

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LAUREANO RODRIGUEZ, DEFENDANT AND APPELLANT.

G.R. No. 3661. November 06, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the 4th of October, 1906, a complaint was filed by the provincial fiscal of Sorsogon with the Court of First Instance of said province accusing Laureano Rodriguez of the crime of estafa, committed as follows:

"That from January, 1904, to March, 1906, Laureano Rodriguez was employed as agent or clerk with a fixed salary, by the copartnership Herranz & Garriz, in their business in the municipality of Bacon, Province of Sorsogon, P. I.

"That the said Laureano Rodriguez as such clerk or agent of Herranz & Garriz, a copartnership established at Sorsogon, Sorsogon, P. I., received money and goods from the said firm for the business carried on by them in Bacon.

"That the said Laureano Rodriguez without authority therefor appropriated and converted to his own use the sum of P3,667.26, the same being the proceeds of goods sold and money received from Herranz & Garriz for commercial purposes, and which he should have so employed or otherwise returned to the said Herranz & Garriz. "That the said Herranz & Garriz have been defrauded in the sum of P3,667.26, which they have not recovered up to the present date, and that the said Laureano Rodriguez did, willfully, feloniously, and with intent of fraud and gain, convert the same to his own use without authority therefor from the owners of the money, Herranz & Garriz, and falsified the books kept by him, and the accounts submitted to Herranz & Garriz, in order that the latter might not discover the fraud and deceit, employing said means for the embezzlement of the aforesaid amount.

"That Laureano Rodriguez did willfully, unlawfully, and maliciously commit all the aforesaid acts in Bacon, Sorsogon, P. I., the same being contrary to law, wherefore he is accused of the crime of estafa, defined and punished under the Penal Code."

Proceedings having been instituted by reason of the foregoing complaint, judgment was entered by the court on the 31st of October, 1906, sentencing the accused to the penalty of two years eleven months and ten days of presidio correccional, to suffer the accessory penalties, to indemnify the firm of Herranz & Garriz in the sum of P1,500, and to pay the costs. From said judgment the accused appealed.

It was conclusively proved at the trial of this case that the accused, Laureano Rodriguez, as the representative and agent of Herranz & Garriz, a firm of merchants established at the capital of Sorsogon, took charge of the branch office of the said firm in Bacon in January, 1904, and left their service on the 13th of March, 1906; that as compensation for his services he was allowed a yearly salary of P2,000 until the end of the year 1905, when it was reduced to P1,500; that it was his duty to purchase abaca [hemp] for account of his principals, to sell the goods forwarded to him by the firm at the price fixed by the latter, and to render a monthly account of all the transactions made, submitting transcriptions from the books and accounts of the branch office with a statement of

debtors to the firm; that during the twenty-six months he acted as agent of the said firm he submitted an equal number of monthly accounts, and in none of them does the name of his wife, Fortunata Confesor, appear as one of the firm's debtors, whereas it did appear in one of the books which the accused exhibited to the examiner, in which the said wife of Rodriguez is recorded as debtor in the sum of P558.56; and upon investigation it further resulted that the accused stated in his monthly accounts and list of debtors sums and balances different from those entered in his books; and by reason of the errors and irregularities discovered in his accounts he was relieved from office on the 13th of March, 1906, and when making delivery under inventory, of the goods kept at the branch office, there remained, from the accounts rendered by him, a balance of P4,049.70 due by him, which sum he declared by the document executed by him on the 13th of March, 1906, he had disposed of as the agent of the injured firm, engaging, however, to pay the same whenever so requested by the creditors, or whenever he possessed property of any kind; and it was further ascertained that the sum of P1,500 was included in said shortage, which the accused confessed to having remitted to Spain in order to pay debts there contracted by his family; and that at the branch office under the charge of the accused there were two stores, one belonging to the firm and a separate one managed by his said wife, and that goods were taken from the one for sale in the other, and also money from the one to be paid by the other, thus causing a great confusion in the accounts between both stores.

From the facts above stated the existence of the crime of estafa and the culpability of the accused are established, since it is proven that Laureano Rodriguez, upon taking charge of the branch office of Herranz & Garriz in the town of Bacon, received money to be invested in the purchase of abaca, and also received goods for sale with the respective prices marked thereon, with the precise obligation of rendering monthly account of the transactions carried out, and failing to properly comply with said obligation as imposed by the head office, upon being relieved on the 13th of March, 1906, and being compelled to render final accounting of the goods and moneys which he had received, it was found that he was short in the sum of P4,049.70, which, according to the document executed by the accused and by his own confession, he had disposed of without the knowledge or consent of the owners thereof, and to the prejudice of the latter; the record further discloses that the accused paid debts of his own to the extent of P1,500 with money belonging to the firm, and delivered money and goods of the same to his wife, Fortunata Confesor, who employed them in the business carried on by herself in a separate store from that managed by her husband, and the latter, in order to conceal his fraudulent doings, made false entries in his books and in the accounts forwarded to the firm. All of said charges having been duly proven, they establish the truth of the accusation and the liability of the accused as the author of the crime of estafa.

No clear and conclusive evidence is offered in the case to prove that the accused had appropriated or misapplied the whole of the amount stated, which, according to document, "Exhibit 8," he offered to pay, and that the disappearance of said amount was due to the purpose or criminal intent to appropriate or misapply it to the prejudice of Herranz & Garriz; on the contrary, the shortage might be attributed to oversight, to errors, or to carelessness or lack of diligence, as well as to other accidents, without voluntary action or omission on the part of the person who is liable for the payment thereof. But it can not be doubted that the accused disposed of or misapplied for his own benefit the sum of P1,500, which he used in paying debts without authority from his principals, an object which is quite different from the intention of the owners of the money when the same was delivered to him; therefore, the crime of estafa defined and punished under articles 534 (2), and 535 (5) of the Penal Code has been committed by him.

The accused pleaded not guilty, although he admitted having received money and goods from Herranz & Garriz for the purposes already mentioned, and notwithstanding his allegations, which have not, however, been satisfactorily proven, the evidence adduced in the proceedings produce in the mind a full conviction of the guilt of the accused who, at least, is criminally liable for the embezzlement of P1,500 invested in the payment of family

debts; the nature of the crime committed is not modified or altered by the promise of payment made to the prejudiced parties, for the reason that acts subsequent to any crime, and agreements entered into after its commission, do not affect its existence nor the liability of the author thereof, inasmuch as the effects of such agreements for the purpose of insuring civil responsibility can not destroy the criminal liability with respect to a public crime which, according to the well-established rule, must be punished, although the prejudiced party may have been reimbursed for the loss that he sustained.

In the commission of the crime at bar no aggravating or mitigating circumstance is present, the abuse of confidence being inherent in the crime of estafa. For the foregoing reasons the judgment appealed from should be affirmed, provided, however, that Laureano Rodriguez shall only be sentenced to two years of presidio correccional, to suffer the accessory penalties of article 58, to indemnify the firm of Herranz & Garriz in the sum of P1,500 or in case of insolvency to suffer the corresponding subsidiary imprisonment not exceeding one year, and to pay the costs. So ordered.

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

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