

DIONISIO ESGUERRA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-14313. July 26, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

Appellant Dionisio Esguerra found by the Court of Appeals guilty of estafa, defined and penalized under Article 315, paragraph 3, 2 (a) of the Revised Penal Code, and sentenced to the penalty therein provided, has taken this appeal by certiorari upon the following assignment of errors:

- The Court of Appeals erred in convicting the accused of estafa under Art. 315, paragraph 3, 2(a), that is, estafa through false pretenses, when the trial court, the fiscal and the private prosecutor assured the accused at the trial that he was being prosecuted for estafa under Art. 315, 1(b), that is misappropriation of money received in trust or on commission or for administration, although in fact the information did not charge estafa under any of those two provisions, so that the motion to quash on the ground that the information did not state an offense should have been sustained.
- The Court of Appeals erred in holding that the accused offered to compromise the case, when the evidence to establish the alleged offer of compromise was rejected by the trial court.
- The Court of Appeals erred in not holding that the best evidence of the sum of P2,000 allegedly given to the accused on March 11, 1952 was the receipt being prepared therefor when the accused left to catch a passing bus if in fact such sum was received by defendant.
- The Court of Appeals erred in not holding that on the undisputed documentary evidence of record, the obligation of the accused, if any, was civil and not criminal.
- The Court of Appeals erred in sentencing the accused to 2 months and 1 day of arresto mayor to 1 year and 6 months of prision correccional and affirming the trial court's decision in all other respects, with costs, and in not acquitting the accused.

The information filed in the trial court reads, thus:

INFORMATION

"The undersigned fiscal accuses Dionisio Esguerra of the crime of 'Estafa' defined and punished under Art. 315, 3rd paragraph (b), committed as follows:

"That on or about and during the period from January 12, 1952 to March 26, 1952, in the barrio of Siain, municipality of Atimonan, province of Quezon, Philippines, and within the jurisdiction of this Honorable Court the said accused upon representations made with Yu Yek Huy & Co., a business firm duly organized and existing under and by virtue of the laws of the Philippines, thru the Manager of said Company, Yu Yek Bio, that the said accused had copras ready for delivery to it, took and received from said Yu Yek Bio the sum of four thousand four hundred pesos (P4,400.00) under the express obligation on the part of the said accused to

deliver to the said company the equivalent worth of copras at its bodega at Siain, Atimonan, Quezon as follows: P2,400.00 worth of copras on or before January 31, 1952; and P2,000.00 worth of copras on or before fifteen days from March 11, 1952, or the same sum of money on the respective dates aforesaid but the said accused once in possession of the said sum of money and far from complying with aforesaid obligation, despite repeated demands made upon him to do so, did then and there wilfully, unlawfully and feloniously with intent to defraud the aforesaid company, misapply, misappropriate and convert the said amount to his own personal use and benefit to the damage and prejudice of the Yu Yek Huy & Co., in the aforesaid amount of P4,400.00 Philippine Currency."

It is to be noted that the first paragraph for the Information specifically refers to the 3rd paragraph, (b) of Article 315 of the Revised Penal Code as the provision under which the accused was being prosecuted. This particular paragraph refers to estafa committed by resorting to some fraudulent practice to insure success in a gambling game. On the other hand, that part of the information referring to representations that the accused had copras ready for delivery, would seem to imply that the estafa charged is that defined and penalized under paragraph 2 (a)—by falsely pretending to possess . . . property, business, etc. The succeeding portion, however, of the same information which alleges failure to deliver the copra or return the money on the dates agreed, charges the accused of misappropriation and conversion under paragraph 1(b) of the same Article 315.

In view of this ambiguity in the information, a motion to quash was filed by the accused. (The motion to quash is not before us, but from the statement of the Court of Appeals—"whether the allegations in the information constitute an offense or multiple offenses, will be taken up in subsequent legal incursions"—it would seem that the ground relied upon is that the allegations in the information charge no offense, or if they do, they charge multiple offenses.) At the hearing of the motion, the fiscal and the private prosecutor both manifested that there was a clerical error in the first paragraph of the information and stated and assured that the accused was being charged under paragraph 1 (b) of Article 315.[1] The trial court admitted the correction and the accused went to trial with that understanding and assurance. After trial in due time, the lower court found the accused guilty as thus charged under Article 315, paragraph 1(b), and sentenced him accordingly. On appeal to the Court of Appeals, where the accused questioned the correctness of the judgment of conviction under the information as corrected and on the facts proven, the appellate court modified the decision of the trial court and declared:

* * * * *

"The evidence for the prosecution fully established the fact that the two sums of P2,400.00 and P2,000.00 were given to the accused on the latter's pretense that he had copra in his bodega which he was drying. Yu Yek Bio testifying, said:

A.— He told me that he had many copras in his bodega and that he will deliver to me the copras corresponding to the amount of P2,000.00 together with the 10,000 kilos, which he promised to deliver at first.' (t.s.n., p. 5).

But the said appellant admittedly had no such copra then. Appellant, however, insisted that he had already delivered the copra corresponding to the first payment of P2,400.00 and to prove this delivery, he presented in evidence Exhibits 1 to 1-K, the purchase vouchers showing the receipt of copra by the complainant company on different dates from Felix Mendoza, Diego Sulit, Diosdado Engco (2 vouchers), Jose Perez (2 vouchers) Jose Cal, Juanito Esguerra, Juan Gonzales (2 vouchers) and Tomas Luna. They were all stamped paid. A great deal of misgiving, however, accompanies this proof; it is unbelievable.

