

1 Phil. 370

[G.R. No. 307. September 12, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. AGUSTIN VILLANUEVA, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

Appeal by the defendant, Agustin Villanueva, against the judgment of the 18th of November, 1897, rendered in case No. 5606 by the court of La Laguna, for attempted *estafa*, by which he was condemned to pay 500 pesetas fine, or to the subsidiary personal penalty, and to the payment of one-third part of the costs.

On the 25th of November, 1884, Celestino Borlasa filed a complaint before the local authorities of the town of Lilio against Agustin Villanueva, stating that he, accompanied by Juan Urna, had gone to the complainant's house, and, after having examined the house, by order, as stated by Villanueva, of the forestry officer, Hermenegildo de Ocampo, and having observed that the house was built with new lumber, as well as several other houses also examined, demanded of the complainant the sum of 6 pesos and 2 reals for the purpose of avoiding a fine and with a view to preparing a petition for obtaining a free permit to cut timber. This amount the complainant was unable to pay, and Villanueva refused to receive 3 pesos, which was offered him by Borlasa.

This fact, proven by the testimony of two trustworthy witnesses, constitutes the crime of attempted *estafa*, denned and punished by section 1 of article 534 and section 1 of article 535 in connection with article 66 of the Penal Code. The facts established by the evidence in the case show that the attempt was made to obtain the sum of 6 pesos and 2 reals by fraudulent representations and for purposes not justified or authorized by the forestry law. If the *estafa* was not consummated it was because the complainant either could not or would not pay the amount demanded, and simply offered a little less than half, which the defendant, in turn, refused to accept.

The defendant, Agustin Villanueva, is guilty, as author by direct participation, of the crime of attempted estafa of a sum not exceeding 250 pesetas, by his own confession. Although the defendant did not succeed in consummating the crime of obtaining the money upon the fraudulent pretext of having been authorized by the forester, Hermenegildo de Ocampo, an employee of the Forestry Bureau, the fact is that he attempted to obtain the amount demanded and refused to receive the 3 pesos which the complainant offered him, this being less than one-half of the amount demanded.

All these facts are established by the testimony of the two witnesses there present and by another witness, who affirms that he saw Villanueva in conversation with the complainant, Celestino Borlasa, although not aware of the subject of their conversation.

The unsupported allegation by the defendant that he had acted under the orders and upon the authority of the ranger, Ocampo, who was not arrested and is still absent, can not serve as an excuse or relieve him from the charge brought against him, inasmuch as the forester was not authorized or empowered to give such orders, nor is such an action authorized by law.

In the commission of the crime, and for the purpose or the imposition of the penalty, the concurrence of the aggravating circumstance of No, 18 of article 10 of the Code must be considered, because Villanueva has been already convicted by final judgment of three other crimes of *estafa*, and, therefore, no mitigating circumstance being present to offset the effects of the aggravating circumstance, the defendant must suffer the penalty prescribed by the law in its maximum degree, although, in consideration of the provisions of article 83 of the Code, and it not appearing that the financial position of the defendant is such that he may be classed as a rich man, which appears from the nature of the crime, the fine to which he has become liable should not be a heavy one, and therefore, by virtue of articles 26, 83, 92, and those above cited, section 50 of General Orders, No. 58, and the law of August 10, 1901, we are of the opinion that the judgment appealed should be affirmed with reference to the defendant, Villanueva, but in case of inability to pay the fine, the subsidiary imprisonment can not exceed one month and one day, the preventive imprisonment suffered to be computed, the defendant to pay one-third of the costs of this instance, without special mention as to the defendant Juan Urna acquitted by the court below. So ordered.

Arellano, C. J., Cooper, Willard, Mapa, and Ladd, JJ., concur.

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