

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. MARTIN N. SALES, DEFENDANT-APPELLEE.

G.R. No. L-8925. May 21, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The government is appealing from the order of the Court First Instance of Camarines Sur, dated August 22, 1953, dismissing the information filed by the Provincial Fiscal in Criminal Case No. 2870 against Martin N. Sales for swindling, acting upon the motion to quash filed by defendant on the ground double jeopardy for having been acquitted of the same charge in the same court in Criminal Case No. 1323.

In Criminal Case No. 1323 Sales was accused of swindling under the following amended information:

"The undersigned Provincial Fiscal accuses Martin N. Sales of the crime of SWINDLING committed as follows:

"That on or about and between the period from November 1946 up to August 1948 in the municipality of Calabanga and Tinambac, province of Camarines Sur and within the jurisdiction of this Honorable Court said accused as sub-agent of the National Coconut Corporation popularly known as NACOCO, a government corporation organized, operating and existing under the laws of the Philippines, received the sum of P238,000.00 from the said corporation with the obligation to purchase for and in behalf and name of the NACOCO coprax with the said amount and then to return to the said corporation the balance of the said amount not used in the said purchase and also to turn over to the corporation the amount of coprax which he might purchase with the said amount; that the said accused complying with his obligation as above stated, purchased and turned over to the corporation all the coprax that he purchased with the exception of 61,511 kilos of coprax; that the accused has furthermore in his possession a cash balance of P3,387.72 so that all together the said accused has a balance of 61,511 kilos of coprax and P3,387.72 in cash which he is duty bound to account for and return to the said corporation; that the accused was given specified instruction and obliged himself to sell the said 61,511 kilos of coprax at no less than 58.00 per hundred kilos ex-bodega thru Mrs. Leonor Moll, District Manager of the NACOCO for the province of Camarines Sur and that the said accused was further instructed and be obliged himself not to collect the proceeds of the sale of the said 61,511 kilos but to leave and let the said Mrs. Leonor Moll and/or the NACOCO Cashier Mr. Faustino Borromeo to collect the proceeds of the said sale, but said accused knowing fully well the said instruction and with obvious unfaithfulness and abuse of confidence and with evident intent to defraud the said corporation, wilfully, criminally and feloniously sold the said coprax contrary to said instructions and obligations and appropriated for himself and for his own use and benefit not only the proceeds of the said 61,511 kilos of coprax amounting to P29,745.30 but also the cash balance of P3,387.72 or the total amount of P33,133.02 to the prejudice and damage of the said corporation in the amount of P33,133.02.

"Acts punishable by Art. 315 paragraph 1 of the Revised Penal Code."

After trial the lower court found that as regards the cash advance allegedly in the sum of P3,387.72 the accused was not guilty of any crime for the reason that he never denied his cash accountability, only that from the beginning there had been a disagreement between him and the NACOCO as to the exact amount of the balance of said cash advance; that he paid fully P3,000.00 on December 20, 1948, on his cash accountability; that the delay in settling this account was due in great measure to the disagreement as to its amount, also to the fact that because there was intimate relation between said cash advance and his accountability for the P29,745.30 mentioned in the information and because there was no separate demand made of him for the amount of the cash advance, defendant must have believed that he was called upon to settle both accounts at the same time; that there was no evidence that defendant had misappropriated said cash advance; and that mere delay in accounting for the cash advance under the circumstances did not constitute the crime of swindling.

As regards the amount of P29,745.30 the court apparently accepting the story of the defendant, found that he actually sold the 61,511 kilos of copra mentioned in the information for P29,745.30 but could not deliver the sales price either to Mrs. Moll, District Manager, or to Mr. Borrorneo, the Cashier, because at the time they were not in Camarines Sur, and that acting on his own initiative and for the interest of the NACOCO he invested said amount in the purchase of copra in the towns of Guinayañgan and Perez, Quezon province on a speculative basis; that when informed of these purchases the officials of the NACOCO emphatically disapproved the same, refused to be bound by his purchases and insisted that he account for the P29,745.30 for several reasons, among them, that when he made the purchases, he was no longer in the service of the NACOCO; that the purchases were made outside of the territory assigned to him; and that the prices at which he bought the copra in Guinayañgan and Perez were not authorized by the NACOCO, and due to this attitude of the corporation, the accused assumed full personal but civil responsibility for the purchases. Because of all this, the trial court held that the crime of swindling was not committed for the reason that there was no act of misappropriation or conversion or diversion of the funds of the NACOCO for defendant's personal use and benefit, for the reason that he invested said amount in the purchase of copra for the benefit of his principal, the NACOCO, though in doing so, he exceeded his authority, and because said copra was placed by him at his principal's disposal. Neither was there any insinuation in the evidence that the defendant had bought the copra for himself and then tried to pass it on to the NACOCO when the price of copra had gone down. The court further found that the accused acted in good faith and that he made the purchase "in the hope to appear well in the eyes of his superior since he had purchased the copra at a price lower by P5.00 per hundred kilos than the copra that he had sold."

