

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. AVELINO PANTIG, DEFENDANT AND APPELLANT.

G.R. No. L-8325. October 25, 1955

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Manila, acquitting the appellant of the crime of estafa, but sentencing him to pay the offended party the amount of P1,200, which is the amount alleged in the information to have been obtained through false and fraudulent representations from the offended party. The dispositive part of the judgment of acquittal, which contains the order complained of, is as follows:

"Wherefore, the accused is hereby acquitted, with costs de oficio. However, it appearing that the sum of one thousand two hundred pesos (P1,200) secured by him from Consuelo R. Pablo has not as yet been paid, the accused is hereby ordered to pay the same to the offended party with interest at 6 per cent per annum from July 20, 1951. Upon his failure to do so within thirty (30) days from notice of this judgment, a writ of execution will be issued on motion of the offended party."

The appellant argues that the civil liability which is included in the criminal action is that arising from and as a consequence of the criminal act, and that since the defendant-appellant was acquitted in the criminal case no civil liability arising from the criminal charge could be imposed upon him. The Solicitor General agrees with this contention, citing the cases of *Manila Railroad Co. vs. Honorable Rodolfo Baltazar, et al.*, 49 Off. Gaz., 3874; *Pueblo contra Abellera*, 69 Phil., 623; and *People vs. Manago*, 69 Phil., 496, and, therefore, recommends that the portion of the decision appealed from, ordering the payment of the civil liability, be set aside, with costs de oficio.

The trial court found as a fact that the sum of P1,200, ordered to be paid in the judgment of acquittal, was received by the defendant-appellant as loan. This finding is inconsistent with the existence of the criminal act charged in the information. The liability of the defendant for the return of the amount so received arises from a civil contract, not from a criminal act, and may not be enforced in the criminal case.

The portion of the judgment appealed from, which orders the defendant-appellant to pay the sum of P1,200 to the offended party, is hereby revoked, without prejudice to the filing of a civil action for the recovery of the said amount. Costs de oficio.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

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