

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BEN CUEVO, DEFENDANT-APPELLANT.

G.R. No. L-27607. May 07, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

This case presents for reexamination the liability for estafa of the holder of a trust receipt who disposed of the goods covered thereby and, in violation of its terms, failed to deliver to the bank the proceeds of the sale as payment of the debt secured by the trust receipt.

We say reexamination because it is a well-entrenched rule in our jurisprudence that the conversion by the importer of the goods covered by a trust receipt constitutes estafa through misappropriation under article 315(1)(b) of the Re-vised Penal Code (People vs. Yu Chai Ho, 53 Phil. 874 and Samo vs. People, 115 Phil. 346. As to civil cases, see National Bank vs. Viuda é Hijos de Angel Jose, 63 Phil. 814; Philippine National Bank vs. Catipon, 98 Phil. 286 and Philippine National Bank vs. Arrozal, 103 Phil. 213).

In this case, an information dated July 27, 1966 was filed in the Court of First Instance of Manila, charging Ben Cuevo with estafa committed as follows (Criminal Case No. 83309):

"That on or about the 16th day of February, 1964 in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud the Prudential Bank and Trust Company in the following manner, to wit: the said accused having received in trust from the Prudential Bank and Trust Company merchandise, i.e., 1,000 bags of grind yellow corn and 1,000 bags of palay specified in a trust receipt covered by Letter of Credit No. 5643, executed by him in favor of said bank, of the total value of P24,000.00, to be sold by him, under the express obligation on the part of the said accused to account for the said merchandise, or to deliver and turn over to the Prudential Bank and Trust Company the proceeds of the sale thereof;

"But said accused once in possession of said merchandise, far from complying with the aforesaid obligation, notwithstanding repeated demands made upon him, with intent to defraud, willfully, unlawfully and feloniously misappropriated, misapplied and converted the said merchandise or the value thereof in the sum of P24,000.00 to his own personal use and benefit, to the damage and prejudice of the Prudential Bank and Trust Company in the aforesaid sum of P24,000.00, Philippine Currency." (p. 2, Rollo.)

Upon arraignment, the accused pleaded not guilty (p. 11, Record). Later, on December 13, 1966, before the trial had started, Cuevo filed a motion to dismiss on the ground that the facts alleged in the information do not constitute an offense.

Judge Ruperto Kapunan, Jr., in his order of January 3, 1967, granted the motion and dismissed the case but "without prejudice to whatever civil action the complaining bank may take to recover the amount of P24,000" which it had advanced to cover the price of the merchandise delivered to the accused (p. 7, Rollo). From that order of dismissal, the prosecution appealed to this Court.

The appeal is meritorious. Judge Kapunan, Jr. erred in holding that the accused did not commit estafa under article 315(1)(b), which reads:

"(b) 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 obligation 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."

Judge Kapunan, Jr., in sustaining the motion to dismiss, relied on the Spanish version of paragraph (b) of article 315 wherein the expression used is "recibido en deposito". In his opinion, that phrase is not accurately translated as "in trust" and, as he explained, it does not allegedly cover the conversion or misappropriation of the goods covered by a trust receipt. The Spanish version reads:

"(b) Apropriándose ó distrayendo, en perjuicio de otro dinero, efectos ó cualquiera otra cosa mueble, que hubiere recibido en depósito, comisión ó administración ó por otro titulo que produzca obligación de entregarla ó devolverla, aunque dicha obligación estuviese afianzada total or parcial-mente, ó negando haberla recibido."

The lower court ratiocinated that the contract covered by a trust receipt is merely a secured loan (U.S. vs. Tan Tok, 15 Phil. 538) where the borrower is allowed to dispose of the collateral, whereas, in a deposit the depository is not empowered to dispose of the property deposited. Hence, the lower court concluded that the violation of the provisions of the trust receipt gives rise to a civil action and not to a criminal prosecution for estafa.

The lower court also ventured the opinion that the other phrase in paragraph (b), "por otro titulo que produzca obligación de entregarla ó devolverla" ("under any other obligation involving the duty to make delivery of or to return the same") is not applicable because that phrase allegedly refers to the very "money, goods, or any other personal property received by the offender" as a deposit, and not to the proceeds of the sale of the goods covered by the trust receipt.

The lower court observed further that the framers of the Spanish Penal Code could not have contemplated the inclusion of the trust receipt in article 315(1)(b) because that transaction did not exist in the nineteenth century.

The usual form of a trust receipt is as follows:

"I/We hereby agree to hold said goods in trust for the said corporation (meaning the bank as trustor), and as its property with liberty to sell the same for its account, but without authority to make any other disposition whatever of the said goods or any part thereof (or of proceeds thereof) either by way of conditional sale, pledge or otherwise.

"In case of sale I/We further agree to hand the proceeds, as soon as received, to the International Banking Corporation to apply against the relative acceptances (as described above) and for the payment of any other indebtedness of mine/ours to the International Banking Corporation." (People vs. Yu Chai Ho, 53 Phil. 874, 876.)

