

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. VENANCIO SULLANO, DEFENDANT AND APPELLANT.

G.R. No. 18209. June 30, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This is an appeal direct to Us from the Court of First Instance of Iloilo's decision finding the accused guilty of estafa and condemning him to suffer an indeterminate sentence of not less than two (2) months and one (1) day of arresto mayor and not more than one (1) year and one (1) day of prision correccional, to indemnify the offended party (ACCFA) in the amount of P5,070.98, with subsidiary imprisonment in case of non-payment, and to pay the costs.

On February 29, 1956, the Santa Barbara Farmers' Cooperative Marketing Association was formally organized. Among the officers elected therein was Venancio Sullano, herein appellant, as Secretary-Treasurer. The Articles of Incorporation and the By-Laws of the Santa Barbara FACOMA were registered on May 11, 1956 in the Securities and Exchange Commission. Also on that date said FACOMA affiliated with Agricultural Credit and Cooperative Financing Administration (ACCFA).

About ten months after or specifically on March 20, 1957, Restituto Danque, an ACCFA auditing examiner, was directed, by Special Order No. 462 of the ACCFA Assistant Administrator, to proceed to the Santa Barbara FACOMA and audit its books of accounts. The result of said audit, as set forth in Restituto Danque's audit report (Exhs. B, B-1, B-2 and B-3), was a finding that Secretary-Treasurer Sullano had a shortage, in his cash account, of P5,005.47 as of April 25, 1957. Subsequently, the Santa Barbara FACOMA's board of directors was informed of said discrepancy, at a meeting called for that purpose. Sullano admitted he might be short, but not in the big amount of P5,005.47 (Tsn., Perez, p. 12). As a result, Secretary-Treasurer Sullano was suspended effective May 31, 1957.

Sullano, in his letter dated June 13, 1957, requested a general re-audit "to clarify the real situation" (Exh. D-1). On the other hand, a letter dated June 18, 1957 from ACCFA's General Counsel, on behalf of its Administrator, addressed to Sullano, stated:

"The audit report on your FaCoMa as of March 31, 1957 shows that you had a cash shortage of P5,005.47 as of said date. The report also discloses that you promised to make good said shortage. If you have not done so, please do so within seven (7) days from receipt hereof, failing which, we will be compelled to bring the matter to the court.

"Also explain within three (3) days from receipt hereof why you should not be suspended and removed from office in view of your shortage discovered." (Exh. Q)

Sullano further wrote the ACCFA District Director at Eoilo City on June 30, 1957, thus: (Exh. R) :

"Upon inquiring from the Central Office regarding my case, I was informed that it was already forwarded to

the Provincial Office. By this information, I believed it was already in your table awaiting for action.

"In this connection, I humbly request for an extension of a considerable time, to raise the necessary amount to cover the real shortage after request for further verification is conducted.

"Personally, I would like to employ all possible means to settle this case extra-judicially.

"I hope for your kind consideration."

On July 15, 1957, the ACCFA Administrator, by telegram (Exh. C), ordered its Auditing Team Leader in Iloilo to send Restituto Danque to re-audit the books of accounts of the Santa Barbara FACOMA. In a letter of the same date (Exh. D), the Assistant Administrator sent to the aforesaid Auditing Team Leader, Sullano's letter of June 13, 1957 requesting a re-audit, with instructions that it be used as guide in said re-audit. It was further stated by him that documents not previously presented should be taken into consideration if proved to be valid.

Restituto Danque, therefore, made a re-audit of the Santa Barbara FACOMA's books of accounts. Specifically, he made a re-audit of the FACOMA's books of accounts from February, 1956 (date of organization) to December 31, 1956 and a cash audit from April 1, 1957 to May 31, 1957. The result was a finding of cash shortage in Sullano's cash accountability in the amount of P5,070.98. (See Audit Report dated October 9, 1957 [Exh. E] and statement of cash accountability [Exh. E-1])

For the ACCFA Acting Provincial Director, the ACCFA District Legal Officer wrote Sullano on November 21, 1957. Said the letter:

"As a result of the re-audit of the Sta. Barbara FaCoMa for the period ending May 31, 1957, the date when your suspension as Secretary-Treasurer of the Sta. Barbara FaCoMa became effective, you had been found short of Five Thousand Seventy Pesos and 98/100 (P5,070.98) incurred during your incumbency as such Secretary-Treasurer of the Sta. Barbara FaCoMa, for which, demand is hereby made that you account for and make good said shortage within ten (10) days from date hereof, otherwise,, much to our regret,, drastic court action will be brought against you." (Exh. S)

After Sullano failed to pay the afore-stated sum, a criminal complaint for estafa was filed against him in the Justice of the Peace Court of Santa Barbara, Iloilo. Subsequently, on June 9, 1959, an information for estafa was filed against Sullano in the Court of First Instance Iloilo.

Sullano pleaded not guilty. At the trial, the prosecution adduced testimonial and documentary evidence in support of the charge. For his defense, the accused presented no witness, but his counsel submitted as documentary evidence the annotations signed by Alfredo Sonalan appearing at the back of three official receipts [1] issued by the municipal treasurer of Santa Barbara, Iloilo. Apparently it was sought to be proved thereby that Alfredo SonaJan, manager of the Santa Barbara FACOMA, was the one who withdrew and received the sums of P1,225 (Exh. 1), P400 (Exh. 2) and P375 (Exh. 3), covered by said receipts, which consisted of funds of the FACOMA deposited with the municipal treasurer of Santa Barbara, Iloilo. We surmise that the defense intended thereby to show that Sonalan, not Sullano, is responsible for the cash shortage to the extent of said amounts.

