

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUSTO DACUYCUI, DEFENDANT AND APPELLANT.

G.R. No. 3873. October 18, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the 14th of December, 1906, the provincial fiscal of Ilocos Norte filed a complaint with the Court of First Instance of said province accusing Justo Dacuycui of the crime of estafa, committed as follows:

"That in the month of February, 1906, the said accused, being a public official and taking advantage of his office of councilor for the municipality of Bacarra, Province of Ilocos Norte, then and there willfully and feloniously received the sum of ₱39 from residents of his district named Angelo Jose, Julian Nacuray, Gabriel Galamay, Alipio Galviso, Silverio Jose, Vicente Gervasio, Pedro Dumingsil, Julian Rivera, Atanasio Perito, Martin Vea, Martin Jose, Juan Sina, Cirilo Ramil, Simon Jose, Alejandro Salacup, Estanislao Galamay, Castor Vea, Ignacio Salacup, Bernardo Edralin, Luis Jose, Cosme Ramoran, Pedro Garcia, Eugenio Aquino, Ciriaco Bolosan, Eugenio Nacuray, Juan Nacuray, Casimiro Pascua, Segundo Galamay, Gabino Galamay, Isidoro Ramo, Tomas Galisinao, Domingo Butac, Catalino Acoba, Bonifacio Mercado, Procopio Galviso, Leon Ramoran, Juan Butac, Tomas Butac, and Cesario Gapusan, for the purpose of investing the money in cedulas, and, notwithstanding several requests made of him, he failed to invest said sum in cedulas or return the same to the owners thereof, and misapplied it and converted it to his own use to the prejudice of the above-named individuals. Said facts constitute the crime defined and punished under article 399 in connection with article 535, No. 5, of the Penal Code, committed within the jurisdiction of this Court of First Instance. All contrary to law."

Proceedings having been instituted, by virtue of the foregoing complaint, judgment was rendered by the court on the 4th of February, 1907, sentencing the accused to the penalty of two months and one day of arresto mayor. to suffer the accessory penalties, to indemnify 23 individuals residing in the barrio of Oangagan, town of Bacarra, of said province, in the sum of P40, at the rate of P2 each, and in case of insolvency to suffer the subsidiary imprisonment of one day for every 12 pesetas unpaid, to temporary special disqualification from public office during ten years and one day, and to pay the costs of the proceedings. From this sentence the accused has appealed.

At the time when Justo Dacuycui was enjoying a vacation at the barrio of Oangagan, town of Bacarra, in the early part of February, 1900, the 39 individuals whose names appear in the complaint, upon being informed through the accused that cedulas had been received at the municipality, delivered to him the sum of P39, asking him to obtain an equal number of cedulas, one for each of them, so as to save them from having to travel the long distance to the town, inasmuch as he had, as councilor, done the same thing in former years. The accused, however, after receiving the money, limited himself to taking out 10 cedulas for as many taxpayers, and appropriated the balance of ₱23, and, notwithstanding the repeated requests made by the 23 taxpayers who were still without cedulas, he failed to either obtain them or return the money, telling them not to worry, as they would eventually receive their cedulas. The term fixed by law for the pay ment of the cedula tax elapsed, and the aforesaid 23 residents were

obliged to take out their respective cedula with a surcharge on account of the delay, each of them paying the cost thereof.

After Silverio Jose, one of the injured parties, had testified in the case, it was agreed between the provincial fiscal and the counsel for the accused that, if all the other witnesses who handed their money to the accused for the purchase of a cedula were to give evidence, their declarations would conform to that made by the only witness who testified in the case.

In his testimony the accused confessed to having received from several residents of the barrio on the 2d of February, 1900, the said sum of P39 to purchase an equal number of cedulas, but denied that he had gone over to the said barrio in order to collect taxes, and further stated that he was there enjoying a vacation when the residents handed him the money for the purchase of their respective cedulas, but municipal treasury one person was not permitted to take out a cedula for another. The accused, however, afterwards managed to obtain 16 cedulas for as many individuals, and appropriated the remaining P23 which belonged to 23 taxpayers who had to purchase¹ and pay for their respective cedillas with the surcharge incurred on account of the expiration of the time fixed by law. When the accused was unable to refund the money he had appropriated he advised the persons interested to procure money with which to purchase cedillas and agreed to pay the same later on.

Probably in order to avoid a repetition by the other witnesses of the testimony given by Silverio Jose, the only witness who testified for the prosecution, following the practice in civil cases, a compromise was entered into by the parties. The law, however, does not authorize this practice in criminal proceedings, but considering that the testimony of the sole witness is fully corroborated by the declaration of the accused, who confessed to having received the said sum to be invested in cedillas, of which he only obtained 10, and then kept the P23 remaining, to the prejudice of the 23 taxpayers, who had to procure them with a surcharge and again to pay for them, one is convinced that Justo Dacuvuv committed the crime of estafa defined and punished under articles 534 and 535, No. 5, of the Penal Code.

Notwithstanding the fact that the accused pleaded not guilty, his culpability as the convicted author of said crime has been fully established, his exculpatory allegation that at the municipal treasury one person was not permitted to obtain a cedula for another being inadmissible, in view of the fact that he secured 16 cedulas, and even if it were true it would never under any consideration justify his appropriating the sum of P23 to the detriment of the injured parties.

Whenever a public official commits a crime outside of in order to collect taxes, and further stated that he was there enjoying a vacation when the residents handed him the money for the purchase of their respective cedulas, but that he was unable to get the cedillas because at the municipal treasury one person was not permitted to take out a cedula for another. The accused, however, after the exercise of his functions, doing acts which are not connected with the duties of his office, he should be punished with the penalty provided by law for the private individual who violates its provisions, without taking into account the official character with which the accused is invested.

The accused was a councilor of the municipality at the time when the crime was committed, although undoubtedly it was not in his province nor did it form a part of his official duties to collect the cedula tax. If because he inspired them with confidence it was an easy matter for him to collect from the said 39 residents the P39 for the purchase of cedulas in view of his character of councilor, this circumstance constitutes in this case one of the elements of the crime of estafa, since he took advantage thereof in consummating the crime; but, considering that he committed the crime as a private individual, it is not proper to impose on him the penalty provided by article 399 of the code for public officers, because he received said amount not in the exercise of his functions as

councilor, though he abused the confidence of the said 39 taxpayers; hence the accused should be punished as a private individual, guilty of the crime of estafa, with the penalty of *arresto mayor* in its minimum and medium degrees, imposed in the medium period on account of the amount misappropriated, because in the commission of the crime neither an aggravating nor a mitigating circumstance is present.

Therefore, in view of the considerations above set forth, it is our opinion that the judgment appealed from should be reversed and Justo Dacuycuy sentenced to the penalty of two months and one day of *arresto mayor* with the accessory penalties of article 61, to make restitution of the sum of P46 to the 23 persons prejudiced, at the rate of P2 to each of them, and in case of insolvency to suffer the corresponding subsidiary imprisonment, and to pay the costs in both instances. So ordered.

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

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