

MARINA TORRES, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, ET AL., RESPONDENTS.

G.R. No. L-21751. May 29, 1971

Ponente: DIZON, J.

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DIZON, J.:

In the Court of First Instance of Manila petitioner, Marina A. Torres, was charged with estafa. After due trial upon a plea of not guilty, she was convicted and sentenced to suffer an indeterminate penalty of one (1) month and one (1) day of arresto mayor to one (1) year and one (1) day of prisión correccional, to indemnify the offended party, Anita M. García, in the sum of P850.00, with subsidiary imprisonment in case of insolvency, and to pay the costs. Not satisfied with the decision, she appealed to the Court of Appeals where, in due time, decision was rendered affirming that of the trial court, with costs. Again, not satisfied with this last decision, she took the appeal now before Us, claiming that the Court of Appeals committed the following errors:

“I

THE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS ALREADY A CONSUMMATED CRIME OF ESTAFA, AS DEFINED AND PENALIZED BY ARTICLE 315, PARAGRAPH 1 (b) OF THE RE-VISED PENAL CODE, ON SEPTEMBER 30, 1959, UPON PETITIONER'S MERE FAILURE TO RETURN THE JEWELRY ON SAID DATE AS AGREED UPON EVEN IN THE ABSENCE OF ANY EVIDENCE OF CONVERSION OR MISAPPROPRIATION ON THE PART OF PETITIONER.

II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE PROMISSORY NOTE ENTERED INTO BY THE PARTIES ON NOVEMBER 13, 1959 DID NOT ALTER THE NATURE OF PETITIONER'S OBLIGATION UNDER THE ORIGINAL AGREEMENT OF THE PARTIES.

III

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT CONVICTING THE DEFENDANT-PETITIONER.”

The facts found by the Court of Appeals – which may not now be reviewed – are stated in its decision as follows:

“On August 14, 1959, Marina A. Torres received from Anita M. Garcia, in the latter's residence at 2179 Mabuhay, Sta. Ana, Manila, a white yellow gold pair of earrings studded with 10 diamonds valued at P1,050.00 to be sold for cash on an overprice commission basis, with the obligation to deliver the proceeds or re-turn the jewelry within 30 days thereafter, or up to September 13, 1959. In order to be sure that the jewelry would not be taken to another place for negotiation and would always remain within the owner's immediate supervision, Miss Garcia charged the defendant with the obligation of reporting it at every 3-day interval. Having bought this pair of earrings from defendant Torres herself, in her capacity as agent of the former owner, complainant did not think it necessary to demand from defendant the execution of a written acknowledgment receipt. On her part defendant Torres does not deny having received the pair of earrings in

question nor the conditions under which it was de-livered, although she claims it to be untrue that a period has been fixed for its sale or return. She admitted, how-ever, that she "had been bringing this jewelry to Miss Garcia very frequently to report to her." (Tsn. 18.) Complainant Garcia testified that after defendant had reported once on August 17, 1959 in accordance with their verbal agreement, she there-after disappeared and failed to show up again. Disturbed by the persistent failure to locate and contact Torres at the latter's abode during the var-ious times she had gone to defendant's address, Garcia thereupon made efforts to ascertain the actual whereabouts of the herein defendant in vain. But on September 15, 1959, Garcia somehow suc-ceeded to talk with the defendant. In order to dissipate complainant's doubts and misgivings, defendant Torres on this occasion assured Garcia that the pair of earrings was still in her (Torres') pos-session by explaining that, if she was not yet able to sell the jewelry in ques-tion it was because of factors beyond her control such as her husband's illness and hospitalization and the change of address of the prospective buyer. Complainant Garcia was so impressed by defendant's story that she finally agreed to accom-modate her by approving her request for an extension of 15 days, or until September 30, 1959, within which to comply with the obligation under the agreement. On October 1, 1959, the day following the lapse of the extension period, defendant Torres did not appear but somehow com-plainant succeeded in communicating with her and this time she told her (Torres) bluntly and frankly that she wanted the earrings back, otherwise "if you cannot give me the jewelry, I will sue you." (Tsn. 2.) In meeting this verbal demand which appeared this time to be serious and determined, defendant Torres again endeavored to soothe Miss Garcia's dis-quietude, saying: "Don't worry because the money is with me already; only I can-not come because my husband is still in the hospital." (Tsn. 2.) Fifteen days after the expiration of the extended pe-riod, or, to be exact, on October 15, 1959, instead of coming in person to offer the proceeds of the sale or to re-turn the earrings to the complainant, the herein defendant sent over her sister, Mrs. Rosario Fariña, to plead with the complainant for a further extension, intimating at the same time the futil-ity of a criminal prosecution in view of the fact that defendant Torres must have misused the proceeds of the sale in connection with her husband's illness and hospitalization. Despite the plea by Mrs. Fariña on behalf of her sister, the record failed to show that complain-ant yielded to the supplication.

