

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. VICENTE LEDESMA, ACCUSED-APPELLEE.

G.R. No. L-41522. September 29, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

The main issue in this appeal is whether or not the Court of First Instance of Negros Occidental, Branch I, Silay City, committed an error in holding that the conviction of the accused Vicente Ledesma in Criminal Case No. 439 constituted as a bar to the pro-secution of the same accused in Criminal Case No. 627 which was appealed to the Court of Appeals (CA-G.R. No. 09562-CR).

On December 18, 1963, accused Vicente Ledesma, a sales agent of the Conpinco Marketing Company with authority to sell appliances and to receive payments for them, sold one Avegon radio for the amount of P230.00 which he failed to turn over to the company despite repeated demands. As a result, he was charged with estafa before the Municipal Court of Victorias, Negros Occidental in Criminal Case No. 439 and after trial was found guilty as charged.

On June 4, 1964, accused Vicente Ledesma was again charged with estafa in the Municipal Court of Victorias, Negros Occidental in Criminal Case No. 1592 for having misappropriated two installments of P19.00 each or a total of P38.00 which he received from Flaviana Bernardas as payments due on a sewing machine, and for his failure to turn over said amount to Conpinco Marketing Company notwithstanding repeated demands. He was sentenced to suffer three (3) months and one (1) day imprisonment of *arresto mayor* and to indemnify the offended party the sum of P38.00 and to suffer subsidiary imprisonment of fifteen (15) days in case of insolvency and to pay the costs. Accused Vicente Ledesma then appealed said decision to the Court of First Instance of Negros Occidental. In said court the Provincial Fiscal filed the corresponding in-formation against the accused which was docketed as Criminal Case No. 627. Upon arraignment, he entered a plea of not guilty. Later upon order of the trial court, the Provincial Fiscal filed an amended information.

On January 29, 1968, the accused Vicente Ledesma filed a motion to dismiss the amended information against him on the ground that he has previously been convicted of estafa in Criminal Case No. 439 for having failed to turn over to Conpinco Marketing Company the proceeds of the sale of one (1) Avegon radio and that therefore his conviction in said Criminal Case No. 439 constituted as a bar to his subsequent prosecution in the present case (Criminal Case No. 627) under the so-called principle of continued or continuing crimes.

On January 13, 1969, the trial court granted the motion to dismiss and cancelled the bond of accused Vicente Ledesma. From said order of dismissal, the offended party Conpinco Marketing Company appealed to the Court of Appeals which appeal the latter has certified to this Court on a pure question of law.

The Court of Appeals^[1] in its resolution of May 28, 1974, by a vote of 4 to 1 ruled that after a delay of five years from the time this case was elevated to the Court of Appeals the case was still not ready for decision because both the offended party Conpinco Marketing Company and the Solicitor General who filed their separate briefs failed

to furnish a copy thereof to the accused-appellee and his counsel. Associate Justice Ramon C. Fernandez dissented and voted to certify the case to this Court as it involves question of law and so that accused-appellee may have a chance to file his own brief. The records, however, show that the Solicitor General subsequently furnished a copy of his brief to the counsel for accused-appellee. In certifying the case to this Court, the Court of Appeals said: "In the above resolution of May 28, 1974, this Court refused to order the forthright certification of this case to the Supreme Court the issues raised being purely question of law on the ground that accused-appellee's brief may raise factual issues. No appellee's brief having been filed there is no hindrance to such certification."

The legal issue now before Us is whether or not the trial court erred in holding that the conviction of accused-appellee Vicente Ledesma for the crime of estafa in Criminal Case No. 439 committed in 1963 is a bar to the prosecution of the same accused for the crime of estafa in Criminal Case No. 627 committed in 1964 as it would place him in double jeopardy.

