

TEOPISTO S. SALCEDO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-45830. October 03, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the decision of the respondent Court of Appeals now Intermediate Appellate Court, affirming the decision of the City Court of Iligan City which convicted the petitioner of the crime of estafa.

The information dated May 6, 1968 charged the petitioner with estafa as follows:

"That on or about March 18, 1968, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused by means of false manifestations and fraudulent misrepresentations, did then and there wilfully, unlawfully and feloniously defraud one Basilio F. Ponce in the following manner, to wit: the said accused, being then the Branch Manager of the Manhattan Guaranty Company, Inc., Iligan Branch, by falsely pretending that the Manhattan Guaranty Company, Inc., is authorized to sell and/or issue insurance policies, and knowing very well that said manifestations and representations to be false and fraudulent, induced the said Basilio F. Ponce to have his building insured against fire and the said Basilio F. Ponce deceived by the misrepresentation of the accused, agreed and gave to the accused, the amount of P1,095.80 as premium on Fire Policy No. LOMG 4602 issued March 14, 1968 and to expire March 14, 1969, later to find out that the said Manhattan Guaranty Company, Inc., was suspended by the Insurance Commissioner and is not authorized to sell/or issue insurance policies, to the damage and prejudice of said Basilio F. Ponce in the aforementioned sum of P1,095.80, Philippine Currency.

"Contrary to and in violation of Article 315, paragraph 4, 2(a) of the Revised Penal Code."

The evidence for the prosecution is summarized in the People's memorandum as follows:

"Petitioner Teofisto Salcedo was, on March 14, 1968, the local branch manager of Manhattan Guaranty Company, Inc. at Iligan City engaged in the business of property insurance (pp. 19-22, tsn., Dec. 22, 1970). Said company, however, had been suspended from operating and eventually closed by the Insurance Commissioner since February 21, 1968 (p. 13, id.). The petitioner was aware of the suspension and closure order but he deliberately concealed the same from complainant Basilio F. Ponce when he issued on March 18, 1968 a P50,000.00 fire insurance policy unto the complainant, and collected the amount of P1,095.80 purportedly as premium thereof (p. 7, Petition; pp. 5-8, tsn., id.; Exhs. "C" and "C-1", Rec.).

"Basilio Ponce, however, came to know of such status of Manhattan Guaranty thereafter, or on March 27, 1968, and so he immediately went to see the petitioner and demanded from him the premium he had paid (p. 14, tsn., id.). But the petitioner refused to make any refund, and instead, assured Ponce that his company was still financially sound (pp. 14-15, tsn., id.). A formal letter of demand for the return of his P1,095.80 (Exh. "E") was likewise made by Ponce. To this the petitioner merely answered that the main office of Manhattan Guaranty in Manila was already closed although at that time the amount of P1,095.80 was still at his disposal as the same was remitted only on December 25, 1968 to the company's Cebu City Branch (p. 7, Petition)."

On the other hand, the petitioner presented his own version of the facts. The defense evidence is summarized in the decision of the respondent appellate court as follows:

"To establish his innocence, the appellant adduced evidence alleging that he cannot be held criminally liable because he was not aware then that his company was suspended and therefore was forbidden to engage in business transaction by the Insurance Commissioner. That altho he had read about the said suspension in the newspapers, he was only officially informed of the reported suspension and stoppage of business transaction when he received the Memorandum (Exh. "1") dated February 26, 1968 from the Branch Manager of the Company of Cebu City Branch Office; and that such receipt was only after two (2) days from the issuance of the fire insurance policy to the complaining witness, Basilio Ponce.

"As a witness for the defense, Jesus Cortes, the Production Manager of the local branch office in Iligan City, also testified corroborating the allegation of the accused. That it was only on March 27, 1968, two (2) days after the issuance of the policy to the complaining witness and, coincidentally the same day that complaining witness demanded the return of his premium payment, that he (Cortes) was shown by the accused the memorandum dated February 26, 1968 directing them to stop negotiating business."

On January 13, 1971, Branch II of the City Court of Iligan City convicted the petitioner of the crime of estafa. The dispositive portion of the decision reads as follows:

"Premises considered, the Court finds the accused, Teopisto S. Salceco, GUILTY beyond reasonable doubt of the crime of ESTAFA and hereby imposes upon him the penalty of prision correccional in its minimum period of SIX (6) MONTHS and ONE (1) DAY and to pay the amount of P1,095.80 to the offended party and in case of insolvency to suffer subsidiary imprisonment at the rate of P8.00 a day but shall not exceed one-third of the principal penalty imposed upon the accused, and to pay the cost of the proceedings."

On December 28, 1976, the respondent Court of Appeals affirmed the judgment of conviction rendered by the trial court but deleted the portion imposing subsidiary imprisonment in case of insolvency.

