

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. JUAN ACOSTA, LUCIANO DE LEON, AND DOMINGO PIMENTEL, DEFENDANTS-APPELLEES.

G.R. No. L-23657. October 29, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

On appeal, by the People, from the "order" of the Court of First Instance of Ilocos Norte, dismissing its Criminal Case No. 3993 upon motion of the accused, after the presentation of evidence by the prosecution. It poses but one legal question: Whether or not such appeal - if allowed - would place the accused in double jeopardy.

The proceedings that transpired in the court below are not disputed.

The accused - Juan Acosta, Luciano de Leon and Dominador Clemente - were prosecuted for estafa before the court a quo, under an Information that substantially alleged as follows: that the said accused, acting in conspiracy with one another, thru fraudulent pretenses, obtained from Pedro M. Miguel, a lady's ring valued at P16,500.00; that accused issued a check for \$5,000.00 in payment thereof; and that said check later turned out to be counterfeit, to the damage and prejudice of said Pedro M. Miguel in the amount of P16,500.00.

At the trial, the prosecution presented as its first witness, Pedro M. Miguel, the complainant, who declared as follows:

That on December 24, 1961, Juan Acosta, Luciano de Leon and Domingo Pimental approached complainant, telling the latter they were interested in buying jewelry; the complainant showed a ring and told the accused that it belongs to Banang Jaramillo, who entrusted it to him to be sold on commission basis for the price of P17,000.00; the buyers agreed to buy the ring; as payment of the ring, Acosta, de Leon and Pimentel gave complainant a \$5,000.00 dollar check drawn against the Banker Trust Company of New York, by Companion Life Insurance Co. payable to the order of accused Dominador Clemente; the accused assured the complainant that the check was good, and relying on that assurance, complainant accepted the check after it was endorsed by Dominador Clemente; after receiving the check, complainant gave the ring to the accused; when the check was presented to the Bank for encashment, it was dishonored because it was fake and counterfeit. The prosecution also presented Exhibits A, B, C, D, E, F and G which were all admitted in evidence.

After the prosecution had rested the case, the respective counsel for the accused moved to dismiss the case. They contended that in view of Pedro M. Miguel's admission that the ring belonged to Banang Jaramillo, it was the latter who suffered damage and not the complainant, and, therefore, one of the essential elements of estafa - damage - is absent, rendering the information defective and the prosecution's evidence insufficient to convict the accused of the offense charged.

The assistant provincial fiscal vehemently opposed the motion to dismiss, contending that the owner of the ring need not be the complainant, because in a prosecution for estafa, the complaint may be filed at the instance of the

one who has been swindled, whether or not he is the owner of the thing subject of the deceit or breach of faith.

In spite of the fiscal's opposition, the lower court dismissed the case, holding that while the information mentioned Pedro M. Miguel as the offended party, it appeared from the evidence that he was merely an agent of Banang Jaramillo who was the owner of the ring subject of the estafa. The trial court observed that inasmuch as in estafa, the value of the articles swindled is not only the basis of the penalty but also the amount of indemnity to the offended party, therefore, it becomes necessary to know the real offended party, and to pay Pedro Miguel an indemnity now will run counter to the evidence adduced, and it would go against the wordings of the information. The trial court further opined that to amend the information at that stage of the proceedings will violate the accused's constitutional right against double jeopardy.

From the order of dismissal, the assistant provincial fiscal has appealed directly to Us. The Solicitor General, however, has moved for the dismissal of the appeal on the ground that it would place the accused in double jeopardy. We agree with the Solicitor General. It cannot be seriously questioned that the trial court had grievously erred in his conclusion and application of the law, and in dismissing outright the case. Admittedly, Miguel was merely an agent, but as such, he had both the physical and juridical possession of the thing received in agency, and could vest title to the buyer of the subject matter of the transaction. Miguel was bound to account for the proceeds thereof and failure on his part to do so, will render him liable for such value to the owner. His possession of the jewelry, therefore, was essentially that of his principal; and any prejudice he suffered by reason of the fraud perpetrated upon him would, likewise, be suffered by his principal. This is elementary, for authorities have invariably held that "the crime of estafa is committed, although the victim was not the owner of the property, but the holder or broker simply, when it appears that the real owner was prejudiced by the disappearance of the property." (U. S. v. Almazan, 20 Phil. 225; U.S. v. Sotelo, 28 Phil. 147, 156-157.)

But then, the erroneous dismissal of the case, notwithstanding, the error cannot now be remedied by the instant appeal because it would place the accused in double jeopardy. The accused, in the case at bar, had been charged under a valid information, before a competent court which had jurisdiction over both the subject-matter and the person of the accused; they had stood trial under a plea of "not guilty", and the prosecution, after the presentation of its evidence, had rested its case; the trial court had thereafter dismissed the case and, that dismissal is on the merits which amounted to an acquittal of said accused. Undoubtedly, to entertain the instant appeal would place the accused in double jeopardy.

WHEREFORE AND UPON THE FOREGOING CONSIDERATIONS, this appeal should be, as it is hereby, dismissed, with costs de officio.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., did not take part.

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