

TEOFILO ABETO, PETITIONER AND APPELLANT, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT AND APPELLEE.

G.R. No. L-3935. December 21, 1951

Ponente: JUGO, J.

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JUGO, J.:

This is a case of certiorari against the decision of the Court of Appeals in the above-entitled case, which declared the appellant guilty of estafa.

It should be borne in mind in this connection 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 cases cited therein). Only questions of law may be reviewed.

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

"Prior to August 13, 1946, the appellant published an advertisement in the newspapers about reservation of sugar. Zacarias Cometa, on August 13, 1946, went to the office of the appellant in the Great Eastern Hotel and asked from the latter if the advertisement was true to which the appellant answered in the affirmative and informed Cometa that they 'would receive shipment of sugar within this month.' Cometa then asked the appellant about the terms of reservations and the latter replied that some amount should be deposited as advance payment in order to have a reservation. Thereupon Cometa made a deposit of P800 to the appellant for 300 sacks of sugar (Exh. B). The shipment having failed to arrive, Cometa demanded from the appellant the return of his money and the latter gave Cometa a personal check for P800 drawn against the Philippine National Bank (Exh. A). One day after Cometa had deposited the check with the Netherlandish Indisohe Handelsbank N. V., Manila Agency, the check was returned unhonored with a note that Abeto's bank account with the Philippine National Bank was already closed (Exh. E). When confronted with this fact appellant gave P50 in cash (Exh. G) to Cometa and signed in his favor a promissory note for P750 (Exh. F)."

It should be noted that the appellant is not accused of issuing a check without funds. On the other hand, the fact that he later paid to Cometa P50 in cash and signed a promissory note for P750 in favor of the latter does not relieve him of criminal liability, if any (U. S. vs. De Guzman, 1 Phil., 138-140; U. S. vs. Rodriguez, 9 Phil., 153-158, and People vs. Velazco, 42 Phil., 75-81).

There is no finding by the Court of Appeals that the appellant made misrepresentations as to the existence of his business of importing refined sugar from the United States; nor is there a finding that the appellant's failure to import or bring the sugar he reserved for Cometa was due to an illicit act or omission of the appellant. In the absence of these findings, the presumption is that no misrepresentation was made and that the failure to import the sugar was due to a lawful cause.

Consequently, the only issue in this case is whether the appellant received the sum of P800 "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."

The decision appealed from finds that "Cometa then asked the appellant about the terms of the reservations and the latter replied that some amount should be de-posit-ed as advance payment in order to have a reserva-tion." The sum was then an advance payment and deposited as such. The word "deposit" is subordinate to the purpose of making an advance payment, which is the real nature of the transaction. It is clear that an advance payment is subject to the disposal of the vendor. If the transaction fails, the obligation to return the advance pay-ment ensues, but this obligation is of a civil and not of a criminal nature. The transaction is rather of the character of a token, pledge, or earnest money, contemplated in Article 1454 of the old Civil Code, which only gives rise to civil liability.

The facts of the present case are analogous to those of the case of U. S. vs. Villareal (27 Phil., 481, 482), which are set forth as follows:

"It appears from the testimony introduced on the trial that the firm of Successors of C. Fressel & Co. was engaged in the purchase and export of native hats of various styles and qualities. Thus engaged it procured the services of the accused in this case to purchase hats of the individual makers found engaged in that business within a certain area and to sell them to the company. It was the custom among the hat makers at that time to have advanced to them by their purchasers money sufficient to pay for materials and help. The defendant having no money to make these advances and to pay for the hats which he had engaged to purchase, certain sums were at various times advanced to him by C. Fressel & Co. In return for the advances the accused at various times sold and delivered to the company quantities of hats at an agreed price. In the course of time and just prior to the commencement of this prosecution a liquidation of the accounts resulted in disclosing the fact that the accused was in debt to Fressel & Co. for money advanced in the sum of P1,036.11."

It was held in said case that, inasmuch as the sums of money were delivered to the defendant as advance payments for the hats which the defendant was to sell to the company, the crime of estafa was not committed, for "a person receiving money from another and failing to return it does not commit the crime of estafa unless it is clearly demonstrated that he received it 'for safekeeping, or on commission, or for administration, or any other circumstances giving rise to the obligation to make delivery of or to return the same.' " [Syllabus].

In view of the foregoing, the judgment appealed from is reversed and the appellant acquitted, with costs de oficio, and the cancellation of his bond. So ordered.

Paras, C.J., Feria, Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

Padilla, Montemayor, and Bautista Angelo, JJ., no part.

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