

CESAR LACSON, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-46713. March 31, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for Review on Certiorari of the decision* of respondent Court of Appeals promulgated on May 26, 1977 in CA-G.R. No. 17031-CR entitled People of the Philippines vs. Cesar Lacson affirming with modification as to the penalty, the decision** of the then Court of First Instance of Manila, Br. XIII dated May 22, 1974 in Criminal Case No. 3958 finding herein petitioner guilty as charged of Estafa, as defined and penalized in Par. 1st, sub-paragraph (b) Article 315 of the Revised Penal Code.

The dispositive portion of the said decision reads:

"Wherefore with the only modification that the minimum penalty of imprisonment should be reduced by one (1) day and that an additional penalty of one (1) year is hereby imposed, the decision appealed from is hereby affirmed in all other respects.

So Ordered." (Rollo, p. 60)

On January 22, 1971, an information was filed by Assistant Fiscal Leocadio Magat against the accused before the Court of First Instance of Manila, Branch XIII, which reads:

"That in or about and during the period comprised between October 20, 1969 to February 18, 1970, inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously defraud the Philippine Refining Company, a business firm duly organized and doing business in said City, in the following manner, to wit: The said accused, being then employed as a Distribution Salesman of the said Philippine Refining Company among whose duties were to receive Philippine Refining products delivered to him by the said Company, under the express obligation of selling them to customers of the said company, and collecting and receiving whatever amount or amounts as may be due from the customers of the said Philippine Refining Company and to account for and turn over the same to his said principal at the Manila Office where the said Philippine Refining Company is located as soon as possible or upon demand collected and received from the said Philippine Refining Company the following goods or articles of merchandise, to wit:

X X X X X X X X

(enumeration of merchandise, quantity and value omitted)

and other products all in the total amount of P50,719.37, but the said accused, once in possession of the aforesaid amount of P50,719.37, far from complying with his obligation aforesaid, failed and refused to do so, despite repeated demands made upon him to that effect and with intent to defraud, misappropriated, misapplied and converted the same or the value thereof to his own personal use and benefit, to the damage and prejudice of the said Philippine Refining Company in the aforesaid total amount of P50,719.37, Philippine currency. (pp. 1-2, Record)."

Several days after the information was filed, accused reiterated his previous offer of compromise in a letter dated February 16, 1971 which was refused by the complainant Company.

Upon arraignment on August 9, 1971, accused Cesar Lacson pleaded not guilty.

The factual background of the case as found by the trial court and the Court of Appeals are as follows:

The prosecution evidence shows that the accused (petitioner herein) was employed by the complainant Philippine Refining Company (PRC for short), for a period of about three years, that is, from 1967 to March 1970, first as junior merchandiser and later as its distribution salesman for the Bicol region comprising the provinces of Sorsogon, Albay and Masbate. As a salesman, he received merchandise manufactured by the PRC, such as beauty and laundry soap, cooking oil, etc. for sale to different end-users of said products in his area on cash basis. Such merchandise are first stored in PRC warehouse in Legaspi City, then later withdrawn from said warehouse and delivered to the accused through David Trucking Company, PRC's authorized hauler of goods. The delivery of the goods was covered by Ex-Warehouse Stock Transfer Receipts signed by the accused (herein petitioner) in triplicate: the white copy (original) is sent by the salesman (accused) to the main office of PRC in Manila; the green one, for the salesman-accused (petitioner herein) as his copy and the blue copy is re-tained by the trucking company. The accused acknowledges receipt of such deliveries in the daily salesman's Activity Report which the accused is required to send to the Manila Central Office of PRC regularly.

On December 12, 1969, David Trucking Company delivered PRC goods in the amount of P13,200.00 to the accused. The accused received said goods from Eladio Bonto of David Trucking Company as evidenced by Ex-Warehouse Stock Transfer Receipt No. 119160. On January 12, 1970, Bonto again delivered PRC stocks amounting to P13,825.50 to the accused as shown in Ex-Warehouse Stock Transfer Receipt No. 119200. Again on February 3, 1970, Bonto made another delivery of PRC products to the accused in the sum total of P13,509.75 and the latter received the goods in perfect condition as appearing in Ex-Warehouse Receipt No. 119241.