A motion for reconsideration was denied in a resolution dated March 9, 1977.

The decisive point in this petition is the determination of whether or not the petitioner employed false pretenses or fraudulent representations in the negotiations and issuance of the fire insurance policy.

The petitioner first argues that since the transaction was one between the Manhattan Guaranty Company, Inc., through its agent, Mr. Cortes and the complainant, the act of Mr. Cortes should be attributed to him alone or to the Manhattan Guaranty Company, Inc. as the principal and not to the petitioner. The petitioner submits that there is no evidence showing that he intervened in behalf of the company in the negotiation and conclusion of the questioned policy. He claims that it was Mr. Cortes alone who negotiated and concluded the contract of insurance and who received the premium payment.

The petitioner's contentions have no merit. The petitioner was then the local branch manager of the Manhattan Guaranty Company, Inc. When he signed and issued the said policy and collected the premium payment thereof in the amount of P1,095.80, he had knowledge that his company was no longer authorized to conduct insurance business. This knowledge makes him liable under paragraph 2(a) of Article 315 of the Revised Penal Code which provides that:

"2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

"(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits."

To secure a conviction for estafa under par. 2(a) of Article 315 of the Revised Penal Code, the following

requisites must concur, to wit: (1) that the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (2) that such false pretenses or fraudulent representations were made prior to, or simultaneous with the commission of the fraud; (3) that such false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property, and (4) that as a result thereof, the offended party suffered damage. All these requisites are present in the case at bar.

That the petitioner made false pretenses or fraudulent representations to the complainant in the issuance of the fire insurance policy is shown by the following uncontroverted facts, to wit: (1) the petitioner himself admitted that he was aware of the suspension order of the Insurance Commissioner from the daily papers before he signed and issued the fire insurance policy and collected the premium payment from the complainant on March 25, 1968; (2) on March 27, 1968, the petitioner was officially informed of the suspension and stoppage of business transactions more than a month earlier and published in the newspapers and that on the same day, the complainant, Basilio Ponce demanded the return of his premium payment but there was no immediate refund despite the fact that the amount was still at the petitioner's disposal as the same was remitted to the company's Cebu City Branch only on December 25, 1968; (3) with full knowledge and having official information to the contrary the petitioner assured the complainant that the Manhattan Guaranty Company, Inc. was still financially sound; and (4) on June 23, 1968, the complainant wrote a formal letter of demand for the return of his P1,095.80 but the petitioner replied that their main office in Manila was already closed inspite of his still having the money with him.

The deliberate concealment by the petitioner of the fact that his company was no longer authorized to engage in the business of insurance when he signed and issued the fire insurance policy and collected the premium payment constitutes false representations or false pretenses. The complainant relied upon these false pretenses. After reading in the newspapers that the Insurance Commissioner had suspended his company from operating, it was the petitioner's duty to stop the solicitation of insurance policies while ascertaining the veracity of the news reports. Instead, he allowed business to go on as usual. He signed and issued the insurance policy. And knowing not only through the newspapers but also from an official communication from his own superiors that business operations were already prohibited when he issued the insurance policy and received premium payments, he refused to return the money thus collected long after the Insurance Commissioner had prohibited operations.

The petitioner was the one liable and not the production manager, Mr. Jesus Cortes. The latter acted in good faith. As stated by the Solicitor General:

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"x x x When Mr. Cortes negotiated to insure the complainant's property against fire, the former appeared to have no knowledge that the Insurance Commissioner already ordered the suspension and closure of their company.

"On the other hand, the accused was aware of such suspension and closure order but he did not inform Mr. Cortes about it. It was only on March 27, 1968, after the insurance policy had been issued and the corresponding premium payment had been collected did the accused show to Mr. Cortes the Memorandum directing them to stop transacting insurance business (p. 4, Decision). Consequently, Mr. Cortes could not be held liable therefor as he was then acting in good faith."

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The petitioner also argues that the signing of the policy by the petitioner was subsequent to the inducement and misrepresentations, if any, made by Mr. Cortes.

This is wrong. The misrepresentation here was committed from the time the complainant was induced to insure

his property and up to the time the policy was issued upon the payment of the requisite premium. The records reveal that the signing of the policy, its issuance, and the initial payment of the premium were all done on March 25, 1968.

The petitioner tried to prove that he signed the questioned policy in the spirit of goodwill and good faith, because at the time he signed the policy, he had no official knowledge regarding the suspension order of the Insurance Commissioner. He claims that he signed the questioned policy as a matter of course and following standard operating procedure, he being the local manager of the local branch whose signature is necessary for the policy to be validly issued.

