8 Phil. 742

[G.R. No. 2330. April 25, 1906]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHARLES J. COCKRILL, DEFENDANT AND APPELLANT.

D E C I S I O N

CARSON, J.:

The complaint filed in this case is as follows:

> "The undersigned accuses Charles J. Cockrill of the crime of *estafa*, committed as follows:
>
> "That on, during, and between the dates of May 1, 1904, and May 31, 1904, and for many months prior thereto, in the city of Manila, Philippine Islands, the following-named persons, to wit (here follow the names of forty-three persons), were voluntarily associated together for the purpose of maintaining a mess for the furnishing of food and meals for said named members; that each of said members contributed equally and proportionately to the expenses of said mess, and for the purchase of food and employment of servants therefor, and that each of said persons were responsible for his proportionate share of expenses incurred for the purchase of food and hiring of servants for said mess.
>
> "That during said time the said Charles J. Cockrill was the treasurer of said mess, charged with the duty of collecting monthly the proportionate share of each member thereof and disbursing the funds so collected in payment of obligations incurred by the said mess; that on, during, and between the dates of May 1, 1904, and May 31, 1904, there came into the possession, care, custody, and control of the said Charles J. Cockrill, by reason of his employment as treasurer as aforesaid, large sums of money pertaining to and belonging to the above-named J. A. Manning and others, under the obligation to deliver the same to the

> creditors of said mess and under the obligation to return any balance of funds left on hand after paying all such obligations to the members of said mess.
>
> "That on or about the 31st day of May, 1904, in the city of Manila, Philippine Islands the said Charles J. Cockrill did, willfully, unlawfully, feloniously, with the intent of gain, without the consent of the joint owners thereof, and to the prejudice of the said joint owners, misapply, misappropriate, and convert to his own use, of the funds received and in his possession as aforesaid, the sum of two thousand one hundred forty-seven and fifty-four one-hundredths (P2,147.54) pesos, Philippine currency, which sum was and is the equivalent of and equal in value to the sum of ten thousand seven hundred thirty-seven and seven-tenths (10,737.7) pesetas.
>
> "All contrary to the form of the statute in such case made and provided."

The evidence of record fully sustains the allegations of the complaint and the findings of fact in the judgment and sentence of the trial court, and it was proven beyond a reasonable doubt that the accused did misapply, misappropriate, and convert to his own use the above-mentioned sum of 2,147 pesos and 54 centavos as charged.

Section 5 of article 535 of the Penal Code is as follows:

> "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 character producing the obligation to deliver or return the same, or who shall deny having received it"— shall be punished as provided in article 534, which defines and penalizes the crime of *estafa*. The accused was treasurer of the above-named voluntary association called the "Parian mess," and as such received into his possession the said sum of 2,147 pesos and 54 centavos, Philippine currency, with the obligation and the duty to pay out of the said sum all and any obligations incurred by the said "Parian mess," and to deliver such balance as might continue in his hands to the members of said association upon demand, and therefore the acts and omissions alleged in the complaint and proven at the trial constitute the crime of *estafa*, as defined and penalized in the above mentioned paragraph 5 of article 535 of the Penal Code.

> It is contended upon appeal that "the alleged mess was not a legal entity or juridical person, and therefore legally incapable of suffering damage," and that "the alleged mess, if it had any legal entity, was a partnership, the defendant a partner, and the crime of *estafa* does not lie as between partners with reference to partnership and property."

In answer to these contentions it is sufficient to say that under the above definition the only question involved is whether the accused received the money with an obligation to return it, whether he failed so to do, and whether his said failure so to do was to the prejudice of a third person. There can be no doubt whatever that his failure to make return of the funds of the mess prejudiced the other members thereof, and it is immaterial whether the mess, as a mess, was or was not a legal entity, or was prejudiced as a mess. The American authorities quoted by counsel for the appellant in support of his contention, that the crime of *estafa* does not lie as between partners with reference to partnership property, are not in point as to the above-mentioned provision of the Penal Code. (Sentences of May 8, 1884, and of March 9, 1880, supreme court of Spain.)

It was further contended by counsel for the appellant that the trial court had no jurisdiction to try the accused because no preliminary examination was held in accordance with law. It does not appear from the record that such preliminary trial was not in fact granted the accused, and where the contrary does not affirmatively appear it must be presumed that the proceedings in the trial court were had in accordance with law, and furthermore, no objection having been made on this ground at the trial, the accused must be held to have waived his right to such preliminary examination, if in fact it was not granted to him.

The judgment and sentence appealed from should be and is hereby affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, and *Willard, JJ.,* concur.

Date created: May 21, 2014