

CHUNG TE & COMPANY, DOING BUSINESS UNDER THE STYLE LA SUERTE CIGAR & CIGARETTE FACTORY, PLAINTIFF AND APPELLEE, VS. LUZON SURETY COMPANY, INC., DEFENDANT AND APPELLANT.*G. R. No. 10790. October 31, 1957*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10790/>**PADILLA, J.:**

Jose Trillanes was employed as salesman for the provinces of Albay and Sorsogon by Chung Te & Company, a registered partnership doing business under the style "La Suerte Cigar & Cigarette Factory." To indemnify the employer against loss resulting from "personal dishonesty, amounting to larceny or estafa, of the employee in the performance of his duties in the position to which he has been appointed," he furnished a surety bond in the sum of P2,000 executed by the Luzon Surety Company, Inc. for a term beginning 26 February 1951 to 26 February 1952 (Exhibit A or 1). On 20 February 1952, before the expiration of the original term, the bond was renewed by the employee with the consent of the surety company and the employer for another term beginning 26 February 1952 to 26 February 1953 (Exhibit A-1). On 1 March 1952 Trillanes received from his employer the sum of P2,000 as contingent fund (Exhibit B). On 19 March 1952 Trillanes was required to account for the fund entrusted to him by Jose C. Locsin, an agent of the employer. He accounted for P324 only and admitted that he misappropriated and spent the balance for his personal use and benefit. His salary for the month of March 1952 in the sum of P220 was credited to his account, thereby reducing the sum unaccounted for to P1,456. On the last mentioned date Trillanes signed a statement before Jose C. Locsin acknowledging "a shortage in cash of Philippine currency" in the sum of P1,456 belonging to his employer (Exhibit D). On 24 March 1952 Trillanes paid to the employer's agent the sum of P105 (Exhibit E), thereby further reducing the sum unaccounted for to P1,351. On 12 June 1952, his employer made formal demand upon Trillanes to pay within 15 days from receipt thereof the unaccounted balance of P1,351 (Exhibit G) and also upon the surety company to pay it (Exhibit F). Neither Trillanes nor the surety company paid the employer. On 9 July 1952 the employer brought an action against the surety company in the Municipal Court of Manila (civil No. 21444) to collect the sum of P1,351, legal interest thereon from 19 March 1952, P600 for attorney's fees and expenses of litigation. The plaintiff further prayed for such other relief as the court might deem just and equitable. After trial, the Municipal Court rendered judgment for the plaintiff. The defendant appealed to the Court of First Instance of Manila (civil No. 18848). After trial, the latter Court rendered judgment ordering the—

* * * defendant Luzon Surety Company, Inc. to pay plaintiff the sum of P1,351, plus legal interest from the date of the filing of this complaint with the Municipal Court of Manila, until the sum is fully paid. Defendant shall also pay the costs.

The defendant appealed. The Court of Appeals certified the appeal to this Court on the ground that it involves a question of law "or the proper construction of the bond (Exhibit A) posted by the Luzon Surety Company, Inc. or as to whether the undisputed facts * * * constitute positive proof of the guilt of Jose Trillanes of the crime of

estafa defined and punished by our penal code." (CA-G. R. No. 13996-K.)

The appellant's undertaking is that;—

* * * for and in consideration of a premium, computed at an agreed rate, the COMPANY hereby covenants and agrees to and with the EMPLOYER, that it will, subject to the conditions and provisions herein contained, which shall be conditions precedent to the right of the EMPLOYER to recover under this bond, at the expiration of six months next after due and satisfactory proof of the loss herein mentioned shall have been furnished the COMPANY, make good and reimburse to the EMPLOYER any and all pecuniary loss of money, securities or other personal property, belonging to the EMPLOYER, or in its possession and for which it is legally liable, sustained by the EMPLOYER by or through the personal dishonesty, amounting to larceny or estafa, of the EMPLOYER, and for which the Employee shall be legally liable to the Employer, occurring at any time during the term beginning the 26th day of February, 1951, at 12 o'clock noon and prior to the 26th day of February, 1952 at 12 o'clock noon, * * *. (Exhibit A.)

The appellant contends that under the 20th clause of the bond which provides that—

It is specifically, conditioned by the LUZON SURETY COMPANY, INCORPORATED, as a condition precedent to it being liable for any claim under this bond, that the EMPLOYER shall assume the burden of proving by proof positive (and not by mere circumstantial evidence), that the EMPLOYEE has been guilty of the actual crime of larceny or estafa of the sums of money claimed, as the crime is defined by the laws of the Philippine Islands in which the offense was committed, * * *,

it is necessary that the employee be convicted of the crime of estafa by a competent court before it could be held liable on the bond. The terms of the bond do not warrant such an interpretation. The trial court found "that the evidence introduced by the plaintiff in this case shows positively and conclusively that Jose Trillanes was guilty of the crime of estafa in misappropriating the shortage in his account." In dismissing a petition for a writ of certiorari to review a judgment of the Court of Appeals in Luzon Surety Co., Inc. vs. Chung Te & Co., G. R. No. L-10640, Minute Resolution of 12 June 1956, involving the interpretation of a printed bond the terms and conditions of which are similar to the one involved in the case at bar (Exhibit A), this Court said: "* * * The bond did not require actual conviction in a criminal case for larceny or estafa." It is enough to show by positive proof that the employee had actually misappropriated the money entrusted to him by the employer or received by him in trust for the employer to render the surety company liable on its undertaking.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, J.J., concur.

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