

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARCIANO VENTURA, DEFENDANT AND APPELLANT.

*G. R. No. 35194. August 27, 1931*

Ponente: IMPERIAL, J.

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### IMPERIAL, J.:

The accused Marciano Ventura appealed from the judgment of the Court of First Instance of Rizal convicting him of the crime of estafa and sentencing him to two months and one day of *arresto mayor*, besides the indemnity and accessory penalties of the law applicable to his case, and, as an habitual criminal, to the additional penalty of sixteen years.

The relevant allegations of the information filed by the fiscal are as follows:

"That on or about the 16th day of May, 1930, in the municipality of Makati, Province of Rizal, Philippine Islands, and within the jurisdiction of this court, the said accused, Marciano Ventura y Javier (alias Macario Villanueva) (alias Marciano V. del Rosario), through false representations and pretending himself to be an agent of the firm I. Beck, Inc., received the sum of P21.70 from Adriano Miralles as the first partial payment for a phonograph case which the said Adriano Miralles purchased from I. Beck, Inc., through the representation of the herein accused, and once in possession of the said sum of P21.70, did then and there willfully, unlawfully, and feloniously, and with intent to defraud the said Adriano Miralles, embezzle and apply to his own personal use and benefits the said amount of P21.70, to the damage and prejudice of the said Adriano Miralles in the aforesaid sum, equivalent to 107 1/2 pesetas.

"That the herein accused is a habitual delinquent under the provisions of Act No. 3397 of the Philippine Legislature in that he has been six times convicted of the same crime by virtue of final judgment handed down by competent courts, having been released from jail on September 22, 1929.

"Contrary to law."

A careful study of the evidence presented at the trial shows that some days before the date mentioned in the information, the appellant, an acquaintance and friend of the offended party, had offered to sell the latter a cabinet or gramophone case of the kind sold by I. Beck & Co. for P21.70. The offended party, who had on a prior occasion bought several gramophone records of the appellant, told the latter that he had no money at the time, but that he would buy one as soon as he had the funds. The appellant had passed himself off in all these transactions as an agent of I. Beck & Co. On May 16, 1930, in the municipality of San Pedro Makati, Province of Rizal, the offended party, having sufficient funds, sought the appellant and told him he had decided to buy the cabinet. The appellant then replied that they would carry through the sale, and delivery would be made shortly. The offended party, not knowing the appellant very well and being in some doubt, required that the receipt for the price be made out in the presence of the municipal president of Makati. They went to the office of the latter and in his presence the offended party delivered to the appellant the sum of P21.70 agreed upon. The municipal president prepared a receipt and required the appellant to sign it. The receipt was marked Exhibit A by the prosecution and reads as follows:

"I hereby acknowledge receipt of the amount of P21.70 from Mr. Adriano L. Miralles, resident of the barrio of Tejeros, municipality of Makati, Province of Rizal, Philippine Islands, as a deposit for the sale of a gramophone cabinet of the firm I. Beck & Company, Inc., of which the undersigned is an authorized selling agent.

"Makati, Rizal, May 16th, 1930.

(Sgd.) "MARCIANO VENTURA

"Witness:

(Sgd.) "MAXIMO PAULINO"

It was stipulated that the appellant would deliver the gramophone cabinet to the injured party on the following day, but neither on that date nor on any other did he comply with his promise or return the money he had received, for which reason the offended party was obliged to institute the instant criminal action.

The appellant assigns the following alleged errors to the judgment appealed from:

"I. The court a quo erred in considering Exhibit A as a receipt for deposit of the sale of one box of phonograph and not as a mere receipt of debt.

"II. The court a quo erred in condemning the herein accused-appellant guilty of the crime charged beyond all reasonable doubt."

