

ALFREDO N. CRUZ, PLAINTIFF AND APPELLANT, VS. JOSE M. VALERO AND LUZON SUGAR COMPANY, DEFENDANTS AND APPELLEES.*G. R. No. L-2826. June 11, 1951*

Ponente: PADILLA, J.

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This is an action to recover from the Luzon Sugar Company and Jose M. Valero, as its President and General Manager, 634.03 piculs of domestic centrifugal sugar and 1,341 gallons of molasses, 152.39 piculs of reserve centrifugal sugar and 297.37 piculs of additional centrifugal sugar or their value, in default of delivery of such sugar and molasses, at the rate of P91 per picul which was the market value at the time of the filing of the complaint; to collect P140, the value of two tires and tubes of a Ford truck taken by the Luzon Sugar Company; and to secure a pronouncement that Jose M. Valero, in his capacity aforesaid, had sold the 634.03 piculs of centrifugal sugar belonging to the plaintiff without the latter's knowledge and consent and appropriated the proceeds thereof to his own use and benefit and to the damage and prejudice of the plaintiff.

After trial, the court dismissed the complaint, for the reason that the centrifugal sugar deposited by the plaintiff in the warehouse of the Luzon Sugar Company within its compound was lost due to a fortuitous event or force majeure, directed the plaintiff to pay the costs of the suit, and dismissed the counterclaim of the defendants, because it was not shown that the plaintiff acted with malice in bringing the suit. From this judgment the plaintiff has appealed.

There is no dispute that the appellant was a sugar cane planter adhered to the Luzon Sugar Company, a sugar central located in the municipality of Calumpit, province of Bulacan, which extracted juice from sugar cane by crushing it and manufactured centrifugal sugar out of the juice extracted from the sugar cane delivered to it by the planters (Exhibit F); that the appellant had a share amounting to 1,544.38 piculs of export centrifugal sugar, known as A sugar, which was exchanged for an equal amount of domestic centrifugal sugar, known as B sugar, deposited in the Luzon Sugar Company's warehouse within its compound, with the obligation on its part to deliver it to the appellant on demand; that in addition to such amount of domestic centrifugal sugar, the appellant was entitled to 283.20 piculs of domestic centrifugal sugar, as his share in the 1940-1941 crop, and to 5,594 gallons of molasses; that on different dates and occasions, the appellant had withdrawn several piculs of sugar, reducing it to 632.03, and several thousands of gallons, reducing the number of gallons of molasses to 1,341; that the appellant was entitled to 152.39 piculs of reserve centrifugal sugar, known as C sugar; that the appellant was also entitled to 297.37 piculs of additional centrifugal sugar as his share in the 1939-1940 and 1940-1941 crops, all of which were stored in the warehouse and in the cylindrical tanks of the Luzon Sugar Company, of which the other appellee was the President and General Manager. Adding up the amounts of sugar stored by the appellant in the warehouse of the Luzon Sugar Company, to wit: 632.03 of domestic sugar, 152.39 of reserve sugar, and 297.37 of additional sugar, gives a total of 1,081.79 piculs of centrifugal sugar.

The appellant claims that on 26 and 27 December 1941, the Luzon Sugar Company did not have in its warehouse in Calumpit the amount of centrifugal sugar he had stored in its warehouse for safekeeping and the number of gallons of molasses he had left in its possession contained in cylindrical tanks, because the appellee Jose M. Valero had disposed of the same without the knowledge and consent of the appellant and that on 28 December, when the appellant wanted to withdraw his sugar from the warehouse of the Luzon Sugar Company, the amount of sugar stored in the warehouse was not sufficient and, if there was enough amount of sugar, it was not manufactured by the Luzon Sugar Company but by the Pampanga Sugar Development Company.

On the other hand, the appellees contend that before 28 December 1941, the Luzon Sugar Company had in its warehouse sufficient amount of centrifugal sugar manufactured by it and was in a position to deliver sugar to planters who wished to withdraw and take delivery thereof, but that on the last-mentioned date, the central was bombed by Japanese airplanes, the warehouse damaged by sharpnel and some piculs of centrifugal sugar were looted, some taken by the Imperial Japanese Army after the occupation of the town of Calumpit by the said Army on 1 January 1942, and the remaining brought by the Japanese Army to Northern Luzon; that for that reason it rendered impossible the delivery of centrifugal sugar and molasses belonging to the appellant; and that the Ford truck tires and tubes, the value of which is sought to be collected, were taken by the management of the sugar central under the Japanese Military Administration.

