

EL PUEBLO DE LAS ISLAS FILIPINAS, QUERELLANTE Y APELADO, CONTRA BASILIO EVANGELISTA Y JOSON (ALIAS BASILIO JOSON, ALIAS JOSÉ EVANGELISTA), ACUSADO Y APELANTE.

G. R. No. 46928. January 29, 1940

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

Se ha seguido esta causa con arreglo a la siguiente que-rella:

"That on or about the 4th day of August 1939, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud Marcos Cano as follows, to wit: the said accused under false and fraudulent manifestations and representations which he made upon said Marcos Cano to the effect that he was an employee in the Manila Gas Corporation and that he could secure employment for persons who are willing to work as painters in said firm at a daily wage of P2.50, provided he is given money to buy painting equipment, and by means of similar deceit, induced said Marcos Cano to recommend his brother, Jose Cano, and his brother-in-law, Antonio Gatmaitan, to said accused, and to give him (accused), as in fact he was given the sum of P15.50 for the purchase of painting equipment, said accused then and there fully knowing that he was not employed in the Manila Gas Corporation and neither did he have any power or influence to recommend and employ persons to work therein, and that those manifestations and representations were only made for the purpose of obtaining, as in fact he obtained, the sum of P15.50, and once in possession of said sum, said accused absconded himself and willfully, unlawfully and feloniously misappropriated, misapplied and converted the said sum to his own personal use and benefit, to the damage and prejudice of said Marcos Cano, José Cano, and Antonio Gatmaitan in the said sum of P15.50, Philippine currency.

"That the said accused has been previously convicted of the crimes of theft and estafa by virtue of final judgments rendered by competent court as follows:

Date of
arrest

Crime

Sentence

Date of
sentence

Date of
release

9-2-26

10-27-28

9-16-26

Estafa, Court of First Instance D-33940

Estafa, Court of First Instance D-33941

Estafa, Court of First Instance D-35166

Estafa, Court of First Instance D-35165

Estafa, Court of First Instance D-35168

Estafa, Court of First Instance D-35167

Estafa, Court of First Instance D-35170

Estafa, Court of First Instance D-35169.1

Qualified theft, Court of First Instance D-37305

Estafa, Court of First Instance D-35265

Estafa, Court of First Instance D-35264

Estafa, Court of First Instance D-35266

Estafa, Court of First Instance D-35267

Estafa, Court of First Instance D-35268

Estafa, Court of First Instance D-35269

1 month, 1 day, and P8 in demnity

1 month, 1 day, and P5.50 in demnity

2 month, 1 day, and P10 in demnity

1 month, 1 day, and P3 in demnity

2 month, 1 day, and P10 in demnity

2 month, 1 day, and P12 in demnity

3 month and P15 in demnity

3 month and P15 in demnity

4 years, 2 months and 1 day plus 21 years additional penalty

3 month, 11 day, and P1.50 in demnity

3 month, 11 day, and P1.20 in demnity

3 month, 11 day, and P6 in demnity

3 month, 11 day, and P4 in demnity

3 month, 11 day, and P2 in demnity

3 month, 11 day, and P3 in demnity

12-11-26

12-11-26

9-2-27

9-2-27

9-2-27

9-2-27

9-2-27

9-2-27

7-30-29

1-12-37

1-12-37

1-12-37

1-12-37

1-12-37

1-12-37

2-10-27

11-7-35

9-9-38

and is therefore a habitual delinquent under the provisions of article 62, paragraph 5, of the Revised Penal Code, the date of his release from confinement in connection with his last conviction of estafa being September 9, 1938."

El. apelante, al ser informado de la querella anterior, declaró ser culpable del delito acusado en la misma y el Juz-gado le condenó a la pena de dos meses y un día de arresto mayor, más a la pena adicional de seis años y un día de prisión mayor, por ser delincuente habitual, y a pagar a la parte ofendida la cantidad de P15.50, con las costas.

Los hechos acusados en la querella constituyen el delito de estafa definido en el artículo 315, No. 4, subsección 2-A, que se castiga con arresto mayor en su grado medio y máximo, o sea, de dos meses y un día a seis meses. Habiendo concurrido la circunstancia atenuante de haberse declarado culpable el apelante, compensada con la agravante de reincidencia, debe imponerse esta pena en su grado medio, o sea, de tres meses y once días a cuatro meses y veinte días.

Aunque entre las previas convicciones que se mencionan en la querella hay la de haber sido el apelante condenado previamente por hurto calificado, habiendo el fiscal excluido esta alegación, las demás previas convicciones del apelante se reducen a tres, para los efectos de la delincuencia habitual, en vista de las fechas de estas convicciones, viniendo así a ser la presente convicción la cuarta. Por esta razón la pena adicional impuesta por el Juzgado es correcta.

Entendiéndose de tres meses y once días la pena principal que se impone al apelante, se confirma en lo demás la sentencia apelada, con las costas. Así se ordena.

Villa-Real, Imperial, Díaz, Laurel, y Concepción, MM., están conformes.

Se modifica la sentencia.

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