

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
ROSENDO RESUELLO, ET AL., DEFENDANTS, ROSENDO RESUELLO,
DEFENDANT-APPELLEE.**

G.R. No. L-30165. February 23, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by certiorari, taken by the Government, from an order of the Court of First Instance of Pampanga, dated October 10, 1968, dismissing Criminal Case No. 5232 of said court entitled "The People of the Philippines vs. Rosendo Resuello, et al.," with costs de officio, and directing the cancellation of the bond filed by defendant Rosendo Resuello for his temporary release.

Together with John Doe, Peter Doe, Edward Doe, Anthony Doe, Bennie Doe and Charles Doe, respondent Rosendo Resuello is charged, in said case, with estafa. The information therein filed, under date of March 9, 1965, reads as follows:

"That in or about the month of October, 1962, in the municipality of Guagua, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above named accused ROSENDO RESUELLO, being the president and general manager of the Security Credit and Acceptance Corporation, JOHN DOE, PETER DOE, EDWARD DOE, ANTHONY DOE, BENNIE DOE AND CHARLES DOE, all being officers of the said Security Credit and Acceptance Corporation, representing themselves to be the president and general manager and other officers and employees of the said corporation, received for deposit from FLORENTINA G. LIMPIN the amount of EIGHT HUNDRED (P800.00) PESOS, with the obligation on the part of the accused to return and deliver the amount so deposited upon demand the said accused far from complying with the said obligation, conspiring together and mutually helping and aiding one another, with intent of gain and to defraud and with grave abuse of confidence and by means of deceit, once in possession of the said money, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to their own personal use and benefit the said amount of EIGHT HUNDRED (P800.00) PESOS, and in spite of repeated and insistent demands made on the said accused to return and deliver the money, said accused failed and refused and still fail and refuse to return or deliver the said amount of P800.00, to the damage and prejudice of the said FLORENTINA G. LIMPIN in the aforesaid amount, Philippine currency."

Respondent Resuello having moved to quash the information - upon the ground that "the facts charged do not constitute an offense" in view of the provisions of Article 1980 the Civil Code - the Court of First Instance of Pampanga issued its aforementioned order granting said motion to quash and dismissing the case as above stated. The pertinent part of said order reads:

"In a loan after the delivery of the thing, the debtor has the title of the thing of which he is entitled to appropriate. On the theory that the accused resorted to fraud (Art. 315, par. 2, subpar. (a)) to obtain such deposit of Florentina G. Limpin, the nature and legal effect of the transaction that it is still a deposit under Art. 1980, New Civil Code, is not altered. The element of fraud being present gives rise to a civil action, but not a criminal case of estafa.

"In either case, a civil action is proper under the circumstances and not a criminal case of estafa. Even granting that the Security Credit and Acceptance Corporation violated some regulations of the General Banking Act, Republic Act 337, and the Central Bank Act, Republic Act No. 265, such violation does not warrant the prosecution of the crime of estafa. Any violation under said Acts, the accused may be made liable therefor, but surely not under the provisions of the Revised Penal Code, for estafa.

"WHEREFORE, the Court hereby dismisses this case with costs de oficio and orders the cancellation of the bond filed by the accused for his temporary release."

In its present appeal, the prosecution maintains that the lower court erred in considering the transaction in question as a simple loan; in concluding that the relationship between the accused and the complaining witness is one of creditor and debtor; in holding that the defendant's liability is purely civil in nature; and in dismissing the case.

Upon the review of the record, We are fully satisfied that the order appealed from should be reversed. Indeed, the information alleges that, representing himself as president and general manager of the Security Credit and Acceptance Corporation, Resuello (and his codefendants, who represented themselves as "officers and employees of the said corporation") "received, for deposit from FLO-RENTINA G. LIMPIN, the amount of EIGHT HUNDRED (P800.00) PESOS with the obligation, on the part of the accused to return and deliver the amount so deposited upon demand x x x." Upon the other hand, the lower court held, in its appealed order, that the transaction referred to in the information constitutes a "simple loan," for, pursuant to Article 1980, "(f)ixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loans." Thus, the lower court departed from the allegations in the information, the truth of which are hypothetically admitted in the motion to quash, which is based upon the theory that the facts alleged "do not constitute an offense."^[1]