"A trust receipt is considered as a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased" (53 Am. Jur. 961, cited in *Samo vs. People*, 115 Phil. 346, 349).

In the instant case, it is alleged in the indictment that the accused, by means of a trust receipt, received from the Prudential Bank and Trust Company 1,000 bags of corn and 1,000 bags of palay to be sold by him with the express obligation to deliver the proceeds of the sale to the bank or, if not sold, to account for the merchandise and that, instead of complying with either obligation, he misappropriated the merchandise or the value thereof (p.

2, Rollo).

We hold that even if the accused did not receive the merchandise for deposit, he is, nevertheless, covered by article 315(1)(b) because after receiving the price of the sale, he did not deliver the money to the bank or, if he did not sell the merchandise, he did not return it to the bank.

Those two situations are within the purview of article 315(1)(b). The first situation is covered by the provision which refers to money received under the obligation involving the duty to deliver it (entregarla) to the owner of the merchandise sold.

The other contingency is covered by the provision which refers to merchandise received under the obligation to "return" it (devolverla) to the owner.

The fact that in the first case the money was received from the purchaser of the merchandise and not from the bank does not remove it from the operation of article 315(1)(b).

As noted by Justice Street in *People vs. Yu Chai Ho*, supra, the conversion by the trustee in a trust receipt of the proceeds of the sale falls "most literally and directly under" the provisions of article 315(1)(b).

Thus, it was held that where, notwithstanding repeated oral and written demands by the bank, the petitioner had failed either to turn over to the said bank the proceeds of the sale of the goods, or to return said goods if they were not sold, the petitioner is guilty of estafa under article 315(1)(b) (*Samo vs. People*, 115 Phil. 346).

In this connection, it is relevant to state that Presidential Decree No. 115, the Trust Receipts Law, regulating trust receipts transactions, was issued on January 29, 1973.

One objective of that law is "to declare the misuse and/or misappropriation of goods or proceeds realized from the sale of goods, documents or instruments released under trust receipts as a criminal offense punishable under" article 315.

Section 13 of the decree provides that "the failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions" of article 315 of the Revised Penal Code.

The enactment of the said penal provision is confirmatory of existing jurisprudence and should not be construed as meaning that, heretofore, the misappropriation of the proceeds of a sale made under a trust receipt was not punishable under article 315. That penal provision removed any doubt as to the criminal liability of the holder of a trust receipt who misappropriated the proceeds of the sale.

The other issue raised in the last part of accused Cuevo's brief is whether the lower court's erroneous dismissal of the information against him amounts to an acquittal which placed him in jeopardy and whether the return of the case to the lower court for trial would place him in double jeopardy.

"No person shall be twice put in jeopardy of punishment for the same offense" (Sec. 22, Art. IV of the Constitution). The maxim is *non bis in idem* (not twice for the same). The ban against double jeopardy is similar to the rule on *res judicata* in civil cases.

Jeopardy attaches when an accused was charged with an offense (a) upon a valid complaint or information sufficient in form and substance to sustain a conviction (b) in a court of competent jurisdiction and (c) after the accused had been arraigned and entered his plea, he was convicted or acquitted, or the case against him was

"dismissed or otherwise terminated without his express consent".

In such a case, his conviction or acquittal (autrefois convict or autrefois acquit) is a "bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information" (Sec. 9, Rule 117, Rules of Court).

The accused invokes the ruling that "where a trial court has jurisdiction but mistakenly dismisses the complaint or information on the ground of lack of it, the order of dismissal is, after the prosecution has presented its evidence, unappealable because an appeal by the government therefrom would place the accused in second jeopardy for the same offense" (People vs. Duran, Jr., 107 Phil. 979).

That ruling has no application to this case because in the Duran case (as in People vs. Cadera, 69 Phil. 327, also cited by the accused herein) the dismissal was made after the prosecution had presented its evidence. The accused filed a demurrer to the evidence but the trial court dismissed the case, not on the ground of insufficiency of evidence, but on the ground of lack of jurisdiction. In the instant case, the prosecution has not commenced the presentation of its evidence. The dismissal was with the consent of the accused because he filed a motion to dismiss.

In *Esguerra vs. De la Costa*, 66 Phil. 134, another case cited by the accused, the erroneous dismissal on the ground of lack of jurisdiction was made by the lower court *motu proprio*. Hence, the dismissal without the consent of the accused amounted to an acquittal which placed him in jeopardy.

Moreover, in the Duran case, it was expressly indicated that the erroneous dismissal on the ground of lack of jurisdiction does not place the accused in jeopardy if the dismissal was made with the consent of the accused, as held in *People vs. Salico*, 84 Phil. 722. As already stated, in the instant case the dismissal was with the consent of accused Cuevo. That dismissal did not place him in jeopardy.