Accused Cesar Lacson failed to send to Manila the signed original of Ex-Warehouse Stock Transfer Receipt No. 119160, No. 119200 and 119241 covering merchandise with an aggregate value of P40,534.75 and did not include acknowledgment of receipt of said merchandise in his Salesman's Activity Report, thereby the Manila Office of PRC wired Gil Casanova, its Divisional Sales Manager for the Bicol Region in 1969-1970 to make a physical inventory of the stocks in the possession of the accused on February 18, 1970 and to render his Inventory Report immediately after completion of the same. Ramon Gascon, the District Sales Manager of PRC for the Bicol Region effected an inventory of the stock then in the possession of the, accused and accordingly rendered his inventory Report. Based on this inventory, a stock Reconciliation Statement and Schedule of Stock accountability was prepared by the PRC's Accounting Supervisor Melquiades Guiang covering the period October 20, 1969 to February 18, 1970 and Schedules of Stock Accountability of the accused for said period of time. It turned out that accused was short in stocks in the amount of P50,586.49. The accused was informed of his shortage in a letter dated May 11, 1970. Accused then went to see General Sales Manager, Mr. Villar in Manila and offered to settle his obligation by paying P10,000.00 down payment and a monthly installment of P500.00 until full payment of his total accountability, which was not accepted by the Company.

On the other hand, accused's evidence is summarized by the lower court and incorporated in the Court of Appeals decision, as follows:

"The accused took the witness stand in his own defense and testified that his stocks shortage was limited to merchandise worth around P10,000.00, representing PRC products he sold on credit to two valued customers, which sale he did not report in his Salesman's Activity Report because only cash sale was allowed by PRC. He explained his violation of the company rule against sale on credit in his testimony in open court, the pertinent

parts of which read as follows:

"Q Let us come to the so-called accounts receivable that you still have and which you in-formed the Hon. Court accounts for the shortage amounting to P10,051.74. These accounts receivable, do you have any docu-ments pertaining to those ac-counts receivable?

A None.

Q And you stated here that there were two stores which more or less bought those goods amount-ing to P10,051.74 which you have not been able to collect up to the time you were separated from Philippine Refining Company?

A Yes, sir.

Q Did you inform Philippine Refin-ing Company about this matter?

A I did not inform the company because it is prohibited for us to sell on credit, and we only prepare the sales invoices when the goods were paid.

Q When you said it is prohibited for you to sell goods on credit, did you violate any regulation of Phi-lippine Refining Company regard-ing your duties as a salesman?

A I admit that I violated some regulations of Philippine Refining Company but the reason for the viola-tion was because of my desire to meet the quota.

Q And because of that violation you would be responsible for the accounts receivable?

A I am. (pp. 31-32, tsn., Feb. 21, 1973).

"In connection with his receivable in the amount of P10,051.74, the evidence shows that two customers, namely, Antonio Bailon and Leonardo Lee, acknowledged in writing on August 7, 1973 that they did purchase on credit through the now accused Distribution Salesman Cesar Lacson of the PRC between the period October, 1969 and February, 1970, PRC merchandise in the amount of P6,500.00 and P3,551.75, respective-ly, and to maintain their credit standing as businessman they remitted said amounts on August 7, 1973 to the PRC, their remittance totaling P10,051.75 receipt of which amount was on August 23, 1973 issued in favor of the accused Cesar Lacson 'For Deposit Only' (Exhs. 5, 6 and 7).

"Regarding alleged shortage represent-ing the purported transfer to the accused of P40,534.75 worth of PRC products, from its Legaspi Warehouse, covered by the hauler's copies of Ex-Warehouse stock Transfer Receipts and that consequently, he did not and could not send to the PRC Manila Office the original copies of said Ex-Warehouse stock Transfer Receipts along with his Salesman's Activity Report for the day: said PRC products were allegedly delivered to him. He denies the initials, lines or scrawlings appearing below and above the words 'Received By: Salesman' on the hauler's copy of said Ex-Warehouse Stock Trans-fer Receipts.