Under Section 9, Rule 117 of the Rules of Court[2] in order that the protection against double jeopardy may inure to the benefit of an accused, the following re-quisites must be present in the first prosecution: (a) a valid complaint or information; (b) a competent court; (c) the defendant had pleaded to the charge; (d) the defendant was acquitted, or convicted, or the case against him was dismissed otherwise terminated without his express consent.[3] In the case before Us, accused-appellee was charged with estafa in Criminal Case No. 439 before a competent court under a valid information and was duly convicted as charged. He was therefore placed in legal jeopardy for the crime of estafa in Criminal Case No. 439 for having failed to turn over the proceeds of the sale of an Avegon radio in the amount of P230.00 to the offended party. When later the accused-appellee was charged and prosecuted for estafa, this time for having failed to turn over to the offended party two installments of P19.00 each or a total of P38.00 paid by a buyer of a sewing machine belonging to the offended party, accused-appellee cannot invoke double jeopardy because he was not being prosecuted for the same offense of estafa for which he has already been convicted but for another and distinct offense. The first offense of the accused-appellee cannot be treated as a continuous crime. A "continuous crime" is a single crime consist-ing of a series of acts arising from a single criminal resolution or intent not susceptible of division. According to Cuello Calon, when the actor, there being unit of purpose and of right violated, commits diverse acts each of which, although of a delictual character merely constitutes a partial execution of a single particular delict, such concurrence of delictual acts is called a "delito continuado." [4] For it to exist there should be plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated; unity of criminal intent or purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim.[5] In the case before Us, there is no unity of criminal intent or purpose because while both offenses committed by accused-appellee consisted of conversion of sums of money belonging to the offended party, they took place on different dates and under different circumstances. The offense in Criminal Case No. 439 occurred on December 18, 1963, while the offense in Criminal Case No. 627 took place on June 4, 1964. Criminal Case No. 439 refers to a conversion of the proceeds of the sale of an Avegon radio in the amount of P230.00 while Criminal Case No. 627 refers to a conversion of two installment payments in the amount of P38.00 on a sewing machine which accused-appellee failed to turn over to the offended party.

In one case[6] where the acts of misappropriation were committed on two different occasions, the first in January 1955 to December 1955 and the second in January 1956 to July 1956, the Court held that it cannot be pretended that when the accused disposed of the palay deposit in January 1955 to December 1955, he already had the criminal intent of disposing what was to be deposited in January 1956 to July 1956. In *People vs. Cid*[7] the Court ruled that the malversations imputed to the accused as well as the falsifications in the months of May, June, July and August 1936 were not the result of only one resolution to embezzle and falsify, but of four or as many

abstractions or misappropriations had of the funds entrusted to his care, and of as many falsifications also committed to conceal each of said acts because there is nothing in the record to justify the inference that the intention of the accused when he committed the malversation in May 1936 was the same intention which impelled him to commit the other malversations in June, July and August. In a more recent case where 75 informations for estafa were filed by the City of Manila against the accused for having collected and received from customers of the Units Supply Company of which the accused was an employee sums of money in payment of goods purchased from it and misappropriated, misapplied and converted the amounts to his own personal use and benefits, the Court upheld the action taken by the City Fiscal's Office in filing the 75 informations against the accused. Said the Court:

"x x x (T)he daily abstractions from and diversions of private respondent of the deposits made by the customers of the optical supply company from October 2, 1972 to December 30, 1972, excluding Saturdays and Sundays, which he assume ex hypothesi, cannot be considered as proceeding from a single criminal act within the meaning of Article 48. The abstractions were not made at the same time and on the same occasion, but on variable dates. Each day of conversion constitutes a single act with an independent existence and criminal intent of its own. All the conversions are not the product of a consolidated or united criminal resolution, because each conversion is a complete act by itself. Specifically, the abstractions and the accompanying deposits thereof in the personal accounts of private respondents cannot be similarly viewed as "continuous crime." [8]

WHEREFORE, the Order of the court a quo dated January 13, 1969 dismissing Criminal Case No. 627 against accused-appellee Vicente Ledesma is set aside. Let the records of Criminal Case No. 627 be re-manded to the lower court for further proceedings without delay. Without costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Concepcion, Jr., JJ., concur.

[1] Special Division of Five Members, originally 10th Division composed of Justices Lourdes P. San Diego, Mateo Canonoy, Ramon C. Fernandez, Ricardo Puno and Mariano Serrano.

[2] "SECTION 9. Former conviction or acquittal or former jeopardy. - When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."

[3] People vs. Ylagan, 58 Phil. 851; Mendoza vs. Almeda-Lopez, 64 Phil. 820; People vs. Galvez, L-14160, June 30, 1960; People vs. Acosta, 25 SCRA 823; People vs. Balisacan, 17 SCRA 1119; People vs. Obsania, 23 SCRA 1249.

[4] Gamboa, et al. vs. CA, et al., G.R. No. L-41054, Nov. 28, 1975, citing Cuello Calon, Derecho Penal II, 520-21.

[5] Gauchero vs. Bellosillo, 28 SCRA 673; People vs. Zapata, 88 Phil. 691.

[6] People vs. Dichupa, L-16943, Oct. 28, 1961, 3 SCRA 329.

[7] 66 Phil. 354-65 (1938).

[8] Gamboa, et al. vs. CA, et al., supra.

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