

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AMBROSIO FIGUEROA, DEFENDANT AND APPELLANT.

G.R. No. 6748. March 16, 1912

Ponente: MAPA, J.

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MAPA, J.:

The complaint on which this cause for the crime of estafa is based, is as follows:

"That the said Ambrosio Figueroa, the accused, did, within the month of May, 1909, in the municipality of Pililla, Province of Rizal, P. L., and while he was president of the municipal board of health of the said pueblo, voluntarily, unlawfully and criminally collect and receive P0.25 from one Marcos Paulete and P0.50 from one Crispulo Masaya, as fees for the slaughter of animals in the said pueblo; but, to their prejudice did appropriate the said sums to his own use, without delivering the same to the municipal treasurer or returning them to the said Paulete and Masaya; acts in violation of law."

In view of the evidence adduced at the trial, the court sentenced the defendant to the penalty of two months and one day of arresto mayor, to reimburse each of the offended parties in the sum of twenty-five centavos, and to the payment of the costs of the trial. From this judgment the defendant appealed.

At the trial the following facts were proved: first, that on one occasion the defendant received from a person by the name of Crispulo Masaya, some pork, valued at 25 centavos, under the express obligation of paying such sum, in cash, to the municipal treasurer of the pueblo as the fee for the slaughter of the hog; second, that, on another occasion, one Marcos Paulete delivered to the same defendant the sum of 25 centavos, in coin, with the instruction that he deliver it to the municipal treasurer in payment of the fee for the slaughter of a hog which the said Paulete had butchered; third, that the defendant did not deliver either amount to the municipal treasurer, nor return it to the said Masaya and Paulete; and, fourth, that when these events occurred the defendant held the office of president of the municipal board of health of the pueblo.

In view of such facts we find the defendant guilty of the crime of estafa, provided for and punished by paragraph 5 of article 535 of the Penal Code, as regards the twenty-five centavos he received in cash from Marcos Paulete, inasmuch as, having received them under the express instruction to deliver them in the latter's name to the municipal treasurer in payment of the fee which the said Paulete owed for the slaughter of an animal, he, instead of complying with such instruction, appropriated the said sum to his own use, to the manifest prejudice of the said Paulete who, of course, would have again to expend, if he has not already done so, a like sum of 25 centavos to pay the fee referred to. The title under which the defendant received the aforesaid sum was evidently that of a commission consisting in the before mentioned instruction to deliver the same to the municipal treasurer; and the fraudulent appropriation of money received on commission is one of the acts expressly mentioned in the aforesaid legal provision as constituting the crime of estafa.

With respect to the 25 centavos, the value of the pork received from Crispulo Masaya, we are of opinion that the herein defendant did not commit the crime of estafa. In the first place it is not claimed, nor certainly could it be

claimed, that he embezzled the meat itself as such, since he acquired it lawfully through Masaya's own free will and consent. The latter delivered it to him in order that he might own it and do with it as he saw fit. The title of acquisition of the meat was, therefore, on the part of the defendant, absolute and perfect and excludes all idea of fraudulent appropriation of the same. Neither was there any such fraudulent appropriation of the twenty-five centavos stipulated between the defendant and Masaya as the price of the said meat, because one can not very well fraudulently appropriate to himself money that is his own, and these 25 centavos which the defendant assumed the obligation to pay as the value of that meat were unquestionably his so long as they had not gone out of his possession. He did not receive from Masaya the said sum nor any other, in cash; what he did receive from the latter, was a small amount of meat, and that, with the understanding perfectly known to and agreed upon between them both that he received it for himself, that is to say, to make it lawfully his own and to convert it to such uses as might best suit him, and not for the purpose of keeping it at the disposal of Masaya or of delivering it to a third person. The 25 centavos which he agreed to deliver to the municipal treasurer, for Masaya, were never received by him from the latter, nor did they ever belong to the said Masaya, notwithstanding that the latter was entitled to collect them from the defendant as the value of the meat which Masaya delivered or sold to him.

It follows, therefore, that what the defendant bound himself to deliver to the municipal treasurer was something entirely distinct from the thing he received from Masaya, as indeed is an amount of meat from a sum of money in cash. This being so, there is evidently lacking one of the essential requisites of the crime of estafa, as defined in paragraph 5 of article 535 of the Penal Code. An oftconsulted author, in commenting on this legal provision, says literally, in part, as follows:

"The third element of this crime consists in that the things mentioned (money, goods or any other chattel) shall have been received as a deposit, on commission or for administration, or under any other title from which arises the obligation to deliver them or return them, that is, to deliver or return the same thing received (not another of the same kind and quality), as occurs in the case of the deposit, commission and administration of which this article particularly treats, and also, for example, in the contract of comodato where the borrower is obliged to make restitution of or to return the very same thing which he received for a specific use." (Viada, Penal Code, amended, vol. 3, p. 515.)

Frankly, with regard to this feature of the case, there was simply a sale of meat by Masaya to the defendant, the price of which, 25 centavos, the latter agreed to deliver to the municipal treasurer, instead of to Masaya himself; and it does not appear that there can be any question as to the fact that the mere noncompliance on the part of the purchaser, with his obligation to pay the price of the sale, is, nor can be in any manner whatsoever, in accordance with the Penal Code, an essential element of the crime of estafa in any of the various forms in which it may be committed. The fact that the payment was to be made, pursuant to the agreement, to a person other than the vendor, and not to the latter himself, has no bearing whatever on the point. The obligation of the purchaser in both cases is exactly the same in substance, is of a purely civil nature, and noncompliance therewith can, similarly, only give rise to the exercise of a civil action.

