

[G.R. No. 85. October 23, 1901]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TAN JENJUA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The defendant is charged with the crime of *estafa*, alleged to consist in the concealment of a private document evidencing a deposit of 2,600 pesos delivered by Fulgencia Tuason to the Chinaman Jose Palanca Yu-Tivo.

It appears from the testimony of the witnesses Balbino Tuason and Macario Deirit that Fulgencia Tuason delivered to Jose Palanca Yu-Tivo through them the sum of 2,600 pesos for the purpose of preventing the money from being seized by the Spanish Government. It also appears from authentic documents in the record that Fulgencia Tuason in September, 1898, went to the Provost-Marshal-General of this city with a complaint concerning the deposit of 2,600 pesos which she had deposited with the Chinaman Jose Palanca Yu-Tivo. In the petition which she presented to the Provost-Marshal-General she asserted that she had in her possession a receipt for this deposit. This receipt, according to the statement of complaining witness, was subsequently delivered by her to the defendant, he having offered to collect the amount of the deposit from the Chinaman Yu-Syna, the son and attorney in fact of Jose Palanca, the latter being absent at that time in China. This according to the complaining witness occurred in the following manner:

Yu-Syna having refused to pay the total amount of the money deposited and having on two occasions delivered to her on account the sum of only 250 pesos, the defendant, Tan Jenjua, a relative of Yu-Syna, came to her house one day and told her to come to see him and he would arrange matters. She went to see him on the day following and the defendant then promised to collect part of the money in a short time. Two days afterwards she returned and Tan Jenjua paid her the sum of 300 pesos. At the same time, upon the pretext that he would

undertake to settle up the affair of Jose Palanca and Yu-Syna, he asked the complaining witness to give him the receipt for the deposit, promising to deliver the balance of the money deposited within a period of two or three months. Trusting in Tan Jenjua's good faith and fearing that impending hostilities might break out at any time, the complaining witness consented and the receipt was accordingly delivered in the presence of the Chinaman Lim-Kayco and two Filipinos, Daniel and Antonio. Some months afterwards the complaining witness made demand for the 2,050 pesos still due on the deposit and defendant refused not only to settle the matter but also to return the receipt for the deposit, whereupon a complaint was filed by the prosecuting witness. The latter further states that the document in question was written in Chinese, which language she is unable to read, and that when Palanca gave it to her it was a receipt for the deposit.

The witness Antonio Deirit testifies to having been present at the time the defendant delivered the 300 pesos to the complaining witness, Fulgencia Tuason, and also at the time of the delivery by her to the defendant of a document written in Chinese characters, on which occasion, according to this witness, after the accused had read the document, he told the complaining witness that according to that paper she still had 2,050 pesos due her and that he would undertake to settle the matter. Daniel Lamprano corroborates the testimony of this witness and that of the complainant stating that he saw the sum of 300 pesos referred to upon a table, while a Chinaman whom he did not know and the woman Fulgencia were in conversation together and he at the same time observed that the Chinaman had a paper in his hand which he subsequently put into a drawer in the table. It is of no importance that Lamprano did not know the Chinaman to whom he referred, because he was known by the witness Deirit and by the complainant. Furthermore it is to be observed that the combined testimony of the three is to the effect that the paper of which Lamprano spoke was the same document which had just been delivered by the complainant to the accused. These witnesses corroborated each other's testimony by referring to the same occasion, time, and place.

There is no reason for believing that the complainant's statement in the petition presented to the Provost-Marshall-General in September, 1898, to the effect that she had in her possession a receipt for the deposit, was untrue. On the contrary, it is to be supposed that when this statement was made she was really in a position to exhibit the receipt in case the Provost-Marshall-General should require its presentation. It can not be presumed that at that time she had formed the design of drawing up a complaint, both for the reason that the complaint was not presented until a year and a half later and because there are no data upon which such a presumption may be based. To this we may add that as the deposit was

actually made as shown by the testimony of the two witnesses, it was natural and logical that the complainant should have demanded from the depositor the receipt as evidence thereof. Therefore, if that receipt was still in her possession, it is not probable that she would falsely pretend not to have it and assert the defendant had concealed it against her will, because such an assertion would make it impossible for her to make use of this document for the purpose of collecting the deposit until such time as its return to her should be made to appear. It is not credible that the defendant would voluntarily deprive herself of such proof of the deposit, which would doubtless be the most certain and efficacious in an action to enforce its collection, unless it be fully proven that she is impelled to act in this singular manner by some interest superior to the interest she must have in the collection of the 2,050 pesos still remaining unpaid upon the amount deposited.