"In this connection, the accused further testified that according to the standard opera-ting procedure followed by PRC in the delive-ries of PRC products from its Legaspi Warehouse to the accused and its distribution salesman five (5) copies of the Ex-Warehouse Stock Transfer Receipt are prepared: 2 copies being retained by the Legaspi Warehouse; and 3 copies by the Hauler who in turn have them signed by the receiving Salesman between the lines on which is printed 'Received by Salesman' in this case by the accused, and upon actual delivery to and receipt of said products by the Salesman, the white original and the green copy of said Ex-Warehouse Stock Transfer Receipt are delivered to the salesman who received said products, and the blue copy is retained by the hauler. The Salesman, in turn, sends the white original, along with his Salesman's Activity Report, to the PRC Manila Office, retaining the yellow copy for his file. Even on cross-examination the accused was clear on this SOP:

"Q When the David Trucking Hauler delivers goods to you, what does the hauler ask of you? What does he require when you receive the goods?

A Every time the David trucking delivers goods, they carry with them three copies of the Ex-Ware-house Stock Transfer, and when I receive the goods, I sign the receipt.

Q And according to you, from the signing of the receipt, because you have received the goods already, the blue copy is given to the hauler?

A Yes, sir.

Q And who keeps the green copy?

A I, and the white copy is being mailed to Manila.

Q And according to you, you mailed the white copy the next day together with the Salesman Activity Report known as SAR, together with the bank draft?

A Yes, sir, with the sales invoice.

Q So that every delivery made to you by the hauler, there are, as you said, three copies of the Ex-Ware- house Stock Transfer prepared, white, blue and green?

A Yes, sir.

xxx xxx xxx

Q May I ask, Mr. Lacson, do you have any of the green copies of Exhibits B, C, and D?

A How can I have the green copies when I did not receive those goods.

Q And also the white copies?

A I don't have them.

Q Why don't you have the white copies?

A How could I have the white copies when I did not receive the goods?

Q How can you account for the existence of the blue copies presented in evidence here, Exhibits B, C and D? How do you account for that?

A How would I know if they delivered those goods to other persons?"

(pp. 18-19, tsn, Feb. 21, 1973).

"The accused testified additionally that he was, during the times material to this case, a resident of Sorsogon, Sorsogon. In order to provide an ideal sales system and control, PRC prepared a general schedule of salesman's whereabouts (Exh. 1) to be observed by the accused for 4-week period, to wit:

1st Week, in Daraga, etc., with overnight stay in Legaspi City at Dalisay Hotel;

2nd Week, in Sorsogon, night-time at Sorsogon;

3rd Week, in Barcelona, Bulosan, Matnog, and Bulan, night time at Bulan; and

4th Week, in Masbate, overnight stay in Masbate, Masbate (p. 4, tsn., Feb. 21, 1973).

"As the selling price of PRC products is subject to change, the salesmen of PRC have to follow strictly the given schedule of whereabouts because whenever there is a change in the price of the PRC products, the

Manila Office wires the salesman at the place indicated in the schedule, and if the salesman concerned be not in the place designated in the schedule, he will be scolded (p. 5, tsn., Feb. 5, 1973). The accused followed the schedule (Exh. 1) in November, 1969, December, 1969, January, 1970 and February, 1970 (pp. 5-6, ditto). The relevance of these facts will be dealt with later in this decision.

"Confronted, with the prosecution's Exhibit 2, the accused testified that he submitted a compromise proposal to pay P10,000.00 down payment as this represents the products he sold on credit for which the stores that bought said products were willing to pay the purchase price if and when the accused may need the money, and furthermore, because he did not like to be involved in a scandal; but the PRC rejected the proposed compromise and instead demanded payments of about P50,000.00 (pp. 14-15, tsn., Feb. 21, 1973). In other words, he did not mean by said compromise proposal to admit a stock shortage much greater than P10,000.00 in aggregate value." (Court of Appeals decision pp. 7-12)

After trial, the lower court rendered judgment of conviction, the decretal portion of which reads:

"WHEREFORE, this Court finds the accused CESAR LACSON guilty beyond reasonable doubt of the crime of estafa defined and punished in Art. 315, par. 1st, sub-par. 1(b), Revised Penal Code, and hereby sentences him to an indeterminate penalty ranging from a minimum of four (4) years, two (2) months, and one day of prison mayor, with the corresponding accessory penalties; and to indemnify the Philippine Refining Company in the amount of P40,667.62, without subsidiary imprisonment in case of insolvency; and to pay the costs of this proceeding."

