

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCELINO RIVERA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 7159. November 08, 1912*

Ponente: TRENT, J.

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In this case the defendants, Marcelino Rivera, Quirico T. Palma, and Mar Carmen Catu were sentenced to four years, two years eleven months and ten days, and one year eight months and twenty-one days, respectively, of prison correccional, and each to pay one-third the costs of the for the crime of estafa. Rivera and Palma appealed and have presented separate briefs.

Counsel for Palma insists that the court erred (a) in permitting prosecuting attorney to file an amended complaint for the crime of estafa; (b) in finding that the proofs presented establish of this appellant beyond a reasonable doubt; and (c) in finding that the facts alleged and established constitute the crime of estafa Counsel for appellant Rivera alleges that the court erred in admitting considering in this case the testimony presented in the former trial for falsification of a public document. Two other errors are alleged which the same as (b) and (c), *supra*.

The two appellants were tried separately, but in view of the fact that t evidence in each case is the same, they will be considered together in instance.

After a careful reading of the record in this case we are of opinion that the guilt of the appellants is fully established. The facts necessary t disposition of the case are as follows: The defendants in a certain case desired to procure an appeal bond in order to stay execution of the judgment rendered against them pending an appeal to this court. For this purpose one Yuen Chi Hin approached Rivera for assistance. Rivera to this Chinaman to Palma and it was agreed between the three that a bond in the amount desired, P5,600, would be furnished for 5 per cent of its value. Rivera and Palma had possession of tax receipts amounting to nearly P30,000, covering property located at San Miguel de Mayumo, Province of Bulacan, and belonging to one Anastacia Dasig. They persuaded the defendant Maria Carmen Catu to appear before the court with these papers, declare herself to be Anastacia Dasig, and sign the appeal bond such person. This plan was carried out, the bond was accepted by the court, and the Chinaman delivered to the appellants Palma and Rivera a check payable to bearer for the sum of P3,000. These appellants took the check to the bank the same day the bond was executed and cashed it, it bearing the indorsement of the defendant Palma. The civil case w duly elevated to this Supreme Court, where the decision of the lower court was affirmed and plaintiffs awarded judgment in the sum of P5,000 wit costs in both instances. The cause being remanded for execution, the sheriff, was unable to find the defendants in that civil case or any pr of theirs upon which he could levy, and the plaintiffs thereupon moved against the sureties on the appeal bond. Process was first issued against Lim Suaco, the other surety on the bond, but was returned unsatisfied with the statement by the sheriff that this party declared himself unable meet the judgment. Several days later Anastacia Dasig presented a motion to the court in which she denied that she had signed the bond and requested that it be annulled as to her. This motion was denied, but subsequently thereto this person in a separate civil action succeeded in the bond annulled as to her. The plaintiffs in the civil case were the remediless, and unable to

recover their judgment. Upon Anastacia Dasig's appearance in court with a denial of having signed the bond, criminal proceedings were promptly instituted against the defendants in the case bar upon a charge of falsification of a public document, and they were convicted of the crime charged and sentenced to various terms of imprisonment. Subsequently thereto, a new trial was granted and shortly thereafter the prosecuting attorney presented a new or amended complaint in which the same defendants were charged with the crime of estafa. This new complaint was based upon the same facts as the former one for falsification of a public document. On the same day that the new complaint charging the defendants with the crime of estafa was filed the following order was entered:

"I hereby certify that the accused Marcelino Rivera, Quirico T. Palma, and Maria Carmen Catu, attended by their counsel, Messrs. McDonough and Sa before this court in public session agreed to the presentation by the prosecuting attorney, Mr. Paredes, of an amended complaint in this cause for the crime of estafa; and the said amended complaint having been read to the accused, Maria Carmen Catu pleaded 'guilty'; Marcelino Rivera and Quirico T. Palma pleaded 'not guilty.'"

Palma having agreed to the substitution of the new complaint, he cannot now claim that the court erred in allowing such substitution. The other appellant does not claim that the court erred upon this point.

The case upon the new complaint proceeded to trial on November 21, 1910. The prosecuting attorney then offered all of the evidence adduced against Rivera and Palma at the former trial. To this Palma said:

"I have no objection to this evidence presented by the prosecuting attorney but I desire to be tried separately."

Rivera said nothing when this offer was made, but he did object to the presentation of Exhibits F, G, and H, which are certain orders issued in civil case. After the introduction of the foregoing testimony, witnesses called and examined both by the prosecution and the appellants in their respective separate trials. Rivera, near the close of his second trial, counsel, made the following offer:

"I will offer the whole evidence of the defense for defendant Rivera on former trial."

The prosecuting attorney then said:

"I wish to offer all the rebuttal evidence offered on that trial."

This evidence was received without objection. The appellant Rivera did not object to the introduction of the testimony taken at the former trial but he himself offered a part of that testimony, which was admitted without objection. He cannot now complain or claim that the court erred in admitting that testimony.

There remains to be disposed of the exception taken by counsel for both appellants that the facts above stated do not constitute estafa.

The first argument of counsel for Palma on this point is that the name used by Maria Carmen Catu in executing the bond was not a fictitious name as required by the provisions of the first paragraph of article 535 of Penal Code, and that therefore one of the essential elements of the crime of estafa was missing. This argument is without force for the fact that other means than the use of a fictitious name may be used to commit the crime of estafa. The article reads:

"ART. 535. The penalties prescribed by the next preceding article shall be imposed upon:

"1. Any person who shall defraud another by the use of any fictitious name or by falsely pretending to possess any power, influence, qualification, property, credit, agency, or business, or by means of any similar deceit other than those hereinafter enumerated."

