

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. POTENCIANO REYES, DEFENDANT AND APPELLANT.

G.R. No. 4213. March 18, 1908

Ponente: CARSON, J.

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CARSON, J.:

The following information was filed in this case:

"The undersigned accuses Potenciano Reyes of the crime of estafa, committed under the following circumstances:

"That in, during, and about the month of January, 1907, in the city of Manila, Philippine Islands, the accused, Potenciano Reyes, was then and there a public official of the Philippine Islands, to wit, a subcollector of Internal Revenue of the Government of the Philippine Islands, duly appointed as such subcollector by the Collector of Internal Revenue of the Philippine Islands, to wit, one John S. Hord, or his deputies duly appointed in accordance with law with power to appoint the said Potenciano Reyes subcollector of the internal revenues aforesaid; that the duties of the said accused as subcollector of the internal revenues aforesaid consisted among others in collecting from a person or persons then and there engaged in the sale of vegetables in the Divisoria Market in said city of Manila the sum of 65 cents, Philippine currency, per day, said sum being then and there the internal-revenue tax duly imposed by law on such person or persons then and there engaged in the sale of vegetables in the place and manner aforesaid for the privilege of the sale of the same; that one Genoveva Torres was then and there engaged in the said market in the sale of vegetables as aforesaid; that the accused, Potenciano Reyes, did then and there willfully, unlawfully and feloniously, and by the assumption of false and fictitious powers, duties, enterprises, and attributes, falsely and fraudulently misrepresent and state to the said Genoveva Torres that he, the said accused, was then and there empowered, by virtue of his office as subcollector of internal revenue as aforesaid, to collect from her, the said Genoveva Torres, not only the said sum of 65 cents, Philippine currency, for the privilege of then and there selling vegetables in the Divisoria Market aforesaid, but the sum of 40 cents, Philippine currency, in addition thereto; that the said Genoveva Torres then and there relying on the false and fraudulent misrepresentations of the accused as aforesaid and then and there believing that the accused was then and there empowered in his capacity as subcollector of internal revenue to collect for the sale of vegetables then and there sold and brought for sale by the said Genoveva Torres to the said Divisoria Market, not only the said internal-revenue tax of 65 cents hereinbefore mentioned but the additional sum of 40 cents aforesaid, did then and there pay to the accused then and there acting under cover of his official capacity as subcollector of internal revenue in said Divisoria Market in the city of Manila, the said additional sum of 40 cents, Philippine currency, the property of the said Genoveva Torres; and the accused did then and there unlawfully, willfully and feloniously, and by means of the false and fictitious representations aforesaid, defraud the said Genoveva Torres in this, that he did then and there induce her to pay to him, the accused, the said additional sum of 40 cents, Philippine currency, and the said accused did then and there willfully, unlawfully, and feloniously receive the same, well knowing that he was then and there authorized to receive from the said Genoveva Torres the sum of 05 cents, Philippine currency, in payment of the internal-revenue tax aforesaid only, and no more; to the prejudice of the said Genoveva Torres in the said sum of 40 cents, Philippine currency, equal to and the equivalent of 2 pesetas.

"Contrary to article 535, paragraph 1, with reference to article 399 of the Penal Code.

"C. L. BOUVE,

"Assistant Prosecuting Attorney."

The facts alleged in the complaint were proven beyond a reasonable doubt, and the accused was convicted of the crime of estafa and sentenced to two months and fifteen days of *arresto mayor*, and the accessory penalty prescribed by law in such cases.

From an examination of the facts charged in the complaint it is manifest that they constitute not only the offense defined and penalized in paragraph 1 of article 535 of the Penal Code, read in connection with article 399 of that Code, but also the offense defined and penalized in section 24 of the Internal Revenue Law.

These penal provisions are as follows;

"ART. 535. 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."

"SEC. 24. (Act No. 1189—Internal Revenue Law). Every officer, employee, or agent appointed and acting under the authority of this Act—

* * * * *

"Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fees, compensation, or reward except as by law prescribed for the performance of any duty; * * * shall be fined in a sum not less than four hundred pesos nor more than ten thousand pesos, or be imprisoned for a term not less than six months nor more than five years, or be punished by both fine and imprisonment, in the discretion of the court. One half of any fine so imposed shall be for the use of the Insular Government, and the other half for the use of the informer, who shall be ascertained and stated in the judgment of the court."

The Internal Revenue Law was enacted long after the Penal Code was promulgated in these Islands, and the state of facts charged and proven in this case furnish an instance wherein the new law has provided a penalty for acts committed under certain conditions altogether different from the penalty prescribed for the same acts committed under the same conditions under the old law. In such cases it is evident that the new law must be taken to repeal the old law, and this notwithstanding the fact that there is no express repealing clause in the new law. It was clearly and unmistakably the intention of the legislator that in any case where one is charged with the commission of the acts penalized in section 24 of the Internal Revenue Act, and the commission of those acts is proven at the trial, the penalty to be imposed should be the penalty prescribed in that section.

It is true that repeals of penal statutes by implication are not favored, and if the statutes can stand together consistently, the later statute should not be construed as repealing the earlier one, but in penal as well as other statutes repeal by implication necessarily results in any case of repugnancy or essential inconsistency between two successive statutes or in any case where the intention of the legislator is manifest that a later statute should supersede an earlier one. It can not be doubted that where a later statute provides a punishment in a different degree from the punishment provided in an earlier statute for the doing or omitting to do a certain act, the legislator thereby clearly manifests his intention that at least, so far as the later statute is inconsistent with the former statute, it shall be deemed to repeal such former statute by implication. (*Nichols vs. Squires*, 5 Peck, Mass., 168; *People vs. Russell*, 59 Mich., 104; *People vs. England*, 91 Hun., N. Y., 152.)

We are of opinion, therefore, that article 534 of the Penal Code, which defines and penalizes estafa, has been repealed in so far as it undertakes to prescribe penalties for those acts which constitute a violation of the Internal Revenue Law, as defined and penalized in section 24 of Act No.1189.

The sentence imposed by the trial court in this case for estafa must be reversed, and a violation of the Internal Revenue Law having been clearly charged in the information, and proven beyond a reasonable doubt, we should and do find the accused guilty of this latter offense and sentence him to six months' imprisonment in accordance with the provisions of the above-cited section 24 of the Internal Revenue Act, and to the payment of the costs in both instances.

It has been suggested that in thus imposing an increased penalty on conviction, on the same facts, of the commission of a distinct offense, other than that of which the accused was convicted in the court below, this court disregards the right of the accused not to be placed twice in jeopardy within the meaning of the Philippine Bill of Rights.

It has been held, however, that "an accused is not placed twice in jeopardy for the same offense within the meaning of the act of July 1, 1902, section 5, because the Supreme Court of the Philippine Islands, upon reversing judgment below in a criminal case, on an appeal taken by the accused, convicted him, on the same facts, of a different offense, carrying an increased sentence." (Trono vs. United States, 199 U. S., 521; Flemister vs. United States,[1] decided by United States Supreme Court December 16, 1907.) So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ.

[1] 207 U.S., 372.

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