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[G.R. No. 518. February 15, 1902]

THE UNITED STATES, EOMPLAINANT AND APPELLANT, VS. ROSARIO DE GUZMAN, DEFENDANT AND APPELLEE.

D E C I S I O N

TORRES, J.:

About 10 o'clock in the morning of October 16, 1900, Kosario de Guzman went to the house of Doña Victorina Leonquingco, located in the district of Santa Cruz, and, on the pretense that she had a purchaser who wished to see the jewels, took from the latter several pieces of gold jewelry set with diamonds, of the total value of 730 pesos. These she promised to return, or to pay over their value in case they were sold, on the afternoon of the same day. As she did not do so, the son of the owner of the jewelry went in search of her on the following day. lie was not able to find her until some days had passed, and then the defendant Guzman pleaded with Leonquingco that she be given an extension of time for the return of the jewelry. She failed, however, upon various pretexts, to return the jewels.

The facts related are fully proved in the cause by the testimony of several witnesses and by the confession of the defendant, and constitute the crime of embezzlement (*estafa*), defined and penalized in article 534, No. 2, and article 535, No. 5, of the Penal Code, since evidence shows that Rosario de Guzman had received from the complaining witness, Victorina Leonquingco, various pieces of jewelry, valued at 730 pesos, for the purpose of selling them, subject to the express obligation of delivering their value or returning them to their owner if they should not be sold. Not having done so, and having failed to give an account of their whereabouts, the legal presumption arises that the defendant abstracted and appropriated to herself the jewelry received, to the grave prejudice of the owner of the same, inasmuch as she neither returned them nor paid their value, as was her duty.

Of the crime charged, the sole proven principal by direct participation, confessed and convicted, is the defendant, Rosario de Guzman. Her assertion, even if substantiated, that

she delivered the jewels to a broker, who states that she either lost them later or that they were stolen from her—and there is no proof of this—and that the complaining witness has entered into an agreement with her for the payment of their value in installments, would constitute no defense. The reason for this is that it is not within the discretion of the parties to change the nature of criminal causes, which are public in character, by converting them into civil actions; and the alleged agreement, even if true and established by proof, would not demonstrate that there has not been fraud on the^part of the accused, or prejudice to the owner of the jewelry; fraud and prejudice which took place and which may not be atoned by the restoration of the embezzled property, the greater part of which, indeed, has not been restored.

In the commission of this crime there is no extenuating or aggravating circumstance to be considered, and therefore the appropriate penalty should be imposed in its medium degree.

By virtue of the foregoing considerations we deem it proper that the judgment appealed from be reversed and that Rosario de Guzman be condemned to the penalty of five months of *arresto mayor*, together with the accessory penalties of article 61, and the payment of an indemnity equal to the value of the jewelry embezzled in case same be not finally returned, or the corresponding subsidiary imprisonment not to exceed the third part of the principal penalty, and to the payment of costs in both instances. So ordered.

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

Date created: April 03, 2014