Moreover, Article 1980 refers to the legal relation between "banks and similar institutions," on the one hand, and the persons making therein "(f)ixed, savings, and current deposits of money," whereas the information in this case describes a legal relation between Florentina G. Limpin, on the one hand, and Resuello and his codefendants, not the Security Credit and Acceptance Corporation, on the other. This relation between Limpin and Resuello is stressed by the fact that the information further avers that the former's money was received by the latter and his codefendants "with the obligation, on the part of the accused" - not the corporation - "to return and deliver the money so deposited upon demand x x x." As if to allay any possible question regarding the nature of the transaction alluded to in the information, the same, likewise, alleges that "the said accused" - once again, not the corporation - "far from complying with the said obligation, conspiring together and mutually helping and aiding one another, with intent of gain and to defraud and with grave abuse of confidence and by means of deceit, once in possession of the said money, did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert to their own personal use and benefit the said amount of EIGHT HUNDRED (800.00) PESOS x x x."

Thus, the information does not allege that the money had been deposited with the corporation. Indeed, otherwise, the obligation to return the money upon demand would have vested, not in Resuello and his codefendants, but in the corporation, contrary to the allegations of the information.

In short, it being averred that the accused had received the money "for deposit," with the obligation on their part to return it upon demand, and that, once in possession thereof, they misapplied, misappropriated and converted said money "to their own personal use and benefit," it follows that the information alleges the crime of swindling (estafa), as provided for in the third paragraph, in relation to subdivision 1(b) of Article 315 of the Revised Penal Code and that the lower court has erred in granting the aforesaid motion to quash.

The reference made in the order appealed from to possible violations of Republic Acts 265 and 337 requires an explanation. On January 23, 1967, this Court rendered its decision in L-20583, entitled "Republic of the Philippines vs. Security Credit and Acceptance Corporation, Rosendo T. Resuello, et al." ordering the dissolution of the aforementioned corporation upon the ground that it had engaged in banking, not only without the authority necessary therefor, but, also, despite the fact that, on October 11, 1961, the Legal Counsel of the Central Bank had rendered an opinion to the effect that the Corporation is a banking institution; that the Securities and Exchange Commission had, on December 5, 1961, furnished a copy of said opinion to the corporation and required the same to comply with the provisions of the General Banking Act, Republic Act No. 337; and that as early as September 10, 1962, the corporation had been found to be performing banking functions, without the requisite certificate of authority from the Monetary Board of the Central Bank.

The appealed order postulates that for transactions of the corporation violative of Republic Acts Nos. 265 and 337, the accused may be held liable, not for estafa, but under the provisions of said laws. The same merely govern, however, those who engage in lending of funds obtained from the public through the receipt of deposits or sale of bonds, securities or obligations of any kind. In other words, the receipt of such deposits or the business of lending the funds thus obtained, without complying with the provisions of Republic Acts Nos. 265 and 337 are punishable under their provisions. Private individuals, whether officers or employees of a bank or not, who misappropriate, for their own use and benefit, funds entrusted to their custody, with the obligation to return the same, are subject to the provisions of the Revised Penal Code.

What is more, if knowing, as he did, that the corporation had no authority to receive current account deposits, defendant Resuello received the amount stated in the information, for the purpose of opening with the corporation a current account deposit, his personal obligation to keep said amount in trust for the depositor is greater than if the corporation had been duly licensed to engage in banking. Hence, misappropriation of said amount by him, for his own use and personal benefit, in breach of the afore-mentioned obligation and of the trust reposed upon him, is even more reprehensible and deserving of penal sanction under the Revised Penal Code.

WHEREFORE, the order appealed from is hereby set aside, and the case remanded to the lower court for further proceedings, not inconsistent with this decision. Costs against defendant-appellee, Rosendo Resuello.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Makasiar, J., did not take part.

[1] People v. Supnad, L-18747, March 30, 1963.

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