

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CASIMIRO CONCEPCION, DEFENDANT AND APPELLANT.

G. R. No. 40620. February 17, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

The appellant, upon his own admission made in open court and in the presence of his counsel, was for the fifth time a recidivist at the time of the trial of this case. His last sentence was that imposed upon him for estafa, on August 22, 1928, in case No. 36870 of the Court of First Instance of Manila.

The case, now under consideration in consequence of his appeal from the judgment rendered by the trial court, was instituted against him on September 13, 1933, that is scarcely five years and one month after his last sentence.

The information, which gave rise to the case in question, charged the appellant with another new crime of estafa alleged to have been committed as follows:

"That on or about the 23d day of August, 1933, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully and feloniously defraud one George Uzton in the following manner, to wit: that the said Casimiro Concepcion pretending to possess enough and sufficient funds deposited in the Philippine Trust Company and to be a business man engaged in giving out loans, and by means of similar deceit to wit: that he was willing and able to make to said George Uzton a loan of P2,000 in cash provided the latter would pay him an interest on said loan at the rate of 2 per cent per month payable four months in advance, which statements and representations made by said accused to said George Uzton the said accused well knew were false and fraudulent, succeeded in inducing the said George Uzton to issue, sign and execute a promissory note in favor of said Casimiro Concepcion acknowledging the receipt of P2,000 as loan and at the same time to issue a check in favor of said Casimiro Concepcion for P160, representing the interest on said loan which promissory note and check the said Casimiro Concepcion took and received from said George Uzton in exchange for check No. C-75450 on the Philippine Trust Company, a banking institution duly organized and doing business in said city in favor of said George Uzton dated August 23, 1933, for the sum of P2,000, which he issued, gave and delivered to said George Uzton, representing the amount of the loan of P2,000, which check was dishonored upon presentation to said bank on the ground that the said Casimiro Concepcion did not at the time have or maintain a current account with said bank nor have any funds deposited in his name or in his behalf upon which to draw the said amount of P2,000, thus succeeding in obtaining the promissory note of said George Uzton in favor of Casimiro Concepcion for the sum of P2,000 without any consideration and receiving from the latter a check for P160 as an interest on said loan which he collected and misappropriated to his own use and benefit, to the damage and prejudice of the said George Uzton in the total amount of P2,160, Philippine currency.

"That the said accused is a habitual delinquent, he having previously been convicted six times of the crime of estafa by virtue of final judgments of competent courts, his last conviction of the said crime of estafa being that of December 18, 1928,"

The appealed judgment sentences the appellant to two months and twenty-one days of *arresto mayor* with the corresponding accessory penalties, to indemnify George Uzton in the sum of P160, with subsidiary imprisonment in case of insolvency, to pay the costs of the proceedings, and to further suffer an additional penalty of twelve years and one day of *reclusi6n temporal*, as a habitual delinquent.

The only question raised by the appellant in his brief is whether or not the evidence of record is sufficient to justify the conclusions of the trial court.

After a careful examination of said evidence, this court arrived at the conclusion that the same supports the findings of fact stated by the trial court in its decision, as follows:

"George Uzton, needing a certain amount of money in order to open a Bar-Restaurant, requested his friend Basilio Salgado to help him find a capitalist, who would be willing to lend him the amount he needed. On the afternoon of August 23d of this year, Salgado introduced Mr. Uzton to the accused who, Salgado claimed would be able to supply him with capital. The accused, without solicitation on Mr. Uzton's part, offered to loan money to the latter, telling him, among other things, that he was willing to help Mr. Uzton because he knew that Americans always complied with their obligations. Mr. Uzton stated that he needed P2,000, whereupon the accused delivered to him the check Exhibit A for P2,000, signed by said accused and drawn on the Philippine Trust Co., and Mr. Uzton, on his part, delivered to said accused the promissory note Exhibit B, for the same amount, payable four months after date. The accused requested that the interest on the loan plus a certain sum for brokerage be paid to him in advance, for which reason, Mr. Uzton delivered to him the sum of P160 in cash. The next day, that is, on August 24th, Mr. Uzton went to the Philippine Trust Co. to cash the check but it turned out that the accused never had funds in said bank and that the check in question formed part of a check book belonging to another person. Mr. Uzton immediately notified Mr. Salgado, by phone, that the capitalist whom the latter had suggested to him did not have funds in the bank and with Mr. Salgado went to the secret service to report the matter."

The check Exhibit A, which bears the authentic signature of the appellant, and the testimony of Basilio Salgado absolutely corroborate George Uzton's testimony as to how he was induced to deliver to the appellant the sum of P160 and how said appellant succeeded in convincing him that he was really a capitalist with funds in the Philippine Trust Co.

There is no question that the proven facts constitute the crime of *estafa* as defined and penalized in article 315, case 4, in connection with subsection 2, paragraph (a), of the Revised Penal Code inasmuch as the amount of the damages caused is P160.

However, this court notes that the trial court also sentenced the appellant to suffer subsidiary imprisonment in case of non-payment to George Uzton of the indemnity of P160. This court believes this to be an error on the ground that once the guilt of the accused is proven, the penalty which should be imposed upon him, taking into consideration the aggravating circumstance of multi-recidivism proven at the trial, should be four months and twenty-one days of *arresto mayor* plus the additional penalty of ten years and one day of *reclusion temporal*, in conformity with the provisions of subsection 5, paragraph (c), of article 62 of the Revised Penal Code. Naturally this has the effect of saving the appellant from subsidiary imprisonment because it is prohibited by rule 3 of article 39 of said Code, which reads as follows:

"When the principal penalty imposed is higher than *prision correccional* no subsidiary imprisonment shall be imposed upon the culprit."

Wherefore, the judgment appealed from is hereby modified by sentencing the appellant to four months and twenty-one days of *arresto mayor*, to indemnify George Uzton in the sum of P160, to further suffer the additional penalty of ten years and one day of *reclusion temporal*, and to pay the costs of the proceedings. So ordered.

Street, Villa-Real, Abad Santos, and Butte, JJ., concur.

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