

4 Phil. 463

[ G.R. No. 2139. April 25, 1905 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ENRICO ILAO, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**CARSON, J.:**

The information filed in this case is as follows:

“The undersigned accuses Enrico Ilaio of the crime of *estafa*, committed as follows:

“1. That the said Enrico Ilaio, on or about the 27th of July, 1902, while Second Lieutenant Wm. H. Bell, of the First Cavalry of the Army of the United States, was commissary of the military post and charged with the distribution, purchase, and sale of Government rice in the said Province of Batangas, obtained from the said lieutenant an order for 200 sacks of the said article in the said town of Batangas, Province of Batangas.

“2. That the said 200 sacks of rice were delivered to the accused by the warehouseman at the beach at Batangas, in exchange for the said order and in accordance with the directions of said Lieutenant Wm. H. Bell.

“3. That the accused received the 200 sacks of rice on commission to sell them, and, upon being sold, to deliver to the said Lieutenant Wm. H. Bell, through the municipal president, Jose Villanueva, the proceeds of said sale.

“4. That said 200 sacks of rice were worth 1,050 pesos, Mexican currency, at the rate of 5.25 pesos per sack.

“5. That not only has the accused failed to pay over or make return of the

proceeds of the sale of the said 200 sacks of rice but he has always denied having received them.

“6. That the said acts were committed in violation of law.”

The accused was found guilty by the Court of First Instance of Batangas and sentenced to six months' *arresto mayor*, with the accessory penalties, from which sentence he appealed to this court.

We are of opinion that there is reasonable doubt as to the guilt of the accused.

The only evidence touching the delivery of the rice was the testimony of the said officer that he had issued to the accused an order upon the Government warehouseman for two hundred sacks of rice, and that some months later he found the said order among his papers, it having been returned to him in due course.

No receipts appear to have been given or required for the said order nor for the delivery of the rice in pursuance thereof, and no memorandum or other note of the transaction was offered in evidence.

It is alleged that the order was issued July 27, 1902, and it appears that the attention of the officer was not again directed to the matter until the end of October, when he discovered that there was no record of payment for the rice in question. During this period the officer in charge was responsible for the purchase and sale of large quantities of rice, and issued many orders to a number of purchasers with whose names and faces he was not and could not have been familiar.

There is so much room for mistake in the recollection of the details of one of these transactions, to which the attention of the officer was not directed at the time, that we are unable to affirm a judgment of conviction based on his recollection of the facts, unsupported and uncorroborated by other evidence.

We think that it is neither impossible nor improbable that the order issued in the name of the accused may have been delivered to some other person, and the rice obtained thereon without his knowledge or consent.

The sentence appealed from should be, and is hereby, reversed, and the accused acquitted, with the costs of both instances *de officio*. So ordered.

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

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