* * * * *

It will be noted that this provision of law specifies that estafa may be committed "by falsely pretending to possess any * * * property," which exactly covers the case at bar. Maria Carmen Catu went before the court and stated that she was the owner of certain property which has been proved to belong to another. We are not, therefore, obliged to discuss whether she did use a fictitious name within the meaning of the law. <!-- committed "by falsely pretending to possess any * * * property," w exactly covers the case at bar. Maria Carmen Catd went before the court and stated that she was the owner of certain property which has been proved to belong to another. We are not, therefore, obliged to discuss whether she did use a fictitious name within the meaning of the law.

Counsel for both appellants then object that a prima facie case has not been made out against the appellants in that it is not shown that the bank had been unable to realize upon the bond up to the date of the trial of these appellants. The lower court said:

"An execution against the judgment debtor was returned unsatisfied on April 13 of the present year, and later in the same month a similar return was made as to the one surety whose signature to the bond in question is found to be genuine. Moreover, an attempt to realize against the other surety resulted in the showing that said instrument was never executed her, but that the pretended execution was fraudulent, as found by the judge in the decision above quoted from, and which was the theory adopted by the judge who suspended execution against said surety by the order of July 26, 1910, in said civil cause No. 6898, as well as by an of the same judge on November 5, 1910."

The records referred to in the above quotation were all introduced as exhibits for the Government in the case at bar. It is true that this e does not directly establish the fact that up to the time of the trial o defendants the plaintiffs had not been able to collect their judgment fr either their judgment debtor or from the sureties on the bond. But it circumstantial evidence of the highest order. By court records it is that the defendant company in that civil case had ceased business and f that reason the judgment could not be collected from it; and that the surety Lim Suaco refused to meet his obligation on the bond with the statement that he was unable financially to do so. The order of the cou dated November 5, 1910, granting a stay of execution as to Anastacia Dasig was based upon a motion presented by that person in which she denied either signing the bond or authorizing anyone to sign it for her; on the trial of the defendants in this criminal case it was conclusively that she did not sign the same. At the first trial of the defendant this case, the surety Lim Suaco testified that he was still unable to obligation in the bond. There is not a shred of evidence in the record tending to weaken the "only logical conclusion to be reached from a consideration of these orders and the declarations of Anastacia Dasig Lim Suaco on the trial of the appellants. To sustain the argument o counsel that the plaintiffs in the civil case for aught the record show have or might have collected their judgment, we should be compelled to reestablish their defendants in business with sufficient attachable pro satisfy the bond; to credit the surety Lim Suaco with an accumulation w a period of five months of from P5,000 to P6,000; or to overturn the evidence which has so conclusively pointed to the trickery of the defendants and hold that Anastacia Dasig did sign the bond, and that in the interim between November 5, 1910, and December 29,1910, she confessed her participation therein and allowed process to issue against her property. vague probabilities or rather possibilities certainly do not amount to reasonable doubt of the fact that plaintiffs in the civil case were time of the trial, and are at this time for that matter, unable to collect their judgment. It is true that the burden of proving a defendant guilty of t crime charged rests upon the prosecution at all stages of the trial. Tho the defendant does not offer so much as a scintilla of evidence in his o defense, it is incumbent upon the Government to prove his guilt beyond reasonable doubt. But the presumption of innocence with which the prison favored may be overcome by convincing evidence of his guilt, and. when such evidence has been presented by the prosecution, his continued silence no bar to its consideration. It is then incumbent upon the defendant would maintain his innocence to bring forth the proofs which will demolish the case made by the Government. To indulge, under such circumstances, conjecture and vague probabilities will not supply the absence of mater

evidence clearly within his power to produce. In the case at bar it was certainly the duty of the prosecution to prove the ultimate fact that plaintiffs in the civil case were still holding their unsatisfied judgment time of the trial of the defendants in this criminal case. It would have eminently proper for the Government to have introduced direct testimony in support of this fact. But in this case, the collateral proof of the appears to us just as satisfactory and conclusive as positive testimony be. The appellants did not attempt to controvert this damaging evidence, which, had it been possible, they could very easily have done. are clearly of opinion that the prosecution has established this fact beyond any question of a doubt.

It is further urged that the pecuniary loss suffered by the plaintiff has not been ascertained. Exhibit F, which is the order of execution issued against the surety Lim Suaco, shows the amount due from the bondsmen to be P5,133.39. In this amount is included a certain number of small item costs which the bank could not have received, but the net amount due the bank and which it lost by reason of the presentation of the bogus bond amounts to P5,088.56.

According to the settled doctrine of this court, the essential elements of the crime of estafa are (1) the deceit employed to defraud another, and (2) the injury or damage caused thereby. Both elements must be present in order to sustain a conviction for such crime. (United States vs. 5 Phil. Rep., 370; United States vs. Leano et al., 6 Phil. Rep. 370; United States vs. Leaño et al., 6 Phil. Rep., 368.) It is evident, as we have said, that deceit was employed by the appellant which caused the injury to the plaintiff bank. The fact that the gain derived by the appellants as a result of their fraudulent acts was not paid by the injured party in this case is of no consequence. The defendant in the civil suit agreed to pay a fixed amount if the appellants would secure bondsmen acceptable to the court. The bondsmen presented by the appellants were accepted and P300 paid. The parties who paid the P300 lost nothing. They received full consideration for this amount. But plaintiff bank suffered the injury. The gain does not necessarily have come from the injured party.

The judgment appealed from being strictly in accordance with the law and the merits of the case, the same is hereby affirmed, with costs against appellants.

Arellano, C. J., Torres, Mapa, Carson, and Moreland, JJ., concur.

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