

FRANCISCO SYCIP, PETITIONER, VS. HONORABLE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-38711. January 31, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

On August 25, 1970, the then Court of First Instance of Manila rendered a decision convicting the herein petitioner Francisco Sycip of the crime of estafa and sentencing him to 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; to indemnify complainant Jose K. Lapuz the sum of P5,000.00, with subsidiary imprisonment in case of insolvency; and to pay the costs.

The then Court of Appeals affirmed the trial court's decision but deleted that part of the sentence imposing subsidiary imprisonment.

The facts of the case as found by respondent appellate court read:

"x x x [I]n April 1961, Jose K. Lapuz received from Albert Smith in Manila 2,000 shares of stock of the Republic Flour Mills, Inc., covered by Certificate No. 57 in the name of Dwight Dill who had left for Honolulu. Jose K. Lapuz 'was supposed to sell his (the shares) at present market value out of which I (he) was supposed to get certain commission.' According to Jose K. Lapuz, the accused-appellant approached him and told him that he had good connections in the Stock Exchange, assuring him that he could sell them at a good price. Before accepting the offer of the accused-appellant to sell the shares of stock, Jose K. Lapuz made it clear to him that the shares of stock did not belong to him and were only entrusted to him for sale. He then gave the shares of stock to the accused-appellant who put them in the market.

"Thereafter, Jose K. Lapuz received a letter from the accused-appellant, dated April 25, 1961 (Exhibit 'A'), the latter informing him that '1,758 shares has been sold for a net amount of P29,000.00', but that the transaction could not be concluded until they received the Power of Attorney duly executed by Dwight Dill, appointing a person to endorse the certificate of stock, and a resolution from the Biochemical Research Laboratory, Inc., authorizing the transfer of the certificate. Jose K. Lapuz signed his conformity to the contents of the letter.

"Jose K. Lapuz declared that he 'was able to secure a power of attorney of Dr. Dwight Dill and gave it to the accused-appellant.' The power of attorney authorized the sale of 1,758 shares only; the difference of 242 shares were given back to Biochemical Research Laboratory, Inc.

"Of the 1,758 shares of stock, the accused-appellant sold 758 shares for P12,128.00 at P16.00 a share, for which Jose K. Lapuz issued a receipt, dated May 23, 1961 (Exhibit 'C'). On the same day, Jose K. Lapuz turned over to Albert Smith the sum of P9,981.40 in payment of 758 shares of P14.00 a share (Exhibits 'D' and 'E').

"On May 30, 1961, Jose K. Lapuz received a letter from the accused-appellant (Exhibit 'F'), the latter informing him that 'although the deal (relative to the 1,000 shares) has been closed, actual delivery has been withheld pending receipt of payment x x x, I have chose(n) to return the shares x x x', enclosing Certificate No.

955 for 500 shares, Certificate No. 952 for 50 shares in the name of Felix Gonzales, and the photostat of Certificate No. 953 for 208 shares, which had been sold to Trans Oceanic Factors and Company, for which a check would be issued 'within the next few days.' He promised to deliver the 242 shares as soon as he would have received them from one Vicente Chua.

"The next day (May 31, 1961), Jose K. Lapuz wrote a letter to the accused-appellant (Exhibit 'C'), stating therein, 'Per our conversation this morning, I hereby authorize you to sell 1,000 shares of Republic Flour Mills.'

"Later, the accused-appellant wrote a letter to Jose K. Lapuz, dated June 1, 1961 (Exhibit 'I'), confirming their conversation on that date that '500 shares out of the 1,000 shares of the Republic Flour x x x has been sold', and stating further that 'pending receipt of the payment, expected next week, we are enclosing herewith our draft to cover the full value of the 500 shares.' He asked in that letter, 'Please give me the 50 shares in the name of Mr. Felix Gonzales and the photostat of 208 shares in the name of Trans Oceanic Factors and Company.'

"The date of the letter (Exhibit 'I') is disputed, the prosecution contending that it should be July 1, 1961, not June 1, 1961. The contention of the prosecution has the support of the date of the draft (Exhibit 'J') mentioned in the letter.

