

LEODEGARIO PAYO, PETITIONER, VS. HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-36809. February 24, 1984

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Petitioner seeks the review by certiorari of the decision of the now defunct Court of Appeals which affirmed his conviction by the likewise defunct Court of First Instance of Davao, Branch I of the crime of estafa on an information which charged that petitioner "having received in trust One (1) unit Blackstone, heavy duty diesel engine for repair and overhauling from Generoso Acero valued at P10,000.00, under the express obligation of repairing the same and turning it over to the owner upon payment of the proper fees for repair, but instead of complying with the said aforesaid obligation, said accused inspite of repeated demands, with grave abuse of discretion, willfully, unlawfully and feloniously failed and still fails to return the said engine, having sold the same to one Romana Rubia and misappropriated and converted the proceeds thereof to his personal use and benefit, to the damage and prejudice of Generoso Acero in the aforesaid amount of P10,000.00."

The charges were denied by petitioner and as a defense, he alleged that the engine in question was bartered to him by complainant Generoso Acero when, after he made an estimate that the cost of the repair would amount to P3,000.00, complainant agreed to his proposal that the engine be exchanged with his corn degerminator and several equipments, plus the amount of P1,000.00.

After trial, judgment was rendered by the trial court convicting petitioner of the offense charged and he was sentenced to four (4) months of arresto mayor, as minimum to two (2) years and four (4) months of prision correccional as maximum with the accessories of the law, to pay the amount of P4,000.00 representing the value of the engine and to pay the costs.

From this sentence, petitioner appealed to the Court of Appeals. During the pendency of the appeal, petitioner filed a motion for new trial on the ground of newly discovered evidence. The motion was supported by an affidavit executed by complainant Acero admitting that his transaction with petitioner was really one of barter.

The appellate court denied the motion for new trial declaring that the alleged newly discovered evidence was only for "impeachment" purposes, "since complainant had declared in the trial (and) subjected to cross-examination." Subsequently, the appellate court rendered its decision affirming petitioner's conviction, as well as its resolution denying reconsideration. Hence, this petition for review, wherein petitioner prays that the appealed decision be set aside and that he be acquitted or at least that the case be remanded to the court a quo for new trial.

In the trial court, complainant Acero testified that he brought the engine to petitioner's shop for repair but after it was repaired, petitioner instead of returning it to him, sold the same to another and converted the proceeds thereof to his own and personal use. On the basis of this testimony, petitioner was convicted.

However, in his sworn statement submitted to the Court of Appeals, executed "for the purpose of informing the

authorities concerned of the nature of the transaction," with petitioner subject of his criminal complaint he stated "That subsequently, Mr. Leodegario Payo proposed to me that he would instead barter or exchange my blackstone engine with a corn degerminator, one corn rolling mill, plus one elevator, plus the sum of P1,000.00; That with this proposal, I received the corn degerminator for testing purpose as I myself then was operating a corn mill and was in fact acceptable to the proposed exchange; that in the meantime the other objects for the exchange were not yet delivered to me; That before the other items for exchange were delivered to me, I learned that Mr. Payo had already sold the Blackstone Engine, and since he already sold the same without yet delivering the other items for exchange, we came into disagreement, and thus the case against him was filed and altogether the other items of our exchange was not delivered to me, and further I was not anymore agreeable to continue with the agreed barter." Since complainant himself is the only interested party in the case and there is no other evidence except his testimony to sustain the judgment of conviction, it becomes necessary to de-terminate the truthfulness of his sworn statement that he had in fact agreed to a barter transaction with petitioner but later came into some disagreement with petitioner about it. For if his sworn statement be true, there would be no evidence whatever to prove the guilt of the accused beyond reasonable doubt.

The case at bar thus falls squarely under the principle enunciated in *People vs. Lao Wan Sing* (46 SCRA 298) that "although a recanting testimony is oftentimes regarded as unreliable, especially so where the recantation relied upon involves a confession of perjury, and motions for new trial based on subsequent retraction by a witness are not favorably considered, yet when aside from the testimonies of the retracting witnesses there is no evidence to support the judgment of conviction, a new trial may be granted (*People vs. Bocar*, 97 Phil. 398). We must consider, furthermore, that in a criminal case the State is 'not less interested than the individual accused of a crime in his acquittal if he is innocent.' (*U.S. v. Raymundo*, 14 Phil. 416, 419)."