The signing and issuance of the insurance policy cannot be a simple matter of course because at the time the policy was issued, the Manhattan Guaranty Company, Inc. was no longer authorized to conduct business. Aware that his company had been suspended and ordered closed by the Insurance Commissioner, the petitioner should have informed the complainant of the suspension and closure instead of signing and issuing fire insurance policies. He should not have received the premium payment paid by the complainant. At the very least, he should have returned the money still in his hands when he received official notice of the closure. What the petitioner, however, did was to deliberately conceal the fact that his company was no longer authorized to engage in the insurance business from the complainant. He continued making money when it was already illegal to do so.

The contention of the petitioner that there was no immediate refund of the premium paid by the complainant because the same was already remitted to their office in Cebu City is not supported by the facts on record.

The records show that the complainant attempted twice to recover the amount he paid. The first was on March 27, 1968 when he orally made a demand. The petitioner refused to refund the money but instead gave assurances that their company was still financially sound. Second, on June 23, 1968, the complainant sent a formal letter of demand but the petitioner's only answer was that their main office in Manila was already closed. It is important to note that on these two instances, the petitioner did not return the premium payment paid by the complainant despite the fact that the said amount was still at his disposal because the same was remitted to their Cebu City Branch only on December 25, 1968. It should be noted that the remittance was not only delayed but it was after the May 6, 1968 filing of the information against him.

The petitioner argues that prior to his receipt of the March 26, 1968 memorandum officially informing him of the closure of their company, his only knowledge about the suspension of their company was through newspapers which according to him was hearsay information. It is sufficient to state here that what is important is the fact that the petitioner admitted having prior knowledge of the suspension and closure of their company when he signed and issued the policy in question and that he believed the same to be true.

Finally, the petitioner tried to prove that the complainant, Mr. Ponce, admitted his prior knowledge of the suspension of the Manhattan Guaranty Company, Inc., thus, he was not at all deceived. The petitioner cites the following excerpts from the complainant's testimony in support of this contention:

"Q - In your reading of the Manila Times, was there ever occasion that you came across an information regarding insurance companies?

"A -

Yes, sir, one of the newspapers that I have read sometime in the month of August, 1968, I can not exactly remember, published that the Manhattan Guaranty Co., was one of the insurance companies that was closed.

"Q -

Will you kindly inform the Honorable Court what relation has that Exh. "H" to the portion of the Manila Times Publication that you saw?

"A -

This is the clipping from the Manila Times dated October 18, 1967, which was presented to the office of the Fiscal. I was the one who presented that to the office of the City Fiscal (Tsn., July 10, 1968, pp. 21-22)."

We note that the suspension in this case was imposed only on February 21, 1968 by the Insurance Commissioner. On the other hand, the Manila Times item read by the complainant was dated October 18, 1967 or four (4) months before the said suspension. Obviously, the news report could not have referred to the future suspension on February 21, 1968 but to the prior suspension sometime in 1967 "which the company was able to lift." (Petition, p. 18, Rollo, p. 24) In other words, the prior knowledge mentioned by the petitioner referred to the 1967 suspension and not to the later suspension on February 21, 1968.

The respondent Court of Appeals, however, erred when it modified the penalties imposed by the trial court by merely deleting that portion which imposed subsidiary imprisonment. For purposes of the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is one degree lower than the penalty prescribed by the Code, and the maximum penalty is the penalty that can properly be imposed in view of the attending circumstances of the case.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** with the **MODIFICATION** that the petitioner should suffer an **INDETERMINATE PENALTY** of **THREE (3) MONTHS** of **ARRESTO MAYOR** as minimum to **ONE (1) YEAR** and **EIGHT (8) MONTHS** of **PRISION CORRECCIONAL** as maximum.

SO ORDERED.

Melencio-Herrera, Plana, Relova, De la Fuente, and Alampay, JJ., concur.

Teehankee, J., (Chairman), see separate dissenting opinion.

DISSENTING OPINION

TEEHANKEE, J.,:

I dissent on the ground that the evidence of the case is not sufficient to prove the willful criminal intent and to overcome the constitutional presumption of innocence of the accused-petitioner. Petitioner, as local branch manager of the closed insurance company, had no intervention whatsoever in the negotiation and conclusion (and the corresponding premium payment) of the questioned insurance policy contract conducted between the complainant-insured and the insurance agent, Mr. Cortez, except subsequently to received the amount of the premium on behalf of the company. His subsequent failure to return the premium to the complainant give rise only to a pure civil liability on the part of the insurance company. There was no intent to defraud on his part. "Intent to defraud must be coetaneous with the alleged deceitful act or antecedent to the damage and not a supervening circumstances." (III Aquino's Revised Penal Code, page 1150). Neither did the petitioner personally gain from the transaction. I vote for his acquittal.

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