

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FLORENCIO TORRIDA, DEFENDANT AND APPELLANT.

G.R. Nos. 7450, 7461, 7452. September 18, 1912

Ponente: TRENT, J.

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TRENT, J.:

These cases come before us on appeal from the Court of First Instance of the First Judicial District. Appellant was charged with three separate crimes of estafa in three separate actions, tried and found guilty in each case and sentenced in each of the first and second to four months and in the third to six months of arresto mayor. He was also condemned to indemnify the offended parties, to temporary special disqualification for the period of ten years and one day and to pay the costs of the causes. By agreement the three cases were tried together in the court below and also in this court.

The facts are these:

The appellant shortly after entering upon his duties as councilman of the town of Aparri, Province of Cagayan, gave, in the month of October, 1910, directions to his subordinates that the death of all large animals must be reported by the owners to him as councilman. These orders were conveyed to the people as directed. Damaso Rabilas lost one carabao, Bonifacio Rante one, Santiago Rante two, and Felipe Rante one (those of Santiago and Felipe were included in the same complaint). The respective owners of these animals reported their death to the appellant. Upon the receipt of this information the appellant informed these owners that they must pay a fine of P5 for each animal, these fees to be turned into the municipality by him. The owners, believing that the municipality had provided for the payment of such fines, turned over to the appellant five pesos for each animal that died. There was no provision whatever made by the municipality or any other entity for the imposition of such fines. These facts clearly constitute the crime of estafa as defined and penalized in paragraph 1, article 535, in relation with paragraphs 1, article 534, Penal Code.

Appellant insists that the trial court erred (1) in finding that there were present in the commission of these crimes the aggravating circumstances numbers 10, 11, and 18 of article 10 of the Penal Code; and (2) in imposing the penalty set forth in article 399 of said code. These provisions read:

"Art. 10. The following are aggravating circumstances:

* * * * *

"10. That the act be committed with abuse of confidence.

"11. That advantage be taken by the offender of his public position.

* * * * *

"18. That the accused is a recidivist.

"Art. 399. Any public officer who, taking advantage of his official position, shall commit any of the crimes

enumerated in chapter 4 of section 2 of title 13 of this book shall, in addition to the penalties therein prescribed, suffer a penalty ranging from temporary special disqualification in its maximum degree to perpetual special disqualification."

We agree with counsel that there were not present the aggravating circumstances mentioned in numbers 10 and 18, *supra*, because there is nothing to show that the crimes were committed with abuse of confidence. There were no confidential relations between the appellant and the injured parties. The mere fact that people had reposed in the appellant sufficient confidence to elect him to a public office does not constitute the aggravating circumstance set forth in number 10. In order to constitute this circumstance the confidence between the parties must be immediate and personal and such as would give the accused person some advantage or make it easier for him to commit the criminal act.

These three cases were tried together in the court below. The judgments in all three of these cases were rendered at the same time; in fact, the three judgments are contained in the same paragraph and were pronounced at the same time. A recidivist is one who at the time of his trial for one crime shall have been convicted by final judgment of another crime embraced in the same title of the Penal Code. At the time the trial court held that the accused was twice a recidivist there was no final judgment against him. In fact, the judgments imposed could not have become final until after the expiration of fifteen days and this only in the event that an appeal was not taken. So it is clear that the aggravating circumstance mentioned in number 18 was not present.

It is insisted that the appellant in committing these crimes did not take advantage of his public position or office. In this we cannot agree with counsel. The fact that the appellant was councilman at the time placed him in a position to commit these crimes. If he had not been councilman he could not have induced the injured parties to pay these alleged fines. It was on account of his being councilman that the parties believed that he had the right to collect fines and it was for this reason that they made the payments. It is true that he had no right to either impose or collect any fines whatsoever. It is also true that a municipal councilman is not an official designated by law to collect public fines. But these facts do not destroy or disprove the important fact that the accused did by taking advantage of his public position deceive and defraud the injured parties out of the money which they paid him. This holding is not in conflict with the doctrine enunciated in the case of *United States vs. Casin* (8 Phil. Rep., 589). In that case Casin and Calleja, the offended party, lived in the same house. Calleja gave to Casin two pesos for the purpose of buying her a cedula in order that she might institute a civil action in the courts. Casin received the money promising to buy the cedula. He neither purchased the cedula nor returned the money but converted it to his own use. The fact that he was a councilman did not have anything to do with his receiving the two pesos. He acted purely in his private capacity. Consequently, he did not in any manner take advantage of his public position.

It is also insisted that it was error to take into consideration the aggravating circumstance number 11 and also impose the penalty provided in article 399. The aggravating circumstance number 11 was found to be present and was taken into consideration for the purpose of increasing the penalty which the law says must be imposed. The disqualification mentioned in article 399 is a part of the penalty to be imposed. This penalty is never imposed as an aggravating circumstance because from the very nature of the penalty it cannot be so considered.

There being present one aggravating circumstance and no extenuating circumstances in the commission of these crimes, the penalty should be imposed in each case in its maximum degree, which is four months of *arresto mayor*.

In the first and second cases the penalties imposed are in accordance with the law; in the third the court erred in imposing six months instead of four. This penalty is, therefore, reduced to four months. In all other respects the judgments appealed from are affirmed, with costs against the appellant. So ordered.

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

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