

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

G. R. No. 3625. August 19, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the 19th of June, 1906, the following complaint was filed by the prosecuting attorney in this case:

"The undersigned accuses Joaquin Celis of the crime of estafa committed as follows:

"That on or about the 16th 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 one check, No. 5269, of the Chartered Bank of India, Australia and China, for five hundred and two pesos and fifty centavos (P502.50), Philippine currency, payable to Findlay & Co. or bearer, signed by Miguel Velasco, of the value of five hundred and two pesos and fifty centavos (P502.50), Philippine currency, then and there received by the said Joaquin Celis, under the duty and obligation to deliver it to Findlay & Co., a co-partnership duly registered in accordance with the laws of the Philippine Islands, who were the owners of the same; and to the damage and prejudice of the said Findlay & Co. in the sum of five hundred and two pesos and fifty centavos (P502.50), Philippine currency, equivalent to two thousand five hundred and twelve pesetas and ten centavos (2,512.10 pesetas), All contrary to law."

The case having been tried upon the said complaint, judgment was rendered on the 28th of July, 1906, the accused being sentenced to imprisonment for four months and one day, to refund to Findlay & Co. the sum of P502.50, Philippine currency, and to pay the costs, and, in case of insolvency, to suffer subsidiary imprisonment according to law. From the said judgment the accused has appealed to this court.

According to the proceedings in this case, it appears to have been fully proven that on a certain day in the month of January, 1906, the accused, being then and there a clerk and bookkeeper in the insurance department of the commercial firm of Findlay & Co., did receive check No. 5269, issued on January 16, aforesaid, by Miguel Velasco, in favor of Findlay & Co. or bearer, and drawn on the Chartered Bank for the sum of P502.50, in payment of a premium upon a policy of insurance on a property of the drawer; and the accused after entering the amount of the check in the book under his charge, as it was his duty to do, failed to deliver the same or the amount thereof to the cashier, as he ought to have done, but converted it to his own use. He purchased jewelry at the store of Pascual Canonico, established in Calle Carriedo, to the extent of P102.50, for which he paid with part of the proceeds of the check, and received the balance in cash and a check for P300 on the Hongkong Bank, which was cashed in the latter bank.

The accused did undoubtedly appropriate the value of the check for P502.50 issued by Velasco, and converted it to his own use to the prejudice of Findlay & Co., because the fact that the entry made in the books of the firm is in his handwriting, the statement of Pascual Canonico, who confirmed the purchase of jewels made at his store by the accused, who paid for them with part of the appropriated check indorsed by the accused, who at once

recognized his signature, the statement of Archibald W. Nicol, and other facts, fully prove his guilt as author of the crime of estafa, notwithstanding his plea of not guilty.

This crime is embraced in article 535, No. 5, and punished by article 534, No. 2, of the Penal Code, and as no extenuating nor aggravating circumstance is present the adequate penalty should be applied in its medium degree.

Both from the complaint and from the evidence introduced in the case, it clearly appears that the crime was committed and consummated in the territorial jurisdiction of the city of Manila, within the limits of which are situated the places wherein the accused received, appropriated, and converted to his own use the value of the aforesaid check No. 5269, for which reason the allegation made by the accused that the judgment is null is entirely unfounded. The jurisdiction of the trial court is manifest from the facts in the case.

Moreover, the motion alleging the nullity of the judgment because of lack of jurisdiction on the part of the judge, the place of the commission of the crime not being stated in the complaint, not having been presented in the court below, it can not be considered by this court, following the doctrine of *Mortiga vs. Serra and Obleno* (5 Phil. Rep., 34), which judgment was confirmed by the Supreme Court of the United States.

Therefore, considering that the judgment of the lower court is in accordance with the law and the merits of the case, the same should be affirmed, provided, however, that the accused Joaquin Celis shall be sentenced to six months of *arresto mayor*, to the accessory penalties of article 61 of the Penal Code, to refund to Findlay & Co. the sum of P502.50, Philippine currency, and, in case of insolvency, to suffer subsidiary imprisonment, which shall not exceed one-third part of the principal penalty, and to pay the costs. So ordered.

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

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