

JOSE T. GALVEZ, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. L-22760. November 29, 1971*

Ponente: CASTRO, J.

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The petitioner Jose T. Galvez was indicted for the crime of estafa before the Pasay City branch of the Court of First Instance of Rizal; upon arraignment on January 26, 1960, he pleaded not guilty. The trial of the case was a protracted one, spanning a period of more than two years, interspersed by several postpone-ments granted at the behest of both the Government and the defense. It was not until February 6, 1962 that the prosecution's case came to a close with the presentation of its last three witnesses. The defense forthwith requested the trial court for two weeks' time within which to ready its own case, but the request was denied on the ground that the court had previously ordered a day-to-day hearing until termination of the trial. At the hearing on the follow-ing day, February 7, the defense's reiteration of its bid for time suffered a rebuff from the court. As a result of the failure of the defense to present its case, the court ordered Galvez to appear on the following day for pronouncement of judgment. On February 8 the defense filed a written motion for reconsideration; this was denied in open court. As a last resort, the defense moved the court for deferment of the pronouncement of judgment until a remedy could be had from a superior court, but this was rejected. The judgment of the trial court dated February 7 was then read, convicting the petitioner Galvez of the crime charged and sentencing him accordingly. Immediately thereafter, the court ordered his incarceration in the Pasay City jail, but he was freed following his filing of a notice of appeal and an appeal bond. On March 7, 1964 the respondent Court of Appeals rendered a decision, affirming the judgment of the trial court in its entirety.

Hence, the present appeal by certiorari on pure questions of law.

The decision of the respondent Court of Appeals sums up the evidence for the prosecution. It appears that sometime in early 1959 Galvez offered the husband of the complainant Feliciano Camara an exchange deal for the spouses' car. About a week later, Galvez showed the Camaras a station wagon, but this made no impression on the latter. Subsequently, the Camaras were shown another car at the Clark Field air base which they readily liked. Before consummating its purchase, however, the Camara spouses asked Galvez, whom they brought along to the air base, for an estimate of the customs duties and other taxes which they would have to pay upon acquisition of the vehicle. Galvez volunteered that he could settle the tax liabilities by the application of mere backpay certi-ficates which could be bought with the relatively small sum of P2,000.

On April 24, 1959, following the purchase of the car, Feliciano Camara delivered to Galvez a bank check, payable to the latter, in the sum of P2,000, representing the amount which Galvez said would be required for the purchase of backpay certificates which in turn would be used to pay for the car's tax obligations. Galvez cashed the check shortly thereafter at the Ermita branch of the Philippine Trust Com-pany in Manila. After some delay, Galvez gave Feliciano Camara a certificate of registration supposedly issued by the Motor Vehicles Office (now Land Transportation Commission) and a set of plate numbers for the newly acquired car. Four months later, however,

the Camaras got wind of information that the taxes due on their car had not been paid. It turned out, after verification, that the Informal Entry 663582 appearing in the MVO file of their car did not correspond to the proper entry number in the Bureau of Customs files. Mrs. Camara lost no time in communicating with Galvez and demanding of the latter the return of her money. Galvez, for his part, allegedly replied that he had given the money to another person.

The present appeal presents two questions for resolution: the first relates to the territorial competence of the trial court; the second relates to the right of Galvez to a day in court.

1. At the trial of this case, the prosecution proved that the check for P2,000 was delivered to Galvez by Camara at the latter's house in Pasay City, within the territorial jurisdiction of the trial court. The petitioner admits that he cashed the same check at the Ermita branch of the Philippine Trust Company in Manila.

The petitioner Galvez now calls our attention to the phraseology of the information filed against him. It reads:

"That on or about April 24, 1959, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Jose T. Galvez, having then induced and persuaded Feliciana Camara, thru false manifestations and fraudulent representations, to the effect that he would be able to pay the full and legal taxes due the government from the car of Feliciana Camara, thru backpay certificates, when in truth and in fact he knew fully well that the amount of P2,000.00 is not sufficient, did then and there receive from said Feliciana Camara the amount of P2,000.00 with the understanding that the herein accused would pay to the government for and on behalf of Feliciana Camara the full and legitimate taxes due her Chevrolet Station wagon, but the herein accused, once in possession of said amount and far from complying with his obligation to pay the lawful and legal taxes of the said car of Feliciana Camara with the money he had thus received in trust or for administration, did then and there willfully, unlawfully and feloniously convert, misappropriate and misapply the said amount to his personal use and benefit, and refused and still refuses to account for said money despite repeated demands made on him by Feliciana Camara, to the damage and prejudice of the latter in the aforementioned amount of P2,000.00."

The petitioner points out that, according to the evidence, the only related transaction that took place within the territorial jurisdiction of the Court of First Instance of Rizal is the delivery of the check for P2,000 to Galvez in Pasay City. The information above-quoted, upon the other hand, does not allege that it was a check Galvez had received and converted to his own use, something which he could have done only by negotiating the same thru indorsement. The evident subject-matter of the information, the petitioner assumes, is the conversion of the P2,000 received by Galvez in cash from the bank in Manila. The petitioner argues, and the Solicitor General concedes, that the delivery of the check to Galvez, understood in the light of the above reasoning, is not an essential element of the estafa charged in the information and, although occurring in Pasay City, did not bring the case within the territorial competence of the Court of First Instance of Rizal. Finally, it is suggested that since the money allegedly converted by Galvez was actually received by him in cash the City of Manila, the action should have been there commenced.