The accused appealed to the Court of Appeals on both questions of fact and law, which in turn affirmed the decision of the trial court "with the only modification that the minimum penalty of imprisonment should be reduced by one (1) day and that an additional penalty of one (1) year is hereby imposed."

Hence, this petition.

In a resolution dated October 3, 1977, the First Division of this Court denied the aforesaid petition for review on certiorari of the decision of the Court of Appeals, the questions raised being factual and for insufficient showing that findings of fact by the respondent court are unsupported by substantial evidence and for lack of merit. (Rollo, p. 39). Petitioner filed on November 23, 1977 his motion for reconsideration but the same was denied with finality by this court in the resolution dated December 14, 1977. (Rollo, pp. 71 and 83)

On March 15, 1978, the court acting upon petitioner's second motion for reconsideration resolved to reconsider the resolution of October 3, 1977 and to give due course to the petition (Rollo, p. 106).

In his brief, petitioner raised the following Assignment of Errors:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT ON THE BASIS OF INCOMPETENT/INADMISSIBLE AND LEGALLY INSUFFICIENT EVIDENCE.

II.

THE COURT OF APPEALS ERRED IN NOT ACQUITTING PETITIONER OF THE CRIME IMPUTED TO HIM UPON THE GROUND OF REASONABLE DOUBT.

(Rollo, p. 114)

The primordial issue of this case is whether or not the Court of Appeals acted with grave abuse of discretion in affirming the decision of the trial court on the basis of alleged incompetent/inadmissible and legally insufficient

evidence.

Petitioner's contention is without merit.

It is a generally accepted principle that only questions of law and not factual issues, may be raised in the Supreme Court and that factual findings of the Court of Appeals are final and may not be reviewed on appeal to this Court, (Sec. 2, second. par., Rule 45; *Manlapaz vs. Court of Appeals*, 147 SCRA 236 /1987/; *Moran vs. Court of Appeals*, 133 SCRA 83 /1984/; *Collector of Customs vs. Court of Appeals*, 137 SCRA 3/1985/; *Espiritu vs. Court of Appeals*, 137 SCRA 50 /1985/; *Premier Insurance & Surety Corp. vs. Intermediate Appellate Court*, et al., 141 SCRA 423 /1986/; *Director of Lands vs. Funtillar*, 142 SCRA 57 /1986/; *Republic vs. Intermediate Appellate Court*, 144 SCRA 705 /1986/); unless: 1) the conclusion is grounded entirely on speculation, surmises and conjectures; 2) the inference is manifestly mistaken, absurd and impossible; 3) there is grave abuse of discretion; 4) the judgment is based on a misapprehension of facts; 5) the court, in making its findings, went beyond the issues of the case, and the same are contrary to the admission of both the appellant and the appellee; 6) the findings of the Appellate Court are contrary to those of the trial court; and 7) the findings are without citation of specific evidence on which they are based. (*Manlapaz vs. Court of Appeals*, 147 SCRA 236 /1987/; *Tolentino vs. de Jesus*, 56 SCRA 167/1974; *Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc.*, et al., 97 SCRA 734 /1980/; *Manero vs. Court of Appeals*, 102 SCRA 817 /1981/; *Moran Jr. vs. Court of Appeals*, supra; *Sacay vs. Sandiganbayan*, 142 SCRA 593 /1986/; *Director of Lands vs. Funtillar*, et al. supra.)

It is herein petitioner's contention that his case falls under one of the aforestated exception, more particularly, that the Court's findings are grounded entirely on speculations, surmises and conjectures and such conclusion of facts were made with abuse of discretion by reason of the total lack of competent and/or admissible evidence in support thereof.

