

**THE PEOPLE OF THE PHILIPPINES, PALINTIFF AND APPELLEE, VS.  
DAVID SANTOS Y RUZ, DEFENDANT AND APPELANT.***G.R. No. 47709. April 14, 1941*

Ponente: MORAN, J.

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On March 1, 1940, an information for estafa was filed against defendant, David Santos y Cruz, for defrauding one Gan Cio Tan, owner of the "Tableria la Cnfianza," "by falsely pretending to build a house in Quezon City and to possess cash with which to cover the payment of his order for building materials needed therefor," and by such representations, induced the offended party "to accept his order for several pieces of lumber, of the total avalue of P850, under the express obligation on his part of paying cash on completion of the delivery thereof \* \* \* well knowing, as said accused well knew, the same to be false and fraudulent since he had no money to pay for said lumber"; and that thereafter he "converted to his personal use and benefit" the lumber by him ordered, to the prejudice of the offended party. The information furtheralleged that defendant is a recidivist. Defendant pleaded not guilty, but upon leave of court; whereupon, the trial court condened him t an indeterminate penalty of from four months and one day of arresto mayor to one year and one day of prision correccional, and to indemnify the offended party in the sum of P850, with subsidiary imprisonment in case of insolvency.

Counsel de oficio for the defendant contends that, notwithstanding defendant's plea of guilty, the latter should be acquitted of the charge on the ground that the delivery of the goods ordered rise to pure civil liability. The supposed delivery on credit is not borne out by the allegations of the information. On the other hand, said allegations which, by his pleas of guilty, defendant admitted, are to the effect tat with intent to defraud the complainant, he ordered certain building materials on the pretense that he was building a house and that he had sufficient funds to pay in cash the value of said materials tiftl completion of their delivery; that these pretenses are false; and that he, thereafter, converted to his personal use the materials by him ordered. These allegations define the crime of estafa provided in section & (a) of article 315 of the Revised Penal Code.

The penalty prescribed by law for the offense charged is arresto mayor in its maximum period to prision correccional in its minimum period, the amount involved being over P200 but less than P6,000. As the aggravating circumstances of recidivism alleged in the information and admitted by the appellant is offset by his voluntary plea of guilty, the penalty should be imposed in its medium period; and pursuant to the Indeterminate Sentence Law, as amended, appellant should be sentenced to a minimum penalty of not less than one month and one day of arresto mayor and to a maximum of one year and one day of prision correccional. With the only modification that the minimum of the indeterminate penalty imposed upon defendant be one (1) month and one (1) day of arresto mayor, judgment appealed from is affirmed, with costs against appellant.

Imperial, Diaz, Laurel, and Horrilleno, JJ., concur.

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