

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS JUMAWAN, DEFENDANT-APPELLANT.

G.R. No. L-28060. February 27, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

A direct appeal on questions of law from the judgment of the City Court of San Carlos City finding the accused-appellant guilty of estafa and imposing upon him a four months and one day prison sentence.

The facts are undisputed and are set out in the trial Court's judgment of June 5, 1967, as follows: It is proven, even admitted, that the accused, being an agent on commission basis of the Montel Discount Center, the Iloilo Enterprises and the Piamonte, Bros., (to sell radios)[1] in a number of instances, collected various amounts by receipts, from customers of the said business firms. These collections were turned over to the firms, except those which he collected in July and August, 1965, pertaining to the Mon-tel Discount Center, which he retained in his possession and refused to give or deliver to the said Montel Discount Center, even after demand for their return, in the amount of Fifty Five (P55.00) Pesos.

"His reason for not turning over the said amount is because, he said, his commission has not been paid and Mr. Manuel Piamonte, his real original principal, a part owner and manager of the said Center, has not paid and refuses to pay him his commission, on account of losses. In fact, a near fight ensued between them in one eatery in Balintawak, Escalante, Negros Occidental, because of the refusal of Manuel Piamonte to account for his commission.

"The accused alleged, aside from lack of payment of his accrued commissions, that he was to have received P1.50 per day as expenses in collecting accounts from customers-debtors of the firm, which accounts were never paid by Mr. Piamonte, and according to his own estimate, is equivalent to, or even more, than the amount he withheld."

In finding the appellant guilty of estafa under Article 315, paragraph 1 (b) of the Revised Penal Code, for having retained in his possession even after demand, his last collections in the amount of P55.00, due to non-payment of his accrued commissions in the larger amount of P65.00 earned on previous collections actually turned over, as well as non-payment of his expense allowance of P1.50 per day, the trial court based its verdict solely on its rejection of appellant's defense that he had such right of retention under Articles 1912 to 1914 of the Civil Code. These codal articles pro-vide inter alia that the agent may retain in pledge the things which are the object of the agency until the principal effects the reimbursement of amounts advanced by the agent, and indemnifies the agent for damages caused him, in the course of execution of the agency.

The trial Court made no ruling whatever on appellant's lack of criminal intent and the absence of damage or prejudice to his principal. Appellant contends that this was error.

We find for the appellant. The trial Court erred in convict-ing him of estafa when the undisputed facts of record clearly show the absence of any criminal intent on appellant's part in having re-retained the amount of P55.00 from

his last collection, since the accrued commission in the larger amount of P65.00 due and pay-able to him for previous collections which he had turned over in full had not been paid to him. His principal had not paid him a single centavo, either on account of his earned commissions or his earned allowances at the rate of P1.50 per day, which should have been paid to him at the latest upon his turn-over of his collect-ions. The reason of business losses that his principal gave for not paying him his earned commissions was certainly far from being a valid one. Under these circumstances, unjustly exploited as appellant was, the Court holds that no criminal liability attached to his act of retaining the amount which was even less than what was actually and honestly due and owing to him by his principal.[2]

We have noted from the record that appellant's testimony as to the amounts due him is totally unrefuted. Worse, the main prosecution witness was strangely silent on the remuneration due appellant, and when this was sought to be brought out by defense counsel on cross-examination, the trial Court blocked it by sus-taining the prosecution's increased objection.[3] Surely, this was most relevant to the issue, as appellant could not be expected to work as a commission and collection agent for nothing. We cannot but condemn the prosecution initiated by the complainant against the accused-appellant as an iniquitous and unwarranted act.

Damage or prejudice, as an essential element of estafa, was likewise not established.[4] Appellant's principal could not claim any such damage or prejudice, for appellant had retained and set off merely in part what was justly and long due to him, with a balance still owing to him.

All these factors, the absence of criminal intent on appellant's part and lack of damage or prejudice caused to the principal, be-sides the appellant's proven good faith, entitle appellant to a verdict of acquittal.

The technicality invoked by the people's counsel that the alleged offended party, Montel Discount Center is a corporation, separate and distinct from Piamonte Bros. or Iloilo Enterprises, such that the transactions made by appellant for and in behalf of these latter-named alleged corporations should not be credited for or against Montel Discount Center is of no importance. The trial court did not so find and the record amply supports appellant's statements that he dealt only with Manuel Piamonte, as the real original principal, who apparently did business under these various business firm names, which appellant honestly believed were "one and the same company." The prosecution's main witness also corroborated this fact in testifying on direct examination as to when appellant was employed as agent of the Montel Discount Cen-ter, that "when we first started he was already employed because he was also the agent under my brother (Manuel Piamonte) when (Manuel) was the manager of the Iloilo Enterprises." [5]

The conclusion reached by us as to the appellant's innocence makes it unnecessary to deal with the other assignment of error as to the applicability of the provisions of Articles 1912 to 1914 of the Civil Code invoked by appellant.

ACCORDINGLY, the judgment appealed from is set aside; the trial Court's conviction of Tomas Jumawan is hereby reversed and he is hereby acquitted of the crime of estafa, with costs de oficio.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, and Villamor, JJ., concur. Barredo, J., took no part.

[1] Note in parentheses supplied.

[2] See Gonzales vs. Serrano, L-25791, Sept. 23, 1968 (25 SCRA 64); People vs. Aquino, 52 Phil. 37; U.S. vs.

Bleibel, 34 Phil. 231.

[3] T.S.N., February 24, 1967, p. 15.

[4] Gonzales vs. Serrano, fn. 2.

[5] T.S.N., February 24, 1967, p. 4, emphasis supplied.

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