

3 Phil. 172

[G.R. No. 1180. January 13, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ROSALIA ANACLETO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

October 16, 1902, an information was filed in the Court of First Instance of this city against Rafaela Santos and Rosalia Anacleto, charging them with the crime of

estafa.

It was alleged that on or about the 10th day of June, 1902, Rafaela Santos and Rosalia Anacleto received certain jewels described in the complaint, the property of

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Gregoria Cobarrubias, the total value of which was \$2,040, Mexican currency, and that between the said 10th day of June and the 9th day of October following, the defendants, in the city of Manila," willfully, feloniously, and without the consent of the owner of said jewels, appropriated the same and converted them to their own use, to the damage of the prosecutrix and contrary to the statute in the case made and provided.

The complaint having been filed, the defendants were tried thereon. From the evidence introduced in the course of the proceedings it appears from a document in the record marked "Exhibit A," which is signed by the defendants and which was identified by them, the woman Anacleto admits that on the 10th day of June, 1902, the date of the document, she received from Bernabela Modesto,

an agent of Dona Gregoria Cobarrubias, the jewels which, with their respective values, are described therein. These jewels, the document states, were delivered to Anacleto by the woman, Modesto, on the behalf of said Cobarrubias, the lawful owner thereof, upon the condition that they were to be sold for the respective prices indicated in the document. The document also stipulated that the jewels were to be returned as soon as possible if not sold, and the price of such jewels as were disposed of was to be duly paid over to their owner.

It seems that early in the month of June, 1902, Rosalia Anacleto Avent to the house of Bernabela Modesto and asked for some jewelry to sell, upon the pretext that she knew some prospective purchasers. The woman, Modesto, thereupon went to the woman, Cobarrubias, and got from the latter the jewels which the woman, Anacleto, had asked for, and delivered them to the latter on the 10th of June. Since that time she has not recovered the jewels or their value. For more than four months Bernabela Modesto endeavored to recover the jewelry. She finally succeeded in getting Rosalia Anacleto and Rafaela Santos—the latter being a woman who, according to the defendant Anacleto, was her companion in the matter—to visit the owner of the jewels. On that occasion Rosalia stated that she had sold the jewels in company with Rafaela, and asked

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Cobarrubias for some more jewelry to sell. The latter refused to give her any, and presented to the two women for signature the document noted on page 12 of the record. Rosalia, under numerous pretexts, tried to avoid signing, but finally

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Cobarrubias made the two women subscribe to it. This document was introduced at the trial in the presence of the defendants and with their knowledge.

The facts related constitute the crime of *estafa*, defined

and punished in article 534, paragraph 3, and article 535, paragraph 5, of the Penal Code.

The defendants, to the damage of the complaining witness, Gregoria Cobarrubias, made away with a number of pieces of jewelry itemized in the document introduced in evidence by the prosecution, the total value of the jewelry exceeding 6,250 pesetas. The crime was committed by fraud and deceit, on the pretext that the defendants had some prospective purchasers for the jewelry. Relying upon this statement the owner delivered the jewels. These were not returned to her, nor did she receive the price thereof; consequently the action of the defendants has caused her damage.

The defendants pleaded not guilty, and denied having received any jewels from Bernabela Modesto. The defendant Rosalia testified that the jewels were received from Gregoria Cobarrubias, and that they had not been returned to her. Both defendants testified that they had signed a document in which they were granted an extension of time for the return of the jewels. The defendant Rafaela states that the jewels are now in the provinces. The defendant Rosalia testifies that the jewels have not yet been returned to their owner, and that this is the reason she has been accused.

Notwithstanding the denial and exculpatory allegations of Rosalia Anacleto, the record nevertheless contains sufficient evidence to show that she is guilty as principal of the crime charged. From the facts established by the evidence it appears that she received the jewels for sale on commission, subject to the obligation of returning them if they were not sold, or of delivering the money received if they were disposed of, and that she did not return the jewels or the money, notwithstanding the demands made upon her by Bernabela and her husband. She has acknowledged that she received the jewels, as appears from the document whose authenticity she admitted, and she acknowledges that she subsequently sold them. This statement was made by her in the presence of the owner of the jewels and of two witnesses. Nevertheless the money realized by the sale of the jewelry was not delivered to the owner. Consequently it follows that the

defendant either misappropriated the money received, in the event that the jewels were actually sold, or else that she fraudulently converted to her own use and failed to pay for the jewels, to the damage of the owner thereof.

No generic, aggravating, or mitigating circumstances attended the commission of the crime, and therefore the penalty must be imposed in the medium degree.

With respect to the other defendant, Rafaela Santos, the evidence does not show that she received or took part in the receipt of the jewels in question. The jewels she referred to in her testimony must be different, judging from the other data in the case. Even if it be true that she cooperated in the sale of the jewels disposed of by the other defendant, the record still fails to disclose evidence that she had received any part of the product of such sales or that she had knowledge of the fraudulent acts of Rosalia Anacleto. Therefore Rafaela Santos can not be regarded as a participant in the commission of the crime, and she must accordingly be acquitted.

For the reasons stated we are of the opinion that Rosalia Anacleto must be convicted and sentenced to two years eleven months and ten days of *prision correccional*, instead of *presidio correccional*, in accordance with the provisions of article 95 of the code, together with the accessory penalties established by article 61 thereof, to the restitution of the jewels misappropriated by her, or to the payment of the value thereof, and in case of insolvency, to suffer the corresponding subsidiary imprisonment, which will in no case exceed one-third part of the principal penalty, and to the payment of one-half of the costs of both instances. Rafaela Santos is acquitted, with the other half of the costs *de oficio*. The judgment of the court below is affirmed in so far as it is in harmony with this decision and reversed in so far as it is in conflict therewith.

Judgment will be rendered in accordance with this opinion and the case remanded to the court below for its execution.

*Arellano C.J., Cooper, Willard, Mapa, McDonough, and
Johnson, JJ., concur.*

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