

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. DAVID DICHUPA, DEFENDANT AND APPELLEE.*G.R. L-Nos. L-16943-44. October 28, 1961*

Ponente: BAUTISTA ANGELO, J.

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David Dichupa was charged in two separate informations with two offenses of estafa committed under section 315, subsection 1 (b) of the Revised Penal Code (Cases Nos. 7680 and 7681). In one he was charged with having committed the offense during the period from January, 1955 to December, 1955, in the municipality of Pavia, province of Iloilo, while he was president and warehouseman of the Pavia Farmers' Cooperative Marketing Association, whereas in the other he was charged with the same offense for having committed similar acts in the same capacity during the period from January, 1956, to July, 1956, in the same municipality and province.

After his arraignment in the two cases wherein he pleaded not guilty, Dichupa, thru counsel, filed a motion to quash the two informations on the following grounds: (1) that the acts described in said informations constitute but one offense; (2) that the acts described therein are also included in 45 informations filed against him for violation of section 54 of the Warehouse Receipt Law; and (3) that the prosecution has adopted two contradictory theories in filing the two criminal cases aforesaid and the 45 informations for violation of section 54 of the Warehouse Receipt Law.

Notwithstanding the opposition of the government, the lower court upheld the motion dismissing the two cases upon the ground that the acts alleged in the two informations constitute only one offense committed within "one continuous period" which should have been consolidated in only one information especially as they are committed against the same offended party, and on the further ground that the said acts appear to be contradictory to the alleged violations involved in the 45 informations for violation of section 54 of the Warehouse Receipt Law. The government has appealed.

One of the grounds on which the lower court dismissed the two informations charging the offense of estafa is that it "is convinced that the series of acts allegedly committed by the accused constitute only one offense committed within one continuous period, that is, from January, 1955 to July, 1956, in the same municipality of Pavia in his same capacity as President and Warehouseman of the Pavia Farmer's Cooperative and Marketing Association (Pavia Facoma) involving portions of palay deposited and encumbered with the ACCFA for commodity loans, affecting the same offended party and of the same criminal intent to defraud the same offended party. In short, the Court believes that the two informations should have been consolidated in only one information against the accused but involving the total value mentioned in both informations." And in reaching this conclusion, the court invoked the case of *U.S. vs. Paraiso*, 5 Phil., 154.

The *Paraiso* case is not in point. It is to be noted that in the *Paraiso* case one single information was filed charging the accused with the crime of falsification of public document by reciting therein various charges or modes of committing said falsification. To this defect the accused did not object. On appeal, however, one of the issues he

raised was that the information charged multiplicity of crimes which may subject him to different penalties which however was brushed aside in view of his failure to object to such defect in the lower court. In other words, what was objectionable in the Paraiso case was that a single information was filed alleging various acts constituting different crimes of falsification which cannot be done except where the law prescribes a single penalty for them, or when the accused does not opportunely move to quash the information.

The instant case involves different facts and issues. Here two different informations were filed which, according to the trial court, do not allege acts constituting two different crimes of estafa on the ground that they were committed "within one continuous period" for which reason they should have been consolidated in only one information. In the Paraiso case the issue raised was just the contrary: acts which constitute different crimes were embodied in only one single information and not spread out in separate informations as in the present case.

The question, however, that needs to be determined in the present case is: Do the acts alleged in the two informations constitute a single crime of estafa because they were committed "within one continuous period" as found by the lower court? Our answer is in the negative for the simple reason that said acts were committed on two different occasions such that it cannot be said that they were committed by the accused with only one criminal intent. Thus, the acts alleged in Criminal Case No. 7681 refer to those committed during the period from January, 1955 to December, 1955, whereas the acts alleged in Criminal Case No. 7680 refer to those committed during the period from January, 1956 to July 7, 1956, and considering that they involved the disposal of cavans of palay deposited in the warehouse of the Pavia facoma, it cannot be pretended that when the accused disposed of such palay in January, 1955 he already had the criminal intent of disposing what was to be deposited in January, 1956 to July, 1956. The two periods are so far apart that they reject the theory of "within one continuous period" invoked by the lower court.

Our authority for this assertion is the case of *People vs. Cid*, 66 Phil., 354. Here the accused was charged under four informations alleging several acts of falsification and malversation. The malversation alleged in the first information took place in May, 1936 and to conceal the same the accused falsified his payroll and cash book on October 3, 1936. The malversation alleged in the second information took place in July, 1936 and to conceal it he falsified his payroll and voucher No. 365 in October, 1936. The malversation alleged in the third information took place in June, 1936 and to conceal it he falsified voucher No. 364. And the malversation in the fourth information took place in August, 1936 and to conceal it he falsified certain official documents and vouchers. He objected to the filing of several informations alleging that "as the four charges imputed against him are so closely related to one another the acts constituting the same should be considered as continuous one, or that the crime committed by him was a continuous one, and therefore said charges should be ordered consolidated into only one charge." In overruling this contention, this Court made the following pronouncement:

"By reading the four informations inserted above, it clearly appears that the alleged acts of falsification and malversation imputed to the accused-appellant were committed by him, being municipal treasurer and bonded official of the municipality of Batac of the Province of Ilocos Norte, on entirely distinct occasions. * * * It may therefore be said that the malversations as well as the falsifications imputed to the accused in the four cases under consideration were not the result of only one purpose or of only one resolution to embezzle and falsify, but of four or as many abstractions or misappropriations had of the funds entrusted to his care, and of as many falsifications also committed to conceal each of said acts. There is nothing of record to justify the inference that the intention of the appellant when he committed the malversation in May, 1936, was the same intention which impelled him to commit the other malversations in June, July and August. On the contrary, the allegations of each of the four informations above-stated warrant the conclusion that when the appellant committed the first malversation he did not yet have the intention to commit the other malversations. He did not commit them successively but at intervals of one month, after he had found out that there was no remedy for the bad act committed by him, having expected perhaps that he could remedy it. As may be seen, he was

mistaken in his calculations. For these reasons, the accused-appellant is guilty of four malversations and of four falsifications because the latter were not a necessary means for the commission of the former, but were committed only to conceal them."

The lower court, therefore, erred in ordering the dismissal of the two informations on the ground that the acts therein alleged only constitute one single crime of estafa upon the theory that they were committed "within one continuous period." Even then, the lower court should not have ordered the dismissal of the two informations but merely the consolidation of the acts charged in one single information.

With regard to the other finding of the lower court that the two informations for estafa allege statements that are contradictory to those appearing in the 45 informations for violation of section 54 of the Warehouse Receipt Law, suffice it to state that such finding is premature for the reason that the particular articles or merchandise which are covered by the informations concerned are not specified. This is rather an evidentiary matter which may be threshed out when the trial on the merits is held.

Wherefore, the order appealed from is set aside. The cases are remanded to the lower court for further proceedings. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Paredes, and De Leon, JJ., concur.

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