

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LUCINA MACASPAC, DEFENDANT AND APPELLANT.

G.R. No. 4450. November 14, 1908

Ponente: MAPA, J.

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MAPA, J.:

On the 30th of July, 1906, the defendant received from Joaquina Punu the sum of P31.50 with the request to deliver it to Marcelina Dy-Oco. The defendant called on the latter on the same day, but, instead of delivering the aforesaid amount, she asked Marcelina for in the name of Joaquina Punu who had in no way authorized her to do so. Marcelina gave her the P30, believing in good faith that Joaquina Punu had really sent for them. Neither the one amount nor the other was ever delivered to the latter or to Marcelina; both amounts were retained by the defendant. These acts were consummated by reason of the confidence that the two women above named had in the honesty of the defendant, and for the same reason they were not disclosed until the month of November following, when the parties met for the first time after the affair happened and Marcelina and Punu then spoke about the matter. They sent at once for the defendant and remonstrated with her; the latter admitted the truth of everything that had taken place, and by way of compromise signed a document confessing her indebtedness to Marcelina Dy-Oco in the sum of P30, and engaging to wash their linen on account of the amount received from Joaquina Punu. These facts appear as sufficiently proven in the case, and constitute the crime of estafa as charged in the complaint, which the judge below rightly classified, and in consequence of which he sentenced the accused to the penalty of five months of arresto mayor, to indemnify the injured parties, in the respective amounts unlawfully obtained from them or to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs.

Counsel for the defendant has alleged that the complaint charges her with two different crimes of estafa: one for P31.50, belonging to Joaquina Punu, and the other for the P30, from Marcelina Dy-Oco, and that, therefore, the provisions of section 11 of General Orders, No. 58, which directs that in every complaint or information one crime only shall be charged, has been violated. Such allegation is entirely extraneous. The said defect constitutes one of the dilatory pleas indicated by section 21, and the accused ought to have raised the point before the trial began. Had this been done, the complaint might have been amended in time, because it is merely a defect of form easily remedied. But the accused, who was then assisted and defended by the same lawyer who now defends her in this instance, did not offer any objection to the complaint, entered into the trial knowing that two different acts were imputed to her therein, and she not only did not object to the taking of evidence regarding them but also testified as witness in her own favor in connection with the said facts; she did not even call the attention of the court to such a defect which, as may be seen, she never considered to be either directly or indirectly prejudicial to her rights. Inasmuch as in the first instance the accused did not make the corresponding dilatory plea to the irregularity of the complaint, it must be understood that she has waived such objection, and is not now entitled to raise for the first time any question in reference thereto when submitting to this court her assignment of errors. Apart from the fact that the defense does not pretend that any of the essential rights of the accused have been injured, the allegation of the defect above alluded to, which in any case could only affect the form of the

complaint, can not justify a reversal of the judgment appealed from, according to the provisions of section 10 of General Orders, No. 58.

The defense also alleges that, with regard to the P30 taken by the accused from Marcelina Dy-Oco, the document offered as evidence by the prosecution shows that they were taken as a loan, and that for this reason Dy-Oco should not have been permitted to testify to the contrary, because it amounts to a repudiation of her own acts, and is against the contents of the said document; in support of its allegation the provisions of section 333 of the Code of Civil Procedure are cited.

The evidence which was adduced without any objection on the part of the defense, fully shows that, when the fraud committed by the accused was discovered, she herself proposed to Marcelina Dy-Oco to give her her house as security to insure payment of the 30 which she had taken, feigning an order from Joaquina Punu which she had not received, said obligation being stated in the document above referred to. It is true that the latter has the appearance of a document of loan, but it is none the less true that the said document does not contain a statement of the original facts that occurred in the matter, but what was subsequently agreed to, by way of a compromise, to insure the payment of the amount unlawfully obtained. These facts occurred in July, and the document was signed in November following.—When signing it, the accused was well aware of the real facts as they occurred, because she had been the principal actor in all of them. The accused could not, in good faith, believe the contrary of what she did herself, and what she did was not to borrow from Marcelina Dy-Oco the amount in question, but asked her for it in the name of Joaquina Punu without the order, or even the knowledge of the latter. She was therefore well aware that it was not really a question of a loan, although it was so apparently stated in the document that she signed three months after the affair at bar had taken place. She was not induced, nor was it possible to induce her to believe, in good faith, to the contrary, as she was conscious of her own doings, since the taking of money from Marcelina Dy-Oco, was her own act and not that of another, and it was not obtained as a loan but by means of deceit, as already stated above, and for which she is prosecuted. This being the case, the citation of section 333 of the Code of Civil Procedure is in every sense inopportune and not pertinent; the provision refers, according to its own terms, to cases where a person from his own declaration, act, or omission, may have intentionally and deliberately induced another to believe that a certain fact is true, and to act under the influence of such a belief.

As to the testimony given by Marcelina Dy-Oco in connection with the document in question, it is evident that it was for the purpose of explaining the circumstances that preceded and led to its execution, and it was perfectly admissible according to the last paragraph of section 285 of the Code of Civil Procedure; and for the further reason that it was received without the least objection on the part of the defense.

The judgment appealed from is hereby affirmed with the costs of this instance against the accused. So ordered.

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

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