

1 Phil. 390

[G.R. No. 546. October 10, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE VS. MANUEL SCARELLA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

LADD, J.:

The complaint, which is for *estafa*, charges the defendant with having received three sums of money, viz, 5 pesos from Potenciano Eborá, 10 pesos from Marcelo Cueto, and 38 pesos from Isidoro Castillo, in payment of dues for timber cut on public lands; that he received these sums with the obligation to pay them over to the United States and that he appropriated them to his own use to the prejudice of the United States.

The court below found the defendant guilty as to all three sums under article 535, No. 5, of the Penal Code, which punishes "those who, to the prejudice of another, shall appropriate or misapply any money, goods, or any kind of personal property which they may have received as a deposit, on commission, for administration, or in any other capacity producing the obligation to deliver or return the same, or who shall deny having received it," The defendant appealed.

The defendant was a ranger in the employ of the Forestry Bureau of the Insular Government in the Province of Batangas. His duties were to measure timber cut on the public lands and issue certificates of the amount cut and other particulars to the parties liable to the payment of the dues. He had no authority to collect the dues himself.

The payments by Potenciano Eborá and Marcelo Cueto and that by Isidoro Castillo must be considered separately.

(1) As to the payments by Eborá and Cueto: Eborá testified that he paid the defendant 5 pesos 71 centimos and 4 octavos, and that he was with Marcelo Cueto when the latter, at

the defendant's instance, paid him 10 pesos, and that these sums were paid for licenses for boats, or, as we think he in effect says, as dues for timber used in the construction of boats belonging to Eborá and Cueto, respectively. The defendant, who testified in his own behalf, admitted the receipt of these sums, and that they were received by him as charges due the Government. He, however, says that the 5 pesos and 71 centimos were received from one Lorenzo Cueto and not Eborá. His testimony is in accord with Eborá's as to the 10 pesos having been received from Marcelo Cueto. Neither Lorenzo Cueto nor Marcelo Cueto testified at the trial.

As to the date of the receipt of these sums there is no evidence except that of the defendant, who says the 5 pesos 71 centimos were received in August, 1901, and the 10 pesos on the 13th of the succeeding month. The payments were made at Batangas, the capital of the province. The defendant was arrested September 28, 1901, and up to that date he had not paid the money into the Treasury or made any other disposition of it for the benefit of the parties from whom he had received it.

The defendant in his testimony undertook to explain and justify his conduct in receiving and retaining these sums. This part of his testimony is confused and obscure, but the purport appears to be, with reference to the payment of the 5 pesos 71 centimos, that it was only a partial payment, the boat not being at the time completed, and it being, therefore, impossible to ascertain the total amount that would be payable respecting it, and that it was understood that upon the completion of the boat the owner was to return and pay whatever balance might then be found to be due. With reference to the other sum the defendant says that he was obliged to go to Lemery on official business the day the payment was made, and that he therefore issued to Marcelo Cueto a provisional certificate, and that Cueto was to wait till his return on the following day, when he was to provide him with the definite certificate or order for payment to the treasury, but that upon his return he found that Cueto had left town. We are unable to perceive that this evidence, admitting its truth, suggests any justification or excuse either for the original receipt of the money in either instance or for its subsequent retention. It was the defendant's duty, immediately upon the receipt of these sums or within a reasonable time thereafter, to pay them into the public treasury. He had, indeed, no authority to receive them on behalf of the Government. But once having received them, although wrongfully, he was under an obligation to the parties from whom he had received them, an obligation arising *ex maleficio*, to apply them to the purposes for which they had been delivered to him. His failure to do this—in the case of the 10 pesos for about two weeks and in the case of the other sum for a considerably longer period—furnishes in itself and without the necessity of taking into consideration his

confession, to which we shall advert in another connection, an amply sufficient basis for the inference that he had fraudulently converted them to his own use. This constitutes the crime of *estafa* under the section of the Penal Code above quoted. The persons injured by the *estafa* were, however, the persons to whom the money belonged, and not, as the complaint charges and as the court below finds, the Government of the United States, the payment to the defendant, by reason of his lack of authority to receive it, not having operated as a payment of the debts due the Government. The indemnification should, therefore, be in the one case to Potenciano Eborá, who we think was the person who paid the 5 pesos 71 centimos, and in the other to Marcelo Cueto. The point that the allegation of the complaint, as to the person injured by the commission of the offense, is erroneous has not been raised by the defendant, and would not avail him if it had been raised. (G. O., 58, sec. 7.)

