

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SWAME CLAUDETT SCOTT, DEFENDANT AND APPELLANT.

G.R. No. 43178. December 04, 1935

Ponente: RECTO, J.

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RECTO, J.:

Swame Claudett Scott was charged in the justice of the peace court of Lipa, Batangas, with the crime of estafa, for having fraudulently obtained the sum of P150 from Leoncio Dioji, in conspiracy with Francisco Yungis and two others named Oscar and Henry. He pleaded guilty and was sentenced to two months and one day of arresto mayor, restitution and costs. He changed his mind however, and appealed from this judgment to the Court of First Instance of Batangas which likewise found him guilty and sentenced him to four months of arresto mayor, restitution of the sum of P150. to the offended party Leoncio Dioji, with subsidiary imprisonment in case of insolvency, and costs. From this second judgment, the accused appealed to this court.

We have carefully examined the evidence of the case and are of the opinion that it bears out the findings of the appealed decision which are summarized by the court a quo as follows:

"The evidence presented in this case conclusively shows that the accused, pretending to be a magician or fortuneteller endowed with power to discover hidden treasures, led the offended party to believe that under his house there was a jar containing articles of great value, but that to obtain said jar it was necessary for the latter to give him the sum of P150 for the purchase of a certain substance and old gold coins to be used in extracting the hidden treasure in question, and that the offended party, believing said statements, delivered the sum of P150 to the accused Swanio who, after receiving it, neither came back to the offended party's house nor returned the money, thereby misappropriating said amount."

The act committed by the appellant constitutes the crime of estafa defined and punished in article 315, case 4, subsection 2, paragraph (a), of the Revised Penal Code:

"Art. 315. Swindling (estafa).—Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

* * * * *

"4th. By arresto mayor in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

* * * * *

"2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

"(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, * * * "

The appealed decision is free from the errors assigned in appellant's brief. The trial court properly denied

appellant's motion to postpone filed on the day of the trial, as shown by the following excerpt from the record:

"COURT. * * * there is no reason why this case should be transferred to another date. This case has been transferred many times upon petition either of }ourself, or your attorney. According to the record of the case the hearing of the same has been postponed and postponed,—more than ten times—on the same ground alleged in your present petition."

On this point, the appellant invokes the decision of this court in the case of *Schiels vs. McMicking* (23 Phil., 526). The appellant, however, should not overlook that the facts of the above-cited case on the question of "due process of law" are fundamentally different from those of the case at bar. In said case, the accused *Schiels*, on December 21, 1910, appealed from the municipal court which convicted him of the crime of theft. Without an opportunity to enter a plea, he was notified on the 23d of said month of the trial of the case at 10 o'clock the following morning. When the case was called for hearing on the day and at the time set, *Schiels*, upon arraignment, asked for time to answer but his petition was denied. His counsel forthwith asked for time to prepare the defense but this petition was likewise denied and the case was tried resulting in *Schiels*' conviction and sentence.

In the case at bar, however, the record shows that the appellant was sentenced by the justice of the peace of Lipa upon his plea of guilty, on December 28, 1933. The case was appealed to the Court of First Instance and a new information was filed on January 12, 1934. Trial was held more than a year later, to be exact, on February 6, 1935, more than ten postponements having been asked in the meantime, mostly at the instance of the appellant and on frivolous and groundless excuses, as, for instance, the engagement of his counsel in other courts. At the trial of the case, he was ably represented by counsel *de officio* and impartially tried. In view of these proceedings, there is absolutely no basis in the contention that the appellant. was tried and convicted of the crime charged without due process of law, and that the court *a quo* committed a rever-; sible error.

Furthermore, the ruling in *Sehiels vs. McMicking* (23 Phil., 526), relied upon by the appellant, was later reversed by the United States Supreme Court, which, in passing upon and annulling the judgment rendered by this court therein said:

"* * * The accused had known for weeks the nature of the charge, against him. He had notice of the hearing, was present in person and represented by counsel, testified in Jiis own behalf, introduced other evidence, and seems to have: received an impartial hearing. There is nothing to show that he needed further time for any proper purpose, and there m no allegation that he desired to offer additional. evidence or suffered substantial injury by being forced into trial. But for the sections in respect of procedure quoted from General Order No. 58, it could not plausibly be contended ;that the conviction was without due process of law. The Court of First Instance placed no purely fanciful or arbitrary construction upon these sections and certainly they are not so peculiarly inviolable that a mere misunderstanding of their meaning or harmless departure from their exact terms would suffice to deprive the proceedings of lawful effect.and enlarge the accused. (E& parte *Harding*, 120 U. S., 782, 784; 30 L. ed., 824, 825; 7 Sup. Ct. Rep., 780; *Re Wilson*, 140 U. S., 575, 585; 35 Law. ed., 513, 517; 11 Sup. Ct. Rep., 870; *Felts vs. Murphy*, 201 U. S., 123, 129; 50 Law. ed., 689, 692; 26 Sup. Ct. Rep., 366; *Re Moran*, 203 U. S., 96, 104, 105; 51 Law. ed., 105, 108, 109; 27 Sup. Ct Rep., 25; *Frank vs. .Mangum*, 237 U. S., 309, ante, 969; 35 Sup. Ct. Rep., 582.)" (238 U. S., 99; 59 Law. ed., 1220; 41 Phil., 971, 978.)

Neither do we find any merit in the appellant's contention that previous demand for the return of the amount swindled and refusal or inability of the accused to do so which are not present in the instant case are necessary elements of the crime of extafa imputed to him. This reasoning would be in point if the crime involved were estafa under the provisions of article 315, case 4, subsection 1, paragraph (?>), referring to fraudulent misappropriation or conversion of money, goods, or any other personal property received by the offender in trust

or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, but it is not so in this case which involves defraudation committed through false representations or fraudulent acts (U. S. vs. Asensi, 34 Phil., 750). The facts of this case are similar to those of *People vs. Valentin*, G. R. No. 29532,1 wherein the accused was convicted of and sentenced for the same kind of estafa of which we find the herein appellant guilty.

The other assignments of error refer to the credibility of the witnesses who testified in the case, and we have already stated that the trial court's findings thereon are unquestionably correct. The appellant admits having held himself out to the offended party as a magician and fortune-teller, and having received from, him the sum of P150. His theory that this sum was not delivered to him for the acquisition of a certain substance and old coins which he needed to extract a jar containing articles of great value from the lot of Dioji's he use, but for the purchase of an apparatus' for locating mines, has evoked from the trial judge the following correct comment:

"The court gives no credit to the testimony of the accused that the offended party delivered to him the sum of P150 for the purchase, for the latter, of an apparatus to locate mines, because if this were true, said apparatus having arPromulgated November 16, 1S>28, not reported.rived since the month of September, 1933, according to the accused himself, the most natural was for him to have delivered the same to the offended party Leoncio Dioji."

The appellant admits having been previously convicted of the crime of estafa. However, as this previous conviction was not alleged in the information we cannot take it into consideration for the purpose of aggravating the penalty to be imposed upon the appellant.

The appealed judgment being in accordance with the facts and the law, it is hereby affirmed, with costs.

Avanceña, C.J., Abad Santos, Hull, and Vickers, JJ., concur.

Judgment affirmed.

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