

1 Phil. 660

[G.R. No. 865. January 24, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FELIX BALMORI,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

The present case, No. 81, from the Court of First Instance of the Province of Itizal is now before us on appeal by defendant from the judgment of February 5, 1902, whereby he was sentenced to imprisonment for one year four months and twenty-one days and 2,001 pesetas fine, or in default thereof to suffer the corresponding subsidiary imprisonment not to exceed one-third of the principal penalty, and costs of suit, for the falsification of a private document. Counsel for defendant claims that the accused is guilty of no offense, and certainly not of that of falsification with which he stands charged. The Solicitor-General, for the reasons advanced in his brief, prayed that the appealed judgment be reversed and the whole proceedings in the case declared null and void, costs of both instances to be borne by the Government.

The criminal act which is the subject-matter of this prosecution as charged in the complaint filed by the prosecuting attorney on January 14, 1902, has the characteristics of the crime of *estafa*, defined and punished in article 534 and article 535, No. 1 of the Penal Code.

It is a settled principle, established for the proper and correct application of the provisions of the Penal Code in regard, to the crimes of *estafa* and falsification of private documents, that the mere simulation or fiction of a receipt, letter, note, or any other private document, committed with fraudulent intent, should it appear that there was no attempt made to imitate the writing and signature of the supposed maker of the document does not constitute the offense of falsification of a private document, but that of *estafa*; and it is held that the note or document used was the means selected by the agent for the commission of the offense known as *estafa* since the deceit which, together with the injury caused,

constitutes one of the principal elements of the above-mentioned offense against property, could not otherwise exist.

This case involves the simulation of a note apparently signed by "J. Fernandez," but as it has not been shown that defendant attempted to counterfeit or imitate the true authentic signature of "Juan Fernandez," it is evident that there was no falsification of any private document. The accused availed himself of the bogus note in order to obtain from the aggrieved party, Simeon Bias, through false representations, the amount of 20 pesos received for by the accused under an assumed name and signature.

Upon these facts a complaint was filed against the defendant, Felix Balmori, charging him with the crime of *estafa*, setting forth in detail the acts committed by the accused, while at the end of said complaint it is stated that the offense charged is that of falsification of a document.

This double classification of the offense is inconsistent with the provisions of section 6, No. 2, and section 11 of General Orders, No. 58, because the act in question constitutes a single offense and it should be specifically designated in the complaint.

At the opening of the trial the provincial fiscal agreed with counsel for defendant, with the consent of the judge, that the complaint be amended so as to charge defendant with the falsification of a private document instead of *estafa*, and under these circumstances the court proceeded to hear the evidence. After hearing argument by the fiscal and by counsel for the accused, the court declared that the crime of falsification had been committed, found the accused guilty thereof, and rendered the judgment already mentioned.

An examination of the record in this case will show not only a discrepancy between the complaint and the result of the evidence, but that an error was committed in charging the proper offense, even after it had been corrected or amended. This error was sustained in the appealed judgment, but as this court reviews the evidence of the offense of which the accused is charged we can not approve of the denomination given the offense in question, nor can we sentence the defendant for a crime which he has not really committed. A new trial should be had upon the filing of a new complaint for *estafa*. The former proceedings are wholly null and void in all parts subsequent to the complaint, wherefore, in view of the provisions of sections 21t and 37, General Orders, No. 58, the judgment of the court below is set aside and all proceedings subsequent to page 21 of the record are declared void; the cost of suit to be borne by the Government, The judge, upon the filing of a new complaint for

estafa, shall proceed in accordance with law. It is so ordered and adjudged.

Arellano, C. J., Cooper, Willard, and Ladd, JJ., concur.

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