The appellant relies on the testimony of Amado de Guzman, an accountant of the Luzon Sugar Company, who said that the amount of domestic centrifugal sugar deposited by the appellant with the Luzon Sugar Company was disposed of by the latter without the consent of the former (pp. 26, 27, 34, t. s. n.—Peralta), to be replaced by or with centrifugal sugar to be manufactured out of the 1940-1941 sugar cane crop (p. 34, t. s. n.—Peralta); that the reserve centrifugal sugar, known as C sugar, was sent to the subsidiary warehouse of the central located at the Insular Refining Company in Mandaluyong (pp. 46, 47, 69, t.s.n.—Peralta); and on that of Petra Cristobal who said that she wanted to buy twenty sacks of sugar from the appellant, but that when she together with the wife of the appellant and one from Malolos, accompanied by Ciriaco B. Serrano, the chemist of the Luzon Sugar Company, went to the warehouse of the Luzon Sugar Company on Monday before Christmas of 1941, she found that the sacks were wet and were not Luzon Sugar Company but Pasudeco sugar; that for that reason she desisted from buying (pp. 74, 76, 77, 80, t. s. n.—Peralta); and that she figured out there were 100 or less than 100 sacks of sugar on that Monday she went to the warehouse (pp. 76, 79, t. s. n.—Peralta).

The appellant testified that after learning that there was no Luzon Sugar Company but Pasudeco sugar in the Calumpit warehouse, he wrote on 26 December 1941 a letter to appellee Jose M. Valero, a copy of which is Exhibit P, expressing his desire to withdraw all his sugar; and that the following day after receipt on 27 December of the answer (Exhibit G), he together with Jose B. Timboi went to the warehouse and "found out that there were no more Luzon sugar in the bodega, but only small pile of Pasudeco sugar." (pp. 129, 145, t. s. n.—Peralta).

The appellant relies also on Exhibit G, which is a letter signed by Jose B. Timboi, a bookkeeper of the Luzon Sugar Company pp. 22, 91, t. s. n.—Peralta), but the sheet of paper on which the letter had been written was cut, the upper part thereof is missing and the remaining part of the sheet is less than one-half of an 8" X 10 1/2" size paper sheet and less than one third of an 8" X 13" size paper sheet. The appellant attempted to supply the contents of the missing part of the letter by introducing a purported copy thereof marked Exhibit G-1. In the supplied contents of the missing part of the letter, it is made to appear that on 27 December 1941, the Luzon Sugar Company had 56.55 sacks or piculs of sugar in its warehouse in Calumpit and 1,097.50 in its subsidiary in Mandaluyong, meaning the Insular Refining Company.

If the contents of the missing part of the letter marked Exhibit G are as they appear in Exhibit G-1 then on 27 December 1941, the Luzon Sugar Company did not have in its warehouse in Calumpit the amount of sugar the

appellant had deposited with it. The inference may be drawn from such supplied contents of the missing part of the letter marked Exhibit G that there was stored and kept in the subsidiary warehouse in Mandaluyong, referring to the Insular Refining Company, an amount more than sufficient to cover the amount of sugar belonging to the appellant deposited by him with the Luzon Sugar Company in Calumpit. And if that were the case, then the Luzon Sugar Company could not make delivery in Calumpit of the appellant's sugar upon his demand and would be answerable or liable to the appellant for his sugar or would have to pay its market price at the time of the demand for its delivery.

On their part, the appellees presented Ciriaco B. Serrano, the chemist of the Luzon Sugar Company, the only one entrusted with the safekeeping of the keys to the warehouse (pp. 4-6, t. s. n.—Sanchez) where the sugar of the central and of the planters was kept, who testified that Petra Cristobal did not go to the warehouse of the central on Monday before Christmas of 1941 (pp. 16, 26, t. s. n.—Sanchez) ; that on 28 December 1941, the Luzon Sugar Company compound was bombed by Japanese airplanes, and the appellant did not go to the warehouse in Calumpit (pp. 5-7, 11, 17, 27, t. s. n.—Sanchez); (Monico Arceo, the mechanical engineer of the Luzon Sugar Company, corroborates him on the bombing of the compound and on the fact that the appellant did not go to the warehouse on 28 December 1941 [p. 84, t. s. n.—Sanchez]); that on that date there were 1,200 piculs of domestic sugar belonging to the planters in the warehouse in Calumpit (p. 8, t. s. n.—Sanchez) ; and 11,000 gallons of molasses deposited or kept in two cylindrical tanks near the warehouse, the big tank having been hit by a bomb (pp. 9, 10, t. s. n.—Sanchez); that the compound of the Luzon Sugar Company was abandoned by its officers and employees and occupied by the Japanese from 1 January to 20 February 1942 (pp. 7, 17, t. s. n.—Sanchez); that on the last mentioned date, when he (Ciriaco B. Serrano) returned to the compound of the Luzon Sugar Company in Calumpit, he found that the sugar deposited there had almost completely disappeared (pp. 10, 36, 66, 76, t. s. n.—Sanchez), and only 5,000 gallons of molasses were left (p. 10, t. s. n.—Sanchez); and that after the Japanese soldiers had left Calumpit, the compound and offices of the Luzon Sugar Company in said place were immediately occupied by the Japanese Military Administration, which, through its representative Captain Nunaka, had absolute control of said compound and offices (pp. 18, 32-37, t. s. n.—Sanchez). The part of Ciriaco B. Serrano's testimony as to the amount of sugar stored in the warehouse of the Luzon Sugar Company on 28 December 1941 (p. 8, t. s. n.—Sanchez) is corroborated by Nicolas S. Cruz, who together with the appellant went to the warehouse on 27 December 1941, and saw 1,000 sacks or piculs of sugar, more or less (pp. 47, 48, 57, 58, t. s. n.—Sanchez); by Fausto Carlos, incumbent municipal mayor of Calumpit, who, on 28 December 1941, being then mayor of the town of Calumpit, went together with an American Army captain to see the extent of the damage caused to the compound by the bombing and there saw a large amount of sugar (pp. 62, 63, 65, 66, 77, 78, t. s. n.—Sanchez); and by Jose Lopez, who went to the warehouse on 29 December 1941 to withdraw 25 sacks or piculs of sugar and there saw 1,000 piculs of sugar, more or less (pp. 103, 104, 118, 119, t. s. n.—Sanchez).

