

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. HANSON C. CHANG, DEFENDANT AND APPELLANT.

G.R. No. L-5839. April 29, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Manila finding Hanson C. Chang guilty of the crime of estafa and sentencing him to suffer an indeterminate penalty of from 4 months of arresto mayor to 1 year and 8 months of prison correccional, with the accessory penalties provided for by law, to indemnify the offended party in the sum of P480.83, with subsidiary imprisonment in case of insolvency, and to pay the costs.

This appeal was originally taken to the Court of Appeals, but was later certified to this Court on the ground that it involves merely a question of law.

Appellant was an agent of the American Factors (Phil.) Inc. in the years 1946 and 1947, and as such, he collected from different customers the value of certain merchandise amounting to P5,736.83. As appellant failed to turn over this amount to the company, he was prosecuted for estafa in the Court of First Instance of Manila under Criminal Case No. 3777. During the pendency of the case, an amicable settlement was reached between appellant and the offended party whereby appellant was allowed to pay the amount of P5,736.83 in installments at the rate of P200 a month. In view of this amicable settlement, the case was provisionally dismissed.

Of the amount of P5,736.83, appellant was only able to pay the amount of P3,456. After the provisional dismissal of the case, the Alto Surety and Insurance Company paid the amount of P1,800 leaving a balance of P480.83. When appellant failed to pay this balance, he was prosecuted for estafa under Criminal Case No. 7344, origin of the present appeal.

Appellant waived his right to present any evidence and preferred to submit the case on the facts as submitted by the prosecution.

The only question posed by appellant in this appeal is contained in the following statement that appears in his brief: "We agree with the trial court that payments effected by the accused affects only his civil but not the criminal aspect of the case. This is true with reference to Criminal Case No. 3777. In other words, even if the defendant-appellant has already made arrangements for the payment of the amount embezzled in Criminal Case No. 3777. But, the People instead of prosecuting to the full extent Criminal Case No. 3777 petitioned the Court for its dismissal. In so far, therefore, as Criminal Case No. 3777 is concerned, the criminal liability of the defendant had been extinguished not because of his payment but because the People sought the dismissal of the case against him." In other words, appellant seems to contend that the dismissal of the first information is tantamount to his acquittal, and that his prosecution under the second information places him twice in jeopardy.

This contention is untenable if considered in the light of the facts of the present case. It appears that the first information was provisionally dismissed because appellant had asked the offended party to drop the case against

him on condition that he would pay the whole amount he misappropriated and provided further that his obligation be guaranteed by a bonding company. The amicable settlement was predicated upon the understanding that, once arrived at, the case would be dropped. It is apparent therefore that the first information was dismissed not only with his express consent but upon his own initiative. And as such dismissal was ordered with his express consent, it follows that the same does not operate as a bar to another prosecution (Section 9, Rule 113.)

Finding no error in the decision appealed from, the same is hereby affirmed, with costs.

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

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