So, Martin Sales was acquitted. That was on March 22, 1950. About three years later, or rather on March 18, 1953, Sales was again charged with swindling in Criminal Case No. 2870 of the same Court of First Instance of Camarines Sur under the following amended information:

"The undersigned Provincial Fiscal accuses Martin Sales of the crime of SWINDLING committed as follows:

"That in or about and between the period from November, 1946 up to August, 1948, the accused Martin N. Sales was appointed qualified and served as bonded sub-agent in the municipalities of Calabanga and Tinambac Province of Camarines Sur of the National Coconut corporation, otherwise known as the NACOCO, a government corporation duly organized and existing under the laws of the Philippines; that as such bonded sub-agent, the accused received from NACOCO a total of P238, 000 for the purpose of investing the same in the purchase of copra for and in behalf of NACOCO with the obligation of turning over the copra so purchased as well as any unused portion of the said amount to the NACOCO; that of the stock of copra in his possession

belonging to the NACOCO, the said accused sold and disposed 51,285 kilos for the sum of P29,745.30 which amount he reinvested in the purchase of another stock of copra at P53.00 per hundred kilos or a total of 56,123 kilos; that from time to time up to and including April, 1950 NACOCO made formal demands on the said accused to turn over the aforementioned stock of copra but the said accused failed to produce any quantity of copra; that with obvious unfaithfulness, abuse of confidence and with evident intent to defraud NACOCO, the said accused wilfully, unlawfully, criminally and feloniously disposed, sold or otherwise misappropriated for himself the aforementioned copra to the prejudice and damage of NACOCO in the sum of P29,745.30.

"Acts punishable by Article 315, paragraph 1 of the Revised Penal Code."

Acting upon a motion to quash on the ground of double jeopardy, the trial court in an order dated August 22, 1953, dismissed the case. As already stated, the government is appealing from said order. We deem it unnecessary to enter into an extensive and elaborate discussion of this case. The two informations we have reproduced in Criminal Cases Nos. 1323 and 2870 speak for themselves. To us, it is clear that both informations refer to the same transaction, namely, the alleged misappropriation of the amount of P29,745.30 or its equivalent; although the government, failing in getting a conviction in the first case, now espouses a different theory of rather two theories inconsistent with each other, either of which to us is not correct. First, government counsel contends that it was not true as claimed by defendant and found by the court in the first case that he reinvested the P29,745.30 in the purchase of copra in the towns of Guinayañgan and Perez because subsequent investigation made by the NACOCO officials revealed that said copra did not exist; therefore, he misappropriated the amount in question and the court should have convicted him in the first case. Almost in the same breath, government counsel says that the copra purchased in the towns of Guinayañgan and Perez were bought with the P29,745.30, funds of the NACOCO, and so was the property of the NACOCO, for which Sales was accountable and having failed to account for the same, he must therefore be held guilty of swindling or embezzlement.

We cannot agree to either theory of the government. In Criminal Case No. 1323 the trial court in acquitting Sales held that his responsibility was civil, not criminal; that Sales actually made the copra purchases for the NACOCO but since the latter disapproved the purchases as being in excess of his authority and made contrary to his instructions, the NACOCO repudiated and refused to be bound by the transaction and held him accountable for the P29,745.30. In other words, the copra purchased in Guinayañgan and Perez, having been disclaimed by the NACOCO became the property of Sales, but he was civilly liable to the NACOCO for the said amount. That finding is now conclusive and binding upon the parties, the government and the accused therein. The government cannot now in this new criminal case attack the decision in said Criminal Case No. 1323 as to its findings of fact by saying that Sales never bought copra with the P29,745.30 but actually misappropriated said amount, nor contend that he actually bought copra with those funds of the NACOCO thereby making the copra so purchased property of the NACOCO which Sales later converted to his own use, despite the NACOCO's repudiation and disapproval of the purchases and disclaimer of said copra. No further considerations are necessary to show the untenable position of the government herein.

In the Case of Melo v. People, G.R. No. L-3580, March 22, 1950, 47 O.G. No. 9, 4361, 4363, this Court ruled:

"One who has been charged with an offense can not be again charged with the same offense though the latter be lesser or greater than the former. As the government can not begin with the highest and then go down step by step, bringing the man into jeopardy for every dereliction included therein, neither can it begin with the lowest and ascend to the highest with precisely the same result."

And in *Tajedor v. Palet*, 61 Phil. 494, 502-3, we ruled:

"x x x a judgment is conclusive not only upon the question actually contested and determined, but upon all matters which might have been litigated and decided in that suit; and this is undoubtedly true of all matter properly belonging to the subject of the controversy and within the scope of the issues, x x x"

In view of the foregoing, and it being abundantly clear that by the amended information in Criminal Case No. 2870, the accused is being twice put in jeopardy of punishment for the same offense, the order appealed from is hereby affirmed.

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

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