"The accused-appellant sold and paid for the other 500 shares of stock, for the payment of which Jose K. Lapuz issued in his favor a receipt, dated June 9, 1961 (Exhibit 'H').

"The draft (Exhibit 'J') for P8,000.00, 'the full value of the 500 shares' mentioned in the letter of the accused-appellant (Exhibit 'I'), was dishonored by the bank, for lack of funds. Jose K. Lapuz then 'discovered from the bookkeeper that he got the money and he pocketed it already, so I (he) started hunting for Mr Sycip' (accused-appellant). When he found the accused-appellant, the latter gave him a check in the amount of P5,000.00, issued by his daughter on July 12, 1961 (Exhibit 'K'). This also was dishonored by the bank for lack of sufficient funds to cover it (Exhibits 'K-1' and 'K-2').

"When Jose K. Lapuz sent a wire to him, telling him that he would 'file estafa case (in the) fiscals office x x x against him' unless he raise [the] balance [of] eight thousand' (Exhibit 'L'), the accused-appellant answered him by sending a wire, P5,000 remitted ask boy check Equitable (Exhibit 'M'). But 'the check was never made good', so Jose K. Lapuz testified. He had to pay Albert Smith the value of the 500 shares of stock." (Petitioner's brief, pp. 58-62)

Coming to this Court on a petition for review on certiorari, petitioner claims that respondent appellate court erred (1) in denying petitioner of a hearing, as provided under Section 9, Rule 124, Rules of Court; (2) in not upholding due process of law (Sections 1 and 17), Article IV, Bill of Rights, Constitution; (3) in refusing to uphold the provisions on compensation, Articles 1278 and 1279, Civil Code; (4) in not dismissing the complaint, even granting arguendo, that compensation does not apply; (5) in not ruling that a consummated contract (Deed of Sale, Exhibit '10') is not covered by the Statute of Frauds and that its decision is not in accordance with Section 4, Rule 51, Rules of Court; and, (6) in ignoring the ruling case promulgated by this Honorable Supreme Court in *People vs. Benitez*, G. R. No. L-15923, June 29, 1960, in its applicability to offenses under Article 315, paragraph 1 (b) of the Penal Code.

Petitioner in his first and second assigned errors argues that respondent Court of Appeals erred in denying him his day in court notwithstanding his motion praying that the appealed case be heard. He invokes Section 9 of Rule 124 of the Revised Rules of Court and relates it to Sections 1 and 17 of Article IV of the New Constitution. This contention is devoid of merit. Petitioner was afforded the right to be present during every step in the trial before the Court of First Instance, that is, from the arraignment until the sentence was promulgated. On appeal, he cannot assert as a matter of right to be present and to be heard in connection with his case. It is the procedure in

respondent court that within 30 days from receipt of the notice that the evidence is already attached to the record, the appellant shall file 40 copies of his brief with the clerk accompanied by proof of service of 5 copies upon the appellee (Section 3, Rule 124 of the Revised Rules of Court). Within 30 days from receipt of appellant's brief, the appellee shall file 40 copies of his brief with the clerk accompanied by proof of service of 5 copies upon the appellant (Section 4, Rule 124 of the Revised Rules of Court). Each party may be allowed extensions of time to file brief for good and sufficient cause. Thereafter, the appellate court may reverse, affirm or modify the judgment, increase or reduce the penalty imposed, remand the case for new trial or re-trial or dismiss the case (Section 11, Rule 124 of the Revised Rules of Court). It is discretionary on its part whether or not to set a case for oral argument. If it desires to hear the parties on the issues involved, *motu proprio* or upon petition of the parties, it may require contending parties to be heard on oral arguments. Stated differently, if the Court of Appeals chooses not to hear the case, the Justices composing the division may just deliberate on the case, evaluate the recorded evidence on hand and then decide it. Accused-appellant need not be present in the court during its deliberation or even during the hearing of the appeal before the appellate court; it will not be heard in the manner or type of hearing contemplated by the rules for inferior or trial courts.