(2) The case stands upon a different footing with regard to the payment by Castillo. The defendant admits the receipt of 38 pesos from him—13 pesos September 13 and 25 pesos September 25—but says that he received the money to hold as a fund, upon which Castillo, who lived some distance from the capital of the province and found it inconvenient and dangerous to make frequent journeys there to pay timber dues, might draw for that purpose as occasion required. This evidence does not appear to us unreasonable, and there is nothing in the record to contradict it, Castillo himself, by whom it might have been disproved if false, not having been called as a witness. If it is to be believed, as we think it must be, the only obligation resting upon the defendant with respect to this money was to hold it till Castillo should direct its payment by him to the Government. So far as appears from the evidence, no such direction had ever been given. The fact that the money had not been paid into the treasury by the defendant can not, therefore, be used, as in the case of the payments by Eborá and Cueto, as the basis for an inference that it had been appropriated by him.

There is some evidence that the defendant, when threatened with arrest, made a verbal statement to Mr. Blanchard, the provincial treasurer of Batangas, confessing the receipt of 53 pesos in timber dues, and naming Eborá, Marcelo Cueto, and Castillo as the persons from whom he had received the money, and that he acknowledged that he had spent the money for medicine, and there is also evidence that subsequently, while in confinement, he wrote Florencio Caedo, the provincial secretary of Batangas, to the same effect, except that he stated in this letter that he had lost the money gambling. The letter was not produced; the evidence as to the verbal confession is not as full, as clear, or as specific as is desirable in evidence of this character, and the defendant retracted the confession at the trial.

Even if we were satisfied upon this evidence that the defendant made use of the money received from Castillo for his own purposes, there would still, we think, be grave doubt whether upon this single fact, unaccompanied by any evidence tending to show that by so doing he placed it out of his power to perform the obligation he was under to Castillo, a fraudulent and prejudicial appropriation could be predicated. It would seem that if by the use of the money he did not alter his situation with reference to his ability to perform the obligation, he would not be guilty of *estafa* until the time for its performance had arrived and he had made default therein. (See 3, Viada, Penal Code, 515-516.) We do not decide this question in the present case, because, upon the whole, we are not convinced beyond a reasonable doubt by the uncorroborated evidence as to the confession that the money received from Castillo had been applied to his own use by the defendant prior to his arrest. The result is that he must be acquitted as to the 38 pesos received from Castillo.

The fact that the defendant is a mestizo was improperly considered by the court below as an aggravating circumstance. Nor are there any facts in the case which warranted the court in finding the existence of the aggravating circumstance of article 10, No. 12, viz, that means were employed or circumstances brought about which added ignominy to the natural effects of the act. There remains only the aggravating circumstance of article 10, No. 11, viz, that advantage was taken by the accused of his official position, which we think was properly applied by the court below.

In the view we have taken of the case it will not be necessary to specially consider any of the defendant's assignments of error, all of which, we think, have been covered in substance by what has been already said.

The judgment of the court below is reversed, and the defendant is found guilty of two distinct offenses of *estafa* under article 535, No. 5, of the Penal Code, each of a sum less than 250 pesetas, with the aggravating circumstance of article 10, No. 11, in each case, for each of which offenses he is sentenced to three months and one day of *arresto mayor*, the sentences to be served consecutively, and to perpetual special disqualification, in accordance with the provisions of article 399, and to indemnify Potenciano Ehora in the sum of 5 pesos and Marcelo Cueto in the sum of 10 pesos, the costs of this instance to be *de oficio*.

The cause will be remanded to the court below for the execution of this judgment. So ordered.

Torres, Cooper, Smith, and Mapa, JJ., concur.

Willard, J., with whom Arellano, C.J, concurs, *dissenting*:

I agree with the foregoing decision so far as it relates to the sums paid by Potenciano Eborá and Marcelo Oueto. So far as it relates to the money paid by Isidoro Castillo, I dissent. To my mind the evidence shows that the defendant received this money in such a capacity and so used it as to make him guilty of the crime of *estafa* as charged.

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