The testimony of Petra Cristobal cannot be relied upon, because Ciriaco B. Serrano, the only person or employee of the Luzon Sugar Company who kept the keys to the warehouse and who, according to Petra, accompanied her to the warehouse (p. 80, t. s. n.—Peralta), testified that Petra did not go to the warehouse on Monday immediately preceding the Christmas of 1941 (pp. 16, 26, t. s. n.—Sanchez) . Assuming that what she testified was true and that the Pasudeco sack was of the same weight as that of the Luzon Sugar Company although the latter's sack might have looked larger (p. 77, t. s. n.—Peralta), the reason why she did not get the sugar was flimsy. If she needed it, a small difference in the size of the sack was of little importance. Asked how many sacks she saw in the warehouse, she said that she did not count them (pp. 76, 79, t. s. n.—Peralta). On cross-examination, however, she said that it was 100 piculs, more or less. She further said that previous to that occasion she very often used to go to the warehouse (p. 79, t. s. n.—Peralta), but in the same breath she said that it was only that Monday before Christmas of 1941 that she went to the warehouse of the Luzon Sugar Company (p. 81, t. s. n.—Peralta).

The supplied contents of the missing part of the letter marked Exhibit G, appearing on Exhibit G-1, which state that before noon of 27 December 1941, appellee Jose M. Valero came to Calumpit, to whom Jose B. Timbol showed or gave the appellant's letter dated 26 December (Exhibit P), and that there were only 56.55 piculs of sugar in the site, meaning in the warehouse at Calumpit, cannot also be relied upon to prove the amount of sugar that was in the warehouse of the Luzon Sugar Company in Calumpit on 27 December 1941, because Jose M. Valero testified that the last time he went to Calumpit was on 8 December 1941 and in the afternoon of that day he together with his family left Manila to seek refuge in Antipolo (p. 24, t. s. n., Rebuttal-Sanchez). According to Petra Cristobal, a witness for the appellant, when she went to the warehouse in Calumpit on Monday before Christmas of 1941, she saw 100 sacks or piculs of sugar, more or less. This testimony contradicts the supplied contents of the missing part of the letter Exhibit G, appearing on Exhibit G-1, which state that there were only 56.55 sacks or piculs of sugar in the warehouse of the Luzon Sugar Company in Calumpit, there being no showing that during the short interval there had been withdrawals of sugar from the warehouse. The appellant's explanation how the letter Exhibit G was cut and the upper part of the sheet destroyed or lost can hardly be believed, because so important a document as Exhibit G could not have been left or placed so carelessly by him on his table that it was used to wrap up coins (pp. 131-133, t.s.n.—Peralta).

The preponderance of evidence is to the effect that there was enough sugar to cover and deliver 1,081.79 piculs of domestic, reserve and additional sugar belonging to the appellant who, according to the milling contract, was in duty bound to take delivery thereof at the warehouse. And it having been established that the Luzon Sugar Company compound was bombed on 28 December 1941 and the Japanese Army occupied it from 1 January to 20 February 1942; that some of the sugar stored in the warehouse were looted, some taken by the Imperial Japanese Army and the remaining brought to Northern Luzon by the said Army; and that the two tires and tubes, the price or value of which is sought to be collected, had been taken by Captain Nunaka of the Imperial Japanese Army, as testified to by the appellant (pp. 150, 151, t. s. n.—Peralta), there is no legal way of holding that the appellees are responsible for said sugar, molasses, tires and tubes, because the loss was due to the war or to a fortuitous event.

The judgment appealed from is affirmed, without costs.

Paras, C. J., Feria, Pablo, Bengzon, Montemayor, Reyes and Jugo, JJ., concur.

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