

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONIO CARDELL, DEFENDANT AND APPELLANT.

G.R. No. 7770. September 28, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of estafa. The complaint alleged:

"That on or before August 1, 1911, in the city of Manila, Philippine Islands, the said accused was acting as agent for the West Coast Life Insurance Company of San Francisco, California, a corporation duly authorized to do business in the Philippine Islands, and as such agent of the West Coast Life Insurance Company of San Francisco, California, the said accused did on or before August 1, 1911, receive policy No. 7476, for Estanislao Labucay in the sum of P6,000, with an annual premium of P504, Philippine currency, with the obligation of delivering said policy to the said Estanislao Labucay upon payment by said Estanislao Labucay of the sum of P504 as premium, and of turning over to said West Coast Life Insurance Company of San Francisco, California, at its office in Manila, the said premium of P504, Philippine currency, and that the said accused did at said time and place deliver the policy and did then collect from said Estanislao Labucay the annual premium of P504, Philippine currency, but did at said time and place fail to deliver and make report to said West Coast Life Insurance Company of San Francisco, California, at its office in Manila, Philippine Islands, regarding said sum of P504, Philippine currency, but that he did willfully, fraudulently, unlawfully and criminally appropriate, misapply and divert to his own private use and benefit the said sum of P504, Philippine currency, to the damage and detriment of said West Coast Life Insurance Company of San Francisco, California, in the said sum of P504, Philippine currency, equivalent to 2,520 pesetas."

After hearing the evidence, the Honorable A. S. Crossfield, judge, found that the evidence showed, beyond a reasonable doubt, that the defendant was guilty of the crime of estafa of P327.60, and sentenced him to be imprisoned for a period of five months of *arresto mayor*, and to pay the costs.

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

First. That the complaint does not state facts sufficient to constitute a public offense.

Second. That the court has no jurisdiction over the offense charged in the complaint.

Third. That the court's findings of fact are contrary to the weight of the evidence.

Fourth. That the conclusions and the decision of the court are not justified by the evidence or the court's findings of fact.

With reference to the first assignment of error, it may be said, that an examination of the record fails to disclose that the defendant made any objection whatever to the sufficiency of the complaint in the court below. In the absence of such objection, this court will not consider that question when presented for the first time here. When no objection is made to the sufficiency of the complaint in the lower court, the objection will not be considered on appeal. (*U. S. vs. Mabanag*, 1 Phil. Rep., 441; *U. S. vs. Cajayon*, 2 Phil. Rep., 570; *U. S. vs. Mack*, 4 Phil. Rep.,

291; U. S. vs. Sarabia, 4 Phil. Rep., 566; Mortiga vs. Serra et al., 5 Phil. Rep., 34; (See also 204 U. S., 470, and 11 Phil. Rep., 762); U. S. vs. Paraiso, 5 Phil. Rep., 149; (See also case of Paraiso, 207 U. S., 368); (See also 11 Phil. Rep., 799); U. S. vs. Aldos, 6 Phil. Rep., 381; U. S. vs. Eusebio, 8 Phil. Rep., 574; U. S. vs. Flores, 9 Phil. Rep., 47, 48; U. S. vs. Lampano, 13 Phil. Rep., 409.)

With reference to the second assignment of error, to wit, that the court had no jurisdiction over the offense charged in the complaint, the appellant alleges that no part of the crime was committed in the city of Manila. It was argued by the appellant that the estafa charged in the complaint was committed in the city of Cebu, which is outside of the jurisdiction of the court. The appellant, however, overlooks the fact that the contract of the defendant with the offended party was executed at Manila, and provides that the defendant, under his obligation to the offended party, should render his accounts to the offended party in the city of Manila. It is true that the defendant collected the money which he misappropriated in the city of Cebu, but under his contract he was bound to account for such money to his principal (the offended party) in the city of Manila, and failing so to do, the crime of estafa was properly charged as having been committed in Manila, which place was within the jurisdiction of the trial court.

In the case of the State of Ohio vs. Bailey (50 Ohio State Reports, 636), it appears from the evidence adduced during the trial of the cause, that a contract of employment was made in one county, by which the accused was authorized to canvass for and sell his employer's goods in another county, and to account therefor in the county where the contract was made, either by letter or in person. At the request of the defendant and under the terms of the contract, merchandise was sent to him by his employer, from the county where the contract was made to the county where he (defendant) was actually operating, and where he received and sold such merchandise. After the defendant had sold the goods he wrote a false account of the transaction to his employer, addressed said letter to his employer in the county where the contract was made, which letter he mailed on the railroad train while absconding. The letter was received by the employer in the county where the contract was made. The supreme court of Ohio held that the defendant might be indicted and tried in the county where the contract was made. (See also Ex Parte Hedley, 31 Cal., 108; Brown vs. State, 23 Texas Appeals, 214 (1887), 4 S. W. Reporter, 588.)

In the case before us the contract of employment was made in the city of Manila; it was the duty of the defendant to account there either by letter or in person. His failure to comply with his promise or obligation to the offended party therefore took place in the city of Manila, within the jurisdiction of the trial court.

The foregoing doctrine was recognized by this court, although the question was not specifically discussed, in the cases of U. S. vs. Ongtengco (4 Phil. Rep., 144), and U. S. vs. Jockers (7 Phil. Rep., 464).

Our conclusion is that the lower court has jurisdiction over the offense charged in the complaint.

With reference to the third and fourth assignments of error, it may be said that an examination of the evidence adduced during the trial of the cause, shows beyond a reasonable doubt, that the defendant committed the crime described in the complaint in the manner and form therein alleged, and without a more detailed discussion of the evidence adduced during the trial of the cause, we are of the opinion that the sentence of the lower court is fully sustained by the evidence and the law.

It will be noted that the sentence, of the lower court was that the defendant should be imprisoned for a period of five months of arresto mayor and to pay the costs of the action. The lower court evidently overlooked some of the requirements of law. The defendant should have been required to return the amount of money appropriated to his own use (the sum of P327.60) or to indemnify the offended party in that amount, and he should also have been sentenced with the accessory penalty provided for in article 61 of the Penal Code. Therefore the sentence of the lower court is hereby modified and it is hereby ordered that the defendant be sentenced to be imprisoned for a

period of five months of arresto mayor, to return to the offended party the sum of P327.60 or to1 indemnify him in that amount, with the accessory penalty provided for in article 61 of the Penal Code, and to pay the costs, and in case of insolvency to suffer subsidiary imprisonment for the amount of money appropriated to his own use. So ordered.

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

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