

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE ABAD, DEFENDANT AND APPELLANT.

G.R. No. 7520. November 23, 1912

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant in this case was charged with the crime of estafa upon an information which reads as follows:

"That on or about December 10, 1910, in the municipality of Cavite, Province of Cavite, P. L., the above-named accused entered the bicycle renting establishment, named 'Ligaya,' located in Plaza Soledad of said municipality, pretended that his name was Jose de los Santos and that lived at No. 111 Calle Paseo, and rented from the proprietor of said establishment, named Leoncio Pangilinan, an Iver Johnson bicycle, No. 16 with the private marks No. 10 and the initials L. P., agreeing to the sum centavos an hour, and to return it after one hour; but having taken away said bicycle he did not return it at the time agreed or pay the rental thereof, but he did willfully, illegally, and maliciously and against the owner take possession of it for himself and for the sake of gain, keeping in his possession until January 29, 1911, when the said bicycle was found possession of the said accused in the town of Imus, Province of Cavite, P. I."

Accepting, as we do, the findings of the trial court as to the credit and the lack of credibility of the different witnesses for the prosecution for the defense, the evidence of record conclusively establishes the guilt the defendant and appellant of the crime of estafa charged in the information, and defined and penalized in section 5 of article 535 of Penal Code, read together with section 1 of article 534.

Counsel for the appellant contends that since the information fails expressly to allege that the bicycle in question had a specific definite value, and forth just what that value was, a judgment of conviction upon this information should not be sustained. But while it is true that a con of the crime of estafa cannot be sustained in the absence of proof that the subject matter of the fraud perpetrated by the accused had some value, and while in good practice a complaint or information charging the commission of the crime of estafa should specifically allege the value of the subject matter of the fraud where that is possible, we hold the mere omission of an allegation of the specific value of the bicycle mentioned in the information did not render it fatally defective, because facts alleged in the complaint, when proven, establish beyond any reason doubt that the bicycle had some value. The information alleges that the bicycle was the property of one Leoncio Pangilinan; that it was use, at the time when the crime was committed, in his bicycle renting establishment; and that the defendant rented it from the owner and agreed to pay him 50 cents per hour for its use. We think that these allegations are sufficient, when proven, to sustain and justify a finding bicycle in question had some value, and that it was the personal property the complaining witness; and it appearing that this bicycle had been converted or misappropriated by the defendant, in violation of the provision of subsection 5 of article 535, the finding that the bicycle was person property of some value is sufficient to sustain a conviction Under the provisions of subsection 1 of article 534, which prescribes the penalty imposed where the value of the subject matter of the fraud is not shown be in excess of 250 pesetas. In the case of

the U. S. vs. De (12 Phil. Rep., 87), wherein defendant was convicted of the crime of robbery of a watch, the specific Value of which was not set out expressly in the complaint, we said that: "Since the crime of robbery is complete when all the other requisites set out in the definition of the code concur, if the property taken has even the smallest value, we think we would be justified in holding that the watch taken had sufficient value to sustain conviction of robbery, unless it affirmatively appeared that it was absolutely worthless, for without testimony to the contrary a watch, which the owner valued enough to carry, may fairly be presumed to have some value, however insignificant that value may be."

We agree, however, with counsel for the appellant that the trial court er convicting the defendant of the misappropriation or conversion of property the value of more than 250 and less than 6,000 pesetas. It is true that one of the witnesses testified that the bicycle in question was worth P75, and that, if this testimony could be taken into consideration for purpose of classifying the estafa committed by the defendant with those penalized under the provisions of subsection 2 of article 534, the judgment conviction should not be disturbed. But the information does not charge the value of the property taken was more than 250 and less than 6,000 pesetas, and while we hold that its allegations amount to a charge that a bicycle of some value was taken, we would not be justified in declaring t these allegations amount to a charge that the bicycle had a value of more than 250 pesetas. Under the code provisions the misappropriation or conversion of property valued at more than 250 pesetas is a higher offend than the misappropriation or conversion of property valued at less than 2 pesetas, and an entirely different and distinct penalty is prescribed for two offenses. We have frequently held that in no case can a conviction b sustained for a higher offense than that charged in the information, nor different offense, unless it is necessarily included in the offense charge manifest therefore that the conviction in this case for the higher of must be reversed.

Counsel for the prosecution contends that the failure of the information allege specifically that the bicycle had a value of 250 pesetas was cur by the undisputed evidence of record showing that its was in fact worth P75, or 375 pesetas. Suit this contention can not be maintained; in the place, because it is in direct conflict with the general rule whereby we uniformly declined to sustain convictions for higher offenses than those charged in the information, which has its foundation in the Constitutional of the accused to be advised at the outset of the proceedings as to the precise nature of the charge against him; and, in the second place, because timely objection was made to the introduction of the evidence as the specific value of the bicycle, and under elementary rules of evidence the testimony in this connection should have been excluded, at least in so far as it was offered for the purpose of establishing a higher or a different offense from that charged in the complaint.

Of course we are not to be understood as holding that in every case of this kind the admission of such evidence would necessarily be erroneous. Case may arise wherein testimony of this character would be properly admitted the purpose of aiding in the identification of the property, or for the purpose of corroborating the testimony of a particular witness or the like. But in such cases its use as evidence must be strictly limited to the leg object for which it might properly be admitted, and it can never be taken into consideration for the purpose of maintaining a conviction for an of higher than that charged in the information.

The judgment of the court below convicting and sentencing the defendant should be and is hereby reversed. The defendant and appellant is, nevertheless, adjudged guilty of the offense charged in the information is to say, of the crime of estafa as defined and penalized in sect of article 535 of the Penal Code, read together with section 1 of article and there being no evidence as to the existence of aggravating or extenuating circumstances, we sentence him to the prescribed penalty in its medium degree, that is to say, to two months and one day of arresto mayor, and to pay the costs in both instances. The bicycle having bee recovered by its owner, there is no need for a specific order for its restoration. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Trent, JJ., concur.

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