

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BENJAMIN BENITEZ, DEFENDANT AND APPELLANT.

G.R. No. L-15923. June 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal from a decision of the Court of First Instance of Manila finding Benjamin Benitez guilty of the crime of estafa and sentencing him to an indeterminate penalty of from 2 months and 1 day of arresto mayor to 1 year and 1 day of prision correccional, with the accessories of the law, to indemnify the offended party in the amount of P540.00 with subsidiary imprisonment in case of insolvency not to exceed 1/3 of the principal penalty, and to pay the costs.

The facts are not disputed. The accused Benjamin Benitez was employed by Jose Cua as collector of rents of the houses owned by the latter. In the months of July and August, 1956, the accused made several collections from his employer's tenants amounting to P540.00. Having failed to turn over said amount, or to account for it, to his employer, upon demand, the accused offered to work in the former's establishment, the sum of P100.00, to be deducted from his salary every month until the whole amount of P540.00 is fully paid. The offer and the conditions for his employment were accepted by Jose Cua and reduced to writing.

The accused, however, after working in Cua's establishment for only a few days, did not report or show up for work, whereupon Cua wrote to him a letter demanding settlement of his account. The accused having failed to pay the amount of his obligation, a complaint for estafa was filed against him. He was convicted and sentenced as stated at the beginning of this opinion. From that sentence, he appealed to the Court of Appeals, contending that the lower court erred in finding him guilty upon his mere failure to account for and turn over his collections, there being no proof of misappropriation or conversion, and in not considering that his agreement with his employer converted his criminal liability, if any, into a mere civil obligation. The questions raised being purely legal, the case was certified to this Court.

After going over the record, we entertain no doubt that the accused has committed estafa.

In the case of *Tubb vs. People* and the Court of Appeals (101 Phil., 114; 53 Off. Gaz. [18] 6096), this Court held that "the failure to account upon demand, for funds or property held in trust is circumstantial evidence of misappropriation." In another case involving a prosecution for the same crime as in the present, it was held that "* * it is the duty of the agent to return the jewelry upon demand by the owner and the failure to do so is evidence of the conversion of the property by the agent. (*People vs. Zamora*, 2 Phil., 382.)" (*People vs. Limbo*, CA, 51 Off. Gaz., 228.) In the case at bar, the accused admits having collected the amount of P540.00 as rentals from the different tenants of his employer. It is, likewise, admitted that he failed to account for and turn over said amount to his employer, upon demand therefor, without giving any reason or explanation whatsoever. These circumstances, together with the fact that the accused even obligated himself to make restitution, clearly show that the amount of P540.00, which he was duty bound to deliver to his employer, was misappropriated by him.

As to the contention that the liability of the accused is civil only because of the written agreement between him and his employer, it is well-settled that criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party, (U. S. vs. Mendezona, 2 Phil., 353; U. S. vs. Ontengco, 4 Phil., 144; U. S. vs. Rodriguez, 9 Phil., 156; People vs. Leachon 56 Phil., 739; Javier vs. People, 70 Phil., 550.) As was said in the case of People vs. Gervacio (102 Phil., 687; 54 Off. Gaz. [9] 2898), "a criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense." The fact, therefore, that the accused herein had, with the consent of the offended party, assumed the obligation of paying the rentals, which he collected, out of his own salary after he had committed the misappropriation, does not obliterate the criminal liability already incurred.

There being no error in the judgment appealed from, the same is hereby affirmed, with costs against the accused.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Barrera, JJ., concur.

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