

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. MACARIA RAMIREZ, DEFENDANT AND APPELLEE.

G.R. No. 3796. October 17, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the 11th of December, 1906, a written information was presented by George W. Walker accusing Macaria Ramirez of the crime of estafa committed as follows:

"That on or about the 15th day of April, 1906, in the city of Manila, P. I., the said Macaria Ramirez did then and there willfully, unlawfully, feloniously, with intent of gain, and without the consent of the owner thereof, appropriate and convert to her own use P65, the property of George W. Walker, then and there received by and in the hands of the said Macaria Ramirez for the purpose of buying fish and using the said sum in the business of buying and selling fish in the said city of Manila and under the obligation then and there to account for and deliver the said sum of P65, or the proceeds thereof either in money or property of the said business to the said George W. Walker; to the damage and prejudice of the said George W. Walker in the sum of P65, equivalent to and of the value of 325 pesetas. All contrary to law."

Proceedings having been instituted by virtue of the foregoing complaint, the accused pleaded not guilty, and on the 28th of December her lawyer demurred thereto on the ground that the facts stated in the complaint did not constitute the crime of estafa and asked that the case be dismissed and the accused acquitted, with the costs de oficio. The prosecuting attorney, however, moved that the demurrer be overruled, alleging that the complaint had been filed in accordance with paragraph 5 of article 535 of the Penal Code, and cited the case of the United States vs. Mateo Perez (1 Phil. Rep., 203), a case similar to the present one, wherein, a demurrer having been considered by the court below, the Supreme Court revoked the decision appealed from in view of the fact that the charge made in the complaint constituted, under the law, a crime and contained all the elements which constitute the crime of estafa; and that, if the accused had actually appropriated the money received and did not return it when requested to do so, the demurrer should be overruled and the accused obliged to answer the complaint.

The lower court, however, by an order dated January 16, sustained the demurrer because the commission of the crime had not been proven and because the accused had not been given an opportunity to render accounts or to return the money as required. From said decision the prosecution appealed to this court. Article 535, No. 5, of the Penal Code provides:

"Those who, to the prejudice of another, shall appropriate or misapply any money, goods, or any kind of personal property which they may have received as a deposit on commission for administration or in any other character producing the obligation to deliver or return the same, or who shall deny having received it."

The appropriation or conversion of money, among other personal property, received on deposit, on commission, for administration, or in any other character, producing the obligation to return it, constitutes the crime of estafa, the two essential elements of which are deceit and fraud or the intent to commit the same.

The accused, Macaria Ramirez, received from George W. Walker on or about the 15th day of April, 1906, the sum of P65 for the purpose of investing the same in the business of buying and selling fish in this city, under the precise obligation to account for the sum received, and as, notwithstanding the lapse of seven months and twenty-seven days, the accused did not account for the money received nor produce the fish which she ought to have bought with the said P65, it can not be denied that George W. Walker, the owner of the money, has been deceived and is the victim of fraud, because he was fraudulently deprived of the said sum to his damage and to the prejudice of his interests.

George W. Walker did not deliver the P65 to Macaria Ramirez as a gift or present in order that she might dispose of the same at will. She received the money for the purpose of using it in the business of buying and selling fish, and when seven months and some days transpire without the appearance of the fish or of the money which according to the accused was to have been invested therein, it becomes evident that Ramirez acted with deceit and bad faith to the prejudice of Walker, and that, therefore, the acts stated in the complaint have been committed and they constitute the crime of estafa. And if it is true, as alleged by the defense, that the accused had not appropriated the money received by her, but supposing that it was used in the purchase of fish, the latter should have been sold at once, and in such case it can not be denied that the proceeds of the sale remained in the hands of the accused, Ramirez, who managed the business, and, from the fact that she did not return the money to the owner thereof, as it was her duty to do, she has appropriated the same, because the said sum of P65 was delivered to her not in order that she might convert it to her own use but to be returned after the business for which the money was intended had been transacted.

The consummation of the crime of estafa—that is, the fraudulent appropriation of the said P65—does not depend on the fact that a request for the return of the money is first made and refused in order that the author of the crime should comply with the obligation to return the sum misapplied. The appropriation or conversion of money received to the prejudice of the owner thereof are the sole essential facts which constitute the crime of estafa, and thereupon the author thereof incurs the penalty imposed by the Penal Code.

For the foregoing considerations there was no legal reason whereby the exception to the complaint should have been considered, and the court below should have overruled the same and ordered that the case be proceeded with. Therefore; in view of the provisions of section 44 of General Orders, No. 58, it is our opinion that the judgment, dated January 16, this year, appealed from must be reversed and the demurrer overruled. Let the cause be remanded to the court from whence it came, with instructions to proceed accordingly, and that judgment be entered in conformity with the law, with the costs de oficio. So ordered.

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

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