

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

G. R. No. 3626. August 21, 1907

Ponente: TORRES, J.

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TORRES, J.:

On September 4, 1905, in this city of Manila, Jose T. Paterno issued check No. 76863 on the International Bank to the order of Findlay & Co., or bearer, for the sum of P251.26. Said check, produced at the trial as "Exhibit A" and issued to cover the premium of an insurance policy on a dwelling house, owned by Paterno and his brothers, and situate on Calle Escolta, was delivered to and received by the accused, in his capacity of bookkeeper and clerk of the insurance department of the commercial firm of Findlay & Co. The accused made the corresponding entry, in the book kept by him, of the amount of the above-mentioned premium; but instead of delivering to the cashier of the firm the check in question or the amount thereof, he indorsed said check to E. M. Bachrach, who in his turn cashed it in the International Bank, which corporation entered the value thereof against the current account of the maker.

The public prosecutor filed a complaint, dated June 19, 1906, based on the above facts, charging Joaquin Celis with the crime of estafa, and the judge, in view of the evidence produced at the trial, sentenced him to four months and one day of imprisonment, to the return of the money, and to the payment of the costs of the trial, and, in case of insolvency, to the corresponding subsidiary imprisonment. From said judgment the accused has appealed.

It was thoroughly established at the trial that, having been the only person who entered in the books of Findlay & Co. the amount of the check in payment of the premium of an insurance policy, and having indorsed said check with his signature to E. M. Bachrach, in partial settlement of his indebtedness to the latter, the accused was the only one who received, appropriated to his own use, and profited by the value of the check, to the prejudice of Findlay & Co., which firm had intrusted the accused with the receiving of money for insurance premiums, thereby defrauding his employers and abusing the confidence reposed in the accused by said commercial firm.

The foregoing facts constitute the essential elements of the crime of estafa as provided for and punished by paragraph 2 of article 534, and paragraph 5 of article 535, of the Penal Code, of which crime the accused was convicted as its sole principal, for having taken a direct part in the execution of the criminal act. On account of the absence of extenuating and aggravating circumstances he must, therefore, be punished with the medium degree of the penalty prescribed by law. He is also liable for the value of the sum unlawfully appropriated, inasmuch as article 17 of the Penal Code provides that every person criminally liable for a crime or misdemeanor is also civilly liable and pursuant to the provisions of article 119 of the same code the liability includes restitution, reparation for the damage caused, and indemnification for damages and losses, together with the subsidiary imprisonment in case of insolvency prescribed by articles 50 and 51 of the code.

In regard to the only allegation made by counsel for the defense, to the effect that the judgment appealed from should be vacated on account of lack of jurisdiction of the trial judge because the place of the commission of the

crime was not expressed in the complaint, taking into consideration the fact that the crime which is now the object of this decision is one of several such offenses committed by the accused, we follow the principles laid down in recent decisions rendered by this court in cases Nos. 3625 [1] (5 Off. Gaz., 634), 3627 [2] (5 Off. Gaz., 633), and 3363 [3] (5 Off. Gaz., 632), in which this same party, Joaquin Cells, was convicted of estafa.[4]

The judgment appealed from having been rendered in conformity with the law and upon the merits, we affirm said judgment, it being nevertheless understood that Joaquin Celis is to be imprisoned for a period of four months and one day of arresto mayor, to return to Findlay & Co. the sum of P251.26, and in case of insolvency to serve the corresponding subsidiary imprisonment, not to exceed one-third of the time of the principal penalty, and to pay the costs. So ordered.

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

[1] Page 394, supra.[2] Page 385, supra.[3]Page 378, supra.[4]A similar case, No. 3624, in which the defendant was also convicted, was decided august 21, 1907. (5 Off. Gaz., 572.)

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