivalent in value to the sum of one hundred and twenty-five thousand (125,000) pesetas, Philippine currency, of the property of the said Montaner and Company, and which said money came into possession of the said Juan Montaner for administration by virtue of his said employment as manager, director, and administrator of the said Montaner and Company.

"That then and there the said Juan Montaner did, willfully, unlawfully, feloniously, corruptly, with intent of gain, without the consent of Montaner and Company, his employer, to the prejudice, loss, and injury of the said Montaner and Company, his said employer, and to the prejudice, loss, and injury of the contributors and members of said association or company, embezzle, appropriate, and convert to his own use, of the said funds, the property of Montaner and Company, received as aforesaid, the said sum of twenty-five thousand (25,000) pesos, Philippine currency, which sum is equal and equivalent in value to the sum of one hundred and twenty-five thousand (125,000) pesetas, Philippine currency, and did, then and there, take and carry away the said sum of twenty-five thousand (25,000) pesos, Philippine currency, which is equal and equivalent in value to the sum of one hundred and twenty-five thousand (125,000) pesetas, Philippine currency, of the property of Montaner and Company, received by and intrusted to him for administration as aforesaid. All contrary to the statute in such cases made and provided."

Proceedings having been instituted by virtue of the foregoing complaint, the judge, in view of the results of the case, entered judgment on the 2d of July, 1905, and sentenced the accused to the penalty of two years' imprisonment with hard labor, and to pay the costs of the proceedings, from which sentence the assessors

dissented, holding that the accused should have been acquitted. The latter excepted to the judgment and to the order of the court denying his motion for a new trial based on newly discovered evidence and has appealed to this court.

On the 20th of September, 1904, a public instrument was executed by Magdalena Gonzalez under authority from her husband, Enrique Gonzalez, and by Juan Montaner and Jose Pichel, whereby a collective mercantile association was organized in the city of Manila under the name or firm style of "Montaner and Company," having its place of business in the town or Island of Jolo, Moro Province, Juan Montaner being the appointed manager, director, and administrator thereof. The purposes of the association were the purchase and sale of abaca, and the purchase, cutting, and sale of native lumber; its corporate capital was to consist of P45,000, Juan Montaner contributing 25,000 pesos in cash, Magdalena Gonzalez 10,000 pesos in cash, and 10,000 pesos by Jose Pichel, of which 3,000 pesos were in cash and 7,000 pesos for the right of retraction and other successive rights over a building lot on Calle San Luis, Ermita. The duration of the company was to be for one year beginning from the date of the indenture, and the partnership could be dissolved before the expiration of said term in the manner therein stated; the profits or losses of the company were to be distributed among the partners in proportion to the capital contributed by each of them, and the managing partner, Juan Montaner, was to receive a remuneration of 150 pesos per month, with power to employ a commission agent, a factor, and other paid employees; further, that, in the event of the company's being dissolved, the winding up should be done by the manager, and that the other partners who were not managers were to be entitled to examine at any time the administration and accounting system of the association.

In order to establish the alleged criminal act of the accused, Juan Montaner, the appropriation and conversion to his own use and to the prejudice of his copartners of the sum of 14,000 odd pesos belonging to the co-partnership Montaner & Co., for which the accused is the managing partner, it becomes necessary to determine whether, when leaving in haste for Hongkong, it was his purpose to absent himself definitely from Jolo and Manila, without intention to return to the Philippines to either of the above named places. Let us examine the charges in the case.

It has not been shown that during the four months and some days in which the accused acted as manager of the company in Jolo he kept the books as provided by the Code of Commerce nor that he paid into the company the 25,000 pesos which he had bound himself to contribute.

Nor has it been proved that his hasty departure for Hongkong was for the purpose of buying a steamer for the company of which he was manager, because Gonzalez denies the fact of ever having been thus informed by Montaner, and, if such had been his intention, he would have acquainted his partners of it, as the company was not in a position to incur such a considerable expense on account of lack of sufficient funds therefor.

The manager of Montaner & Co., in a letter dated February 16, 1905, told his friend Tiana, a Chinaman residing in Jolo, that, as the latter probably had already heard, the lumber business at Bungao was a disastrous one, for reasons which everybody knew, having liabilities amounting to 16,000 pesos, and that, on account of the lack of funds, he was obliged to proceed to Shanghai for the purpose of disposing of his shares in the "Anglo Chinese Company," and to make with the proceeds thereof as many payments as he could, confessing that at the time his position was a desperate one; such a manager was not in a position to even think about buying a steamer for the company whose interests and business he was directing.

The accused assured Enrique Gonzalez, the husband of Dona Magdalena, who was one of the partners, that he was going over to Hongkong for the purpose of buying a steamer for a company in Jolo, but this point has not been justified nor confirmed by the Chinaman Tan-Dico nor by anyone else. Therefore his statement to Gonzalez

that he was going over to Hongkong in order to buy a steamer for a company in Jolo was not true. No one had ever given him such an order, and if he made this statement to Gonzalez it must have been for the purpose of explaining to the latter the reason of his taking passage to Hongkong, and thus conceal the real object of his departure from Manila.

