

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TEODORO EVIA, DEFENDANT AND APPELLANT.

G.R. No. 42938. November 29, 1935

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from a judgment of the Court of First Instance of Camarines Norte finding the appellant guilty of a violation of section 112, title 38, of the United States Code Annotated, and sentencing him to suffer two months and one day of imprisonment, to indemnify the offended party, Concordia de la Cruz, in the sum of P899, and to pay the costs. In case of insolvency, appellant was also sentenced to suffer subsidiary imprisonment, which shall not exceed one-third of the principal penalty.

The main question raised by this appeal is the sufficiency of the evidence to, sustain the judgment of conviction. At the trial the defense presented no evidence, but moved for the dismissal of the case on the ground that the guilt of the accused had not been established beyond a reasonable doubt. The trial court denied the motion.

The evidence for the prosecution shows that Concordia de la Cruz was the wife of Valentin Ramos, a veteran of the United States Army. Valentin Ramos died and his wife wanted to file a claim for a pension from the United States Government, Through the intervention of the appellant, who was at the time the municipal treasurer of Laba, Province of Camarines Norte, Concordia de la Cruz entrusted the prosecution of her claim to one Arsenio Rada, then chief clerk of the office of the provincial treasurer of Camarines Norte. Concordia promised to give both Rada and the appellant some remuneration in the event that her claim was allowed. The claim was allowed through the efforts of Rada. Upon the receipt of a letter from the Bureau of Pensions; Concordia went to see the appellant who told her that her pension money had already arrived. Appellant told Concordia that, by using his influence, Rada was able to get her check from the postmaster. He asked her to put her thumb-mark on the check, and when she asked him for, the money, he told her to wait and left the house. After a while he came back with the money, but gave her only P477.66 out of the sum of P1,376.66, represented by the check. He retained the balance, saying that Rada instructed him to withhold that amount which was to be divided between Rada and himself. Concordia's insistence to get the full amount proved to be of no avail.

Counsel for the appellant contends that the provisions of law cited by the trial court are not applicable to the case at bar. This contention is correct. The information, however, contains an allegation to the effect that the appellant retained the sum of P899 from the pension due Concordia de la Cruz, and such allegation is fully sustained by the evidence. The facts thus established come within the purview of section 114, title 88, of the United States Code Annotated, which provides, among other things, that any person instrumental in prosecuting any claim for pension, who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding P500, or imprisoned not exceeding two years, or both, in the discretion of the court. We are of the opinion and so hold that the appellant was instrumental in prosecuting the claim of Concordia de la Cruz within the meaning of said section.

Counsel for the appellant also contends that the judgment below is contrary to law in so far as it requires the appellant to indemnify Concordia de la Cruz in the sum of P89D. This contention is without merit. In this jurisdiction the civil liability of the accused must be determined in the criminal action, unless the injured party expressly waives SHeh liability or reserves his or her right to have the civil damages determined in a separate action (U. S. vs. Heery, 25 Phil., 600.) Concordia de la Cruz had the right to recover from the appellant the sum of P899 by way of damages, and the court below had jurisdiction to award her said amount. There is, however, no authority of law for the imposition of subsidiary imprisonment in case of nonpayment of the indemnity. This question must be governed by the provisions of the United States Code Annotated, which provides for no such subsidiary imprisonment.

Taking into consideration the facts and circumstances of the case, we believe that the prison sentence imposed by the trial court is too lenient. We accordingly modify the judgment below by sentencing the appellant to suffer imprisonment for one year, and to indemnify Concordia de la Cruz in the sum of P899.

Modified as above indicated the judgment is affirmed with costs against the appellant. So ordered.

Avanceña, C.J., Malcolm, Villa-Real, Hull, Vickers, Perial, Goddard, and Recto, JJ., concur.

Judgment modified.

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