The Chief Justice and six Justices voted to reverse the order of dismissal. Justices Teehankee and De Castro dissented. As only seven Justices voted to reverse the order of dismissal, the same has to be affirmed.

WHEREFORE, the order of dismissal is affirmed. Costs de officio.

SO ORDERED.

Makasiar, Fernandez, Guerrero, Abad Santos, and Melencio-Herrera, JJ., concur.

Fernando, C.J., concurs on the basis of absence of double jeopardy.

Teehankee and De Castro, JJ., dissent.

Barredo and Concepcion, Jr., JJ., no part.

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DISSENTING OPINION

DE CASTRO, J.:

I regret to have to dissent from the majority opinion.

The question is whether the violation of the terms of a trust receipt would constitute estafa. There is no more doubt that under P.D. 115, the violation is defined as estafa, but before the promulgation of said decree, I have entertained grave doubts to such an extent that I would acquit a person accused of the crime allegedly committed before said decree, the promulgation of which serves to confirm my doubts. For if there had been no such doubt, specially as some decisions had already been rendered by this Court holding that estafa is committed when there is a violation of a trust receipt, there would have been no need for P.D. 115.

One view is to consider the transaction as merely that of a security of a loan, and that the trust element is but an inherent feature of the security aspect of the arrangement where the goods are placed in the possession of the "entrustee," to use the term used in P.D. 115, violation of the element of trust not being intended to be in the same concept as how it is understood in the criminal sense. The other view is that the bank as the owner and "entrustor" delivers the goods to the "entrustee," with the authority to sell the goods, but with the obligation to give the proceeds to the "entrustor" or return the goods themselves if not sold, a trust being thus created in the full sense as contemplated by Art. 315, par. 1(b).

I consider the view that the trust receipt arrangement gives rise only to civil liability as the more feasible, before the promulgation of P.D. 115. The transaction being contractual, the intent of the parties should govern. Since the trust receipt has, by its nature, to be executed upon the arrival of the goods imported, and acquires legal standing as such receipt only upon acceptance by the "entrustee," the trust receipt transaction itself, the antecedent acts consisting of the application of the L/C, the approval of the L/C and the making of the marginal deposit and the effective importation of the goods, all through the efforts of the importer who has to find his supplier, arrange for the payment and shipment of the imported goods-- all these circumstances would negate any intent of subjecting the importer to criminal prosecution, which could possibly give rise to a case of imprisonment for non-payment of a debt. The parties, therefore, are deemed to have consciously entered into a purely commercial transaction that could give rise only to civil liability, never to subject the "entrustee" to criminal prosecution. Unlike, for instance, when several pieces of jewelry are received by a person from the owner for sale on commission, and the former misappropriates for his personal use and benefit, either the jewelries or the proceeds of the sale, instead of returning them to the owner as is his obligation, the bank is not in the same concept as the jewelry owner with full power of disposition of the goods, which the bank does not have, for the bank has previously extended a loan which the L/C represents to the importer, and by that loan, the importer should be the real owner of the goods. If under the trust receipt, the bank is made to appear as the owner, it was but an artificial expedient, more of a legal fiction than fact, for if it were really so, it could dispose of the goods in any manner it wants, which it cannot do, just to give consistency with the purpose of the trust receipt of giving a stronger security for the loan obtained by the importer. To consider the bank as the true owner from the inception of the transaction would be to disregard the loan feature thereof, a feature totally absent in the case of the transaction between the jewel-owner and his agent.

Consequently, if only from the fact that the trust receipt transaction is susceptible to two (2) reasonable interpretations, one as giving rise only to civil liability for the violation of the condition thereof, and the other, as generating also criminal liability, the former should be adopted as more favorable to the supposed offender. (Duran vs. CA, L-39758, May 7, 1976, 71 SCRA 68; People vs. Parayno, L-24804, July 5, 1968, 24 SCRA 3; People vs. Abendan, L-1481, January 28, 1949, 82 Phil. 711; People vs. Bautista, L-1502, May 24, 1948, 81 Phil. 78; People vs. Abana, L-39, February 1, 1946, 76 Phil. 1.)

Accordingly, I vote for the affirmance of the questioned order.

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Dissenting opinion

TEEHANKEE, J.:

I concur with the dissent of Mr. Justice De Castro insofar as it upholds the more liberal interpretation to the trust receipt transaction which would give rise only to civil liability on the part of the offender. The very definition of trust receipt as given in the main opinion (at pp. 4-5) to wit, "(A) trust receipt is considered as a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased' (53 Am. Jr. 961, cited in *Samo vs. People*, 115 Phil. 346, 349)," sustains the lower court's rationale in dismissing the information that the contract covered by a trust receipt is merely a secured loan. The goods imported by the small importer and retail dealer through the bank's financing remain of their own property and risk and the old capitalist orientation of putting them in jail for estafa for non-payment of the secured loan (granted after they had been fully investigated by the bank as good credit risks) through the fiction of the trust receipt device should no longer be permitted in this day and age.

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