

LOURDES VALERIO LIM, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-34338. November 21, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Petitioner Lourdes Valerio Lim was found guilty of the crime of estafa and was sentenced "to suffer an imprisonment of four (4) months and one (1) day as minimum to two (2) years and four (4) months as maximum, to indemnify the offended party in the amount of P559.50, with subsidiary imprisonment in case of insolvency, and to pay the costs." (p. 14, Rollo)

From this judgment, appeal was taken to the then Court of Appeals which affirmed the decision of the lower court but modified the penalty imposed by sentencing her "to suffer an indeterminate penalty of one (1) month and one (1) day of arresto mayor as minimum to one (1) year and one (1) day of prision correccional as maximum, to indemnify the complainant in the amount of P550.50 without subsidiary imprisonment, and to pay the costs of suit." (p. 24, Rollo)

The question involved in this case is whether the receipt, Exhibit "A", is a contract of agency to sell or a contract of sale of the subject tobacco between petitioner and the complainant, Maria de Guzman Vda. de Ayroso, thereby precluding criminal liability of petitioner for the crime charged.

The findings of fact of the appellate court are as follows:

"x x x The appellant is a businesswoman. On January 10, 1966, the appellant went to the house of Maria Ayroso and proposed to sell Ayroso's tobacco. Ayroso agreed to the proposition of the appellant to sell her tobacco consisting of 615 kilos at P1.30 a kilo. The appellant was to receive the overprice for which she could sell the tobacco. This agreement was made in the presence of plaintiff's sister, Salud G. Bantug. Salvador Bantug drew the document, Exh. A, dated January 10, 1966, which reads:

'To Whom It May Concern:

This is to certify that I have received from Mrs. Maria de Guzman Vda. de Ayroso, of Gapan, Nueva Ecija, six hundred fifteen kilos of leaf tobacco to be sold at P1.30 per kilo. The proceeds in the amount of Seven Hundred Ninety Nine Pesos and 50/100 (P 799.50) will be given to her as soon as it was sold.'

This was signed by the appellant and witnessed by the complainant's sister, Salud Bantug, and the latter's maid, Genoveva Ruiz. The appellant at that time was bringing a jeep, and the tobacco was loaded in the jeep and brought by the appellant. Of the total value of P799.50, the appellant had paid to Ayroso only P240.00, and this was paid on three different times. Demands for the payment of the balance of the value of the tobacco were made upon the appellant by Ayroso, and particularly by her sister, Salud Bantug. Salud Bantug further testified that she had gone to the house of the appellant several times, but the appellant often eluded her; and that the 'camarin' of the appellant was empty. Although the appellant denied that demands for payment were made upon her, it is a fact

that on October 19, 1966, she wrote a letter to Salud Bantug which reads as follows:

'Dear Salud,

'Hindi ako nakapunta dian noon a 17 nitong nakaraan, dabil kokonte pa ang nasisingil kong pera, magintay ka hanggang dito sa linggo ito at tiak na ako ay magdadala sa iyo. Gosto ko Salud ay makapagbigay man lang ako ng marami para hindi masiadong kahiyahiya sa iyo. Ngayon kung gusto mo ay kahit konte muna ay bibigyan kita. Pupunta lang kami ni Mina sa Maynila ngayon. Salud kung talagang kailangan mo ay bukas ay dadalhan kita ng pera.

'Medio mahirap ang maningil sa palengke ng Cabanatuan dahil nagsisilipat ang mga suki ko ng puesto. Huwag kang mabahala , at tiyak na babayaran kita.

'Patnubayan tayo ng mahal na panginoon Dios. (Exh. B).

Ludy'

"Pursuant to this letter, the appellant sent a money order for P100.00 on October 24, 1967, Exh. 4, and another for P50.00 on March 8, 1967; and she paid P90.00 on April 18, 1967 as evidenced by the receipt Exh. 2, dated April 18, 1967, or a total of P240.00. As no further amount was paid, the complainant filed a complaint against the appellant for estafa." (pp. 14, 15, 16, Rollo)

In this petition for review by certiorari, Lourdes Valerio Lim poses the following questions of law, to wit;

1. Whether or not the Honorable Court of Appeals was legally right in holding that the foregoing document (Exhibit "A")
2. "fixed a period" and "the obligation was therefore, immediately demandable as soon as the tobacco was sold" (Decision, p. 6) as against the theory of the petitioner that the obligation does not fix a period, but from its nature and the circumstances it can be interred that a period was intended in which case the only action that can be maintained is a petition to ask the court to fix the duration thereof;
3. Whether or not the Honorable Court of Appeals was legally right in holding that "Art. 1197 of the New Civil Code does not apply" as against the alternative theory of the petitioner that the foregoing receipt (Exhibit "A") gives rise to an obligation wherein the duration of the period depends upon the will of the debtor in which case the only action that can be maintained is a petition to ask the court to fix the duration of the period; and
4. Whether or not the Honorable Court of Appeals was legally right in holding that the foregoing receipt is a contract of agency to sell as against the theory of the petitioner that it is a contract of sale. (pp. 3-4, Rollo)

It is clear in the agreement, Exhibit "A", that the proceeds of the sale of the tobacco should be turned over to the complainant as soon as the same was sold, or, that the obligation was immediately demandable as soon as the tobacco was disposed 'of. Hence, Article 1197 of the New Civil Code, which provides that the courts may fix the duration of the obligation if it does not fix a period, does not apply.

Anent the argument that petitioner was not an agent because Exhibit "A" does not say that she would be paid the commission if the goods were sold, the Court of Appeals correctly resolved the matter as follows:

"x x x Aside from the fact that Maria Ayroso testified that the appellant asked her to be her agent in selling Ayroso's tobacco, the appellant herself admitted that there was an agreement that upon the sale of the tobacco she would be given something. The appellant is a businesswoman, and it is unbelievable that she would go to the extent of going to Ayroso's house and take the tobacco with a jeep which she had brought if she did not intend to make a profit out of the transaction. Certainly, if she was doing a favor to Maria Ayroso and it was

Ayroso who had requested her to sell her tobacco, it would not have been the appellant who would have gone to the house of Ayroso, but it would have been Ayroso who would have gone to the house of the appellant and deliver the tobacco to the appellant." (p. 19, Rollo)

The fact that appellant received the tobacco to be sold at P1.30 per kilo and the proceeds to be given to complainant as soon as it was sold, strongly negates transfer of ownership of the goods to the petitioner. The agreement (Exhibit "A") constituted her as an agent with the obligation to return the tobacco if the same was not sold.

ACCORDINGLY, the petition for review on certiorari is dismissed for lack of merit. With costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., and de la Fuente, JJ., concur.

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