

**THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND AP-
PELLEE, VS. JOSE LOPEZ (ALIAS JOSE LOPEZ CADENA, JOSE L.
CADENA, JOSE L. LOPEZ, EMILIO YANGCO, MARCELO MAGNO,
PEDRO BAUTI...**

G. R. Nos. 45202-45207. December 29, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

Jose Lopez, who is also known by the several names above-mentioned, was charged with and convicted of five crimes of estafa and one of theft in the Court of First Instance of Manila on May 25, 1936. The penalties imposed upon him in each of said cases which were tried jointly upon petition of the defendant with the consent of the fiscal were:

G. R. No. 45202 (estafa), three months and eleven days of arresto mayor, with costs.

G. R. No. 45203 (estafa), three months and eleven days of arresto mayor, with costs.

G. R. No. 45204 (estafa), three months and eleven days of arresto mayor, with costs.

G. R. No. 45205 (estafa), thirty days of arresto mayor (the trial court perhaps meant one month and one day, or thirty-one days of arresto mayor, article 315, case 4, and article 27, paragraphs 5 and 6, of the Revised Penal Code), with costs.

G. R. No. 45206 (theft), two months and one day of arresto mayor, with costs.

G. R. No. 45207 (estafa), three months and eleven days of arresto mayor, with costs.

Four days before the trial of his said six cases and four days also before the sentences were imposed upon him, Jose Lopez, the accused, filed with the court his petition of May 21, 1936, praying that he be granted the benefits of the Probation Law (Act No. 4221). On the following day, May 22, 1936, the lower court denied his petition, as it could not do otherwise, because said Act provides that the provisions thereof would be applicable after sentence has been pronounced and the same has become final (sec. 1).

The day after the sentences had been imposed upon him, or May 26, 1936, the accused filed his notice of appeal in each of the six cases, his petition reading as follows:

"The undersigned defendant hereby interposes an appeal from the judgment rendered against him in the above-entitled case, on May 25, 1936." In view of the unequivocal terms of his appeal, it would appear that the appellant, in this instance, would endeavor to prove either his innocence or the impropriety of his penalties. Such is not the case, however, because the only error assigned by him in his brief is:

"The trial court erred in denying the petition of the appellant to avail himself of the benefits of the provisions of Act No. 4221, commonly known as the Probation Law."

This court cannot consider the question so raised by the appellant for the reason that he did not appeal from the order of the lower court of May 22, 1936, denying his motion of the day before praying that he be granted the benefits of said Probation Law; it is the appeal which can confer jurisdiction upon this court to try a case coming

from the lower court. Neither may this court consider the question whether or not there was prejudicial error in the application of the penalties imposed upon the appellant, because the court has not been asked to do so and there is not the least indication that it is necessary to do so.

Wherefore, the sentences appealed from are affirmed, with the costs to the appellant.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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