

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LORENZANA YUMANG, DEFENDANT AND APPELLANT.*G.R. No. L-19569. May 30, 1964*

Ponente: PAREDES, J.

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A case certified by the Court of Appeals, it appearing that one of the issues raised is the jurisdiction of the trial court.

Sometime on November 17, 1955, defendant-appellant Lorenzana Yumang, received under receipt (Exh. A), from one Asuncion Rodriguez, eight pieces of jewelry, valued at P1,273.00, to be sold on commission basis and with the obligation to deliver the proceeds thereof or return the jewelry within one (1) month thereafter. The delivery of the jewelry was made at the residence of Rodriguez, No. 1987 Retiro Street, Quezon City. The receipt contained a proviso, prohibiting Yumang from entrusting the jewelries in the hands of third persons and that she herself should sell them. On March 14, 1955, Rodriguez' lawyer made a written demand (Exh. B), upon appellant to return the jewelry or hand over the proceeds of the sale, which demand was ignored. Later, defendant admitted to complainant that the jewelries were pledged in a pawnshop in the City of Manila and delivered the corresponding pawnshop tickets (Exhs. C & D) to Rodriguez. The pawnshop tickets showed that five (5) pieces of jewelry taken by appellant were not included in the two tickets. Three pieces were pawned for P430.00. Roberto Lim, owner of the pawnshop where part of the jewelry was pledged, testified that it was Yumang who originally pawned the articles, but later the complainant renewed and subsequently redeemed them in her own name. Accused-appellant admitted also in one of the hearings (April 7, 1959), that she pawned the jewelries without the permission of the complainant-owner.

The testimony of accused, to the effect that the jewelries were delivered by her, without complainant's permission, to some third persons, but who were unable to collect from their respective buyers, was discounted by the trial court for two reasons: First, because said persons were not presented to corroborate her and she was not able to produce any receipt thereof. Second, even if she had delivered the articles to third parties, the clear import of the receipt which she signed, did not excuse her from liability.

The trial court found Lorenzana Yumang guilty of the offense of estafa and sentenced her to an indeterminate penalty ranging from Four (4) months, of arresto mayor, to One (1) Year and Four (4) Months of prision correccional, and to indemnify Asuncion Rodriguez in the sum of P1,273.00, without subsidiary imprisonment in case of insolvency, which shall not exceed 1/3 of the principal penalty and to pay the costs.

The above judgment is now before Us, appellant alleging that the lower court erred; (1) in not dismissing the case for lack of territorial jurisdiction; and (2) in not declaring that the liability of the accused is purely civil in nature.

Under the first assignment of error, appellant's counsel argues that since the receipt and delivery of the jewelries was executed and made in Quezon City, with the timely objection interposed by counsel to the jurisdiction of the trial court, the case should have been dismissed.

The pledging of the articles without the prior consent and knowledge of the complainant and the subsequent failure on the part of the accused to account for said jewelries upon demand, constituted misappropriation, or conversion, an element of estafa (U.S. vs. Zamora, 2 Phil. 582; U.S. vs. R.R. Evangelista, 11 Phil. 606). Under the set up of the case at bar, It is evident that an essential ingredient of the offense of estafa was committed in the City of Manila. "In all criminal prosecutions, the action shall be instituted and tried in the Court of the municipality or province wherein the offense was committed or anyone of the essential ingredients thereof took place." (Rule 106, sec. 14, par. a). In transitory or continuing offenses in which some acts material and essential to the crime and requisite of its consummation occur in one province and some in another, the court of either province has the jurisdiction to try the case (U.S. vs. Santiago, 27 Phil. 408; U.S. vs. Cardell, 23 Phil. 207 cited in II Moran's Com. on the Rules of Court, 1957 Ed. 634).

"Los delitos de estafa y malversacion son por su naturaleza muy semejantes, no existiendo mas diferencia entre los dos que en el caracter del culpable que los comete; en las circunstancias en que los comete, y en las cosas que constituyen su objeto; propiedad privada en el de estafa y caudales o efectos publicos en el de malversacion. x x x Pues bien, los delitos de estafa pueden perseguirse en el Juzgado dentro de cuya jurisdiccion se comet en se estan cometiendo o continuan cometiendose, y donde el culpable de dichos delitos esta obligado a dar cuenta de las cosas que haya recibido y que haya distraido. Esto es asi, porque los delitos de estafa que suelen cometerse en parte en un municipio o provincia, y en parte, en otros municipios o provincias, sonde los que pueden llamarse, y de hecho se han llamado, delitos continuos. x x x Por consiguiente, siendo setnajantes, como hemos dicho, los dos referidos delitos, la razon que existe para perseguir el uno en cualquiera de los lugares donde se haya cometido, o donde algunos de los actos encaminados a su comision se hayan llevado a cabo, debe existir para perseguir el otro. x x." (El Pueblo de Filipinas, contra Zoilo Tolentino, 69 Phil.715).

Obviously, therefore, the CFI of Manila, had jurisdiction to take cognizance of the case at bar.

Anent the second assignment of error, We are of the opinion that the facts as found by the trial court show beyond peradventure of doubt that the appellant had committed the offense described in the information.

The decision appealed from should be, as it is hereby affirmed, with costs against petitioner-appellant Lorenzana Yumang.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala and Makalintal, JJ., concur.

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