

2 Phil. 483

[G.R. No. 1262. September 02, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. QUIRICO OLAGUER,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

It is claimed by the counsel for the defendant in his brief that the defendant did not deceive Baldomero Belleza, the complaining witness, but that Belleza deceived himself, thinking that the defendant had powers which he did not possess. This claim is answered by the testimony of Belleza, wherein he says, in answer to a question by the court, that the defendant promised to secure the liberty of his brother, and his other statement that Belleza must pay the defendant \$100 to secure this liberty. This was a representation on the part of the defendant that he possessed the power necessary to secure such liberty.

Upon the questions of fact as to whether the defendant made such promise, and whether he received 50 pesos from Belleza, the evidence is sufficient to sustain the conviction. It will be noticed from an examination of the defendant's testimony that, while he says that he is not guilty, he makes no specific denials as to conversations with Belleza or the receipt of the money. It would seem from the witnesses whom he presented that he claimed that the money had been paid for losses at gambling in his house.

We agree with the defendant's counsel that the eleventh aggravating circumstance of article 10 of the Penal Code ought not to have been taken into consideration by the court below. That circumstance is as follows: "To take advantage of any public office held by the accused." Flaviano Belleza was a military prisoner. The fact that the defendant was a copyist in the office of the provincial fiscal, a civil officer, even assuming that such a copyist would be a public officer, could have had nothing to do with the liberation of this prisoner, over whom the civil authorities had no control. It was also shown that the defendant acted as interpreter for Lieutenant Silliman, the officer who arrested Flaviano and others. This

employment was casual and temporary. It does not appear that there was any such office as that of interpreter to this lieutenant. The discharge of this service could not make of the defendant a public officer.

Even if he were such an officer, that circumstance could not be used to increase the penalty to the maximum degree, but would be, under article 399, a circumstance inherent in the crime, and punished by *inhabilitacion especial temporal*. (United States vs, Estanislao de la Rama, decided Aug. 27, 1903.)^[1]

The judgment is reversed and the defendant is convicted of the crime of estafa in the sum of 50 pesos, and is sentenced to three months of *arresto mayor*, the restitution of the sum of 50 pesos, and the payment of the costs of both instances.

Arellano, C. J., Torres, Cooper, Mapa, and McDonough, JJ., concur.

^[1] Not published.
