

101 Phil. 72

[G. R. No. L-10017. April 17, 1957]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PO KEE KAM, DEFENDANT AND APPELLANT.

D E C I S I O N

CONCEPCION, J.:

This is an appeal, taken by defendant Po Kee Kam, from a decision of the Court of First Instance of Manila, convicting him of the crime of *estafa* under Article 315, paragraph 1(5), of the Revised Penal Code, and sentencing him to “an indeterminate penalty of from 4 months of *arresto mayor* to 1 year and 8 months of *prision correccional*, with the accessories of the law, to indemnify the offended party, in the amount of P3,358.50, or suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs.”

Appellant maintains that:

1. “The lower court *a quo* erred in not considering that the evidence does not show any offense was committed by the defendant and that Exhibits ‘A,’ ‘A-1’ and ‘A-6’ do not sustain his conviction.
2. “The lower court erred in not considering that the liability of the defendant, if at all, is civil and not criminal.
3. “The court *a quo* erred in not considering that the goods appearing in Exhibit ‘A’ had been lost by an act of God.
4. “The court *a quo* erred in not considering that it had no jurisdiction nor was the case filed with proper venue.”

It appears that, on the dates hereafter stated, complainant herein, the Vilco Trading Corporation, had shipped, in Manila, the following goods, for delivery to appellant Po Kee Kam, in Tacloban, Leyte:vee

Date	Goods		Net Value
March 17, 1951	150 cases of soap (Exhibit A-6)	P2,040.00	
April 10, 1952	95 cases of soap (Exhibit 4)	990.50	
May 24, 1952	6 cases of soap (Exhibit A-1)	876.50	
July 1, 1952	105 cases of soap (Exhibit 4)	952.00	
	Total		<u>P4,859.00</u>

Vicente L. Ko Ching, complainant's manager, testified that these goods were sent to appellant, as commission agent of said complainant, pursuant to an agreement the terms of which are printed at the foot of the corresponding invoices (Exhibits A, A-1, A-6 and 4), the originals of which were delivered to said appellant, reading:

"It is hereby stipulated and agreed by and between the Vilco Trabling Corporation and the undersigned consignee that the merchandise above specified are received on consignment with the obligation on the part of the consignee to either return the said merchandise or deliver the proceeds of sale to the consignor in the City of Manila, Philippines, within (30) days from date of this consignment."

and that upon repeated demands, appellant stated that he could not turn over the proceeds of the sale of said goods, he having spent the same, and promised to pay as soon as he could raise funds therefor.

On the dates given below, complainant, likewise, shipped identical goods in Manila, consigned to the persons, and delivered to them at the places, hereunder stated: nona

Date	Consignee	Quantity	
November 17, 1951	Li Hean Hao, Gen. MacArthur, Samar	40 cases cases (Exhibit A-5)	P439.00
December 29, 1951	Emilia Duloy, Laoang, Samar	42 cases (exhibit A-4)	483.00
March 29, 1952	Tim To Huna, Catbaliagn	50 cases exhibit (Exhibita A.3 and A-2)	562.50
May 29, 1952	Jose C. Uy, Carigara, Leyte	10 cases Exhibit A-7)	95.00

Complainant tried to prove that these shipments, aggregating P1,579.50, were made upon the request of herein appellant, who held himself responsible for the return of the goods, if not sold, or of its price, if sold.

Appellant denied, however, having had such understanding with the complainant. Furthermore, he testified that the goods covered by Exhibits A, A-1, A-6 and Exhibit 4, were purchased by him; that he paid P1,500 on account of the price thereof, as per receipts Exhibits 1, 2 and 3; and that he could not pay the balance of said price because his store in Tacloban, Leyte, was burned on April 12, 1951.

The lower court held that appellant is not criminally liable for the goods consigned to other persons than himself, but found him guilty of misappropriating the proceeds of the sale of the goods delivered to him, after deducting the sum of P1,500 turned over by him to the complainant.

The first two assignments of error refer to the nature of the transaction between appellant and the complainant. The former contends that he merely purchased the goods covered by Exhibits A, A-1, A-6, and Exhibit 4, the aggregate value of which is P4,859, but the latter maintains that, as set forth in said invoices, the goods were sent to, and received by, appellant as complainant's commission agent. Appellant argues that he is not bound by the terms of said documents for he has not signed the same to indicate his conformity therewith. But, he received the originals of Exhibits A, A-1, A-6 and 4, together with the goods therein described, and never protested against the tenor thereof, thus indicating that said invoices reflect the true agreement between the parties. He did not even assail the accuracy of said documents when complainant's representative demanded several times that he turn over the proceeds of the sale of said goods. What is more, the testimony of complainant's manager to the effect that upon demand, appellant stated that he could not deliver said proceeds, he having spent the same, was not denied by him. Said statement implied an admission of his status as complainant's commission agent and of the fiduciary capacity in which he held the proceeds of the sale of the goods. Otherwise, it would have been unnecessary for him to explain what he had done with the aforementioned sale price. In short, the lower court did not err in finding that the same had been misappropriated by appellant and that his responsibility therefor is not merely civil in nature.

Counsel for appellant contends, under his third assignment of error, that he should not be held criminally liable for the goods described in Exhibit A-6, said goods having been lost by an act of God, namely, a fire that allegedly consumed his store, with its contents, on April

12, 1951. There is, however, no evidence, that said goods were either destroyed in said conflagration or found, at least, in said store at the time thereof. Appellant limited himself to mentioning said occurrence as the cause of his financial incapacity to reimburse the amount misappropriated by him, apart from the circumstance that the fire—which has not been satisfactorily established—could not have affected, and did not affect, the goods described in Exhibits 4, A-1 and A, dated April 10, May 24, and July 1, 1952, or a year after said alleged conflagration.

It is lastly urged that the Court of First Instance of Manila had no jurisdiction to hear this case because the misappropriation charged and proven took place in Leyte. There is no merit in this pretense, for appellant was, pursuant to the invoices, bound to, either return the merchandise in question, or deliver the proceeds of the sale thereof, “to the consignor in the City of Manila”, where, as held in *U.S. vs. Reyes* (1 Phil., 249), *U.S. vs. Cardell* (23 Phil., 207), *U.S. vs. Santiago* (27 Phil. 408), *U.S. vs. Mesina* (42 Phil., 66, 68), *People vs. Peias* (R. G. 46802-46811, September 23, 1939) and *People vs. Tolentino* 3 (40 Off. Gaz., 11th Supp., Ill, 118), one of the elements of the embezzlement charged may be deemed to have its situs, in view of appellant’s failure to render accounts at the place agreed upon.

The value of the goods held by appellant in a fiduciary-character was, as above stated, P4,859, and having duly accounted for the sum of P1,500, the amount misappropriated is, therefore, P3.359.

Wherefore, with the modification that appellant should indemnify the complainant in the sum of P3,359, with subsidiary imprisonment in case of insolvency, the decision appealed from is hereby affirmed, in all other respects, with costs against said appellant. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ. concur.