Finding herself in quandary, with a criminal prosecution dangling over her head, defendant Torres was constrained to appear at Garcia's residence on Nov-ember 13, 1959, that was 1 month and 13 days after the extension had lapsed, to plead with the latter to please accept a promissory note for the value of the jewelry in question. Accompanied by Mrs. Rosario Fariña, her sister, the latter offered herself to act as guarantor for Torres' liability in the pro-posed promissory note. At first the complainant was not disposed to accept the proffer but when defendant Torres confessed to Atty. Hermenegildo Atienza, Miss Garcia's counsel, that she had in fact used the proceeds of the sale for her husband's medical treatment, she finally decided to follow Atty. Atienza's advice by accepting promissory note Ex-hibit 1 which defendant and her sister signed on the same date. By the terms of the promissory note, defendant Torres specifically admits that the sum of P1,050.00 therein contained is "the value of the diamond earrings which Mrs. Marina Torres received from Miss Garcia on consignment to be sold with the obli-gation to return said earrings or the proceeds of the same." While the prom-issory note provides for the payment of the aforesaid amount in four installments of (a) P300.00 on November 20; (b) P250.00 on December 20; (c) P250.00 on January 20, 1960; and (d) P250.00 on February 20, 1960, yet it is uncontroverted fact that the herein defendant only paid the sum of P200.00 on November 14 (Exhibit 2). When, during the trial, defendant Torres was asked why she did not comply with the pro-missory note Exhibit 1, all she could mum-ble by way of an elusive answer was to blame complainant Garcia for having filed a case against her in the Fiscal's office (tsn. 16). But this explanation is without merit, for the record of this case shows that the information which brought about the present criminal prosecution was not filed until Sep-tember 27, 1960, almost a year after the execution of the promissory note (Exhibit 1). (Annex "A"; Appellants' brief. pp. 21-25 Italics ours)."

Upon the errors allegedly committed by the Court of Appeals, it is clear that the following are the only questions to be resolved: firstly, whether upon the evidence of record, petitioner may be held guilty of the consummated crime of estafa; secondly, whether or not petitioner may still be held criminally liable after the execution by her of

a promissory note – now in the record as Exhibit 1 – in payment of the value of the earrings studded with diamonds subject matter of the criminal offense she was charged with and found guilty of, by the Court of First Instance of Manila and by the Court of Appeals.

Petitioner's contention in connection with the first issue is that the Court of Appeals did not make any positive finding of fact regarding the conversion or misappropriation by her of the earrings mentioned heretofore, for which reason she was erroneously convicted of estafa, contrary to the ruling laid down in *Concepcion vs. People*, 74 Phil. 63.

We find the above contention to be without merit. It is clear from the decision of Court of Appeals that it actually found and declared that on October 1, 1959 when the complainant was told by the offended party that she would charge her criminally in court if she did not give back the earrings delivered to her for sale or its value, petitioner told her not to worry because she had the money already; "only I cannot come because my husband is still in the hospital." (t.s.n., p. 2).

Then on October 15 of the same year, instead of seeing the complaining witness in person to deliver the alleged proceeds of the sale of the jewelry or to return the latter, petitioner sent over her sister, Mrs. Rosario Fariña, to plead with the complaining witness for a further extension, her sister intimating at the same time the futility of any criminal prosecution, because petitioner must have misused the proceeds of the sale due to the illness and hospitalization of her husband.

Then, on a subsequent occasion, faced with the serious threat of a criminal prosecution, petitioner was constrained to personally see the complaining witness on November 13, 1959, that is, more than one month after the expiration of the extension granted to her, on which occasion she pleaded with her to accept a promissory note for the value of the jewelry in question, payment of which would be guaranteed by her sister, Mrs. Fariña. The complaining witness, at first, was not disposed to accept such proposal, but when petitioner confessed to Atty. Hermenegildo Atienza, complaining witness' counsel, that she had, in fact, used the proceeds of the sale of the earrings to defray the expenses of her husband's medical treatment, she finally accepted the promissory note.

Upon these facts petitioner argues that her liability, if any, was reduced to a mere civil liability. This is untenable. At the time the promissory note was executed, it is clear that petitioner had already committed the crime of estafa, so that even full payment of the value of the piece of jewelry misappropriated by her could not extinguish her criminal liability. The following decisions on this matter clearly show petitioner's contention to be without merit:

"Subsequent agreements between the parties with respect to the civil liability arising from the commission of a crime does not affect the right of the government to prosecute the criminal notwithstanding complete restitution of the property injured." (*U.S. vs. Mendozana*, 2 Phil. 353, 376).

"It is well settled in this jurisdiction that payment made subsequent to the commission of the crime of estafa does not alter the nature of the crime committed, nor does it relieve defendant from the penalty prescribed by law." (*Javier vs. People*, 70 Phil. 550, 552-553).

"The reimbursement of the amount embezzled exempts the accused only from civil liability." (*People vs. Velasco*, 42 Phil. 75 81)."

WHEREFORE, the appealed decision is affirmed, with costs.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Ruiz Castro, J., took no part.

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