

APOLINAR E. VELASCO, PETITIONER VS. THE COURT OF APPEALS, RESPONDENT.*G.R. No. L-3825. January 23, 1952*

Ponente: JUGO, J.

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This is a petition for certiorari against the decision of the Court of Appeals in the above-entitled case. We can review only questions of law, for the reason, that "the judgment of the Court of Appeals is conclusive as to the facts, and cannot be reviewed by the Supreme Court" (Moran, Comments on the Rules of Court, Vol. I, p. 857, Third Edition, and the cases therein cited).

The Court of Appeals affirmed the judgment of the Court of First Instance of Manila, which convicted the appellant of the crime of estafa and imposed upon him the penalty of three (3) months of arresto mayor, a fine of P6,000.00, to indemnify the offended party in the sum of P3,000.00, with subsidiary imprisonment in case of insolvency, with the accessory penalties of the law, and to pay the costs.

The facts of this case as found by the Court of Appeals are as follows:

"On February 14, 1946, appellant, as President of the Federal Films, Inc., a domestic corporation, entered into a contract of lease with one Eugenio Vitan, whereby the latter leased his property consisting of a lot and a building situated in Cavite City to the former for a period of 20 years (Exhibit A, pp. 69-71, rec). It appears that the building was an old one and was formerly utilized as a dance hall (cabaret). Said building was however, remodelled, improved and converted into a theater and called Cine Palace (pp. 3, 4, t.s.n., Del Rosario).

"On August 8, 1946, appellant, as president of the said corporation, likewise entered into a contract of lease with the offended party in Manila whereby the latter leased his Cine National, situated in Manrique St., Sampaloc, Manila to the former (Exhibit 2, pp. 118-120, rec). In order to secure the conformity of the offended party to the lease contract, appellant made it appear that the corporation was the owner of the Cine Palace (pp. 10, t.s.n., Monzon) which he mortgaged (Exhibit C, pp. 78-75, rec.) to the former as a security for the payment of the P3,000 monthly rent during the whole two-years term of the lease.

"Among other things, the lease contract (Exhibit 2, pp. 118-120, rec.) provides that it shall be for a term of two years commencing from August 16, 1946; that the monthly rental is P3,000; that the lessee will pay the lessor P3,000 upon taking possession of the theater and, within 15 days thereafter, pay another P3,000, representing two months advance rent.

"Upon taking possession of the Cine National, appellant paid the sum of P3,000. He, however, failed to pay the balance of P3,000 as agreed upon, notwithstanding the demands made by the offended party (pp. 10, 12, 13, t.s.n., Monzon). For that reason, the offended party attempted to foreclose the mortgage (p. 16, t.s.n., Momson), but desisted (p. 16, t.s.n., Monzon), because he found out that the Cine Palace belongs to one Eugenio Vitan of Cavite City and not to appellant (p. 11, t.s.n., Monzon). To avoid further loss on his part, the offended party closed the Cine National on November 3, 1946 (p. 43, t.s.n., Del Bosario) and caused the filing of the

complaint against the appellant (p. 16, t.s.n., Monzon)."

The petitioner makes the following assignment of errors:

"I

"The respondent Court of Appeals erred in convicting petitioner of the crime of estafa because no damage was caused to the offended party, or even, if it be granted that damage was caused to the latter the same was caused by his own negligent acts.

"II

"The respondent Court of Appeals erred in not holding that the acts complained of against petitioner do not constitute the deceit required in a conviction for the crime of estafa.

"III

"The respondent Court of Appeals erred in not holding that the alleged fraudulent representation of petitioner did not deceive the offended party because even without said representation the offended party would have entered into the contract of lease."

It will be observed that the errors assigned raise not only questions of law but also of fact. We have to disregard the questions of fact and confine ourselves to those of law.

There can be no doubt that the petitioner mortgaged a property which was not his and for that reason it could not be foreclosed. The decision appealed from makes, reference to the mortgage, Exhibit C. In that deed of mortgage the description of the building is clearly given, and it is stated that the Federal Films, Inc., of which the defendant is the president, is the lawful and absolute owner of the building. It is a fact that the building is owned by one Eugenio Viton. It is true that in the mortgage deed reference is made to the lease between Viton and the Federal Films, Inc., but that reference concerns only the equipment placed by the latter in the movie theater of Viton, which may or may not belong to the Federal Films, Inc. But the fact is, as found by the Court of Appeals and as appears from the deed, that the house was mortgaged by the Federal Films, Inc. This constitutes deceit and a clear violation of Article 816, paragraph 1, of the Revised Penal Code. It is also clear that said mortgage covers the amount of P3,000 which was the rental for the month of September 16 to October 15, 1946, for the mortgage provides that it "shall remain in full force and effect, in accordance with the law for the sum of P66,000.00 for a period of 2 years rental effective August 16, 1946, and to expire on August 16, 1948." There can be no doubt that damage was caused to the offended party, for the reason that he could not realize any amount from the mortgage to satisfy the unpaid rental.

The petitioner contends that the mortgage could have been foreclosed as against Viton, for the reason that the latter consented to the execution of the mortgage. In the first place, nothing appears in the findings of the Court of Appeals with regard to this point; and, in the second place, the alleged consent of Viton was not a consent at all, for he testified as follows:

"A. I know that they guaranteed their participation. They asked me if I have no objection to their putting the building as guaranty in connection with the lease of Cine National, here in Manila, and I answered them: 'If you consider it possible, it's up to you.' " (ts.n., p. 5, Session of July 11, 1947.)

Furthermore, the mere consent of Viton, if it had been given, did not make him a mortgagor.

Finding no errors of law in the decision of the Court of Appeals, it is hereby affirmed, with costs against the appellant. So ordered.

Paras, C. J., Feria, Bengzon, Padilla, and Reyes, JJ., concur.

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