The petitioner's attempt at drawing a hairline distinction between the conversion of a check and the conversion of cash in relation to the formal allegation in the information of conversion of a specific sum of money, is remarkable. We are, however, not persuaded that the distinction materially alters the substance of the indictment, nor does it affect the efficacy of the prosecution's evidence, for the reasons hereunder stated.

Firstly, the information alleges that Galvez had received the sum of P2,000 from Camara. The phrase "amount of P2,000.00" is broad enough to refer to either cash or a negotiable instrument. A check, after all, while not regarded as legal tender, is normally accepted, under commercial usage, as a substitute for cash.[1] Further, the credit represented by it in stated monetary value is property capable of appropriation.[2] Secondly, it is

erroneous for the petitioner to assume that he was in receipt of Camara's money only from the time when and at the place where he cashed the check. Applying the principles of civil law on payments done thru the use of bills of exchange,[3] the delivery to Galvez of the check on April 24, 1959 in Pasay City, had the effect, when the same was subsequently cashed, of transferring as of that date and in that place, the sum covered thereby from the drawer to the payee. This, although the change from check to public notes took place at a later date and at another situs. And finally, the delivery by Camara of the check in Pasay City and its acceptance by Galvez signified not merely the transfer to the accused of money belonging to the complainant. It also marked, as shown by the chain of events established by the prosecution, the creation of a fiduciary relation between the parties. The existence of such relation either in the form of a trust, commission or administration, is, of course, an essential element of the crime of estafa by misappropriation or conversion.[4] To put it else-wise, estafa is a continuing crime and the receipt by the accused of the check in Pasay City and his cashing of the same shortly there-after in Manila form part of the events that make up the body of the offense.[5] The rule that a criminal prosecution shall be instituted in the place where the offense or any of its essential ingredients was committed is thereby satisfied.[6]

2. We now come to the second question posed by the petitioner.

The lower court's rejection of the petitioner's motion for a two-week postponement following the arrival of his turn to present his evidence is here assailed as unreasonable and as amounting to a denial of his right to be heard. First, it is contended that the lower court's order resetting the trial for February 6, 1962 and thereafter from day to day until the case would be fully terminated, was given in open court on January 24, 1962 in the absence of counsel and without subsequent written notice to him. For this reason, the petitioner argues, he was not able to anticipate the arrival of his turn to present his defense and could not have readied himself for it. Second, it is pointed out that, in any event, the accused had no notion that the prosecution would close its case on February 6, 1962, and he would need no less than two weeks from that time to organize his evidence and secure, by court process or otherwise, the attendance of his witnesses or the production of essential documents.

The totality of the foregoing reasons, however, fails to persuade us that the petitioner was denied his day in court.

Although the order resetting the trial for February 6, 1962 and thereafter from day to day until the trial's termination was announced in open court and in the presence of only the petitioner, it is to be assumed that his counsel had actual notice thereof for the latter appeared in court on the new date set. Moreover, the record shows that the hearing scheduled for January 24, 1962 was ordered cancelled by the court at the instance of the petitioner himself due to the absence of his counsel. It was the latter's duty to check with the court respecting the outcome of that hearing at which he failed to appear. In the absence of any claim to the contrary, it is to be presumed that this he did in the exercise of the diligence required of him as an officer of the court.

As to the claim that the petitioner was deprived of the opportunity to prepare his defense thru the denial of his motion for postponement, we agree with the respondent Court of Appeals that two years were more than enough time for this purpose. The case is one of estafa, and the transaction involved therein is not a complicated one. The accused could be properly expected to anticipate, before his turn came, what course his defense would ultimately take and what evidence would be required. The claim that the accused needed time to secure the attendance of his witnesses flies in the face of the fact that he made no request for a subpoena and/or a subpoena duces tecum on February 6, 1962, the date the prosecution closed its case, or on the following day which was the day he was scheduled to present his evidence. Furthermore, in his motion for new trial filed with this Court, the accused annexed a copy of his affidavit revealing in detail his version of the circumstances that led to his being charged in court. A reading of the same shows that he had intended to testify on his own behalf regarding matters peculiarly within his own personal knowledge. Yet, on the date set for the reception of his evidence, he dared not come forward to testify. True, an accused is not bound to testify on his own behalf and his silence may not be taken

against him,[7] but in this case, the petitioner's belated attempt at this very late day to have his version admitted makes him vulnerable to the charge that his application for continuance made on February 6 and 7, 1962 was not founded on good faith. As a rule, it is only in cases of clear arbitrariness that this Court will interfere with the trial court's exercise of discretion in granting or denying a motion for postponement.[8] We do not find such arbitrariness in the present case.

All the grounds relied upon by the petitioner in his motion for new trial dated November 9, 1964 filed with this Court have all been discussed at length above, and further comment thereon will serve no useful purpose.

ACCORDINGLY, we affirm the decision of the respondent Court of Appeals dated March 7, 1964 and consequently deny the petitioner's motion for new trial. Costs against the petitioner.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur. Fernando, J., did not take part.

[1] Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. I, 1964 ed., p. 93, citing Ogden, 5th ed., p. 44.

[2] Article 417, par. (1), Civil Code of the Philippines.

[3] Article 1249, 2nd par., Civil Code of the Philippines.

[4] Article 315, subd. 1, par. (b), Revised Penal Code.

[5] Rule 110, Sec. 14, Revised Rules of Court.

[6] U.S. vs. Santiago, 27 Phil. 408.

[7] Article III, sec. 1, par. 18, Philippine Constitution; Rule 115, sec. 1, par. (d), Revised Rules of Court.

[8] People vs. Mendez, L-27348, July 29, 1969, 28 SCRA 880.

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