

4 Phil. 131

[G.R. No. 1565. January 14, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOSE NER,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On November 25, 1902, a complaint was filed by the assistant prosecuting attorney in the Court of First Instance of the city of Manila charging Jose Ner with the crime of *estafa*. The complaint stated that the defendant on November 17, 1902, had received from Agripina de Guzman certain jewelry belonging to the latter; that the jewelry consisted of four rings, three pairs of earrings, and two breast pins, all of them set with diamonds; that the total value of the jewelry amounted to 869 pesos, Mexican; that this jewelry had been given to the defendant to be sold by him on commission; that instead of doing so the defendant, with intention of profiting thereby, misapplied and embezzled the value of the said jewelry to the prejudice of the owner thereof.

Being unable to recover her jewelry, in spite of her claims, Agripina de Guzman obtained from the defendant an instrument drawn by Maximo Valenzuela and subscribed by him; in this instrument, which is to be found at page 17 of the record, the defendant, Ner, declares to have received from Agripina de Guzman certain jewelry valued at Pfs. 869 to be sold on commission, and in case of inability so to do to be returned without failure on the afternoon of the next day, all the damages resulting from any noncompliance therewith to be on his account. Notwithstanding this written obligation, the defendant did not

return the jewelry.

Maximo Valenzuela affirms to have written the instrument aforesaid in the presence of Agripina de Guzman and Jose Ner, at the former's house. That Ner signed the instrument immediately, promising to return the jewelry on the next day; that he was present at the time Agripina de Guzman was remonstrating with the defendant for not having yet returned the jewelry; that it was then that he knew that the defendant had taken the jewelry to sell it to somebody in La Laguna.

The defendant pleaded not guilty. The trial being had, the defendant was found guilty and on June 13, 1903, was sentenced to one year of *presidio correccional*.

These facts constitute the crime of *estafa*, provided for and punished by articles 534, paragraph 2, and 535, paragraph 5, of the Penal Code. The defendant is guilty, as principal, of the crime charged. Although he pleaded not guilty, it has, however, been fully shown by the evidence in this case that he appropriated to himself some jewelry belonging to Agripina de Guzman; that this jewelry had been given to him to be sold on commission; that he had not returned the jewelry, notwithstanding the promises he had made and the instrument he signed to that effect; that he did not give any account as to the whereabouts of the jewelry or the value thereof; that, according to the statement of the offended party, recorded at page 29, the value of the jewelry was 869 pesos, Mexican.

That the defendant is guilty, as principal, of the crime of *estafa* is an unquestionable fact. When the complaint and the contents of the instrument by him subscribed were read and made known to him, he did not allege any defense, neither dared he question the genuineness of the instrument. For these reasons the evidence adduced in the case produced in the mind a plain conviction of his guilt; even his counsel in this instance had to acknowledge it.

There being no aggravating or extenuating circumstances to be considered in the case, the corresponding penalty should be imposed upon the defendant in its medium degree.

It is, then, our opinion that, with the reversal of the judgment below, the defendant, Jose Ner, should be sentenced to six months of *arresto mayor* to return the jewelry embezzled or its value, excepting the three pieces recovered by the owner thereof, described at page 40 of the record; to suffer subsidiary imprisonment in case of insolvency, provided that it shall not exceed one-third of the term of the principal penalty, and to pay the costs in both instances. Let this case be remanded to the court below, together with a copy of this decision and of the judgment entered in accordance herewith. So ordered.

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