

BIENVENIDO E. DOLLENTE, RECURRENTE, CONTRA EL PUEBLO DE FILIPINAS, RECURRIDO.

G.R. Nos. L-6675-81. May 26, 1954

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PABLO, M.:

El Juzgado de Primera Instancia de Manila condeno al acusado en cada una de las siete causas a cuatro meses y un día de arresto mayor y a devolver a los denunciantes las cantidades que aparecen en la siguiente tabla:

Causa Criminal No. 714 por P2,400 a Bonifacio Vistan
Causa Criminal No. 722 por P700 a Juan Camara
Causa Criminal No. 1189 por P1,450 a Nicanor Soriano
Causa Criminal No. 1516 por P1,000 a Domingo del Rosario
Causa Criminal No. 2464 por P1,000 a Maximino Pinpin
Causa Criminal No. 5050 por P1,400 a Maximo Picar
Causa Criminal No. 6078 por P2,750 a Arsenio Reyes

pero, despues de la condena y pendientes las causas en el Tribunal de Apelacion, el acusado restituyo parte de estas cantidades. Dicho Tribunal de Apelacion condeno al acusado en cada una de las siete causas a un mes y un día de arresto mayor a un año y ocho meses de prision correccional y a restituir a los denunciantes las siguientes cantidades: P1,900 a Bonifacio Vistan, P650 a Nicanor Soriano, P500 a Domingo del Rosario, P250 a Maximino Pinpin, P650 a Maximo Picar y P1,410 a Arsenio Reyes. En la causa criminal No. 722 la cantidad entregada al acusado era de P2,000 y no P700: se le condeno por el Tribunal de Apelacion a restituir al denunciante P2,000.

En recurso de certiorari el recurrente pide la revision de la decision del Tribunal de Apelacion, apuntando los siguientes errores:

"I. The Court of Appeals erred in not holding that the transactions in question gave rise to civil but not criminal liability.

"II. The Court of Appeals erred in not holding that the remedy of the aggrieved parties is against the corporation and not against the petitioner whose personality is independent of that of the corporation.

"III. The Court of Appeals erred in not holding that the principal stockholder of a duly registered corporation cannot be held responsible for the act of misappropriation or conversion of said corporation in the absence of a specific provision of law to that effect.

"IV. The Court of Appeals erred in not applying the 3-fold rule to the penalties imposed on the accused."

El recurrente sostiene que no ha cometido el delito de estafa porque no recibio de los denunciantes las caritidades especificadas en la tablo como Bienvenido E. Dollente, sino como Presidente y Administrador General de B. E. Dollente & Co., Inc. La accion que tienen los denunciantes, contiene el recurrente, es la rescision del contrato o el cumplimiento del mismo—que es accion civil y no criminal—porque lo que ha habido entre ellos y el acusado era la venta de jeeps con pagos parciales a cuenta de sus precios.

Este Tribunal no revisa las pruebas; solamente decide si la ley ha sido aplicada debidamente. Las conclusiones de hecho del Tribunal de Apelacion son las siguientes:

"It appears that during the period from May, 1945, to June, 1946, the appellant, a certified public accountant, was a major in the Philippine Army on duty in the Finance Service as assistant auditor. On January 31, 1946, he organized a private corporation for the purpose of engaging in general merchandising, more particularly in the buying and selling of surplus jeeps, under the name of B. E. Doliente & Co., Inc., duly registered with the Securities and Exchange Commission on March 6 of the same year and with offices at his own residence at 116 Requesens St., Manila. The major portion of the P50,000 peso capital of the corporation, of which P10,000 was subscribed for, and P2,500 paid up, was owned by the appellant and he was the President and General Manager of the corporation.

