

DEMETRIA MERCADO, PETITIONER AND APPELLANT, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT AND APPELLEE.

G.R. No. 11553. February 28, 1961

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BENGZON, ACTING C.J:

Review of the decision of the Court of Appeals convicting Demetria Mercado of the crime of estafa. According to such decision.

"Sometime in 1950, the complainant Miguela San Angel, who was then receiving a pension from the Philippine Veterans Board as beneficiary of her deceased husband, a member of the "guerilla" during the Japanese occupation, was accosted by appellant Demetria Mercado in the public market of Dinalupihan, Bataan, where the latter was selling meat and pork. On said occasion, appellant made mention of the complainant's being a pensioner, told her that they were relatives, and as a sign of good will gave her a kilo of pork. After that first meeting, appellant tried to be friendly to Miguela. At one time, she lent the latter P200.00 without a receipt, and at another, one cavan of rice. Appellant also accompanied the complainant when she cashed her pension checks at the post office."

"On May 22, 1952, Miguela San Angel, as beneficiary of her deceased husband, also received from the United States Veterans Administration a check in the amount of P10,000.00. She deposited P2,000.00 thereof with the Philippine Postal Savings Bank (Exh. "B") and also paid her debts to appellant."

"In that same month of May, 1952, after Miguela received the aforementioned sum of P10,000.00 a certain Martina Nebre de Candelaria, or simply Martina Nebre, who owed money to appellant and others told the appellant that she was selling her house, together with the lot, on Mabini Street, Dinalupihan, Bataan, for P3,000.00 in order to pay her indebtedness to the latter. Appellant volunteered to find a buyer therefor, saying that her relative Miguela San Angel, would buy the property. Appellant then urged the complainant to buy the property of Martina. The complainant said she did not have enough money for that purpose but appellant offered to furnish her P1,000.00 of the selling price provided she was paid back in installments by the complainant out of her monthly pensions, plus an additional amount of P200.00, as interest. After the complainant with her children had inspected the property for sale, she agreed to buy the same under the terms aforesaid."

"In the morning of June 12, 1952, the complainant-accompanied by her daughter Belen and by appellant and her husband, Victor Andres—made a trip to Manila, and withdrew the sum of P1,999.00 from her deposit in the Philippine Postal Savings Bank, leaving only a balance of P1.00. On her way out of the room where she got the aforesaid sum, the complainant was prevailed upon by the appellant to give the same to her supposedly to prevent its being stolen by pickpockets. From the post office building, the complainant and her three companions, went to eat in a restaurant and then return that same day to Dinalupihan, Bataan, arriving there at dusk. After telling appellant that she would come back the following day in order that they could go to a notary public to pay for the aforesaid house and lot, the complainant went home to the barrio, leaving her money with the appellant."

The next day, June 13, 1952, the complainant returned to the house of appellant and they, together with Martina

Nebre, and two other women named Feliza Diaz and Elisa Bañez, and appellant's husband, went to Notary Public Daniel Sobrevinas. The latter promptly prepared the deed of sale, after briefly questioning Martina on whether she was really selling her property and as regards the price thereof. A copy of the finished draft of the deed of sale was handed by said notary to each of those present, except the complainant who did not know how to read. Upon perusing the document, both the vendor, Martina Nebre, and Felisa Diaz, one of the witnesses thereto, noted that the name of appellant, instead of that of Miguela San Angel, appeared thereon as vendee. Martina and Felisa made remarks to that effect to the complainant, who, in turn, told appellant that her (complainant's) children might not agree to such an arrangement. However, appellant assured the complainant that there was nothing wrong with her (appellant's) appearing as the buyer in the document because she was not going to fool or cheat her (complainant) and moreover, she assured the complainant that the title of the property would be transferred to her after she had completed paying the sum of P1,000.00, which the complainant agreed to pay to the vendor. With such explanations, the complainant said nothing more. The deed of sale, Exhibit "3", was presently signed by Martina Nebre, as vendor, and Felisa Diaz and Elisa Bañez, as witnesses."

"While it appears from the deed of sale, Exhibit "3", that the vendor, Martina Nebre, received in full on June 13, 1932, the purchase price of P3,000.00, stated therein, actually only the amount of P1,544.00 was paid to her on said date. This sum was the remainder of the P2,000.00 which was the agreed initial or down payment on the property, after paying her indebtedness to appellant in the amount of P456.00. With respect to the balance of P1,000.00 of the agreed purchase price, pursuant to the understanding between the appellant and the complainant that the former would furnish or advance said amount and the latter would pay it in monthly installments, plus P200.00 as interests, as aforementioned, appellant entered into an agreement with Martina Nebre to pay her said balance on or before the end of December, 1952."

The decision further found that after obtaining the document of sale in her name, Demetria Mercado sold the house and lot for P3,000.00 to Federico Simsuangco on May 19, 1953, accepting a down payment of P1,000.00, the balance to be paid later.

On the basis of the above-stated facts, the defendant was sentenced to imprisonment of not less than 2 months and one day of arresto mayor nor more than one year and eight months of prision correccional, to indemnify the offended party in the sum of P3,200.00 and to pay her moral damages in the sum of P1,000.00.

It will be observed that there were two pivotal points against appellant in the matter of the alleged swindling: (a) she caused the notary to write the document of sale in her own name, instead of that of Miguela Angel; and (b) she subsequently sold the property to Simsuangco and retained the price. Now, bearing in mind that she had advanced a portion of the purchase money delivered to Martina Nebre, the contention could be made that, because she had some interest in the property, she committed no crime in disposing of it, but only a civil wrong, if any. This is one reason why we gave due course to the petition for review. We find, however, upon examination of the record that Miguela San Angel repaid to this defendant with interest, the amount so advanced, and that was prior to the Simsuangco sale.

The other reason for the review was that the subsequent conveyance to Simsuangco had not been mentioned in the information. Petitioner's counsel enlarged on this matter, insisting on the right of the accused to be informed of the charges. It appears, however, that such sale was proven by the testimony of the appellant herself. Accordingly, there may be no objection to taking it as further proof of the conversion and misappropriation averred in the information.

The petitioner must, therefore, be held guilty of estafa as charged. And as no question was discussed in the briefs as to the propriety of the penalty, the judgment of the appellate court is hereby affirmed, with costs.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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