

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BLAS ALMAZAN AND JUANA MARTINEZ, DEFENDANTS AND APPELLANTS.

G.R. No. 6447. September 14, 1911

Ponente: TORRES, J.

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TORRES, J.:

This is an appeal raised by the two defendants from the judgment of conviction rendered in this case by the Honorable Judge Dionisio Chanco.

On March 28, 1909, Catalina Macugay went to the house of Francisco Quiaoit to get a pair of gold earrings of the form of a shuttle, with small diamond settings, for the purpose of selling them on commission, and Quiaoit then and there delivered the earrings to her, which were valued at P180, the said Macugay assuming the engagement to return them in the evening of that day, if not sold, or to deliver to him their price, if she should be able to sell them. As Macugay did not return the earrings nor deliver their price, as agreed, Quiaoit, on the following day, went to Macugay's house and demanded of her the return of the earrings or the delivery of their price, on which occasion he found in the latter's house another woman named Cayetana Sebastian, to whom Macugay said she had delivered the earrings. Cayetana acknowledged that she had received the jewels from the latter and, in turn, stated that she had delivered them to one Juana Martinez who had commissioned her to bring to the said Martinez a pair of earrings as the latter desired to secure them for another person. After Martinez has received the earrings ordered from Sebastian, she would neither return them to the latter nor pay their price, saying that she should keep them until the latter had paid the sum of P60 which she, Sebastian, owed to Bias Almazan, Martinez' uncle. Then Quiaoit, accompanied by Catalina Macugay and Cayetana Sebastian, went to the said Almazan and Martinez and begged them to return to him the earrings as they belonged to him and not to Cayetana Sebastian, but they denied his request, saying that they would not return the earrings until Sebastian had paid her debt to Almazan. A complaint alleging coercion was then filed in the court of the justice of the peace of Laoag and a judgment of conviction was therein rendered. The defendants appealed to the Court of First Instance of Ilocos Norte, which, at the petition of the provincial fiscal, dismissed the case, but reserved the right to the fiscal to file another complaint for estafa against the defendants.

For the foregoing reasons, on January 11, 1910, a complaint was filed by the provincial fiscal in the Court of First Instance of the aforesaid province, charging the said Bias Almazan and Juana Martinez with the crime of estafa, and the case having come to trial, the court, on August 29, 1910, rendered judgment by sentencing the two defendants to the penalty of six months of arresto mayor, to the accessory penalties, to return the earrings or pay their value, P180, and, in case of insolvency, to the corresponding subsidiary imprisonment, not to exceed one-third of the time of the principal: penalty, and to the payment of the costs. From this judgment the defendants appealed.

From the facts before related, which were perfectly proved at the trial, it is concluded that the crime of estafa, as punished by articles 534, No. 2, and 535, No. 5, of the Penal Code, was actually committed, inasmuch as, to the prejudice of Francisco Quiaoit, a pair of gold earrings with diamond settings, valued at P180, belonging to the

latter, was appropriated or misapplied by Juana Martinez who received the same to sell on commission under the condition that she should return them or pay their value to the bearer thereof, and not only did the said Martinez fail to comply with these conditions, but she refused to return the jewels on the pretext that they had been delivered to her by their bearer, Cayetana Sebastian, in payment amount which the latter owed to Martinez' uncle, Blas Almazan.

It is a fact that Cayetana Sebastian owed P60 to Blas Almazan and that the latter's niece, Juana Martinez, proposed that her uncle should collect that amount from his debtor, Sebastian, and for that purpose employed deceit and fraud by commissioning the said debtor to bring her a pair of earrings on the pretext that she desired to acquire them for another, a third person; and the broker, Cayetana Sebastian, who obtained the jewels belonging to Francisco Quiaoit, through the mediation of another woman, Catalina Macugay, who had received the said earrings from their owner, believing Martinez' statements, fell into the trap which the latter had prepared and delivered the earrings to her. Though the bearer of the jewels and not the said Quiaoit was directly the victim of the deceit, the truth is that it was the owner thereof who suffered the detriment, inasmuch as the pair of earrings disappeared and it was Juana Martinez who was benefited thereby in the sum of P130, for which they were pawned to Simeon Mandac, as stated by Mandac in his letter addressed to the clerk of the Court of First Instance and which is to be found on page 5 of the trial record.

While Francisco Quiaoit was endeavoring to recover his earrings, he had an interview with Juana Martinez; he was accompanied on this occasion by Catalina Macugay, who had received the jewels from him to sell, and by Cayetana Sebastian, who had obtained them from Macugay to deliver them to Juana Martinez, at the latter's request. In spite of Quiaoit's representations that he was the legitimate owner of the jewels, Juana Martinez refused to return them, saying that Cayetana Sebastian had delivered the same to her in payment of the sum which the latter owed to Martinez' uncle, Bias Almazan, and that she would not return the jewels unless the said Sebastian should pay the debt. The defense tried to prove that Cayetana Sebastian was at the house of the defendant Martinez on March 28, 1909, and delivered the said earrings to her in payment of her (Sebastian's) debt of P130. This delivery was alleged to have been made in the presence of the witness Modesta Segundo, who so testified. The allegation of the delivery of the earrings in payment of a debt of P130 can not be held to have been proven by the testimony of the witness Segundo, inasmuch as it does not appear to have been corroborated by the testimony of the defendants themselves. Besides the debt was owing to Bias Almazan and not to Juana Martinez and only amounted to P60, not P130 as the said witness testified.