* * * * *

"Anent the second amount of P2,000.00, delivered on March 11, 1952, the appellant alleged that he did not receive the same, as he was in his place at Malasak, Atimonan, conducting a liquidation with a copra dealer

Amado Villamiel in the morning and in the afternoon of the said day, he was delivering copra to Yang, the manager of Gua Chi Gan. But the evidence of the prosecution belies these allegations in an immeasurable manner.

* * * * *

" * * * We have no reason to doubt the veracity and truthfulness of these State witnesses who testified in a direct, positive and straightforward manner.

"While we agree with counsel that the appellant cannot be held guilty of estafa under paragraph 1-b, Art. 315 of the Revised Penal Code, we are nevertheless of the opinion, and so hold, that appellant is responsible for a violation of paragraph 3 (2-a) of the same article, which penalizes any person who shall defraud another (2) By means of any of the following pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud; (a) by using fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions or by means of other similar deceits" (*italics ours*). The information describes and alleges this means of committing "swindling" and the evidence adduced, amply substantiates said allegations."

Consequently, the Court of Appeals held appellant guilty of estafa under paragraph 3(2-a) of Article 315. It is from this decision that the accused has taken this present appeal by certiorari.

The issue here is whether after denial of a motion to quash, precisely on the vagueness of the information, upon assurance by the fiscal and the private prosecutor and accepted by the court that the offense for which the accused was being prosecuted is that of misappropriation defined in paragraph 1(b) of Article 315, involving unfaithfulness or abuse of confidence and under which the accused entered trial, the latter could, on appeal, be convicted of an entirely different offense with different elements, that of false pretenses of possessing property or business made prior to or simultaneously with the commission of the fraud. The appellant submits that he could not, especially when the latter offense is not adequately alleged in the information.

We incline to agree with the appellant. It is undisputed that the information contains no allegation of misrepresentation, bad faith or false pretenses, essential element in the crime of which appellant was found guilty by the Court of Appeals. This is so, evidently, because, as already stated, the fiscal and the private prosecutor avowedly were prosecuting the accused for the crime of misappropriation and conversion committed with unfaithfulness and abuse of confidence for which the appellant went to trial and was convicted by the lower court. It is true the information states that "the accused, upon representations (not misrepresentations) that the accused had copras ready for delivery to it, took and received" the sum of P4,400.00. Nowhere does it appear in the information that these "representations" were false or fraudulent, or that the accused had no such copra at the time he allegedly made such "representations". The falsity or fraudulentness of the pretense or representation or act being the very constitutive element of the offense, allegation to that effect, either in the words of the law or in any other language of similar import, must be made in the information if the right of the accused to be informed of the nature and cause of the accusation against him is to be preserved. In this case, for instance, since the representation wherefor the money was delivered is not being charged as false, and since, if not false, the receipt of the money on such representation does not constitute an offense, the motion to quash the information on the ground that it did not charge an offense or the allegations therein did not constitute an offense, should have been granted. Instead, the fiscal and the private prosecutor assured the court, and both the court and the accused depended on the assurance, that the offense charged is not that of misrepresentation or false pretense, but that of misappropriation and conversion, of unfaithfulness and abuse of confidence. To convict him now of the very offense which he correctly assailed was not adequately alleged in the information and with which the prosecution expressly stated they were not charging the accused, would result not only in violating appellant's constitutional

right to be informed of the nature and cause of the accusation against him, but in actually misleading him.

Pertinent on this point is Section 4 of Rule 116 of the Rules of Court which provides:

"Sec. 4. Judgment in case of variance between allegation and proof.—When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the defendant shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved."

Stated differently, an accused may be convicted of an offense proved provided it is included in the charge, or of an offense charged which is included in that proved. Still stated differently, an accused can be convicted of an offense only when it is both charged and proved. If it is not charged although proved, or if it is not proved although charged, the accused can not be convicted thereof. In other words, variance between the allegation and proof cannot justify conviction for either the offense charged or the offense proved unless either is included in the other.

On the merits, there is reason to believe that the responsibility of herein appellant is only civil in nature. Exhibit A, upon the strength of which the prosecution mainly relies, reads:

"Received from Messrs. Yu Yek Huy & Co., the sum of Two Thousand four hundred Pesos (P2,400.00) only representing advance payment of 10,000 kilos of copra which I sold them and shall be delivered in their bodega at Siain, P.I., on or before Jan. 31, 1952.

Jan. 12, 1952 "

(Sgd.) D. ESGUERRA

Signature of Seller"

The language of this receipt, together with the finding of the Court of Appeals that "Factually, the appellant used to supply copra not only to complainant, but also to other copra exporters in Siain", clearly indicate, in our opinion, that the transaction was that of sale of copra for future delivery. Obviously, an advance payment is subject to the disposal of the vendor. If the transaction fails, the liability arising therefrom is of a civil and not of a criminal nature.[2]

In view of the foregoing, the decision appealed from is reversed; the accused is acquitted, with costs de oficio, and the bond given for his provisional liberty cancelled. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

[1] "1. With unfaithfulness or abuse of confidence, namely:

(a) * * *;

(b) By misappropriating . . etc. . . ."

[2] Abeto vs. People, 90 Phil., 681.

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