

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ROSENDO VILLAREAL, DEFENDANT AND APPELLANT.

G.R. No. 9192. August 07, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Manila convicting the accused of the crime of estafa and sentencing him to four months, and one day of presidio correctional, to payment of costs of the action, and to indemnify the firm of Successors of C.Fressel & Co. in the sum of P1,036.11, with subsidiary imprisonment in case of insolvency.

It is charged in the information in this case: "That on or about the 31st day of January, 1913, in the city of Manila, P. I., the said Rosendo Villareal, having prior to that date as an agent of the firm of Successors of C. Fressel & Co., a copartnership duly organized and doing business in the city of Manila, P. I., received several amounts for the purchase of native hats, from which amounts on the date above stated, there was a balance in his possession of P1,036.11, which the said Rosendo Villareal had received on deposit, commission or administration from the said firm, Successors of C. Fressel & Co., to wit, for the purpose of buying native hats for the said firm of Successors of C. Fressel & Co., the said defendant did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert to his own use the said sum of P1,036.11, to the damage and prejudice of the said firm of Successors of C. Fressel & Co. in the said sum of P1,036.11, Philippine currency, equivalent to 5,180 and 11/20 pesetas."

We are of the opinion that there is not sufficient evidence to sustain the conviction. It appears from the testimony introduced on the trial that the firm of Successors of C. Fressel & Co. was engaged in the purchase and export of native hats of various styles and qualities. Thus engaged it procured the services of the accused in this case to purchase hats of the individual makers found engaged in that business within a certain area and to sell them to the company. It was the custom among the hat makers at that time to have advanced to them by their purchasers money sufficient to pay for materials and help. The defendant having no money to make these advances and to pay for the hats which he had engaged to purchase, certain sums were at various times advanced to him by C. Fressel & Co. In return for the advances the accused at various times sold and delivered to the company quantities of hats at an agreed price. In the course of time and just prior to the commencement of this prosecution a liquidation of accounts resulted in disclosing the fact that the accused was in debt to Fressel & Co. for money advanced in the sum of P1,036.11.

It appears from the testimony of Brokman, the manager of Fressel & Co., as well as from the testimony of the accused, that the money advanced to the accused by Fressel & Co. was in the nature of a loan and not a delivery of money to be used for a particular purpose or to be returned. Brokman testified that they purchased hats from the defendant at the price which they could agree upon; that an account was kept of the debits and credits of the accused in which he was charged with the sums of money advanced and credited with varying quantities of hats which he delivered to them; that the sum of P1,036.11 which appears as the balance in favor of the company did

not represent any particular or designated sum of money advanced to the accused' but was obtained by subtracting from the total of the sums advanced the total purchase price of the hats delivered. The accused testified that the money which he had from the plaintiffs was received as a loan which was charged to his account and which he promised to repay in hats which he proposed to sell and deliver to them. He admitted that he owed the sum above mentioned but denied that he had used any money obtained from the company for his own purposes as alleged, declaring that the sum represented the losses which he had sustained in the business occasioned by two causes; First, the neglect or refusal of certain hat makers to whom the accused had advanced considerable sums of money to deliver to him the hats for the purchase price of which said sums had been delivered; and, second, the company at various times during their commercial relations refused to pay the accused the price which he asked for the hats and compelled him to sell them to it at a considerable loss. This evidence is uncontradicted, and being corroborated, as it is, by other evidence in the case, we are constrained to find that the accused has not violated any criminal law and should be acquitted.

The judgment of conviction is reversed and the accused acquitted.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

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