As adverted to above, the trial court rendered, on February 17, 1961, a judgment of conviction: And the accused perfected an appeal therefrom to this Court.

Appellant states in his brief that he thereunder discusses questions of facts as well as of law and, hence, asks for certification of his appeal to the Court of Appeals. Although the Solicitor General states in appellee's brief that he is agreeable to said certification, we are of the view that the request ought not be granted. For one thing, in his notice of appeal filed in the court below, appellant expressly specified that he was appealing the case to the Supreme Court. And it is the rule that an appellant who takes his appeal to the Supreme Court is deemed to have

waived his right to dispute any finding of fact made by the trial court.[2]

And, for another, the principal arguments raised by appellant in his brief are actually in the nature of questions of law, which we now proceed to discuss.

It is first contended by appellant that the court a quo erred in holding that the funds involved in the cash shortage are ACCFA funds. There is no dispute that the Santa Barbara FACOMA affiliated with the ACCFA on May 11, 1956. There is also no dispute that prior to said date, or on February 24 and 27, 1956, funds of the proposed FACOMA—i.e., the P1,225, the P400 and the P375 appearing under Exhibits 1, 2 and 3, respectively were deposited with the municipal treasurer of Santa Barbara, Iloilo. And that said deposited funds were included by Restituto Danque in his audit and re-audit. Said funds were in fact included in his computation of Sullano's cash shortage. Appellant would argue, from these undisputed facts, that said funds having been received before the Santa Barbara FACOMA affiliated with ACCFA, the same cannot be considered as ACCFA funds.

Appellant forgets that prior to May 11, 1956 the Santa Barbara FACOMA had yet no legal personality and existence. For equally unquestioned is the fact that it was only on said date, also, that its Articles of Incorporation was registered with the Securities and Exchange Commission (Exh. F). And to form a cooperative marketing association—such as the Santa Barbara FACOMA herein—adoption and registration of Articles of Incorporation, in the manner provided by the Corporation Law, is required. (Sec. 3, Public Act 8425). For this reason prior to May 11, 1956, funds of the proposed FACOMA were deposited "for safe-keeping" (See Exhs. 1, 2 and 3) with the municipal treasurer. From the foregoing it is clear that, since the Santa Barbara FACOMA affiliated with the ACCFA on the same day that it acquired legal existence, there was no error in considering, for purposes of this estafa case, the afore-stated so-called FACOMA funds as ACCFA funds.

Neither is there necessity, as appellant would further urge, to pinpoint the items misappropriated or the specific time the same were misappropriated. It suffices that the accused was shown, beyond reasonable doubt, to be short in his cash accountability, as of May 31, 1957, in the total amount of P5,070.98. Since, upon demand for the same, he could neither account for it nor cover the shortage, there is evidence that he misappropriated said amount. Failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation (*Tubb vs. People*, L-9811, April 22, 1957; 53 Off. Gaz. 6096).

The second assignment of error in appellant's brief is on the finding that he admitted having misappropriated funds in his custody. It is averred that the statements of the appellant thereon were conditional, that is, that he "might" be short, and, "if so," he was willing to make up for the same. As rightly observed by the Solicitor General, however, this point is inconsequential. For even totally apart from any finding of admission on appellant's part that he misappropriated the funds in his custody, the prosecution's evidence, as discussed above, has established such misappropriation.

In his third and last assignment of error, appellant would again refer to the deposits of P1,225 (Exh. 1), P400 (Exh. 2) and of P375 (Exh. 3) made on February 24 and 27, 1956 with the municipal treasurer.

The receipt and withdrawal of said deposits by the accused himself are clearly admitted. For in the official municipal voucher (Exh. W), said accused signed a certification to the effect that he received said amounts from the municipal treasurer of Santa Barbara, Iloilo, on May 29, 1956. It is true that there were certifications signed by Alfredo Sonalan, at the reverse side of the official receipts for said deposits, stating that Sonalan received them from said municipal treasurer. It must be remembered, however, that Sonalan was the one who made these deposits, prior to the establishment of the Santa Barbara FACOMA. For which reason it is not surprising that, regardless of who actually withdrew said amount, Sonalan was likewise made to acknowledge said withdrawal. At the time said deposits were withdrawn, on May 29, 1956, the Santa Barbara FACOMA was already legally

existing.

Sullano, being then its Secretary-Treasurer, is without doubt the one who actually received, for keeping in his custody, the said funds. Standing un rebutted to this effect is the testimony of Simplicio Aranda, a clerk in the Provincial Auditor's Office of Iloilo, stating that said deposits were in fact withdrawn by Sullano and not by Sonalan (Tsn., Gavan, pp. 83, 85).

Wherefore, the judgment appealed from is hereby affirmed *in toto*, with costs against the appellant. So ordered.

Concepcion, C. J., Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Zaldivar and Sanchez, JJ., concur.

Judgment affirmed.

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