

[G.R. No. 1942. February 01, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LOPE DEDICATORIA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

It is a fact fully proven in this case that the defendant pretended falsely to be an attorney at law and that his name was Jose Batallones, in order to appear as a member of a family of this name with whom the priest Don Juan de la Rosa had an intimate friendship; that by means of these false pretenses defendant succeeded in living for some days in said priest's house and gaining his confidence; later on, as a result of that confidence thus gained by deceitful means, defendant succeeded in getting the priest to loan him on several occasions various sums of money, which he failed to repay; he also induced the priest to intrust him with 60 pesos to be taken to the priest Juan Baliwag, and he failed to comply with his trust. All the sums taken amount to 215 pesos.

These facts constitute the crime of *estafa* as provided for and punished under subsections 1 and 5 of article 535 of the Penal Code. The defendant should be punished with the penalty of *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree, because the amount embezzled is more than the sum of 250 pesetas but less than 6,250 pesetas (subsec. 2, art. 534). There are no extenuating circumstances to be considered in imposing the penalty. The fact that the crime was committed at the house of the injured party, which the court below considered as an aggravating circumstance, should not be so considered, because that is an inherent part of the crime, without which said crime could not have been

committed. Therefore, the defendant should suffer the penalty prescribed by law in its medium degree, to wit, six months of *arresto mayor*.

We affirm the judgment below, it being understood that the penalty imposed on the defendant is six months of *arresto mayor*, with the costs in this instance. So ordered.

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

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