

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCOS LOPEZ ET AL., DEFENDANTS, MARCOS LOPEZ, APPELLANT.

G.R. No. 3968. March 21, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of estafa in the words following:

"That the said Marcos Lopez, Juan Alarcon, and Narciso Sagal, the former being the municipal treasurer and deputy of the provincial treasurer, at Escalante, Occidental Negros, P. L., and the latter being clerks of the municipal treasury of Escalante, duly appointed and qualified and discharging their respective offices, knowingly, maliciously, and criminally, by means of deceit, collected from several residents of their municipality greater fees than those prescribed by Act No. 1147 for branding and registering of cattle, with prejudice to the owners, to the amount of P174.50. All contrary to law."

The defendants were duly arrested, brought before the court, and arraigned and each pleaded "not guilty."

At the opening of the trial the complaint against the said Juan Alarcon and Narciso Sagal was dismissed, in order that the said defendants might be used as witnesses in the case against the other defendant, Marcos Lopez.

After hearing the evidence adduced during the trial of the cause, the lower court found the defendant guilty of the crime charged in said complaint and sentenced him to pay a fine of P150, to twelve years of special temporary disqualification under article 541 in its relation with article 309 of the Penal Code, and to return the sum of P188.60 to the various persons mentioned in said decision and to pay the costs, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of the law.

From that sentence the defendant appealed to this court and made several assignments of error, the most important of which is that the lower court erred in qualifying the offense committed by the defendant as that of estafa, punishable under said article 541 in its relation with article 399 of the Penal Code, instead of qualifying said offense as that of illegal exaction, defined and punished under article 398 of said code.

An examination of the record brought to this court shows, beyond peradventure of doubt, that the defendant committed the acts charged in said complaint, in the manner and form as therein charged. These facts constitute the crime of estafa and not that of illegal exaction (VII Viada, 394; sentence of the supreme court of Spain, 10th of October, 1893), which is punishable under paragraph 1 of article 535 in its relation with article 534 in their relation with article 399 of the Penal Code.

It is therefore the judgment of this court that the sentence of the lower court be modified and that the defendant be sentenced to be imprisoned for a period of one year one month and eleven days of presidio correccional and twelve years of special temporary disqualification, and to return the sum of P118.60 to the various persons mentioned in said decision and to pay the costs, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of the law. So ordered.

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

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