

SALVADOR PANLILIO, PETITIONER VS. COURT OF APPEALS, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G. R. No. L-16955. May 30, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

From a decision of the Court of First Instance of Camarines Norte convicting petitioner Salvador Panlilio of the crime of estafa, with which he is charged, and sentencing him to an indeterminate penalty ranging from three (3) months and one (1) day of arresto mayor to one (1) year and eight (8) months of prision correccional, to indemnify complainant Roberto Suria in the sum of P300, with subsidiary imprisonment in case of insolvency, and to pay the costs, Panlilio appealed to the Court of Appeals which, in due course, affirmed said decision, except as to the indemnity due to Suria, which was increased to P358.60. The case is now before us on appeal by certiorari taken by Panlilio, upon the ground that the Court of Appeals had erred:

- "* * * in convicting the accused of estafa by conversion inspite of the fact that there is no direct, clear, convincing, positive and satisfactory evidence that he has misappropriated or converted the amount (in question) for his personal use and benefit"; and
- "* * * in condemning the accused inspite of a finding that the transaction of the parties is that of a partnership and that there has not been any liquidation and accounting made".

In support of the first assignment of error, petitioner asserts that the information does not alleged: (a) that the sum of money in question had been received "for safe keeping or on commission or for administration or any other circumstances giving rise to the obligation to make delivery or to return the same"; and (b) that he "has misappropriated or converted said amount for his personal use or benefit".

We find no merit in this pretense, it being specifically alleged in the information that, on October 16, 1957, "accused Salvador Panlilio received the amount of P1,000* * * from Roberto Suria in trust and custody and for the purpose of buying commercial goods and articles for 4 Roberto Suria", with the understanding "that if the said accused failed to buy the said goods * * * he should* * * return the amount of P1,000 * * * within one week from the date of receipt" thereof "to the said Roberto Suria"; and that "instead of buying the said goods, the said accused * * * unlawfully, feloniously and wilfully misappropriated the said amount of P1,000.00 * * * to the prejudice and damage of Roberto Suria".

Although the evidence of the misappropriation by petitioner is not direct, it is not disputed that on October 16, 1957, petitioner issued the following receipt:

"TO WHOM IT MAY CONCERN:

Received from M. Roberto S. Suria the sum of one thousand pesos (P1,000.00), Philippine Currency, for the purpose of buying commercial goods and articles for the said Roberto Suria, to be resold in the province of

Camarines Norte, and if I failed to buy said goods, the said amount be returned to him within one (1) week from today.

(Sgd.) SALVADOR PANLILIO
Recipient"

Moreover, the lower court found

"Despues de entregada la cantidad de P1,000.00 el apelante, este salid de Daet el 17 de octubre para volver a Angeles pero desde aquella fecha ya no volvio a aparecer en Daet para dar cuenta del resultado del negocio de cigarillos y whisky. Tampoco devolvio a Surla le cantidad de P1,000.00 no obstante repetidos requerimientos que le ha hecho, si bien la suegra y la esposa del apelante dirigieron cartas a la esposa del denunciante Surla prometiendlo devolver la cantidad de P1,000.00 tan pronto como pudiesen hacerlo".

The foregoing facts suffice to establish the misappropriation imputed to petitioner herein.

With respect to the second assignment of error, it is true that petitioner sought to prove that he and Surla had established a partnership, and that the status of its accounts had not been liquidated. However, the Court of Appeals gave no credence to petitioner's evidence, and the findings of said court on this point are not subject to review on appeal by certiorari. Moreover, in the above quoted receipt signed by the petitioner, he acknowledged that the sum of P1,000 was delivered to him "for the purpose of buying commercial goods and articles for the said Roberto Surla" and that if he failed to buy the goods, said amount would be "returned to Surla within one week". Had a partnership been established, the goods would have been purchased for the partnership, not for Surla.

The lower court, likewise, found that sometime in October, 1957, petitioner had bought 82 cartoons of cigarettes valued at P641.40, which were stolen from his house on October 26, 1957. Deducting said sum of P641.40 from the P1,000 received by him from Surla, there results an unaccounted balance of P358.60, which petitioner was sentenced by the Court of Appeals to refund Surla.

Wherefore, the decision appealed from is hereby affirmed, with costs against the petitioner. It is so ordered.

Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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