

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EMILIO DE JESUS AND FRANCISCO DE LA ROSA, DEFENDANTS AND APPELLANTS.

G.R. No. 46715. September 22, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

The question raised before us by the appeal taken by the accused from the judgment of the lower court, sentencing them for estafa to suffer the principal penalty of three months of arresto mayor and an additional penalty of ten years and one day of prision mayor by reason of habitual delinquency, besides indemnifying Toribia Bacos in the sum of P43.80, is whether or not said two penalties are in accordance with law.

The information charging the appellants with the crime in question, of which it may be truthfully stated that they pleaded guilty upon arraignment, reads as follows:

"That on or about December 15, 1938, in the municipality of Pasay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the accused above-named, conspiring together and helping each other, by means of false and fraudulent manifestations which they made to Toribia Bacos to the effect that a solitaire ring which was in their possession was genuine and valued at P900 and knowing fully well that such manifestation was false and fraudulent, because said ring was fake with copper setting and false diamond, did then and there willfully, unlawfully and feloniously induce said Toribia Bacos to exchange and deliver and in fact she exchanged and delivered a pair of earrings, worth P8, a ring worth P4, and an engagement ring worth P1, a gold necklace worth P30 and cash of P0.80 for the said fake solitaire ring, and once in possession of said jewelries and money belonging to Toribia Bacos, the accused above-named, did then and there willfully, unlawfully and feloniously, appropriate and convert said jewelries and money to their own use and benefit, to the damage and prejudice of the said owner in the amount of P43.80.

"That the accused Emilio de Jesus and Francisco de la Rosa are habitual delinquent, having committed the present crime within the period of 10 years from their last release from prison on December 28, 1938, and October 30, 1938, respectively, and having been convicted of estafa and theft by virtue of several final judgments handed down by competent courts within the same period of 10 years, as follows:

"EMILIO DE JESUS Y BAUTISTA

Date of commission

Date of sentence

Crimes

Sentence

Date of release

5-4-36 May 22, 1936 Estafa, M.C.D.

H-52433. 3 months and 11 days Appealed

Appealed and sentence as follows:

June 1, 1936 Estafa , Ct. 1 st

Inst. D-52390. 2 months and 1 day; P58 indemnity August 12, 1936

9-8-36 Sept. 16, 1936 Estafa, M.C.D.

H-61331. 2 months and 1 day and 6 years and 1 day additional imprisonment, and P28 indemnity.

Sept. 17, 1936 Estafa, M.C.D.

H-61332. 2 months and 1 day and 6 years and 1 day additional imprisonment. (Appealed)

Cases Nos. H-61331 and II-61332, appealed and sentenced as follows:

Oct. 29, 1936 Estafa , Ct. 1 st

Inst. D-53188. 4 months and 1 day, mas 8 años 1 dia como pena adicional (Appealed)

Nov. 24, 1936 Estafa , Ct. 1 st

Inst. D-52160. 3 months and 11 days.

Case No. D-53188, appealed and sentenced as follows:

Mar. 4, 1937 Estafa , Ct. 1 st

Inst. D-53188 4 months and 1 day.

6-2-38 June 3, 1938 Estafa, M.C.D.

H-95213. 6 months.

Case No. H-95054, appealed and sentenced as follows:

"FRANCISCO DE LA ROSA Y GOMEZ

Dec. 8, 1931 Estafa, M.C.D.

F-48246. 2 months and 1 day, and P23.60 indemnity. Feb. 18, 1932

Aug. 16, 1933 Theft, M.C.D.

F-94776. 4 months and 1 day, and P20 indemnity (Appealed)

Oct. 19, 1933 Attempted estafa, M.C.D.

F-91955. P200 fine

Case No. F-94776, appealed and sentenced as follows:

Nov. 15, 1933 Hurlo , Ct. 1 st

Inst. D-46442. 6 months and P20 indemnity.

May 22, 1936 Estafa, M.C.D.

H-52433. 3 months and 11 days and 2 years, 4 months and 1 day additional imprisonment for being a habitual delinquent for the third conviction. (Appealed)

May 25, 1936 Estafa, M.C.D.

H-50768. 3 months and 11 days, and P27 indemnity

Case No. 52433, appealed and sentenced as follows:

June 1, 1936 Estafa , Ct. 1 st

Inst. D-52390. 2 months and 1 day, plus additional penalty of 2 years, 4 months and 1 day and P58 indemnity

Oct. 30, 1938

"Contrary to Law."

According to the provisions of article 315, subsection 4, of the Revised Penal Code, the penalty that should be imposed upon a person found guilty of a crime of estafa, where the amount of the fraud does not exceed P200, is arresto mayor in its medium and maximum periods, that is, from two months and one day to six months, the medium period of said penalty being from three months and eleven days to four months and 20 days.

In the case of the appellants, there having been present one aggravating circumstance, which is that of recidivism, and one mitigating circumstance, which is that of voluntary confession of guilt, both of which circumstances should be set off against each other (art. 63, subsec. 4), the principal penalty which should have been imposed upon them is at least three months and eleven days of arresto mayor, and not three months only, as the lower court had imposed upon them.

By reading the information quoted herein, it may clearly be seen that the four previous convictions of estafa of the appellant Emilio de Jesus can be considered as only three, for the purposes of the law penalizing habitual delinquency, for the reasons stated in the cases of *People vs. Santiago* (55 Phil., 266) ; *People vs. Ventura* (56 Phil., 1) ; and *People vs. Kaw Liong* (57 Phil., 839); and it may likewise be seen that the five previous convictions of estafa and theft of the appellant Francisco de la Rosa can, in turn, be considered as only three convictions, for the same reasons. Consequently, after considering the question from this viewpoint, the additional penalty that may be imposed upon each of the accused, by virtue of the aforesaid provisions of article 62, subsection 5, paragraph (b), of the Revised Penal Code, is prision mayor in its minimum and medium periods, that is, from six years and one day to ten years.

Following the recommendation of the Solicitor-General, which is very well founded, the judgment appealed from is hereby modified so as to impose upon each of the accused-appellants the principal penalty of three months and eleven days of arresto mayor and the additional penalty of six years and one day of prision mayor. Modified as

above, said judgment is affirmed in all other respects, without special pronouncement as to costs. So ordered.
Avanceña, C. J., Villa-Real, Imperial, Laurel, Concepcion, and Moran, JJ., concur.

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