

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EPIFANIO CARULASDULASAN AND NICASIO BECAREL, DEFENDANTS AND APPELLANTS.

G.R. No. L-6408. May 24, 1954

Ponente: REYES, J.

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REYES, J.:

Epifanio Carulasdulasan and Nicasio Becarel were accused in the Court of First Instance of Cebu of the crime of estafa committed, according to the information, as follows:

"That during the month of December, 1950, in the municipality of Dalaguete, Province of Cebu, Philippines, and within the jurisdiction of this Court, the above-named accused, being then tenants of Crispin Almagro, and as such had the express obligation to share one-half of whatever product they could harvest from the land of the latter, conspiring together and helping each other and with deliberate intent to defraud said Crispin Almagro, the accused herein having stripped 600 kilos of abaca planted on their landlord's land, of which he was entitled to one-half of this quantity or 300 kilos sold them all without giving said Crispin Almagro his corresponding share and appropriated the proceeds thereof for their own use and benefit and despite several demands with the aid of the police authorities of the aforesaid municipality the accused, refused and still refuse to give the offended party his share and to his damage and prejudice in the amount of P330, the value of 300 kilos as his rightful share." Upon arraignment the accused asked for the dismissal of the case on the ground that the facts alleged in the information did not constitute estafa. As the trial court granted the motion, the provincial fiscal interposed the present appeal.

We agree with the Solicitor General that the facts alleged in the information make up the crime of estafa defined in subsection 1(6) of article 315 of the Revised Penal Code, which refers to fraud committed—

"By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other circumstance involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property." From the facts alleged it is clear that the accused received from the sale of the abaca harvested by them a sum of money which did not all belong to them because one-half of it corresponds to the landlord's share of the abaca under the tenancy agreement. This half the accused were under obligation to deliver to the landlord. They therefore held it in trust for him. But instead of turning it over to him, they appropriated it to their own use and refused to give it to him notwithstanding repeated demands. In other words, the accused are charged with having committed fraud by misappropriating or converting to the prejudice of another money received by them in trust or under circumstances which made it their duty to deliver it to its owner. Obviously, this is a form of fraud specially covered by the penal provision above cited.

The learned trial Judge held the provision inapplicable on the theory that "the abaca in question was not received by the accused from anybody but had been harvested by them, as tenants, from the plantation of the complainant." His Honor has obviously overlooked the fact that what the accused are charged with having misappropriated is the

landlord's share of the purchase price received by them for the abaca which they sold.

As authority for holding that upon the facts alleged in the information the accused could not be held guilty of estafa, the trial court cites the case of *U. S. vs. Reyes*, 6 Phil., 441, which is clearly inapplicable to the case at bar. In that case the lessee of several parcels of land entered into an agreement with one Julian Reyes for the cultivation of said land under certain conditions, one of which was that the harvest was to be divided between them share and share alike. But when the crop was harvested Reyes sold it without giving his partner his share. Convicted of theft in the court of first instance, Reyes was, upon appeal to this Court, acquitted of that crime, this Court holding that the unlawful disposal of his partner's share of the crop by Reyes "was undoubtedly a violation of their contract and a trespass upon the rights of another and not an act constituting the crime of theft." It should be noted, however, that while Reyes was acquitted of the charge of theft this Court did not hold that he was not guilty of estafa. On the contrary, this Court seems to have given thought to the suggestion of the Solicitor General that the crime committed by Reyes was not theft but estafa, on which reason this Court, in acquitting Reyes of theft, did so "without prejudice to the institution of any other action that may be proper" and remanded the case to the court below "for proper procedure."

Applying the corresponding provision of the Spanish Penal Code, the Spanish Supreme Court, in its decision of December 20, 1930, sustained the conviction for estafa of a tenant (*aparcero*) who sold crop gathered from the land held by him as tenant without giving the landlord his share thereof.

In any event, supposing that subsection l(b) of article 315 of the Revised Penal Code is not applicable, still the information alleges sufficient facts to make the accused criminally liable under the first paragraph of article 318, which punishes "any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter," it being averred that the accused "with deliberate intent to defraud" their landlord sold all the abaca harvested by them from his plantation without giving the latter his share and appropriated the proceeds thereof to their own use and benefit to the damage and prejudice of the landlord in the amount of P330.

In view of the foregoing, the order of dismissal is revoked and the case remanded to the court below for further proceedings.

Paras, C. J., Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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