

[G.R. No. 1877. April 29, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. RICARDO GUTIERREZ, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

Ricardo Gutierrez, having been charged with the crime of *estafa* for having appropriated and spent for his own profit the sum of \$91.86, gold, to the prejudice of the treasurer of the Province of Rizal, Mr. Bartlett, the present suit was filed and the judge, in view of the results of the evidence, rendered judgment on April 28, 1903, sentencing the defendant to the penalty of four months and one day of *arresto mayor* and to pay to the said treasurer the sum embezzled, which is understood to have been paid with that received by the said treasurer from the defendant, Gutierrez.

The defendant being a man intrusted by the provincial treasurer with the collection of contributions of several towns of said province, each time the amount was collected it was handed to the treasurer or to his confidential man and the sum collected was entered in the books, which records were duly compared with the stubs of the receipts issued by the collector, Gutierrez, to the taxpayers, the sums entered corresponding to the months of July, August, September, October, and November, 1902. A discrepancy having been found some months later between the reports presented by the defendant and entered, and the stubs of the receipts issued by him to the taxpayers, the treasurer, Mr. Sinclair, requested the defendant to reimburse the amount which had not been entered by the defendant, but the defendant denied having left any sum collected by him unentered. The treasurer insisted and told him that according to the stubs on the receipts he had left unentered that amount, and the defendant learning this, and, being afraid he would be complained of (which had never happened before), he promised to pay that sum, which he did on the following day, alleging that if the sum of which this balance consisted had not been included in the reports it was due, perhaps, to forgetfulness and because of the many duties he had in his office.

There being no sufficient proof in the case that the defendant, Gutierrez, on leaving said sum of \$91.86, gold, unentered, had any intention of appropriating it, because he knew perfectly well he could not deny having received it for the reason that the stubs of the receipts which he had issued to the taxpayers would have made this fact appear, and the fact that on being requested and being shown said stubs, and even without having the reports presented by him or the entries made shown to him, he obligated himself to pay the sum which appeared unpaid and did pay on the following day, as confirmed by the treasurer.

“The defendant in a criminal case must be always presumed to be innocent until the contrary is proven, and in case of doubt and when his liability shall not have been satisfactorily shown he shall have the right to be acquitted.” (Sec. 57, General Orders, No. 58.)

The denial of the defendant of having received that sum upon the request for payment by the provincial treasurer does not constitute, in any way, proof of the commission of the crime of *estafa* because if on making the entry of the sums collected in his report to the deputy or treasurer, comparison was made with the stubs, as is affirmed by the treasurer, it would have been immediately noticed that there was a difference between the amount entered in the report and that collected according to the stubs of the receipts issued by defendant. It is a fact proven that the last entry had been made by the defendant some months previous without any question, and for this reason there is nothing strange in the fact that on being required to make payment of the sum he should have denied it and should have alleged that he had delivered to the treasurer all the sums collected by him, and then, for fear of being complained of, or for the reason that he could not clearly explain the existence of the difference, he promised to pay same as he did. Such conduct is not proof enough that he committed the crime of *estafa*; even though his innocence be doubted, the lack of satisfactory proof of his liability requires his acquittal.

For the reasons above stated, we are of the opinion that with the reversal of the judgment appealed from the defendant, Ricardo Gutierrez, ought to be, and is hereby, acquitted, with the costs in both instances *de oficio*. Let this case be returned to the court of its origin 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.

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