

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GREGORIO MALLARI AND JULIA SUNGA, DEFENDANTS. &#8211; JULIA SUNGA, APPELLANT.***G.R. No. 5753. September 28, 1910*

Ponente: TORRES, J.

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On September 2, 1905, Gregorio Mallari, accompanied by his wife, Julia Sunga, presented himself to Emigdio Bundoc Taliri and requested the latter to trust him with some embroidered jusi cloth to sell on commission. Mallari agreed to deliver to the owner of the cloth the proceeds of the sales, or the cloth itself in case it should not have been sold, by the 30th of December of that year. Pursuant to the request, the accused spouses received from Taliri 66 pieces of embroidered jusi, valued at P198, and thereupon Fulgencio Jaime drew up a contract in Spanish from data furnished him in the Pampanga dialect. After this document had been written it was read to the said spouses and interpreted to them in Pampanga, and the next day it was ratified before the notary, Simplicio Mangila, although Julia Sunga did not appear before the notary, saying that she did not think her presence was necessary as, according to the offended party, she had already signed the document. As Mallari did not fulfill his agreement to deliver the value of the cloth or the cloth itself, should it not have been sold, the owner of the goods made a demand upon him, at the time the agreement was broken, and on several occasions afterwards, once in writing and the other times verbally through Nicolas Quiambao, for the return of the cloth or the delivery of its price; but Mallari always replied that the cloth was not yet sold, when Taliri knew that it was; wherefore the latter, believing that he was the victim of a fraud, made a complaint to the court of the justice of the peace of San Fernando, Pampanga, and the record of the proceedings in the case was afterwards forwarded to the Court of First Instance.

On the basis of the foregoing facts, the provincial fiscal, on November 5, 1908, filed a complaint with the Court of First Instance of the said province charging the spouses Gregorio Mallari and Julia Sunga with the crime of estafa, and the cause having been tried, the judge, in view of the evidence adduced, rendered judgment therein on October 12, 1908, and sentenced each of the accused to the penalty of six months' *arresto mayor*, to the accessory penalties, to indemnify Emigdio Bundoc Taliri severally and jointly in the sum of P198, with subsidiary imprisonment in case of insolvency, and each to pay one-half of the costs. Gregorio Mallari died on the 4th of the said month of October, in the pueblo of Macabebe, wherefore, by order of December 24, 1908, the case was dismissed in so far as it concerned him, and an appeal was taken by the surviving defendant, Julia Sunga.

Starting from the hypothesis that due proof was actually adduced in this cause of the existence and reality of the crime of estafa herein charged, and of the guilt of the accused Gregorio Mallari, although, on account of the latter's death on October 4, 1908, a few days before the judgment appealed from was rendered, the case was dismissed with respect to the deceased, by order of December 23 of the same year (p. 101 of the record), withal the proceedings had in the case do not show full proof of the guilt of the other defendant, Julia Sunga, the wife of the deceased defendant, Gregorio Mallari, as a coprincipal of the crime under prosecution.

The circumstance of Julia Sunga's having been present when her husband Gregorio Mallari received from the aggrieved party the 66 pieces of embroidered jusi cloth, and when the instrument of contract was executed, expressive of the delivery and receipt of the cloth and of the obligation to deliver the price thereof, or to return the cloth, in case it should not have been sold by December 30, 1905, to its owner, Emigdio Taliri, does not determine, on account of the husband's nonfulfilment of his agreement, criminal liability on the part of the wife. Because she accompanied her husband on that occasion, it does not follow that she was criminally liable for the deceitful and fraudulent conduct of her husband, so long as it is not shown that the wife participated directly or even indirectly in the appropriation or abstraction of the cloth received for its sale on commission by the husband.

Between the document Exhibit A, on the one hand, which contains a copy of the memorandum written by the notary Simplicio Mangila on page 37, back, of the registry book of instruments executed or ratified in his office - a copy subscribed by the notary Cosme Garcia, because the said Mangila who wrote the copied memorandum afterwards died - and on the other hand, the Exhibit B, which is said to be a transcript or reproduction of the instrument alleged to have been executed by the said spouses and in which record was made of the receipt of the cloth and the agreement to return it or its value on December 30, 1905, since the authenticity of this document Exhibit B does not appear to have been proved at the trial, the contents, of the memorandum copied in Exhibit A must necessarily be relied upon, inasmuch as it is a proven fact that the defendant Julia Sunga did not appear before the notary to ratify the contents of the document alleged to have been written by the witness Fulgencio Jaime which, having disappeared, was substituted by the Exhibit B, an imitation or reproduction of the same. The memorandum copied in Exhibit A reads as follows:

"Don Gregorio Mallari, executor of the instrument, D. Emigdio B. Taliri, creditor, D. Fulgencio Jaime, witness, Venancio Reyes. By commission on sale value of P198, Sept. 3, 1905. The commission is on sixty-six pieces of embroidered jusi, the proceeds from the sale of which shall be delivered to Taliri on the 30th day of December of the present year."

In this note, which must be a true extract of the instrument drawn up by the witness Jaime and which was ratified before a notary by the executor thereof, Mallari, neither the name of the appellant Julia Sunga, nor any mention thereof, appears. It was therefore not necessary for her to ratify the contents of the documents executed by her husband, as is made to appear in Exhibit B, for accepting as certain and exact the memorandum copied in Exhibit A, as averred by the notary who transcribed it from the registry book kept by the deceased notary Simplicio Mangila who wrote the memorandum and before whom the ratification was made, the participation of Julia Sunga in the aforesaid agreement of her husband, such as it appears in the document reproduced by Exhibit B, can not properly be admitted as a fact. It would not be hazardous to affirm that were the notary Mangila now living he perhaps would not have exhibited the said document, Exhibit B, after the disappearance of its original authentically abstracted in the instrument Exhibit A.

The fraud or the deceit must not be looked for in the act of making the contract of commission and of executing the instrument annotated by the notary according to Exhibit A. The malice and the elements constituting the crime of estafa supervened after the receipt of the cloth, and under this assumption the record of the cause does not disclose conclusive proof that Julia Sunga participated in the punishable acts committed by her husband who, according to the testimony of the aggrieved party himself, was the sole person who took charge of the cloth for the purpose of selling it on commission and came to terms of agreement with the owner thereof, wherefore the demands made through a third party in behalf of the offended person were addressed to the said Mallari. The criminal liability of the appellant can not be established by the circumstance that her name appears beside that of her husband in the charges preferred against the latter in connection with the alleged estafa.

For the foregoing reasons, and in view of the fact that the trial of this cause disclosed no conclusive proof of the

guilt of the defendant Julia Sunga, it is proper, in our opinion, with a reversal of the judgment appealed from, to absolve Julia Sunga, with the costs of both instances de oficio, and it is so ordered.

Arellano, C. J., Johnson, Moreland, and Trent, JJ., concur.

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