

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PACIFICO SALAPARE, DEFENDANT AND APPELLANT.***G.R. No. 46740. November 13, 1939*

Ponente: DIAZ, J.

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Although he pleaded guilty in the Court of First Instance of Manila to the crime charged in the information by which the case was commenced, the defendant Pacifico Salapare appealed from the judgment which sentenced him to two months and one day of arresto mayor, to indemnify the entity known as The Office Appliance Company in the amount of P126 with the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs of the proceedings, on the ground that the facts alleged in the said information only involve a civil action.

The facts set forth in the information plainly state that the defendant received from The Office Appliance Company a portable typewriter described as follows: Royal, Pica Type, A-589098, valued at P126; that the understanding between them was that the defendant would have the machine referred to under trial for three days and that he would return it afterwards to the owner, The Office Appliance Company, in the latter's own office at Muelle del Banco Nacional Street, City of Manila; and that notwithstanding the time (92 days) that has elapsed from the expiration of the period aforementioned to the day of the filing of the information in the Municipal Court, the said defendant not only did not return the machine in question, but also appropriated it to himself and disposed thereof, wilfully, unlawfully and feloniously, for his own benefit and to the damage and prejudice of the aforesaid entity. These facts clearly constitute the crime of estafa, defined and penalized in article 315, paragraph 1, subsection (b) of the Revised Penal Code, for it is therein provided that estafa is committed by one who misappropriates or converts, to the prejudice of another, 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, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property. As the defendant has admitted the facts referred to, it is plain that his appeal is without merit.

The penalty imposed by the lower court upon the appellant is not in accordance with law, for the reason that in cases of estafa wherein the amount defrauded does not exceed P200, the law prescribes the penalty of arresto mayor in its medium and maximum periods, that is, two months and one day to six months.

It is true that the appellant confessed his crime in the Court of First Instance, but he did so after he had denied it in the Municipal Court where he was originally prosecuted. By his action, the prosecution was compelled to adduce its evidence; and although the case was already in the Court of First Instance, when the defendant was arraigned, he insisted on his plea of not guilty and decided to change it to that of guilty only after several days. We have already held time and again that for the mitigating circumstance of voluntary confession to be taken into account, it is necessary that it be made before the presentation of any evidence by the prosecution; and that if in the justice of the peace court or in the Municipal Court the defendant does not plead guilty, and does so on appeal, his

confession made under those circumstances, does not constitute the mitigating circumstance provided in article 13 of the Revised Penal Code (People vs. Sy Chay, 37 Off. Gaz., 3206; People vs. Herminio, 36 Of. Gaz., 2216 People vs. Bawasanta, 36 Off. Gaz., 2237; People vs. Javier y Rivero, 36 Off. Gaz., 2701). Accordingly, in the case of the appellant it must be deemed that neither a mitigating nor aggravating circumstance has been proved at the trial, so that the proper penalty to be imposed on him is the medium period of the penalty prescribed by law, that is, three months and eleven days to four months and twenty days.

For the foregoing reasons, the judgment appealed from is modified in the sense of raising the penalty imposed on the appellant to four months and twenty days of arresto mayor. In all other respects, the judgment referred to is affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, Concepcion, and Moran, JJ., concur.

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