On the 28th or 29th of January, 1905, when manager Montaner returned to Jolo from this city, the partner, Jose Pichel, made known to him his desire to inspect the books so as to find out if, owing to the alleged mismanagement of the business of the company, of which he had heard, any loss had been sustained by the same. In reply to this request Montaner directed Pichel to get the lumber that was in Bungao and ship it to Manila, where he would be in advance, stating that there he would show him the books and make up a balance sheet, and engaging to return to Pichel his share of the capital in case it did not suit the latter to continue in the company, or in case the company were wound up. When Pichel reached this city Montaner had already left for Hongkong several days previously.

No explanation is found in the case of the conduct of a manager who, without giving previous notice, abandons the administration of the interests of the company having considerable liabilities, and carries away all the cash pertaining to the same, as well as all his own luggage, jewels, and other articles of great value, and the household property necessary to live in some other place.

He had in his possession 14,000 odd pesos belonging to the firm of Montaner & Co., and took the said amount with him when leaving, and there was in Bungao a stock of lumber of small value which could not be disposed of because the forestry dues had not yet been paid. However, it must be borne in mind that the company owed about 8,000 pesos to several persons, and that the accused was personally indebted to Tan Oa in the sum of 1,300 pesos, and also owed Otensin 5,681.94 pesos for value of the abaca he had purchased on credit, which sums were represented by two drafts accepted by him on the date of his departure for Hongkong, payable eight days thereafter; that is, at a time when he would no longer be in the Philippine Islands.

Shortly before committing the criminal act and in order to inspire confidence in his partner Gonzalez, who resided in this city and who was the only person aware of his hasty departure, in a short conversation had with the latter on February 7, the date when he embarked for Hongkong, Montaner assured him that the business of the company was in good shape and that they were making money, although a few days later he wrote the above mentioned letter to his friend Tiana disclosing the difficult and desperate position of Montaner & Co. The fraud and deceit with which Montaner has acted toward his co-partners is well manifest.

If it had not been the intent of manager Montaner to defraud his partners by carrying away with him the funds of the company when leaving, he would have deposited them in some bank in this city even without their knowledge, and thus show that he was acting in good faith; but, far from doing so, he concealed the fact that he had collected the value of the abaca sold for account of the company and kept the money as if it had belonged exclusively to him. Moreover, on the 10th of February, the day after his arrival in Hongkong, he wrote to Gonzalez informing him that if he did not find in said port a steamer of the conditions desired by him he would proceed to Amoy. Instead of going over to the latter port, however, he embarked on the 11th for Singapore without having had time to look for a steamer and without having informed his partners of the change of itinerary so hastily adopted. At the latter port he was arrested and, much against his will, he was brought over to this city.

It has been satisfactorily proved that the proposed purchase of a steamer in Hongkong was but a mere pretext, because nobody had given such an order, and the firm of Montaner & Co. lacked the necessary means. Besides this, none of his partners was aware that the accused intended to acquire the vessel, nor had their consent therefor been given. The fact that among his luggage gold jewelry with precious stones and pearls, table linen, silver

spoons and forks, and other articles of considerable value were found, indicates conclusively that he did not mean to be temporarily absent from his residence in order to carry out an incidental matter of business, but that it was a question of carrying off the greater part of the funds of the company to the organization of which he had contributed nothing, with the intent to defraud his partners and creditors.

If the value of the lumber brought over to this city and of that which remained at Bungao was not by any means sufficient to meet the debts of the company; if the accused himself confessed to a friend of his that the lumber business had been a failure and that the liabilities amounted to 16,000 pesos—that is, more than the assets—this being due to the fact that the accused did not contribute the 25,000 pesos promised by him; and if it is considered that eight days after the 7th of February, the date of his departure from Manila, he would have to pay the sum of 6,981.94 pesos, the amount of two drafts received by him, it becomes evident that, as Montaner knew the bankrupt condition of the firm intrusted to his management, he had resolved to leave this city, as he actually did, carrying with him and appropriating the 14,000 pesos which belonged to the company.

From the facts appearing in the case as fully proven, it may be seen that the crime of estafa punished under article 534, paragraph 3, and article 535, paragraph 5, of the Penal Code, has been committed, because by means of deceit and bad faith other persons were defrauded of a considerable sum of money belonging to the firm of Montaner & Co.

This case offers sufficient proof, supported by three serious and conclusive indications derived from fully proven facts, to establish the guilt of the accused as the author by direct participation, convicting him, beyond all reasonable doubt, of the crime of estafa herein prosecuted, notwithstanding his plea of not guilty, because from the facts already mentioned and the other merits of the case duly considered, in accordance with the rules of common sense and sound judgment, the mind is convinced of his guilt, and his unsupported allegations do not in any degree serve to destroy or weaken the probative value of all the evidence.