In support of this contention, petitioner in his assignment of error claims that the Ex-warehouse Stock Transfer Receipt Exhibits B, C & D are not competent proof to show his receipt of goods since the signature appearing in the Exhibits B & C are not his, while Exhibit D does not bear any signature at all (Petitioner's Brief, p. 11). However, this contention was rebutted by the evidence pre-sented by the prosecution consisting of the testimony of Eladio Bonto who stated that it was the petitioner who actually received said items described in Exhibit B, C and D and thereafter who actually signed the Ex-Warehouse Transfer Receipts in Bonto's presence (tsn, pp. 6-15, May 24, 1972) and that he delivered the goods by Ex-Warehouse Receipt, Exhibit B, C and D to petitioner on December 2, 1969, January 12, 1970, February 3, 1970 (tsn, pp. 6-14, May 24, 1972). There being no showing that Bonto has any reason to testify falsely against the accused, the latter's assertion that he did not receive the goods nor sign the receipt merits no consideration. It is a well-settled rule that mere denial of an accused cannot prevail over the clear and positive testimony of the prosecution witness. (*People vs. Parilla*, 144 SCRA 454 /1986/).

However, petitioner claims, that Eladio Bonto testified not on petitioner's receipt of the goods in question but on the latter's receipt of previous deliveries and includes that Eladio Bonto's testimony has no probative value and insufficient to support petitioner's conviction of the crime imputed to him (Petitioner's Brief, pp. 13--14). Petitioner's contention is unmeritorious, having been belied by Eladio Bonto's testimony that he personally delivered the goods covered by Ex-Warehouse Stock Transfer Receipts Exhibits B, C and D to petitioner himself on their different dates, namely, December 2, 1969, January 12, 1970 and February 3, 1970 and for every delivery, petitioner signed the corresponding receipt in Bonto's presence (tsn pp.6-15, May 24, 1972). As has been aptly stated by the Court of Appeals in its decision "(T)he credibility of witness Bonto was never impugned by the defense nor was there shown any ill motive on the part of Bonto to testify falsely against appellant." (Court of Appeals decision p. 13, *Rollo*, p. 56). Well settled is the rule that witnesses who have no evil motive to testify

against the accused are credible. (People vs. Beltran, 133 SCRA 521 /1985/). Hence, Bonto's testimony regarding petitioner's receipt of the goods in question cannot be doubted.

Moreover, petitioner's offer to settle his obligation with PRC is indeed an implied admission of guilt on his part. (Sec. 24, Rule 130 of the Revised Rules of Court).

Petitioner however, contends that his offer of compromise contained in his letter (Exh. "2") did not mention how much he is liable to PRC, and hence, cannot be said to have admitted liability on all the goods covered by the Ex-Warehouse Stock Transfer Receipt Exhibits B, C and D. (Petitioner's Brief, p. 16). He asserts that his letter is not strictly a definite offer of compromise within the provision of Sec. 24, Rule 130 of the Revised Rules of Court.

Such contention lacks merit. It must be remembered that the information for estafa against petitioner was filed on January 22, 1971 whereas, his offer of compromise was made on February 16, 1971, or thirteen (13) days after the information against him was docketed in the trial court. Clearly, it can be inferred from his act that when he executed his offer of compromise, he was already fully aware of the amount imputed to him by PRC and that he was offering to settle the case against him involving stock shortage in the total amount of P50,719.37 worth of PRC products. As consistently ruled by this Court, an offer of compromise by the accused in criminal cases is an implied admission of guilt. (U.S. vs. Torres, 34 Phil. 994; People vs. Sope, 75 Phil. 810; People vs. Amiscua, 37 SCRA 813 /1971/).

In addition, petitioner's failure to account for the whereabouts of the missing PRC products or the proceeds of the sale thereof constituted circumstantial evidence of misappropriation.

After a careful review of the records, We find no cogent reason to disturb the findings of fact and of law by respondent court.

WHEREFORE, the petition is Denied and the decision of respondent Court of Appeals is Affirmed in toto.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Cortes JJ., concur.

* Penned by Justice Jose G. Bautista, concurred in by Justices Ramon C. Fernandez & Nestor B. Alampay.

** Rendered by Judge Jesus P. Morfe.

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