

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, V.S. VICTOR ALVERIO, DEFENDANT-APPELLEE.

G.R. No. L-9371. October 18, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a decision of the Court of first Instances of Leyte, Hon. Juan L. Bocar, presiding dismissing the above-entitled criminal case on a motion to quash.

"x x x the above-named accused having received from Juan Damasig, the following articles, x x x for the sole and only purpose of selling them with the specific obligation to return the said articles or pay to Juan Damasig the proceeds of the sale, with deliberate intent, with deceit and with intent to gain, did then and there wilfully, unlawfully, and feloniously fail and refuse and still fails and refuses, in spite of repeated demands by the offended party, to turn in said goods or the amount of P225.00, except the sum of ONE HUNDRED TWENTY FIVE (P125.00) PESOS, thereby appropriating the balance of P100.00 to his own personal use and benefit, to the damage and prejudice of the offended party in the above mentioned amount of P100.00."

Upon the filling of the information, counsel for the accused presented a motion to quash on the ground that according to the evidence disclosed during the preliminary investigation the accused failed to give the P100.00 to the complaining witness because he delivered it to a person whom he believed to be a creditor of the complainant. Opposition to the motion having been filed by the fiscal, the court set motion for hearing and examined the accused, the offended party and the person to whom the accused had given the sum of P100.00. After hearing the testimonies of these witnesses, the court found-

"that in this particular case the accused, although he acted without authority from Juan Damasig to give P100.00 to Nicasio Llevado, acted with sincerity and good faith and from what the court could gather, alverio gave the P100.00 to llevado in a sincere good faith that Damasig would not object to his giving the money to Llevado and that Damasig would not deny that he owed any money from Llevado."

Against the order of dismissal this appeal was taken and it is claimed that the accused committed abuse of confidence when, instead of delivering the entire sum to the offended party, he gave part thereof to another person without having been authorized to do so.

We have read the evidence and there is nothing in it from which we may deduce that there was abuse of confidence induced by a criminal intent and amounting to a criminal act, but that the estafa may be committed if there is abuse of confidence, no such abuse having been shown to exist and good faith on the court, the trial judge committed no error in ordering the dismissal of the information.

The decision appealed from is hereby affirmed, without costs.

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

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