Both errors deal with the sufficiency of the evidence presented by the prosecution. We have stated at the beginning that the facts proved establish the appellant's guilt beyond a reasonable doubt. It cannot be disputed that the latter passed himself off as an agent of I. Beck & Co. and pretended to be in possession of a cabinet or gramophone case, because of which, the offended party agreed to purchase it, paying and delivering to the appellant, as in fact he did, the sum of P21.70. It is likewise beyond question that neither on the date stipulated nor upon any other subsequent date did the appellant deliver the article he had sold, or return the price he had received. With reference to Exhibit A, it is clearly not an acknowledgment of a debt but that the appellant had received the money as the price of the article he had sold. It follows that the two errors assigned to the judgment appealed from are groundless. So far as the evidence of the defense is concerned, the trial court did not err in refusing to rely upon it, for it has failed to overcome that adduced by the prosecution.

There is a controversy in regard to the additional penalty imposed by the trial court for the reason that the appellant is an habitual criminal. The record shows that the latter was convicted and sentenced to imprisonment by the municipal court of Manila, for the crime of estafa in the following cases: In No. B-58022 he was convicted on September 15, 1918, committed to prison on the 20th of that month, and released on January 19, 1919; in No. B-57987, he was convicted on September 20, 1918, committed to prison on the same day and released on January 19, 1919; in No. F-56664 he was convicted on September 12, 1927, committed to prison on September 13, 1927, and released on June 11, 1928; in No. E-52856 he was convicted on September 17, 1927, committed to prison on September 13, 1927, and released on June 11, 1928; in No. E-96891 he was convicted on July 15, 1929, committed to prison on July 16, 1929, and released on September 22, 1929; and in No. E-96892 he was convicted on July 15, 1929, committed to prison on July 16, 1929, and released on September 22, 1929.

The trial court found the accused guilty simply of estafa and sentenced him to two months and one day of arresto mayor, with the accessories, indemnity and costs, and as an habitual criminal held that his first two convictions could not be counted because his conviction and release took place more than ten years immediately preceding the date on which he was last found guilty of estafa, and considering only that he had been Convicted in the remaining cases, imposed upon him the additional penalty of sixteen years' imprisonment in accordance with

subsection (c) of section 1, Act No. 3586, amending Act No. 3397.

The defense does not question in his brief the propriety of the additional penalty because, as heretofore stated, counsel contends that the appellant should be acquitted. But the Attorney-General contends that in accordance with Act No. 3586, the six prior convictions of the accused should be taken into consideration, although, following the rule laid down in *People vs. Santiago* (55 Phil., 266), and *People vs. Be la Cruz* (G. R. No. 33786, promulgated February 7, 1931 ),<sup>[1]</sup> said six prior convictions are to be considered as equivalent to only three.

In accordance with section 1 of Act No. 3586, the appellant's six prior convictions must be taken into account, since the last, which took place on July 15, 1929, is included within the ten years next preceding the date on which he was last convicted, that is, February 21, 1931. This court has so uniformly held whenever the question has been raised. But following the doctrine laid down in the *Santiago* and *De la Cruz* cases, *supra*, these six prior convictions must be considered as equivalent to only three, because the accused committed the second crime before his first conviction, and the fourth before his third conviction, and because the fifth and sixth crimes were committed on the same day. So that the present conviction being the fourth sustained by the appellant in this cause, the case falls within subsection (b) of section 1 of that law. With respect to the nature of the crime last committed, the same must be considered as qualified estafa according to article 536 of the Penal Code. The penalty provided for this crime is *arresto mayor* in its minimum and medium degrees according to case 1, article 534, as amended by section 2 of Act No. 3244; but according to article 536 the penalty must be raised one degree because the accused has been more than twice a recidivist, and the proper penalty is *arresto mayor* in its maximum period to *presidio correccional* in its minimum degree, and the medium degree of this penalty is one year and one day to one year and eight months of *presidio correccional*.

Wherefore the judgment appealed from is modified and the accused-appellant is sentenced to one year and one day of *presidio correccional*, to indemnify the offended party in the amount of P21.70, with subsidiary imprisonment in case of insolvency, the accessory penalties of article 58 of the Penal Code, and to the additional penalty of ten years' imprisonment as an habitual criminal, besides the payment of the costs of both instances. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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[1] Not reported.

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