

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMILIO LEYVA, DEFENDANT AND APPELLANT.*G.R. No. 3874. January 28, 1908*

Ponente: TORRES, J.

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Until December 31, 1905, Emilio Leyva, agent, broker, and collector, in the Province of La Laguna, for "La Yebana," a cigar and cigarette factory owned by Baer Senior & Co., had in his possession moneys" collected from different persons, among whom were those enumerated at page 1G of the record; the said collections amounted to P1,593.09, according to the complaint of the fiscal; to P1,436.85, according to the extract of account appearing as Exhibit D; and P1,376.25, according to the accused's own statement, which appears at page 25. It was the duty of the accused to pay in the money collected or to remit the same by postal money order to the said factor situated in the city of Manila; but, far from doing so, he appropriated the money to his own use and misapplied it to the prejudice of the owners of the factory, Baer Senior & Co., and in order to consummate the fraud he feigned a robbery and reported the occurrence thereof by wire to the said owners.

Upon complaint filed by the provincial fiscal on the 7th of May, 1906, the corresponding proceedings were instituted, and on the 19th of January, 1907, the judge entered judgment sentencing the accused to the penalty of one year eight months and twenty-one days of presidio correctional, and to pay the costs, without, however, ordering the restitution of the amount embezzled, because the same had already been the subject of a decision in proceedings in the Court of First Instance of Manila, from which judgment the accused has appealed.

From the above-stated facts, which appear as having been duly proven, it is shown that the crime of estafa, included in articles 534, No. 3, and 535, No. 5, of the Penal Code, was committed inasmuch as the accused, having managed to collect the sum of P1,376.25 as agent of "La Yebana," a cigar and cigarette factory owned by Baer Senior & Co., appropriated to his own use and misapplied the said sum, to the prejudice of the aforesaid owners, without fulfilling his obligation to remit to this city, by money order payable to the said owners, every time that his collections reached the sum of P500.

The accused, Emilio Leyva, pleaded not guilty, but, notwithstanding his allegations, the case furnishes sufficient evidence of his culpability as the principal of the crime for having disposed of the amount which he had in his possession while under the obligation to pay it to the owners thereof, which he failed to do, with fraud and bad faith and to the prejudice of the same.

We consider that the conclusions of the court below are in accordance with the merits of the case in that the robbery of the valise which, as stated by the accused, contained the amount embezzled and disappeared on the previous night or during the early hours of the morning of the day upon which he states that he missed it; this is a simulated or fictitious statement, invented for the sole purpose of justifying the disappearance of the embezzled sum. It appears that the valise was placed on a chair, far away from the place where the accused and his wife were sleeping and not inside of the wardrobe, as even a less diligent person would ordinarily have done when a large

sum of money which did not belong to him was involved. The allegation that he intended to deliver said sum at the office of the factory at noon, or in the afternoon of a Sunday, in the morning of which he was to come to this city from La Laguna, is incomprehensible, as he knew that the office would not be open on Sunday nor would there be any person to receive whatever money he paid in. Again, there is the fact that, notwithstanding the instructions he had, he failed to remit said amount, which already exceeded more than double the sum of P500, and that if the said robbery were true he would not have limited himself to reporting the matter to the authorities but would file a formal information thereof asking that the same be investigated, and submitting particulars as to how it happened. All of these facts and the habits of the accused, who, as it appears in the case, spent his time in cockfighting and playing the games of burro and malilla, corroborate, in a convincing manner, the evidence of his guilt, and that the robbery was nothing more than a pretext gotten up with the intent of evading the liability incurred by him.

The circumstance that the embezzled amount was included in a civil action instituted against the accused does not affect the essence of the crime, or of the complaint, nor relieve the accused from responsibility, inasmuch as the amount embezzled is a sum which he must refund, and once it appears that the money disappeared by means of a fraudulent and criminal act, the criminal nature of the act could not be evaded by reason of the civil action, nor could the author thereof remain unpunished.

For the reasons set forth, and in view of the fact that the judgment appealed from is in accordance with the law, it is our opinion that the same should be affirmed, with costs against the accused. So ordered.

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

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