

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. KAW LIONG (ALIAS CO KING LIONG, KO LIONG, KING LIONG, KING BIO, CO LIONG), AND YU SIONG (ALIAS YU HAM BIN), DEF...

G.R. No. 36862. February 13, 1933

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

The appellant in this case and another by the name of Yu Siong, were accused in the municipal court of the City of Manila of the crime of estafa committed, according to the information, as follows:

"That on or about the 13th day of April, 1931, in the City of Manila, Philippine Islands, the said accused, conspiring and confederating together and helping each other, did then and there willfully, unlawfully and feloniously defrauded the Sun Photo Supply, a concern organized and doing business in said city, and its owners, in the following manner, to wit: the said accused, by stating and representing themselves to the employees of said Sun Photo Supply to the effect that they were merchants with credit, business and means with which to pay for 10 dozen rolls, Kodak film No. 116 valued at P72, and that they would pay cash on delivery thereof at their place of business at Calle Nueva of said city, and by means of other similar deceits, when in truth and in fact, as the said accused well knew, said statements and representations were false, succeeded in inducing the employees of said Sun Photo Supply to give and deliver, as in fact the latter gave and delivered to said accused the above-mentioned goods and merchandise, and the said accused once in possession thereof, willfully, unlawfully and feloniously disappeared and absconded themselves with the said goods and merchandise and misappropriated, misapplied and converted the same or the value thereof, to wit: P72 to their own use and benefit, to the damage and prejudice of said Sun Photo Supply and its owners, in the aforementioned sum of P72, Philippine currency, equivalent to 360 pesetas.

"That the said accused Kaw Liong alias Ko Liong alias Co King Liong alias King Bio alias Co Liong has heretofore been convicted by virtue of final judgments rendered by competent courts, eleven times of the crime of estafa, five times of theft and three times of attempted theft, and is therefore an habitual delinquent under the provisions of Act No. 3586 of the Philippine Legislature, his last sentence as yet not having been served by him, inasmuch as his last conviction being under date of on or about October 3, 1931, for a term of imprisonment of sixteen months and three days."

The municipal court found the two defendants guilty and sentenced them accordingly. The appellant herein appealed to the Court of First Instance where, after due trial, he was again found guilty of the crime charged and sentenced to three months and one day of arrest mayor and to suffer an additional penalty of ten years and one day of prision mayor, being a habitual delinquent, and to indemnify the Sun Photo Supply in the sum of P72, with subsidiary imprisonment in case of insolvency and to pay the costs. From this judgment this appeal was taken.

After a review of the evidence presented in the case, the appellant's attorney de oficio states in his brief that he finds no ground to ask for the acquittal of the appellant. We are satisfied that the evidence of record fully

establishes the guilt of the appellant. The only question which arises is as to the appropriate penalty to be imposed. The accused admitted having been convicted eleven times of the crime of estafa, five times of theft and three times of attempted theft. The record shows that the defendant was convicted of the crime of estafa once on August 29, 1927, eight times on September 2, 1927, and once on August 28, 1931. He was also convicted of the crime of theft once on September 13, 1927, twice on September 11, 1931, and twice on September 12, 1931. Of attempted theft, he was convicted once on October 3, 1931. In *People vs. Santiago* (55 Phil., 266); *People vs. De la Cruz*, G. R. No. 33786,[1] and *People vs. Ventura* (56 Phil., 1), we held that convictions taking place on the same day should be considered equivalent to one. It follows that the appellant must be held to have had seven convictions of the crime of estafa, theft and attempted theft, and, pursuant to paragraph (d), section 1 of Act No. 3397, as amended by Act No. 3586, the accused should be sentenced to an additional penalty of not less than twenty-one years nor more than thirty years' imprisonment. (*People vs. Hipolito*, G. R. No. 30735.)[2] Consequently, the judgment of the lower court must, and is hereby, modified by sentencing the appellant to three months and one day of arresto mayor, and to suffer an additional penalty of twenty-one years of imprisonment.

Modified as above stated, the judgment appealed from is affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Street, Ostrand, and Butte, JJ., concur.

[1] Promulgated February 7, 1931, not reported.

[2] Promulgated October 21, 1929, not reported.

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