Even though it were true that Cayetana Sebastian did deliver the said jewels to Juana Martinez in payment of what she might have been owing the latter, yet, as the jewels belonged to Francisco Quiaoit and not to their bearer Sebastian, Quiaoit could not lose his property without his consent, and he is entitled to recover the same from Martinez who appropriated it. As such appropriation was effected by means of deceit, for the record shows no proof that Sebastian did deliver Quiaoit's jewels in payment of a debt of her own, as the defense endeavored to prove, but under the pretext that another, a third person, wished to acquire them, and as the fraudulent act by which Juana Martinez succeeded in obtaining the possession of the jewels occasioned serious detriment to their owner who was deprived of them by means of a fraudulent transaction effected by the said Martinez who, in turn, obtained lucre by pawning the said jewels to Simeon Mandac for the sum of P130, more than double the amount of the debt which she tried to collect from the broker, Cayetana Sebastian the commission of the crime of estafa is manifestly shown, and the sole person responsible for its perpetration is the said Juana Martinez, since it was she alone who managed to secure the jewels by means of deceit, she who misapplied the same by pawning them without the knowledge of the broker or of the owner of the property, and is the sole person who obtained lucre from the transaction by collecting P130 from Simeon Mandac who afterwards would not or could not return the jewels, under the pretext that they had been lost.

It does not appear from the proceedings that Blas Almazan had any hand in the commission of the crime under prosecution, either as a principal or as an accessory before or after the fact, for it was not proven that he took a direct part in the perpetration of the crime, or had directly induced his niece, Juana Martinez, to commit it, or that he had at least cooperated in its consummation by previous or simultaneous acts, or that he had derived any benefit or profit from the crime or assisted Juana Martinez in its commission with knowledge of the perpetration of the said crime of estafa, for, even though he may have received from her the amount of Cayetana Sebastian's debt to him, it was not proved that he had any knowledge that his niece Martinez, in collecting or obtaining the said sum, committed estafa: for these reasons, no grounds are found whereon he may be held criminally liable for this crime.

With respect to the three errors attributed by the defense to the judgment appealed from, the first two are, of course, for the reasons hereinbefore given, understood to be refuted. The third consists in the failure of the lower court to take account of the plea of jeopardy set up on the ground that the defendants were sentenced by the justice of the peace to the penalty of two" months' imprisonment and to pay a fine of 325 pesetas for the crime of coercion, although afterwards, through their having appealed to the Court of First Instance, the case was, on motion of the fiscal, dismissed, with the reservation that he might file another complaint for estafa. Notwithstanding the arguments advanced by the defense, the defendants, on account of such prosecution for coercion, can not be held to have been placed in jeopardy and that therefore in accordance with the law they may not now be prosecuted again for the crime of estafa.

Aside from other reasons that might well be given, tending to show that the defendants have not been placed in jeopardy, it is sufficient for the purpose of this decision to state that the aforementioned justice of the peace had no jurisdiction whatever to try cases for the crime of coercion, provided for and punished by article 497 of the Penal Code, by the penalty of *arresto mayor* and a fine of from 325 to 3,250 pesetas, a sum greater than that of P200 fixed by section 4 of Act No. 1627 as within the original jurisdiction of a justice of the peace; and therefore, all the proceedings had by the justice of the peace were null and void and could produce no effect in favor of the defendants in support of a plea of jeopardy in this cause for estafa.

As regards the motion made by counsel for the defendants, for a rehearing, on account of the discovery of new evidence of great importance in the decision of this case, this court also rules that it is inadmissible, for the reason that, if it is true that Salustiano Baleba was at the house of Blas Almazan when Cayetana Sebastian delivered the pair of earrings to Juana Martinez, saying that she did so in payment of her debt, the defendants knew at the time of the trial that Baleba was present during such delivery of the jewels and heard the statement made by Cayetana Sebastian on paying her debt with the earrings; therefore the defendants, in adducing proof in defense of their rights, should have summoned this witness and availed themselves of his testimony, and, were he absent, they even could have asked for a continuance. But the fact is that the defendants' counsel took no such action, notwithstanding that his clients were aware that the testimony of the said witness might be favorable to them. The said testimony can not, therefore, be considered as newly discovered evidence. Moreover, the statements made by Salustiano Baleba, though admitted, would be mere cumulative evidence which would not alter the result, inasmuch as it would not establish a new fact, but at most would corroborate the testimony of the witness Modesta Segundo.

For the reasons herein set forth, it is proper, in our opinion, to sentence, as we hereby do, Juana Martinez to the penalty of six months of *arresto mayor*, to the accessories of article 61 of the code, to return the pair of earrings, or, in default of the same, their Value of P180, to their owner, Francisco Quiaoit, and, in case of insolvency, to the corresponding subsidiary imprisonment which shall not exceed one-third of the principal penalty, and to the payment of the costs in both instances; and to acquit, as we hereby do, Blas Almazan, with the other half of the

costs de oficio. The judgment appealed from is thus affirmed in so far as it is in accord with this decision, and is reversed in so far as it is not, and we deny the exception alleged of jeopardy and the petition for a new trial on the ground of newly discovered evidence of great importance for the proper decision of this case. So ordered.

Mapa and Johnson, JJ., concur.

Carson and Moreland, JJ., concur in the dispositive part.

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