

G.R. No. 2273

[G.R. No. 2273. December 04, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCIS J. BERRY,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On August 22, 1904, Attorney Francis J. Berry and Paul G. Carriere were charged by the provincial fiscal in the Court of First Instance of Tayabas with the crime of *estafa*. It was alleged in the complaint that the defendants, on or about the 11th day of June, 1904, fraudulently secured the signature of one Cornelio Finohermoso to a certain deed whereby the latter conveyed to Berry his title to a tract of land in Calulihan, municipality of Pitogo, containing 1,000 coconut trees, said land being bounded on the north by the land of Ramon Atienza; on the south by that of Joaquin Martinez; on the east by a forest belonging to the municipality of Pitogo, and on the west by the sea. The price stipulated was P1,000. Finohermoso was induced to believe that the instrument was not a conveyance of his property but a mere mortgage thereon. The foregoing acts were committed by the accused to the prejudice of Finohermoso and in violation of the statute in such cases made and provided.

Upon the filing of the complaint counsel for defendants moved for a separate trial as to Carriere, which was granted. The present case, therefore, concerns Francis J. Berry only.

The court, after hearing the evidence, rendered judgment convicting the defendant, Berry, of the crime of frustrated *estafa* and sentenced him to thirty days' imprisonment and costs. From this judgment the defendant appealed.

The record sufficiently shows that this was not a case of frustrated but of consummated *estafa*.

It was proved at the trial that Finohermoso, while in confinement and anxious to obtain his liberty, was induced through fraud and deceit to sign what was represented to him to be a mortgage deed of his land, for the purpose of securing the payment of a fee of P100 to the lawyer who was to arrange the matter of his bail. It developed, however, that the instrument was an absolute conveyance of the land, in consideration of P1,000 to the attorney who, through the interpreter, Carriere, had agreed to defend him.

Under paragraph 7, article 535 of the Penal Code, he who through deceit shall defraud another by inducing him to sign a document, is guilty of *estafa*.

According to the settled jurisprudence of our courts, the essential elements of the crime of *estafa*

are: (1) The deceit employed to defraud another, and (2) the injury or damage caused thereby. Both elements must be present in order to convict of any of the various species of fraud denned and punished by the Penal Code.

It is evident that deceit was employed by the defendant. The injury caused to Finohermoso is likewise manifest. By the fraudulent execution of the document marked "Exhibit A," Finohermoso involuntarily parted with his title to a piece of land valued at more than P3,000 in payment of services which were worth only P100. Cornelio Finohermoso never would have signed the document marked "Exhibit A" had he been aware of the fact that he thereby conveyed for the sum of P1,000 his title to a piece of land which, according to his own statement, was worth more than P3,000. He stated to the interpreter, Carriere, that as soon as he should obtain his liberty he would try to get P100 to redeem the land. By virtue of the deed thus fraudulently executed the title to the property was unduly conveyed to the defendant, who did not even pay the arbitrary price fixed therein nor render, perhaps, any services to Finohermoso, to the prejudice of the latter.

We find that Francis J. Berry was the sole author of the crime charged in the complaint by his direct participation in the commission thereof, his plea and evidence introduced by him to the contrary notwithstanding. The circumstantial evidence in the case, based upon established facts as it is, shows that the defendant, Berry, is guilty of the offense charged.

The defendant, Berry, a resident of the city of Manila, sent Paul G. Carriere, who was employed in his law office as interpreter and translator, to the Province of Tayabas to interview the prisoners confined in the public jail and enter into contracts with those who desired to retain an attorney to defend and represent them at the trial of their respective cases. Carriere, Berry's forerunner, called at the public jail early in the month of June and distributed among the prisoners cards similar to "Exhibit D," wherein it was stated that he, Carriere, was the agent of Francis J. Berry, an American attorney.

On the morning of the 11th of June, Carriere and Berry visited the public jail accompanied by their interpreter, Fabian Hernandez, and while there made agreements with some of the prisoners, Finohermoso being one of them. They demanded of him the sum of P100 for the services which the defendant, Berry, had promised to render. The payment of this amount was to be secured by a lien upon a tract of land containing 1,000 coconut trees. It should be noticed that the owner of the land himself testified that he never entered into any contract for the sale of his land.; that he could not afford to part with it for less than P3,000; that the document submitted to him for his signature was, according to what the interpreter Hernandez told him, a mortgage deed to secure the payment of the P100. Hernandez in his testimony corroborated the statement of Finohermoso in so far as it related to Carriere.

The justice of the peace before whom the document marked "Exhibit A" was executed testified that, according to the interpreter Carriere, the instruments ratified by the prisoners, Finohermoso being one of them, although purporting to be actual conveyances were in fact mere mortgages; that he, at the request of Carriere, who communicated with

the defendant, Berry, occasionally in English, so explained it to the prisoners, who signed the papers; that he did not remember having read the instrument literally to Finohermoso.

The defendant, Berry, can not now plead that he was ignorant of the acts of his employee, who claimed to be his agent and procured for him clients among those confined in the public jail. He had knowledge beforehand of the document which was to be executed by Finohermoso and was present at the jail when Pinohermoso through deceit was induced to sign the instrument. He furthermore procured the inscription of that document in the Registry of Property, tendered the corresponding fees, and requested the treasurer by letter to expedite the matter as he intended to dispose of part of the property acquired by him through such criminal methods. The defendant and his clerk, Carriere, secured cedulae for those prisoners who did not have any, Finohermoso being one of them.

The evidence for the defense can not overcome or even weaken the probatory force of the strong and conclusive circumstantial evidence furnished by the record, which, taken as a whole, shows that the defendant is guilty beyond a reasonable doubt. He can not be permitted to allege that his agent, Carriere, acted for himself and without his knowledge, since it is an admitted fact that his agent acted in pursuance of a mutual agreement and understanding between them. These facts show that the defendant is guilty of consummated *estafa*, and the penalty by him incurred is that provided for in article 534, paragraph 2, of the Penal Code, considering the amount stipulated in the instrument signed by Finohermoso.

Having reached this conclusion, it will not be necessary to determine whether or not the services were actually rendered by the defendant.

No extenuating or aggravating circumstances having attended the commission of the crime, the corresponding penalty should be imposed in its medium degree.

The foregoing disposes of the second and third assignments of error contained in appellant's brief. As to the first assignment it may be said that the penalty prescribed for the crime of *estafa* is *arresto mayor* in its medium degree to *presidio correccional* in its maximum degree, and that the Court of First Instance had therefore jurisdiction to try this case and this court the power to take cognizance of the same on appeal.

For the reasons above stated we are of the opinion that the judgment of the court below should be reversed, and the defendant, Francis J. Berry, sentenced to four months and one day of *arresto mayor* with the accessory penalties prescribed in article 61, and to pay the costs of both instances. The deed of sale executed by Cornelio Finoherinoso June 11, 1904, and marked "Exhibit A" is hereby declared null and void.

Let the case be remanded to the Court of First Instance with a certified copy of this opinion and of the judgment to be entered in accordance herewith for its execution. So ordered.

Johnson, Carson, and Willard, JJ., concur.

Arellano C. J., and Mapa, J., dissent.