

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JULIAN ABANA, DEFENDANT AND APPELLANT.

G.R. No. L-39. February 01, 1946

Ponente: DE JOYA, J.

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DE JOYA, J.:

Defendant and appellant Julian Abana was accused of estafa, in the Court of First Instance of the City of Manila, under the following information:

"That on or about the month of January, 1942 in the City of Manila, Philippines, the said accused, having received from A. B. Collette one Ford automobile, second hand, valued at P600, under the express obligation of keeping and taking care of the same for the said A. B. Collette while the latter was interned in Santo Tomas by the Japanese as a citizen of the United States and returning It after said owner's release or upon demand, far from complying with his said obligation and despite repeated demands made upon him to do so, wilfully, unlawfully and feloniously misappropriated, misapplied and converted the said automobile or its value to his personal use and benefit, to the damage and prejudice of the said A. B. Collette in the amount of P600, Philippine Currency. Contrary to Law."

After the trial of the case, he was found guilty, and sentenced to an indeterminate penalty ranging from four months of arresto mayor to one year and eight months of prisión correccional. to indemnify the offended party A. B. Collette, in the sum of P600 with subsidiary imprisonment in case of insolvency and to pay the costs.

From said decision, defendant has appealed to this Court, alleging that the lower court had erred in not acquitting him.

The evidence adduced by the parties, at the trial of the case in the court below, has sufficiently established the following facts:

That defendant and appellant Julian Abana had been in the service as chauffeur of the complainant A. B. Collette, an American citizen, since 1934, in the City of Manila, until the Japanese occupation in January, 1942; that to avoid the seizure by the Japanese of an automobile owned by Mr. Collette, which was a second hand Ford Sedan, valued at P600, the complainant, with the consent of the accused, simulated a sale of said automobile to the latter, as of August, 1941, and to this effect he signed the form provided for that purpose on the back of the corresponding certificate of registration issued by the Bureau of Public Works.

Being an American, Mr. Collette was interned in the University of Santo Tomas, and there he remained practically during the whole period of time covering the Japanese occupation of the City of Manila. In the meanwhile said automobile was kept in a garage near the house of the accused at Remedies street, District of Paco, as his exclusive property.

The complainant, as an American citizen, was interned by the Japanese Army from January 23, 1942, to September 15, 1942, when he was released. He was reinterned from May 17, 1943, and remained in the

concentration camp until February 3, 1945, when he was liberated. During the first internment, the complainant was supplied with funds, food, and other necessities by the accused, who took them personally or through his son to the concentration camp once or twice a week. The accused also supplied complainant's wife and her children with their necessities.

Before re-entering the internment camp on May 17, 1943, Collette authorized the accused to sell the automobile in question if he should ever need money very badly and to use the proceeds of the sale. On April 25, 1944, the accused sold the car, but did not inform the complainant about it until after the latter had been liberated on February 3, 1945.

While the complainant claimed that, after Ms liberation he was made to believe by the accused that the automobile had been burned in the garage, on the occasion of the burning of the District of Paco by the Japanese, and that it was only by accident that he discovered that the accused had sold the car; defendant and appellant, on the other hand, testified that immediately after the sale he informed complainant's wife about it; and that, upon the liberation of the American internees, he tried to get in touch with the complainant, and that as soon as he contacted him he informed said complainant of the sale of the car, and Mr. Collette replied that it was all right as he would buy a new car anyway.

The testimony of the accused appears to be more trustworthy than that of the complainant. It has been shown that complainant reiterated the authority he had given, when he told Mrs. Gollette, on April 23, 1944, to have the car sold by the accused; and when the latter sold the car two (2) days after on April 25, 1944, he must have done so with full authority. As a matter of fact, complainant never demanded from the accused the proceeds of the sale.

Both the Solicitor General and the defense agree, as shown by their respective briefs, that the facts stated above have been sufficiently established by the evidence in this case. And after a careful perusal of the evidence, the court finds that the facts so admitted in the briefs are fully substantiated thereby.

If the complainant had really executed a simulated sale of the automobile in question, to prevent said automobile from falling into the hands of the enemy, and authorized defendant-appellant to sell the same, if he should ever be in need of funds, and to use the proceeds of the sale, as a sign of gratitude for the many favors that herein complainant and his family had received from the defendant and appellant; and that defendant and appellant had sold said automobile, and used the proceeds, pursuant to said authority, defendant and appellant Julian Abana cannot be legally convicted of the crime of estafa; and hence he is entitled to a judgment of acquittal.

In order that the accused might be convicted of the crime of estafa, the two; essential requisites of fraud or deceit and damage or injury must be sufficiently established by competent evidence. (United State vs. Rivera, 23 Phil., 383; United State vs. Eustaquio, 31 Phil., 188; People vs. Yusay, 50 Phil., 598). No such deceit and no such injury have been established by the prosecution in this case.

When the trial court has overlooked important evidence, it is the duty of the appellate court to revise the findings of facts made by the court below, and to render judgment accordingly. (United State vs. Singson, 41 Phil., 53; People vs. Istoris, 53 Phil., 91.)

And if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused of the crime charged and the other consistent with their guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. (People vs. Pacana, 47 Phil., 48, 57.)

As to the motive of the complainant) in instituting this criminal action against defendant and appellant, it is not difficult to conceive that after liberation, being in need of funds for himself and his family, and forgetting the

many favors that he had received from the defendant and appellant, during complainant's interment at the Santo Tomas University concentration camp, he was tempted to make some money by the sale of said automobile, if he could recover the same by the use of threats or coercion in the form of a criminal action against the herein accused, and the temptation proved stronger than the natural feeling of gratitude that he should have entertained for the many favors that he and his family had received from defendant and appellant, when they were in dire need.

The evidence for the prosecution being utterly insufficient to establish the guilt of herein defendant and appellant, beyond reasonable doubt, of the criminal offense with which he is charged, the judgment of conviction rendered in this case is hereby reversed with the cancellation of the bond filed by him for his provisional release from custody, with costs de oficio. So ordered

Ozaeta, Perfecto, and Hilado, JJ., concur

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