"Soon after its incorporation, said company started advertising in the local newspapers the sale of surplus jeeps assuring special prices and priority to servicemen and war veterans. Numerous customers flocked to its offices, among them appellant's own subordinates in the Finance Service of the Philippine Army. The evidence discloses that cash deposits were required from and were made by the prospective buyers. Upon the promise that the vehicle ordered by them would be delivered in two or three weeks. Business was so brisk that, in a short time, the cash deposits collected in this manner reached the total amount of P272,848.21. Several purchasers, among them the complainants in the cases before us, not only failed to receive the promised vehicles but also to have all or part of their deposits refunded, as promised. This gave rise to the cases under consideration.

"Upon the main point at issue, the evidence of record clearly shows that, because the corporation carried appellant's name, because its offices were located in his own residence, because he owned most of the stock thereof and he was its President and General Manager, all the prospective purchasers of jeeps, the herein complainants among them dealt with the appellant direct and entrusted their money directly to him.

"Upon the other hand, the record discloses that, at least in the case of complainant Domingo R. Del Rosario (Crim. Case No. L-1518)¹, the appellant personally proposed in writing to refund his deposit. In fact, appellant himself admitted in this connection that he had refunded other deposits when he received his backpay and even went as far as to ask his wife to sell all their personal properties "to clear my name from this trouble."

* * * * *

"* * * the informations filed allege and the prosecution evidence clearly shows that he received the cash deposits made by the different complainants in trust and under the express obligation on his part of buying and delivering the vehicle or vehicles sought to be purchased by the complainants or of returning the said money to the depositors if unable to do so, within a period of time agreed upon. In each case, it having been proven likewise that notwithstanding repeated demands for the refund of said deposits the appellant had failed to do so. * * *. This appropriation and conversion has been conclusively established by the eloquent fact that appellant was not able to refund the deposits when demand therefore was made upon him. In this connection he was not able to give any satisfactory explanation as to what had become of the money of the complainants. If it was lost as a result of his business transactions or if he used it to buy vehicles subsequently delivered to others or to refund the deposits of other parties, then the employment of complainants' money for those purpose constitutes misappropriation and conversion thereof in the absence of proof that appellant was duly authorized to do so."

De lo transcrito se ve que el acusado no recibio las cantidades entregadas por los denunciantes como pago en una transaccion de venta de jeep, sino como deposito, ni las recibio en su concepto de Presidente y Administrador General de la B. E. Dollente & Co., Inc., sino personalmente. Si los denunciantes habian comprado ya los jeeps con el dinero que habian entregado, entonces no hubiera dicho el Trbunal de Apelacion que "the evidence discloses that cash deposits were required from and were made by the prospective buyers." Deposit no es

payment; el comprador no es "prospective buyer." Si la transaccion habida entre los denunciantes y el acusado era la venta de jeeps, entonces el Tribunal de Apelacion no hubiera empleado las siguientes palabras: "cash deposits" were required * * * from * * * the prospective buyer." Si el acusado actuaba en dichas transacciones como Presidente y Administrador de la B. E. Dollente & Co., Inc., el Tribunal de Apelacion hubiera expresado asi y no hubiera dicho que los denunciantes "dealth with the appellant direct and entrusted their money directly to him." Si, como reclama el acusado, la transaccion habida entre el, como Presidente de la B. E. Dollente & Co., Inc., y los denunciantes era una venta de jeeps, entonces el no hubiera "personally proposed in writing to refund their deposits." Esta ultima actuacion del acusado no es consecuente con su teoria de que habia vendido jeeps como Presidente y Administrador General de la B. E. Dollente & Co., Inc. a los denunciantes.

