

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SECUNDINO MENDEZONA (ALIAS S. MENDEZONA), DEFENDANT AND APPELLANT.

G.R. No. 6467. September 16, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 23d of May, 1910, the fiscal of the Province of Cebu filed a complaint in the Court of First Instance of said province, in which he charged the defendant with the crime of estafa, committed as follows;

"That on or about December 10, 1909, in the municipality of Cebu, of this province and judicial district, the said Secundino Mendezona (alias S. Mendezona), did willfully, unlawfully, and criminally, by pretending to have property, assets, and similar credit, defraud the Compania General de Tabacos de Filipinas of the sum of P2,500, as follows: the said Secundino Mendezona (alias S. Mendezona), by means of fraud and false representations of possessing copra for sale, secured the sum of P2,500; thereby causing damage to the Compania General de Tabacos de Filipinas in that by such fraud its agent in Cebu, Don Cristobal Garcia, furnished him money: which amount he requested and took on account and in part payment for 600 piculs of the said fiber which the accused pretended to have and offered for sale and sold at P10.75 a picul, according to contract with said offended company, in violation of law."

After hearing the evidence adduced during the trial of the cause, the lower court found that the defendant was guilty of the crime charged in the complaint and sentenced him to be imprisoned for a period of two years one month and twenty-one days of prision correccional, in accordance with the provisions of article 535 in relation with article 534 of the Penal Code, with the accessory penalty provided for by law, to indemnify La Compañia General de Tabacos de Filipinas in Cebu in the sum of P2,500, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of law, and to pay the costs.

From that sentence the defendant appealed to this court and made the following assignments of error:

"The lower court erred:

"1. In holding that the defendant is guilty of the crime of estafa, as defined and penalized by article 535, in connection with article 534, of the Penal Code.

"2. In holding that the defendant refused, neglected and failed to deliver said copra, or any part of the same, as well as to return the sum of P2,500.

"3. In sentencing the defendant to suffer subsidiary imprisonment in case of insolvency for the indemnity of P2,500, and to pay the costs.

"4. In admitting Exhibit B of the prosecution.

"5. In overruling the motion of the defense for dismissal of this case on the ground that the existence of the crime of estafa had not been proven.

"6. In holding that the action prosecuted constitutes estafa and is not a civil obligation, as it should be held.

"7. In having violated the organic act of Congress, which says in section 5: 'No person shall be imprisoned for debt.'"

All of the foregoing assignments of error may be discussed under one head, to wit: That the lower court erred in finding the defendant guilty of the crime of estafa under the evidence adduced during the trial of the cause.

It was proven during the trial of the cause by Exhibit A that the defendant on the 10th of December, 1909, received from La Compañia General de Tabacos de Filipinas the sum of P2,500 oft account, in part payment of 600 picos de coprax, at P10.75 per pico. It was also proven during the trial of the cause that the said 600 picos de coprax had not been delivered by the defendant to the said company at the time of the trial in the lower court (May 23, 1910). The complaint does not state when the said coprax was to be delivered under the contract, neither does the evidence adduced during the trial of the cause show exactly when said coprax was to be delivered. The agent of the said company testified during the trial and said that the defendant represented to him that he (the defendant) had 600 picos of coprax in Mindanao and that he had sent a boat to Mindanao for the purpose of bringing said coprax to Cebu. There is no proof in the record which shows that the defendant did not have 600 picos of coprax in Mindanao nor that he did not send a boat to Mindanao for the purpose of bringing the said coprax to Cebu. There is no proof in the record which shows that the representations made by the defendant at the time of the alleged contract with reference to the coprax were untrue.

The theory of the defense is, under the assignments of error, that the relation existing between the said company and the defendant was purely a contractual relation and that the failure to deliver the said coprax (if there was a failure) amounted to nothing more or less than a breach of a contract; that the relation between the said company and the said defendant was purely a contractual one, and that a breach of this relation resulted only in a civil liability and not in a criminal liability.

In support of this contention of the defendant Exhibit 3 was introduced, which is a copy of a current account between Secundino Mendezona and the said company. This exhibit shows that on various dates from the 5th of November, 1909, up to and including the 1st of January, 1910, the defendant had received various sums of money from the said company upon contracts for coprax, amounting to P10,237.19, and that he had been credited on said contracts with coprax actually delivered to the said company, together with some additional credits for errors in account and otherwise, in a sum amounting to P7,822.76, leaving a balance of P2,414.43 due upon the 1st of January, 1910. The said current account shows, for example, that on the 30th day of November, 1909, the defendant received from said company on a contract for coprax the sum of P1,000, and on the same date delivered to the said company coprax amounting to P224.70. This item, as well as others mentioned in said current account, shows that the company had been in the habit of entering into contracts with the defendant for the delivery of coprax and paying to the defendant sums of money in many cases in advance.

From all of the evidence adduced during the trial of the cause, we are unable to find any proof to justify the conclusion that the relation between the defendant and the said company, with reference to the purchase and sale of the said 600 picos of coprax, was any different from their relations with reference to each of the other transactions for the purchase of coprax which took place between them, between the 5th day of November, 1909, and the 1st day of January, 1910, except that the 600 picos of coprax were not delivered. By reference to said current account (Exhibit 3) it will be seen that the said company treated (so far as their book account was concerned), the contract for the purchase of the said 600 picos of coprax in exactly the same manner as they had treated other contracts with the defendant for the purchase of coprax made theretofore.

We find no sufficient evidence in the record to justify the conviction of the defendant for the crime charged in the complaint. He may be civilly liable for a breach of his contract, but there were no misrepresentations made by the defendant, so far as the evidence shows, sufficient to justify his conviction for the crime of estafa. The sentence of

the lower court is, therefore, hereby reversed, and it is hereby ordered that the complaint be dismissed against the defendant and that he be discharged from the custody of the law.

Torres, Mapa, Carson, and Moreland, JJ., concur.

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