

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
PACIPICO P. SALAPARE, DEFENDANT AND APPELLANT.***G.R. No. 46741. November 13, 1939*

Ponente: DIAZ, J.

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Charged with estafa on November 12, 1937 in the Municipal Court of Manila, the defendant, after trial, was convicted on May 24, 1939 and sentenced to a penalty of three months and eleven days of arresto mayor, to indemnify Melecio C. Ramos in the amount of P160, which is the sum defrauded," with the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs. From the judgment, the defendant appealed to the Court of First Instance; and although he at first denied the crime with which he was charged, he made his voluntary confession thereof a few days afterward. The court then imposed on him the penalty of two months and one day of arresto mayor, plus the indemnity to Melecio C. Ramos in the aforesaid sum of P160 with subsidiary imprisonment in case of insolvency, and the payment of costs in that instance. For reasons known only to the defendant, he again appealed the judgment to this court; but the defense counsel assigned to him has limited himself to saying in his brief that the judgment from which his client had appealed, is in accordance with law, and therefore prays that, instead of the penalty which the Solicitor-General recommends in his brief, the same penalty as that imposed by the Court of First Instance be imposed on the defendant.

The acts described in the information undoubtedly constitute the crime of estafa, for the reason that the appellant had received from Melecio C. Ramos the amount of P160 for the purchase of certain goods necessary for the business of the company in which the latter was treasurer, and wilfully, unlawfully and feloniously appropriated said sum to himself with grave abuse of confidence, applying it to his own use, to the damage and prejudice of the aforementioned treasurer Melecio C. Ramos.

But we find that the lower court erred in imposing on the appellant the penalty of two months and one day of arresto mayor, for cases of estafa in which the amount defrauded does not exceed P200, as the case at bar, are punished under article 315, paragraph 4, of the Revised Penal Code, by arresto mayor in its medium and maximum periods, that is, from two months and one day to six months. The admission made by the appellant of his crime, in the Court of First Instance, cannot constitute a mitigating circumstance in his favor, because before a voluntary confession may be considered a mitigating circumstance, it is necessary that it be made before the presentation of any evidence by the prosecution; and in the Municipal Court where the appellant was originally prosecuted, he stood trial and pleaded "not guilty", thus compelling the prosecuting attorney to prove the crime with which he was charged. (People vs. Sy Chay, 37 Off. Gaz., 3206; People vs. Hermino, 36 Off. Gaz., 2216; People vs. Bawasanta, 36 Off. Gaz., 2237; People vs. Javier y Rivero, 36 Off. Gaz., 2701). It must be deemed that in the case of the appellant no circumstance modifying his responsibility has concurred. Therefore, in accordance with the rule prescribed in article 64, paragraph 1, of the Revised Penal Code, the penalty that may be properly imposed on him is from three months and eleven days to four months and 20 days.

For the foregoing reasons, the judgment appealed from must be, as it is hereby, modified, the appellant being

sentenced to four months and twenty days of arresto mayor. In all other respects, the judgment referred to is affirmed, with costs against said appellant. So ordered.

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

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