Here, complainant's sworn statement was not as much a "recanting testimony," but a clarification and admission, that he did have an agreement to barter or exchange his blackstone engine with petitioner's corn degerminator and related items. There is no "confession of perjury" here, but a placing of their transaction in a clearer light, borne out at the trial, that indeed as per complainant's own testimony then, petitioner's corn degerminator had been delivered to and received by him from petitioner. And indeed the evidence further shows complainant's counsel in a letter of demand, Exhibit A, to petitioner dated July 7, 1969, before the institution of any case, had written petitioner "That when confronted by my client you denied everything and instead inform my client with all apparent honesty that it [Blackstone engine] is now owned by you since it has been bartered with a degerminator, blower and others by Mr. Acero". (Emphasis and note in brackets supplied.) Complainant's sworn statement would thus bear out petitioner's consistent contention from the beginning that their transaction had become a purely civil one.

Such sworn statement of complainant in the language of *Lao Wan Sing*, supra, "constitutes an evidence that was discovered by the appellant after the lower court had tried and decided the case, and while this case was pending appeal. The statements made by the [complainant] after the trial in the Court below was evidence which the appellant could not have secured during the trial, such that, they can be considered as a newly discovered evidence that may be properly be presented in a new trial. More so, because those statements appear to be a material evidence that may change the judgment, that had been rendered." Granted, then that complainant's sworn statement constituted impeachment evidence, as held by the appellate court, it nevertheless partook of the nature of material newly discovered evidence that should properly be presented in a new trial. The Court in said case went on to cite the precedent of *U.S. vs. Dacir*, 26 Phil. 204, that "x x x The practice of this Court has been to grant new trials in such cases only in very exceptional instances, as for example, in cases wherein it is made to appear that there was no evidence sustaining the judgment of conviction other than the testimony of a witness who is shown to have made contradictory statements as to material facts, and where it appears further that under all the

circumstances of the case proof that the witness had varied or modified his testimony out of court and after the trial would lead the trial judge to a different conclusion."

Indeed the Solicitor General cites the jurisprudential test for granting a new trial on the ground of newly discovered evidence, as follows:

"Settled is the rule that before a new trial may be granted on the ground of newly discovered evidence, it must be shown:

(a) that the evidence was discovered after trial;

(b) that the evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and

(c) that it is material, not merely cumulative, corroborative or impeaching and of such a weight that it would probably change a judgment if admitted. Evidence which merely seeks to impeach the evidence upon which the conviction was based, or retractions of witnesses, will not constitute grounds for new trial, unless it is shown that there is no evidence sustaining the judgment of conviction except the testimony of the retracting witness. The reason for this rule is that, if new trial will be granted at every instance where any interested party succeeds in inducing some of the witnesses to vary their testimony outside of court after trial, there will be no end to litigation. (People vs. Reyes, 71 Phil. 598; People vs. Ventura - L-16946 July 31, 1962 5 SCRA 741.)" (Solicitor General's brief, pp. 9-10 Emphasis supplied.)

Indeed, the case at bar clearly appears to fall within the recognized exception that the evidence in the form of complainant's "recanting" or "clarificatory" statement after the trial and on appeal that "he was in fact acceptable (sic) to the proposed exchange" although later because of some disagreement he "was not anymore agreeable to continue with the agreed barter" was material and vital evidence which could not be produced at the trial. For it was testimonial evidence on the part of complainant which could not be elicited from him at the trial and to which he alone held the key, answerable only to his own conscience. It is in the compelling interest of justice that such statement of complainant be allowed to be submitted in a new trial, which if admitted, is of such weight that it could probably change the judgment as there would then be no evidence to sustain the judgment of conviction.

ACCORDINGLY, the Court resolved to SET ASIDE the appellate court's decision and to remand the records of the case to the trial court below for a new trial.

Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

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