In view of the testimony in the record, supported by the reasons above set forth, one is convinced of the reality of the delivery by the complainant to the accused of the document evidencing the deposit in question.

It is of no importance that the document is written in Chinese and that neither the complainant nor her witnesses can read this language, inasmuch as from the evidence in the record the true nature of the document may readily be inferred. It is evident that the accused had great interest in obtaining possession of this document inasmuch as he was willing to sacrifice the sum of 300 pesos to that end. The delivery of this money by him to the complainant is sufficiently proven by the evidence introduced. The interest of the defendant stands in itself sufficient and convincing proof of the value and importance of the document. It must be either the receipt for the deposit or nothing at all upon the facts presented by this case, and if the latter be the case, it can not be understood nor could it be satisfactorily explained why the accused should have displayed such an interest in obtaining its possession. This consideration acquires greater force if one at the same time keeps in view the fact to which the witness Deirit testified, to the effect that the defendant said to the complainant, after having read this document, that it appeared therefrom that she still had due her 2,050 pesos from the 2,600 deposited after deducting the 250 pesos formerly delivered to her by Yu-Syna and the 300 which at that time had just been delivered to her by the accused. The latter's refusal to return the document is shown in the record solely by the testimony of the complaining witness. No other witness testifies upon this point nor has any attempt been made to introduce evidence on the subject. Nevertheless we can entertain no reasonable doubt as to the truth of this fact. Supposing that the complainant had had no difficulty in recovering possession of the document, unquestionably she would not have failed to do so when it is considered that the recovery of the document was a matter of great

interest to her as evidence of a deposit of a considerable sum of money. Furthermore, if this fact was not true, the defendant could have shown such to be the case from the first by simply returning the document; it was to his interest to do so, but nevertheless he has not done it. The failure to return the document up to the present time, notwithstanding the criminal prosecution brought against him on this account, conclusively shows his determination to conceal the paper. There are some facts which do not require proof because they are self-evident; and the unvarying attitude of the defendant in this case is the most complete and convincing proof of his refusal to return the document.

The concealment of that document causes a positive injury to the complainant because it dispossesses her of evidence of a deposit of considerable value, thereby making it difficult for her to enforce the collection of this sum by adequate means. For the purpose of proving the existence of this damage it is unnecessary to inquire whether as a matter of fact she has ever succeeded in collecting the deposit or not. The commission of the crime herein prosecuted is entirely independent of that subsequent and casual event, the result of which, whatever it may be, can in no wise have any influence upon the legal effects of the concealment already consummated of the document in question.

The extent of a fraud when it consists of the concealment of a document should be graded according to the amount which the document represents, as it is evident that the gravity of the damage resulting therefrom would not be the same, for instance, in the case of the concealment of a document representing \$30 as in the case of one representing \$30,000. In support of this doctrine several decisions of the supreme court of Spain may be cited, among others, that of April 23, 1880. The document concealed in the present case represents a value of 2,050 pesos, and consequently this sum must serve as a basis for grading the penalty corresponding to the crime. The damage here in question results from the deprivation suffered by the complainant of the document evidencing the deposit and not of the loss of the deposit itself. The concealment of the document referred to does not necessarily involve the loss of the money deposited, and for this reason it would not be just to give judgment against the defendant for the payment of that amount.

The court therefore declares that the defendant should be convicted and sentenced to one year eight months and twenty-one days of *presidio correctional* with the corresponding accessories and the payment of the costs of both instances.

The judgment appealed thus modified is affirmed.

Arellano, C. J., Cooper, Willard, and Ladd, JJ., concur.
Torres, J., did not sit in this case.

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