

EUGENIO S. DE GRACIA, PETITIONER, VS. COURT OF APPEALS, RESPONDENT.

G.R. No. 19298. April 30, 1964

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Eugenio S. de Gracia was charged with estafa before the Court of First Instance of Manila where he was found guilty thereof and sentenced to suffer an indeterminate penalty of 2 months and 1 day of arresto mayor, as minimum, and 1 year and 1 day of prision correccional, as maximum, to indemnify the complainant in the amount of P400.00, with subsidiary imprisonment in case of insolvency, at the rate of P2.50 a day, provided that said subsidiary imprisonment does not exceed one-third of the principal penalty herein imposed, and to pay the costs.

On appeal, the Court of Appeals modified the above judgment by eliminating the subsidiary imprisonment imposed upon the accused. The case is now before us on a petition for review.

Sometime in July, 1950, one Celedonio A. Benipayo, owner of Lucky Press and Engraving located at 1220 Santander, Sampaloc, Manila, and appellant entered into a transaction whereby the former was to print and engrave the composite picture of several of the members of the House of Representatives and the latter to pay him the price in the amount of P540.00. An advance payment of P140.00 was given, leaving a balance of P400.00. When the pictures and the cuts were ready for delivery, appellant could not pay the balance agreed upon, and so he induced Benipayo to accept an assignment in his favor of certain accounts due from the congressmen concerned, to wit: Congressmen Felisberto Verano for P120.00, Jesus Ilagan for P120.00, Dennis Molintas for P100.00, and Ismael Veloso for P60.00, or a total of P400.00. In addition appellant gave Benipayo letters of Congressmen Verano, Ilagan and Molintas authorizing the accounting officer of the House of Representatives to charge their accounts against their allowances. In the assignment of the accounts made in favor of Benipayo, appellant wrote the words "Please issue treasury warrant payable to Lucky Press and Photo-Engraving as our assignee, E.S. de Gracia."

Relying on this assignment, Benipayo delivered the composite pictures and cuts to appellant. When Benipayo went to the office of the accounting officer of the House of Representatives to collect, he came to know from the records that the money covered by the accounts had already been collected by appellant, whereupon Benipayo filed a charge for estafa against him while he instituted an action to recover the balance due before the Municipal Court of Manila. The civil case was appealed to the court of first instance and later to the Court of Appeals where the latter affirmed the judgment of the former sentencing appellant to pay the sum of P400.00 to Benipayo, plus P100.00 as attorney's fees, as well as to pay treble costs.

In concluding that appellant is guilty of the crime charged, the Court of Appeals made the following finding: "This Court in said case CA-G. R. No. 11716-R, had already passed upon this issue of fact by holding that the evidence of record indubitably reveals that appellant himself had collected the credits he assigned to plaintiff (complainant herein) in payment of the balance of P400.00 which he owed the latter for the preparation of certain

cliches and that he did not turn over his collection to his creditor. Besides, an examination of the evidence on record does not reveal any outstanding credit owing to the appellant from the different congressmen concerned other than those which the cashier or accounting officer had paid to the former on account of the pictures purchased by them from him."

Appellant now disputes this finding not only on the basis that the decision in the civil case is not deemed admissible against an accused in a subsequent criminal action even if they involve the same party but because the evidence on record does not support the finding that appellant does not have any outstanding credit in his favor from the congressmen concerned other than those which the accounting officer had paid to the former on account of the pictures purchased by him from him.

While as a rule the decision in a civil case is not admissible as evidence against an accused in a criminal case subsequently filed against him even if both involve the same party because of the theory that a decision in a civil case is merely based on preponderance of evidence while in a criminal one on a finding beyond per-adventure of doubt, the citation of that decision herein is merely confined to the status of the assigned credits in question and not to the case as a whole, a material fact which was found to be true not only by the court of first instance but even by the Court of Appeals as to which appellant has no reason to complain because of the opportunity for examination and confrontation he had had in the civil case. At any rate, there is enough evidence on record to show that appellant really withdrew the same credits he assigned to the complainant himself, of Juliana Imutan, clerk of the accounting office of the House of Representatives, and of Toribio M. San Juan, chief of the property division of the same House, plus the letters of inquiry extant in the record. Under a well-settled rule, this finding of the Court of Appeals cannot now be disturbed there being more preponderance in support thereof.

Regarding the contention that appellant did not have any criminal intent to defraud the complainant when he assigned the credits in question to him, suffice it to say that the Court of Appeals found otherwise, as may be inferred from the following statement: "The scheme or cunning with which the appellant was able to obtain the release in his favor the release of the composite picture and the cuts was clearly fraudulent. The pretended assignment of credits which appellant had, by his subsequent act, not intended to materialize, was used and availed of by him as part of the deceit which was the affected cause that induced the complainant to part with his property." Criminal intent being a function of the mind, we find the surmise reasonable for no other conclusion can be drawn from the overt act of appellant in successfully withdrawing the very credits he assigned before the complainant could have time to collect them. And it is not correct to say that complainant was negligent in collecting said credits because he immediately tried to do so, only that he failed because there were no funds available when the attempt was made. And when he returned he found to his surprise that the credits had already been collected by appellant contrary to his commitment.

WHEREFORE, the decision of the Court of Appeals is hereby affirmed, with costs against appellant.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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