The penalty of two months and one day of *arresto mayor*, imposed upon the defendant by the judgment appealed from, is in accordance with the law, as regards the sum of 25 centavos swindled from Marcos Paulete, even allowing no weight, as none should be allowed, to the matter of the other sum of 25 centavos, the value of the meat delivered to the defendant by Crfspulo Masaya, for the reason already indicated above, to wit, that, with respect thereto, no crime of estafa was committed. It is maintained in the Attorney-General's brief that the defendant committed that crime, not as a private person, but as a public official in his capacity of president of the municipal board of health, and that, therefore, there should in addition be imposed upon him the penalty prescribed in article 399 of the Penal Code, as follows:

"The public official who, taking advantage of his office, shall commit any of the crimes specified in Chapter

IV, Section II, Title XIII of this book, shall incur in addition to the penalties prescribed therein that of temporary disqualification in its maximum degree to perpetual special disqualification."

This article is not applicable to all the embezzlements and swindles or estafas which a public official might commit, but only to such as he may commit by taking advantage of his office, as the text thereof expressly says. The office of president of the municipal board of health, which the defendant held, has nothing to do with the collection of license fees for the slaughter of animals, which fees must be paid like all the taxes and other revenues of the municipality, to the provincial or municipal treasurer, pursuant to section 69 of Act No. 82. Marcos Paulete himself well knew this on delivering the 25 centavos to the defendant with the explicit direction that the latter should deliver it to the municipal treasurer of his pueblo as the fee for the slaughter of an animal. He, therefore, knew that this money was delivered to him, not in his official capacity, but as a private party, in the same manner as might have been done to any other person not a public official, since it did not matter at all whether or not the person who should pay, in Paulete's name, the said fees to the municipal treasurer, was such. The defendant, then, not having acted as president of the municipal board of health, but as a private citizen, in receiving that sum, evidently did not take advantage of his office, and therefore, the provisions of the said article 399 are not applicable, and the swindle or estafa committed by him must be punished only by the penalty specified in paragraph 5 of article 535, in connection with article 534, which, in fact, is the one imposed upon him in the judgment appealed from. (8 Phi], Rep., 589,[1] and 9 Phil. Rep., 84.[2])

The defense alleges that the Court of First Instance which pronounced judgment in this cause lacked jurisdiction to try the same, and that, consequently, all the proceedings had therein are null and void, inasmuch as the crime concerned is one for which the law fixes a penalty of less than six months' imprisonment, the trial of which class of crimes pertains solely and exclusively, in first instance, to the courts of the justice of the peace, according to section 68 of Act No. 136, providing for the organization of courts in the Philippine Islands.

Certain it is that the penalty fixed by law for the crime which was proven in the trial of this case, is less than six months imprisonment, and that the justices of the peace have original jurisdiction for the trial of all misdemeanors and offenses in all cases where the sentence might not by law exceed six months' imprisonment or a fine of one hundred dollars; but it is no less certain that the complaint in the case at bar was filed, not for the said crime exactly, but for another more serious one, which is that of estafa committed by a public official, since, according to the language thereof, it was committed by the accused as president of the municipal board of health. The crime charged under such form of complaint is punishable by law with the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification, in addition to the penalties prescribed in the section that treats of swindles and other false pretenses (art. 399, Penal Code). The said penalty of disqualification is considered by the law as a punishment, and in itself fixes the measure of its gravity. It is severer, under such classification, than those of presidio and prison correctional, which, as is known, are from six months and one day to six years' duration and, as indicated by their name itself, are classified only as correctional penalties (art. 25). And, if to this it is added that, pursuant to article 6, crimes are considered "graves" for which the law provides penalties that are in any of their degrees punishments, an exact idea is given of the gravity of the crime charged in the complaint against the herein defendant. That crime, as described in the complaint, falls within the exclusive jurisdiction of the Courts of First Instance, and in no case may be tried by the justices of the peace, for the simple reason that the latter can not in any case, without exceeding their jurisdiction, impose the penalty of disqualification, be it temporary or perpetual, special or absolute. Once the Court of First Instance acquired jurisdiction by virtue of the terms of the complaint, for the trial of the crime charged therein, it did not afterwards lose it through the mere circumstance that the crime which in fact was proven at the trial, was of less gravity, and the court could, therefore, continue to try the case and pass final judgment, for the reason that this latter crime is necessarily included in that which was charged in the complaint. It is rather in substance the same crime, with the

sole difference that it was committed by the defendant, according to the evidence, as a private party, and not as the president of the municipal board of health, as alleged in the complaint. This case is expressly provided for in General Orders No. 58, section 29 of which provides as follows:

"The court may find the defendant guilty of any offense, or of any frustrated or attempted offense, the commission of which is necessarily included in the charge in the complaint or information."

It is not necessary to say that it may occur and does in fact quite frequently occur, that the lesser offense included *iri*; that which is the subject of the complaint, especially when it is not of a higher class than that of frustrated or attempted offenses, is punished by law with a penalty of less than six months imprisonment, and nevertheless the legal provision just above transcribed expressly empowers the judges of the Courts of First Instance, without distinction of cases or of penalties, to find the defendant guilty of any such lesser offense: which shows in a conclusive manner that the levity or insignificance of the penalty adequate to the offense such as was actually proved, does not and can not impair the jurisdiction which they acquired, at the commencement of the trial of the cause, by virtue of the facts alleged in the complaint, when these come *prima facie* within their legal jurisdiction.

The judgment appealed from is affirmed, with the exception of that part thereof which sentences the defendant to the reimbursement of the sum of 25 centavos to Crispulo Masaya, which part is hereby reversed; with the costs of this instance against the appellant.

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

[1] U.S. vs. Casin.

[2] U.S. vs. Dacuycuy

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