

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MANUEL DA SILVA, DEFENDANT AND APPELLANT.*G.R. No. 3857. January 28, 1908*

Ponente: TORRES, J.

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On the 3d of October, 1906, the accused, Manuel Da Silva, presented himself at the store of Chinaman Uy Yan, situated in Calle del Rosario, in the district of Binondoy Manila, with a memorandum of goods that he desired to secure, but the Chinaman not knowing him, showed the said memorandum to his agent, Julio Danon, who at the time was in the shop; thereupon the latter told the accused that, as he was not known to them, the goods, which consisted of paints, cement, sheets of iron, and other things, could not be delivered to him; the accused, Silva, then stated to them that he was a partner with the merchant Carlos Pombo, and was authorized by the latter to buy merchandise and sign for him in view of this statement, Danon and the Chinaman told him to bring in a vale signed by the said Pombo and they would then deliver the goods to him. Silva then asked them to get the goods ready, as lie would return at once with the vale, and, in fact, within an hour he returned with a vale bearing date of October 3, 190G, calling for several articles, signed by him and stamped with the name of Carlos Pombo. This is the same document offered by the prosecution as Exhibit A.

By virtue of the said vale, the goods stated therein were delivered to the-accused who informed Chinaman Uy Yan and Julio Danon, that if at any time or on Saturdays, before the 3d of November, the day appointed for the payment of the price of the goods taken by him, they needed any money, they might call for it.

A few days after the goods were taken, Danon saw the accused and asked him whether he could pay some money on account. The accused then offered to pay him 300 within two or three days, but as the offer was not fulfilled, Julio Danon went in search of Carlos Pombo, and upon finding him after a few days asked him if he could pay the 300 offered by his partner; Pombo replied that he knew nothing regarding the vale, nor had any such goods been asked for by him, and that he was altogether ignorant of the matter. For this reason Danon again sought the accused who, upon being informed of Pombo's reply requested Danon not to see Pombo again, and promised that within twenty-four hours he would pay part of the value of the goods, and would produce security for the payment of the balance of the account, and, in addition, he addressed to Julio Danon the note which appears at folio 52 marked as "Exhibit B," promising to pay the value of the said goods. The offer was not, however, fulfilled nor was the security promised ever produced.

The goods were worth from P800 to P850, and belonged to the said Chinaman Uy Yan. The result of the investigation was that Carlos Pombo denied that he was a partner of the accused and also denied that he had ever authorized him to use the stamp with his name on the document marked "A," which does not coincide with the stub of the book in his office which was offered in the evidence at the trial, folio 20 of which shows that a vale for 60 pounds of ice was issued on the 30th of September, 1900; Pombo testified further that he had never seen the goods enumerated in the vale (Exhibit A,) which goods, valued at 736, have not been returned nor has the price thereof ever been paid to the owner.

A complaint having been filed by reason of the foregoing, charging Manuel Da Silva with the crime of estafa, the corresponding proceedings were instituted, and the judge rendered judgment on the 31st of October, 1906, sentencing him to the penalty of four months and one day's imprisonment, to return to Chinaman Vy Yan the merchandise that was delivered to him or otherwise to pay 736, the value thereof, and, in case of insolvency, to suffer subsidiary imprisonment, and to pay the costs. From this judgment the accused has appealed.

The facts stated above, duly proven in this case, constitute the crime of estafa defined and punished under articles 534, No. 2, and 535, No. 1, of the Penal Code, the latter of which articles is of the following tenor:

"The-following shall incur the penalties of the preceding articles:

"1. He who shall defraud others by using a fictitious name, by assuming fictitious power, influence, or attributes, or by pretending to possess imaginary property, credit, commission, enterprises, or business, or by using any other similar deceit that is not one of those mentioned in the following cases."

The accused, Silva, who was not known to Chinaman Uy Yan or to Julio Dan on, in order to obtain the goods enumerated in the vale marked "A," made use of false representations, attributing to himself deceitfully and with bad faith the character of a partner of Carlos Pombo, a well-known merchant of this city; also further alleging that lie was authorized by the latter to sign his name, all of which Avas untrue. By means of said fraudulent statement, and of the document marked "Exhibit A," which is a vale with some printed letters and a No. 20 in figures, the goods he intended to obtain being stated in writing, the accused obtained the merchandise from the store of the offended party. The value of the goods was to have been paid on the 3d day of November, or one month after the date of the said vale; payment, however, was not effected. Such deceitful conduct unquestionably presents the characteristics of the crime of estafa as defined by said article 535, No. 1, inasmuch as the accused, instead of delivering to Carlos Pombo the goods taken from the store, sold them to C. Gomez who in his turn disposed of them to Agapito Zialcita; and, in the meantime, the accused kept the representative of Uy Yan waiting with promises of payment which were never fulfilled, nor were the goods ever returned.

The accused pleaded not guilty, yet, notwithstanding his denial and the allegation that he was a partner of Pombo, full proof of his guilt as the author of the crime is contained in the case, for he failed to show that he was authorized to sign in the name and on behalf of Carlos Pombo, or that he was his partner, or that he had authority to use the stamp with the name of Carlos Pombo on the vale marked "Exhibit A," which latter does not agree with the stub book produced by Pombo, and Pombo denies all of the allegations made by the accused. Therefore, there is no doubt that the accused simulated the vale marked "A" and stamped it with the stamp of Carlos Pombo, without the knowledge of its owner, for the purpose of deceiving the Chinaman Uy Yan, who was thereby subjected to loss by being deprived of the merchandise taken from his store to the value of P736, which was not paid.

In the commission of the crime neither a mitigating nor an aggravating circumstance is present, therefore, the penalty should be imposed in its medium degree, as has been done by the court below in the judgment appealed from.

Therefore, it is our opinion that the said judgment should be affirmed, as we do hereby affirm the same, provided, however, that the penalty imposed on the accused, Manuel Da Silva, shall be four months and one day of arresto mayor, with the accessories of article 61, and costs. So ordered.

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

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