

1 Phil. 616

[G.R. No. 899. December 31, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FELICITAS ORTIZ,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

Vicente Lavin had pledged to his grandmother, Romualda Faz de Leon, some jewelry of the value of 1,500 pesos as security for a loan of 400 pesos. This sum, advanced by Romualda Faz de Leon to her grandson, Lavin, formed part of the sum of 889 pesos, the property of Felicitas Ortiz, the defendant, the daughter of the said Romualda Faz de Leon, which sum of money was in the hands of a Chinese merchant. The jewelry pledged by the grandson to his grandmother was in turn pledged by the daughter, together with some other jewelry belonging to her, to Apolinaria Sy-Quia, as security for a loan of 1,000 pesos. Lavin offered to pay Apolinaria Sy-Quia the 400 pesos which he owed his grandmother, together with the interest accruing thereon up to that time, with the view to obtaining the return of the jewelry pledged. Apolinaria Sy-Quia, however, stated that Felicitas Ortiz had told her that the amount to be paid was 600 pesos as principal and 100 pesos as interest, the additional 200 pesos being part of the 889 pesos referred to, received by Romualda Faz de Leon from a Chinese merchant and loaned by her to Juana Encarnacion, and by the latter in turn loaned to Vicente Lavin, as appears from the receipt signed by the latter and endorsed by Juana Encarnacion to the accused, Felicitas Ortiz. It appears that the jewels were afterwards lost upon the death of Apolinaria Sy-Quia, according to the statement made by the mother of the latter, and it also appears that Felicitas Ortiz obtained from the mother of Apolinaria Sy-Quia the payment of the sum of 2,500 pesos for her jewelry and 1,000 pesos for the jewels of Lavin. The record contains a document, executed apparently by Romualda Faz de Leon in favor of Felicitas Ortiz, in which the former acknowledges to have received from the latter 1,500 pesos in satisfaction of the value of the jewelry belonging to Vicente Lavin and lost while in the possession of Apolinaria Sy-Quia.

Vicente Lavin, upon this, instituted a prosecution against Felicitas Ortiz on the charge of *estafa*.

In this criminal proceeding we can not consider the causes of actions which may have accrued from the second operation of pledge; from the refusal of Apolinaria SyQuia to return the jewelry pledged, upon the tender of payment made by Vicente Lavin of the sum loaned by Romualda Faz de Leon, together with the accrued interest; from the addition to the loan secured by the pledge of 200 pesos more as principal on the account of Felicitas Ortiz, who demanded that this sum be paid by Vicente Lavin, Juana Encarnacion not having done so; from the loss of the jewels while in the possession of the Sy-Quia family; from the payment of the money in lieu of the jewels said to have been made by the mother of Apolinaria Sy-Quia to Felicitas Ortiz and by the latter to her grandmother, Romualda Faz de Leon. All these questions are entirely foreign to the issues in this case. We can only consider here the acts which are alleged to constitute the crime of *estafa*, in the manner and form in which they are alleged to have been committed by the accused.

It does not appear in any manner that the accused has attempted to appropriate or convert the jewels which Vicente Lavin had pledged to his grandmother. The fact of her having pledged them to Apolinaria Sy-Quia was not such an act of appropriation or conversion, nor was it in itself a crime punished by any article of the Penal Code, as the acts appear to have been committed from the allegations in the record. Neither, in consequence, does it appear that the accused, by means of the second pledge, or by the claim for damages by reason of the loss of the jewels, has obtained any profit or gain, nor, furthermore, would such an intent to obtain a profit or gain by any of the means employed constitute a crime under any of the provisions of the Penal Code. She may, perhaps, have acted in excess of her right, or there may have been negligence or even intentional wrong in the acts committed by her, but nothing of this kind has been proven, nor, if it had been proven, has it been shown that the breach of duty which might have resulted has gone beyond the sphere of tortuous negligence, upon which might be predicated a liability for the payment of damages, but which does not constitute the crime punished by paragraph 2 of article 534 of the Code, as defined in section 5 of article 535 thereof, or for which Felicitas Ortiz can be held personally responsible upon a prosecution instituted by Vicente Lavin in his own right, and not on behalf of any other person who may have sustained with the accused any of the legal relations referred to in paragraph 5 of article 535 above cited. The court therefore, without deciding anything concerning the civil actions which may respectively pertain to the plaintiff and to the accused arising from the possible sources of obligation before indicated, acquits the defendant, Felicitas Ortiz, with the costs *de officio*. So ordered.

Torres, Cooper, Smith, Willard, Mapa, and Ladd JJ., concur.

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