The fact that the money which the accused took with him on leaving Manila consisted of bills of the Spanish Filipino Bank does not show that he had any intention to return to these Islands, because said bills, being payable to bearer and representing a value; could easily have been exchanged by him for currency, especially in Spain, his native country, by such means as are within the reach of anyone. On account of the haste in the departure of the accused from Manila, where he had to meet several pecuniary liabilities within a few days, he did not buy a draft payable to the bearer in lieu of said bills.

Even if it were true that the company had more funds than it needed to meet its obligations after the hasty departure of the accused, this fact could in no way justify the deceitful behavior of the latter in taking with him a large amount of money upon leaving under a false pretext; and in view of the antecedents and of other merits connected with these proceedings, it was not to be expected that the accused would return to the Philippines unless compelled, as he has been, by the authorities by virtue of extradition proceedings.

The best proof that Juan Montaner had committed the crime of estafa is the concurrence of the two indispensable elements for the existence of such crime in the complex acts performed by him, such as the deceit with which he proposed to defraud his partners and creditors, and the damage occasioned to the firm of which he was the manager.

The deceit is manifest from the moment when he promised Jose Pichel to show him the books in the city of Manila and to produce a balance sheet of the company's accounts at a time when he had already made up his mind to leave for Hongkong with the proceeds of the abaca he had sold on behalf of the company, so that Pichel was surprised when he reached this city at not finding the accused, and even more so upon learning that he had gone to Hongkong for a purpose of which he was ignorant. The accused acted also with deceit and bad faith by concealing

both from Pichel and from the husband of his other partner, Magdalena Gonzalez, that he had collected 14,000 odd pesos for the abaca and that he had the money in his possession when leaving in a great hurry for said foreign port on the day after he arrived at this city from Jolo. He likewise acted with deceit when stating to Enrique Gonzalez, the husband of his said partner, that he intended to buy a steamer in Hongkong for a company in Jolo, a fact which turned out to be utterly false, as it has been seen.

The damage caused to the partners Magdalena Gonzalez and Jose Pichel, or to the association, is unquestionable for the reason that they were deprived of the sum of 14,000 pesos belonging to the firm of Montaner & Co. Therefore, as soon as it was made public that the manager of the firm had departed, carrying with him most of the company's funds, actions were entered against the partners owing to the collective nature of their partnership, thereby injuring them in their private interests.

Hence, in appropriating the said sum, the aforesaid two elements which constitute the crime of estafa—namely, deceit and fraud or the intent to commit the latter—are present, the same being indispensable to the consummation of the said crime according to the precedents established by the decisions of January 8, 1884, and November 14, 1886, and by several other decisions of the supreme court of Spain when applying the provisions of the Penal Code, which is similar to the one in force in these Islands.

As to the result of the settlement of accounts of the firm, and as to the ultimate agreements entered into between the accused and his partners, such subsequent acts in no way affect the existence of the crime, because the effect of the contracts or compromises entered into between the parties for the purpose of securing the civil liability can not alter or otherwise affect the nature of a well defined crime, and, furthermore, because estafa is a public crime which should be prosecuted de oficio and punished, notwithstanding the fact that the offended party' has been reimbursed, no compromises and stipulations which are only available in civil actions being admissible in connection with criminal matters, according to the precedents established by the decisions of February 19, 1879, February 15, 1884, and February 9, 1885.

It is to the public interest that every crime should be punished, and, even where the offended party has expressly waived indemnity, it is the duty of the public prosecutor to institute criminal proceedings for the punishment of the guilty. (Arts. 17, 23, and 133 of the Penal Code; arts. 234, 239, 240. et seq. of the Revised Compilation of 1880, and arts. 100, 106 et seq. of the Law of Criminal Procedure of 1882.) The last two laws of procedure are cited because they contain legal doctrines that are not opposed to the law of criminal procedure now in force.

Considering that in the commission of the crime no extenuating nor aggravating circumstance is present, and that abuse of confidence is an element inherent to the crime of estafa, the adequate penalty should be imposed upon the guilty person in its medium degree.

Therefore, in view of the considerations above set forth, the accused, Juan Montaner, should be sentenced to two years imprisonment (presidio correccional), to the accessory penalties of article 58 of the Penal Code, to make restitution to the firm of Montaner & Co. of the sum of 14,000 pesos embezzled, and such portion of said sum as may result from the liquidation, and in case of insolvency, to suffer subsidiary imprisonment, which shall not, however, exceed one third of the principal penalty, and to pay the costs in both instances, the judgment appealed from being thus partly affirmed and partly reversed, in accordance herewith. So ordered.

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

Johnson, J., dissents.

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