No es aplicable a los siete asuntos la causa invocada por el acusado de *People vs. Ma Su*, G. R. No. L-3872, en que este Tribunal dijo: "En la transaccion habida entre el acusado y Lino Casabar no hay tal fideicomiso. La cantidad de P1,600 que Lino Casabar entrego al acusado es, segun la querella, 'part payment' del precio de un molino de arroz. Se trataba de una venta con un pago parcial. El dinero en esta venta del molino de arroz entregado por Lino Casabar, ya habia dejado de ser propiedad de este; ya era de la propiedad del vendedor. No era un deposito; era pago parcial. En virtud de este contrato, Casabar tenia derecho a exigir del acusado la entrega del molino dentro del plazo estipulado, pagando el saldo del importe no pagado aun. Si el acusado dejaba de cumplir su obligation de entregar el molino, Casabar podia pedir (a) la rescision del contrato o (b) el cumplimiento del mismo; esto es, que se le devolviese por el acusado los P1,600, pago parcial, o que se le condenase a entregar el molino. Lo que procede es una accion civil y no una accion criminal." En la causa citada la cantidad de P1,600 era pago parcial (part payment) del precio del molino; en las siete causas presentes las cantidades entregadas por los denunciantes eran depositos para poder obtener jeeps, y no pagos de los jeeps; no era entrega del precio del jeep por los compradores, sino deposito en poder del acusado efectuado por los "prospective buyers."

El articulo 315, parrafo 3(b), delCodigo Penal Revisado es la disposicidn penal infringida. El acusado dispuso de las cantidades que los siete denunciantes depositaron en su poder para ser utilizadas como pago de los jeeps, pero el acusado ni entrego los jeeps prometidos, ni devolvio los dedositos. El Tribunal de Apelacion no incurrio en los tres primeros errores que se le atribuye porque el acusado, segun dicho tribunal, fue el que dispuso de las cantidades depositadas y no la corporacion B. E. Dollente & Co., Inc. El unico responsable, por tanto, es el y no la corporacion.

El acusado contiene que erro el Tribunal de Apelacion al imponerle la pena, en cada una de las siete causas, de un mes y un dia de arresto mayor a un ano y ocho dias de prision correctional, con infraccion del articulo 70 delCodigo Penal Revisado. Esta bien fundada la contention del acusado. Dicho articulo, tal como fue enmendado por la Ley No. 217, dice, en parte, asi:

"Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period."

Aplicando esa disposition, este Tribunal dijo:

En *Pueblo contra Penas*, 68 Phil., 533, " * * * if an accused has to serve more than three sentences, he cannot be sentenced to more than three times, the most severe penalty that may be imposed upon him for the various crimes he might have committed."

En *People vs. Concepcion*, 69 Phil., 58, supra, " * * * 'the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him.' * * * ."

En *People vs. Conception*, 68 Phil., 530, " * * * the accused should not serve a penalty of imprisonment for more than three-fold the length of time corresponding to the severest of the penalties imposed upon him in all of said cases * * *."

En *Bagtas y Alejandrino contra Director de Prisiones*, 47 Off. Gaz., 1743, "Under article 70 of the Revised Penal Code the maximum duration of the convict's sentence cannot exceed three-fold the length of time corresponding to the most severe of the penalties imposed upon him, and the application of this rule does not preclude his enjoyment of the deduction from his sentence of 5 days for each month of good behavior as provided in paragraph 1 of Article 97 of said Code."

En *Aspra vs. Director of Prisons*,[*] 47 Off. Gaz., 4610, se concedio el recurso de habeas corpus porque el preso al tiempo de la presentacion de su solicitud ya habia sufrido prision de mas del triple de la pena mas grave impuesta a el en las varias causas.

Segun el Tribunal de Apelacion, no concurre ninguna circunstancia modificativa; debe imponerse, por tanto, la pena en su grado medio. Segun el articulo 315, parrafo 3.º delCodigo Penal Revisado en relacion con la ley de pena indeterminada, en cualquiera de las siete causas, la pena imponible es la de un afio y un dia, como minima, a un ano, ocho meses y un dia de prision correccional con las accesorias, como maxima. Triple de esta pena: tres años y tres dias a cinco años y tres dias. Esta es la pena total que debe imponerse al acusado en las siete causas y debe confirmarse la decision apelada en cuanto a la restitution de las cantidades estanadas.

Dictese sentencia a tenor de lo resuelto con costas.

Paras, Pres., Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo y Labrador, MM., estan conformes.

[*] 85 Phil., 737

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