

[G.R. No. 1897. April 11, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. POLICARPO AQUINO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

In a complaint filed on the 13th of February, 1904, by one of the assistant prosecuting attorneys of Manila, Policarpo Aquino was charged with the crime of *estafa*, in that the accused had secured, some months previous, through false and fraudulent representations, the possession of property and credits of the amount of 500 pesos, to the prejudice of Barbara de la Cruz, who, on account of such misrepresentations, had given him money.

The case having come on for trial by virtue of said complaint, the judge sentenced the accused to the penalty of ten years of *presidio correctional* with the accessories provided for in article 58 of the Penal Code, to return 100 pesos to the offended party, and in case of insolvency to suffer the corresponding subsidiary penalty for the costs. From this sentence the accused appealed.

The crime with which the accused, Policarpo Aquino, is charged constitutes the crime of *estafa* inasmuch as he, Aquino, pretended to be the owner of property and claimed that he was to receive an inheritance of 14,000 pesos from the estate of his deceased father, and secured in bad faith and fraud the sum of 100 pesos on three occasions from one Barbara de la Cruz, the said amount being secured from her, 25 pesos on each of the first two times and 50 pesos on the third occasion, the said Barbara de la Cruz relying on his misrepresentations of being the owner of said property and said inheritance, the accused promising her to pay said amount as soon as he received from Attorney Trinidad Jurado said 14,000 pesos, but failed, however, to repay said amount so fraudulently obtained, which fact is proven by the declarations of the aggrieved party and the eyewitness to the delivery of the money, Julian Levanto; this fact being furthermore confirmed by Franciano Dominguez,

before whom the accused appeared and asked him as a lawyer to protect his rights in the matter of his pretended inheritance. Policeman George Walker affirms that the accused was sentenced previously to four months' imprisonment for *estafa* from one Suarez, and the father of the accused himself, who is not dead, as represented by the son, the father stating that he was compelled to put his son out of his house at the age of 17 years by reason of his bad conduct and rascality and because the son paid no attention to his advice and continued his fraudulent practices.

The accused comes within the provisions of article 535 of the Penal Code, he having falsely represented that he would receive as heir a valuable estate from his deceased father; that he was the owner of an estate in Pasig, and was to receive 14,000 pesos from the attorney, Trinidad Jurado, upon which representations he succeeded in getting the sum which he did in this case and for this reason he is liable as principal in the crime, and the amount taken being more than 250 pesetas and less than 6,250 pesetas, the accused has incurred the penalty provided for in paragraph 2 of article 534 of the Penal Code, and owing to the presence of the aggravating circumstance of *reincidencia* the penalty should be imposed in its maximum degree.

By virtue, therefore, of the considerations above set forth, it is the opinion of this court that the sentence appealed from is in accordance with the law and should be affirmed in all its parts, with the costs in this instance, this case to be remanded to the court below with a certified copy of this decision and of the judgment which shall be rendered in accordance herewith. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.