

PEOPLE OF THE PHILIPPINES, COMPLAINANT AND APPELLEE, VS. SOLEDAD NERY, ACCUSED AND APPELLANT.

G.R. No. L-19567. February 05, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is an appeal from a judgment of the Court of First Instance of Negros Occidental convicting Soledad Nery for estafa. The Court of Appeals certified it to this Supreme Court, the one and only issue raised in the appeal being one of law.

The accused-appellant, Soledad Nery, conforms to the following findings of fact of the trial court:

On 15 November 1954, in a market stall in Bacolod City, the said accused received from Federico Matillano two (2) diamond rings to be sold by her on commission. The agreement was for the accused to deliver, on the following day, the sum of P230.00 to her principal, to whom the accused had represented having a ready buyer, and whatever overprice could be obtained in the sale would be retained by the accused as her commission.

Soledad Nery failed to show up on the following day; after several days, in a casual encounter with Federico Matillano, she claimed that her prospective buyer withdrew from the transaction and that she was looking for another buyer. Days, weeks, and months passed; and, his patience exhausted, Federico brought the matter to the attention of the police authorities of Bacolod on 5 January 1955. In no time, Soledad was found and brought to the police station; then and there, she promised, in writing (Exh. "A"), to deliver the price of the rings or the rings on 25 January 1955.

When the last-mentioned date arrived and Soledad failed to comply with her promise, the City Attorney, at the instance of Federico Matillano, filed on 12 February 1955 a complaint with the municipal court. The case was either withdrawn or dismissed, however, the accused making two payments of P20.00 each to Federico.

After these payments, the accused failed to pay further; hence, the fiscal filed the corresponding information, dated 30 June 1958, with the court of first instance.

On 10 October 1958, during the pendency of the case in the court of first instance, the accused, assisted by counsel, Atty. Marcos Gomez, executed a deed, which is copied hereunder, as follows:

"Bacolod City
October 10, 1958

I hereby promise to pay Mr. Federico Matillano, the sum of One Hundred Ninety Pesos (P190.00) Philippine Currency, to be paid in the following manner:

For

the
month
of
Nov. 1958

-

P50.00

"

"

"

"

Dec. 1958

-

40.00

"

"

"

"

Jan. 1959

-

100.00

In the event that I fail to comply with the above compromise, the complaint for estafa filed against me by Mr. Matillano will be push through, .

(Sgd.) Soledad Nery.

I hereby bind myself jointly and severally to the above-mentioned obligation of Soledad Nery.

(Sgd.) Atty. Marcos S. Gomez

Witness:

(Sgd.) Leopoldo Lopez."

During the month of March, 1959, the accused Soledad Nery tendered a P50.00-payment to Federico Matillano, which the latter accepted, but the balance of the pries of the two rings was never paid.

Finding the accused guilty beyond reasonable doubt of the crime of estafa, the trial court imposed an indeterminate sentence of no less than two (2) months and one (1) day of arresto mayor to no more than one (1) year and one (1) day of prision correccional; to indemnify Federico Matillano the sum of P140.00, representing

the unpaid balance, with subsidiary imprisonment in case of insolvency at the rate of P2.50 a day but not exceeding a third of the principal penalty; and to pay the costs.

The only issue is defined in the appealed decision, as follows:

"La cuestion mas importante que se plantea ante la consideration del Juzgado, es si la transaction original habida verbalmente entre la acusada y el ofendido en la mañana del 15 de Noviembre de 1954, formalizada mas tarde el 5 de Enero de 1955, por medio del documento de compromiso, Exh. A, ha sido novada por virtud de los pagos parciales de a P20. cada uno, Exhs. 1 y 2, y del otro documento de compromiso, Exh. E, de manera que la responsabilidad criminal de la acusada originada por la infraccion de la transaccion originada ha venido a convertirse en una simple responsabilidad civil."

Borrowing from a theory expressed in four decisions of the Court of Appeals, namely: *People vs. Galsim*, CA-G.R. No. 531-R, Feb. 26, 1948, 45 Off. Gaz, 3466, Aug. 1949; *people vs. Trinidad*, 53 Off. Gaz., 731, Feb. 15, 1957; *People vs. Doniog*, CA-G.R. No. 16993-R, 53 Off. Gaz., No. 15, 4500; and *People vs. de la Rama*, CA-G.R. No. 17677-R, May 21, 1958, the accused in the present case insists that there is no prohibition in our law to prevent the parties to a contract to novate it so that any incipient criminal liability under the first is thereby avoided.

The novation theory may perhaps apply prior to the filing of the criminal information in court by the state prosecutors because up to that time the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the justice authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability, as distinguished from the civil. The crime being an offense against the state, only the latter can renounce it (*People vs. Gervacio*, 54 Off. Gaz., 2898; *People vs. Velasco*, 42 Phil., 76; *U.S. vs. Montañes*, 8 Phil. 620).

It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to (cf. *Abeto vs. People*, 90 Phil., 581; *U.S. vs. Villareal*, 27 Phil., 481).

Even in Civil Law the acceptance of partial payments, without further change in the original relation between the complainant and the accused, can not produce novation. For the latter to exist, there must be proof of intent to extinguish the original relations, and such intent can not be inferred from the mere acceptance of payments on account of what is totally due. Much less can it be said that the acceptance of partial satisfaction, can effect the nullification of a criminal liability that is fully matured, and already in the process of enforcement. Thus, this Court has ruled that the offended party's acceptance of a promissory note for all or part of the amount misapplied does not obliterate the criminal offense (*Camus vs. Court of Appeals*, 92 Phil., 85; 48 Off. Gaz., 3898).

The Court of Appeals decisions conform to the views here expressed. In the *Galsim* case, the principal had accepted the sub-agent to answer for the jewelry, thereby releasing the agent. In the case of *Trinidad*, the Court expressly found that the compromise had taken place "immediately after the loss of the money in question, and long before the case was brought to court". In the case before us, however, the alleged novation occurred after the criminal case had been instituted, and while it was pending trial. In fact, the novation theory advanced by the accused has been rejected, time and again, by this Supreme Court, in a legion of decisions. Of late, we stated: .

"* * * *", it is well-settled that criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own

motion though complete reparation should have been made of the damage suffered by the offended party (U.S. vs. Mendozona, 2 Phil., 353; U.S. vs. Ontengco, 4 Phil., 144; U.S. vs. Rodriguez, 9 Phil., 153; People to Leachon, 56 Phil., 739; Javier vs. People, 70 Phil., 550). As was said in the case of People vs. Gervacio 102 Phil., 687, a criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes by the commission of the offense'. The fact, therefore, that the accused herein had, with the consent of the offended party, assumed the obligation of Paying the rentals, which he collected, out of his own salary after he had committed the misappropriation, does not obliterate the criminal liability already incurred." (People vs. Benitez, 108 Phil., 920)

Nor is the case altered by the dismissal of the first charge in the municipal court, since under the law in force in 1955; (Rep. Act 296) that court had no jurisdiction over the offense, which was properly cognizable in the Courts of first instance that had original jurisdiction in all criminal cases in which the penalty is more than six months or fine of more than P200,00 [sec. 44 (f)].

In view of the foregoing, the appealed decision should be, as it is hereby affirmed, with costs against the accused-appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepción, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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