

JOAQUIN GUZMAN, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, RESPONDENT.

G.R. No. L-9572. July 31, 1956

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

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

Appeal by certiorari from the decision of the Court of Appeals finding appellant Joaquin Guzman guilty of the crime of qualified theft.

The facts, as found by the Court of Appeals, are as follows:

"That accused Joaquin Guzman was a travelling sales agent of the New Life Commercial of Aparri, Cagayan. On March 2, 1953, Guzman left Manila with 45 cases of different assortments of La Tondeia wine, in a truck driven by Andres Buenaventura, with Federico Cabacungan as washing (helper), on their return trip to Aparri, by way of Ilocos Norte. Along the route, the accused made various cash sales of wine and when they reached Ballesteros, Cagayan, at about 3 o'clock in the afternoon of March 5, 1953, said accused had in his possession the amount of P4,873.62. Here, they parked their truck at the Sambrano Station and the accused left his companions until supper time at past 7:00 p.m. When they retired for the night, driver Buenaventura and the accused occupied the driver's compartment of the truck, Buenaventura lying on the driver's seat and the accused taking the upper deck with which the truck was provided (see photograph Exhibit. A). The washing, Cabacungan, slept in the body of the truck where the wines were kept. There was a wall between the body of the truck and the driver's compartment; and on that night all the windows were locked from inside. In the morning of March 6, 1953, accused Guzman told the driver that he lost the amount of P2,840.50, and his firearm license. Upon the advice of the driver, said accused reported the matter to the Chief of Police of Ballesteros, who gave him a certificate of loss of his firearm license. They were proceeding to their home journey when, at the outskirts of Ballesteros, they were met by a tax collector and policeman Mariano David who told the accused to return to Ballesteros and execute an affidavit regarding the alleged theft. Before the accused returned to Ballesteros, he entrusted to the driver Buenaventura, the amount of P1,630 in cash and a check for P403.12 under the proper receipt (Exhibit C), with the sales invoices, for delivery to the manager, Enrique Go, of the company of Aparri. Driver and washing continued the trip and arrived at Aparri between 3 and 4 o'clock in the afternoon of the same day. The driver delivered the money and invoices to Enrique Go and informed the latter of the loss. Go reported the matter to the Philippine Constabulary. The PC investigators and Go picked the accused at his house at Aparri at 8 o'clock in the morning, on March 7, 1953, after having failed to see him (accused) at Ballesteros the previous night. Questioned at the PC barracks as to how much money he still had, the accused stated that he had only P3, in his person. On March 10, 1953, the accused wrote to Go, requesting him to defer the filing of the criminal complaint until March 16, 1953, on which date he promised to refund the amount lost (Exhibit G). On March 17, 1953, the said accused paid the amount of P1,500 to Go. On April 1, 1953, the accused was prosecuted for theft for the shortage of P804.70." (Appellant's Brief, pp. 13-15.)

Appellant Guzman claims, first, that under the above findings of fact, he had committed only the crime of estafa; and second, as the crimes of estafa and theft are essentially different offenses, he should be acquitted of the present charge for qualified theft, although proceedings may be filed anew against him for the proper offense. We

agree with appellant that under the above facts, the Court of Appeals erred in holding that he "had only the material or physical possession of the said merchandise or its proceeds, because he was not the owner thereof; he was simply holding the money for and in behalf of his employer".

While it is true that appellant received the proceeds of his wine sales as travelling salesman for the complainant, for and in behalf of the latter as his principal, and that possession of the agent is possession of the principal, an agent, unlike a servant or messenger, has both the physical and juridical possession of the goods received in agency, or the proceeds thereof, which takes the place of the goods after their sale by the agent. His duty to turn over the proceeds of the agency depends upon his discharge, as well as the result of the accounting between him and the principal; and he may set up his right of possession as against that of the principal until the agency is terminated.

The case cited by the Court of Appeals (*People vs. Locson*, 57 Phil., 325), in support of its theory that appellant only had the material possession of the merchandise he was selling for his principal, or their proceeds, is not in point. In said case, the receiving teller of a bank who misappropriated, money received by him for the bank, was held guilty of qualified theft on the theory that the possession of the teller is the possession of the bank. There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his principal. In the former case, payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous, right to retain the money or goods received in consequence of the agency; as when they principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault (Article 1915, new Civil Code; Article 1730, old).

As appellant converted to his own use proceeds of sales of merchandise delivered to him as agent, which he received in trust for and under obligation to deliver and turn over to his principal, he is guilty of the crime of estafa as defined by Article 315, paragraph 1, subparagraph (e), of the Revised Penal Code. This has been the consistent ruling of this Court in cases where a sales agent misappropriates or fails to turn over to his principal proceeds of things or goods he was commissioned or authorized to sell for the latter. (*U. S. vs. Reyes*, 36 Phil., 791; *U. S. vs. Lim*, 36 Phil., 682; *People vs. Leachon*, 56 Phil., 737).

The next question is whether the present information for qualified theft alleges sufficient facts to sustain a conviction for estafa under Article 315, paragraph 1, subparagraph (b), of the Revised Penal Code. The information reads:

"The undersigned accuses Joaquin Guzman of the crime of Qualified Theft, defined and penalized under Articles 308 and 309, No. 3 in connection with Article 310 of the Revised Penal Code, as amended by Commonwealth Acts Nos. 273 and 417 and Republic Act No. 120, committed as follows:

That on or about the 6th day of March, 1953, in the municipality of Aparri, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Joaquin Guzman, while in the employ of Enrique Go and with grave abuse of confidence did then and there, willfully, unlawfully, and feloniously, with intent to gain but without violence against or intimidation of persons nor force upon things, without the consent of the owner Enrique Go alias Ngo Yat, take and carry away for his personal use and benefit the sum of eight hundred four pesos and seventy eentavos (P804.70) to the damages and prejudice of said Enrique Go altos Ngo Yat, in the amount of P804.70." (Original Records p. 22.)

Article 315, paragraph 1, subparagraph (6), on the other hand, provides:

"Surindling (estafa).—Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

* * * * *

(2) With unfaithfulness or abuse of confidence, namely:

* * * * *

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, good, or other property;

Under the above definition of estafa, it is an essential element of the crime that the money or goods misappropriated or converted by the accused to the prejudice of another was received by him "in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to retain the same". No such allegation appears in the above information. Consequently, we agree with appellant that he can not be convicted thereunder of the crime of estafa as defined by the article above.

Wherefore, the decision appealed from is reversed, and appellant Joaquin Guzman acquitted of the crime of qualified theft. Appellant should, however, be held in custody pending the filing of another information against him for estafa under Article 315, paragraph 1, subparagraph (6), of the Revised Penal Code. Without costs in this instance. So ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angela, Labrador, Concepcion, Endencia, and Felix, JJ., concur.

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