In his third and fourth assigned errors, petitioner contends that respondent Court of Appeals erred in not applying the provisions on compensation or setting-off debts under Articles 1278 and 1279 of the New Civil Code, despite evidence showing that Jose K. Lapuz still owed him an amount of more than P5,000.00 and in not dismissing the appeal considering that the latter is not legally the aggrieved party. This contention is untenable. Compensation cannot take place in this case since the evidence shows that Jose K. Lapuz is only an agent of Albert Smith and/or Dr. Dwight Dill. Compensation takes place only when two persons in their own right are creditors and debtors of each other, and that each one of the obligors is bound principally and is at the same time a principal creditor of the other. Moreover, as correctly pointed out by the trial court, Lapuz did not consent to the off-setting of his obligation with petitioner's obligation to pay for the 500 shares.

Anent the fifth assigned error, petitioner argues that the appellate court erred in not ruling that the deed of sale is a consummated contract and, therefore, not covered by the Statute of Frauds. It must be pointed out that the issue on whether or not the alleged contract of sale is covered by the Statute of Frauds has not been raised in the trial court or with the Court of Appeals. It cannot now be raised for the first time in this petition. Thus, there is no need for respondent court to make findings of fact on this matter.

With respect to the sixth assigned error, petitioner points out that the Court of Appeals erred in affirming the decision of the trial court convicting him of the crime charged. Petitioner mentions that in *People vs. Benitez*, G.R. No. L-15923, June 30, 1960 (108 Phil. 920), We have ruled that to secure conviction under Article 315, paragraph 1(b), Revised Penal Code, it is essential that the following requirements be present: (a) existence of fraud; (b) failure to return the goods on demand; and (c) failure to give any reason or explanation to the foregoing. He claims that nowhere in the decision was he found to have any particular malice or intent to commit fraud, or, that he failed to return the shares on any formal demand made by Jose K. Lapuz to him, and/or was he unable to make any explanation thereto. On this score, We only have to quote from the decision of the respondent court, as follows:

"The 'malice or intent to commit fraud' is indicated in that part of the decision hereinbefore quoted, that is, the accused-appellant 'received from Jose K. Lapuz the 500 shares in question (a part of 1,758 shares) for sale, and that, although the same had already been sold, the accused x x x failed to turn over the proceeds thereof to Jose K. Lapuz.' The abuse of confidence in misappropriating the funds or property after they have come to the hands of the offender may be said to be a fraud upon the person injured thereby (*U.S. vs. Pascual*, 10 Phil. 621).

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"The accused-appellant having informed Jose K. Lapuz that the '500 shares out of the 1000 shares x x x has been sold' (Exhibit 'T'), for which he issued a draft for P8,000.00 (Exhibit 'J'), the latter cannot be expected to make a demand for the return of the 500 shares. His demand was for the payment of the shares when the draft was dishonored by the bank.

"The delivery of a worthless check in the amount of P5,000.00 by the accused-appellant to Jose K. Lapuz, after the latter's 'hunting' for him, is even a circumstance indicating 'intent to commit fraud.' (pp. 48-49, Rollo)

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"His explanation of his inability to return the 500 shares of stock is not satisfactory. x x x If it is true that he gave the 500 shares of stock to his creditor, Tony Lim, he is nonetheless liable for the crime of estafa, he having received the 500 shares of stock to be sold on commission. By giving the shares to his creditor, he thereby committed estafa by conversion." (pp. 49-50, Rollo)

Indeed, Jose K. Lapuz demanded from petitioner the amount of P5,000.00 with a notice that in the event he (petitioner) would fail to pay the amount, Lapuz would file an estafa case against him.

By and large, respondent Court of Appeals has not overlooked facts of substance and value that, if considered, would alter the result of the judgment.

WHEREFORE, for lack of merit the petition is hereby DISMISSED.

SO ORDERED.

Teehankee, Acting C.J., (Chairman), Melencio-Herrera, Gutierrez, Jr., and De la Fuente, JJ., concur.
Plana and Alampay, JJ., no part.

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