

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CLARO P. AQUINO, DEFENDANT AND APPELLANT.*G.R. No. 28987. September 07, 1928*

Ponente: VILLAMOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-28987/>**VILLAMOR, J.:**

The information filed herein alleges that the defendant, being a subagent of C. S. Salmon, general agent of the Insular Assurance Co., Ltd., collected and received from Graciano G. Magno, the sum of P125 as the first payment on the yearly premium on an insurance policy issued by said company, and said accused being bound as said subagent to deliver to the general agent, C. S. Salmon, the whole amount collected by him, that is, the P125, failed to do so appropriating to his own personal use a part of said sum, or P69.60, equivalent to 348 pesetas. The defendant was found guilty of estafa and sentenced to four months and one day *arresto mayor*, with the accessories of law, to indemnify the offended party in the sum of P69.60, with the corresponding subsidiary imprisonment, and to pay the costs of the action.

It appears from the record that the defendant was duly appointed by the complainant C. S. Salmon as an insurance subagent of the Insular Life Assurance Co., Ltd.; that in order to guaranty the fulfillment of his obligations as agent, the defendant gave a bond at the requirement of Mr. Salmon, for the sum of P4,000 in order to reimburse the general agent for any loss and damage the latter might sustain by reason of the non-performance of any of the obligations and undertakings contracted by the defendant by virtue of the contract of agency entered into with the offended party; that at the time when the defendant solicited the insurance and obtained of the assured Graciano G. Magno the sum of P125 as the first annual premium on the policy, that is, on October 16, 1925, he was duly authorized to do so; that the defendant was under the obligation to turn over to Mr. Salmon all of his collections made as subagent, although he was also authorized by the general agent to deduct therefrom his commission as subagent pursuant to the contract of agency, and it so appears from the accounts prepared by Mr. Salmon, which may be seen on pages 112-124 of the record, and from Mr. Salmon's own testimony on page 24 of the stenographic notes, that the part pertaining to the Insular Life Assurance Co., Ltd., for the premium of the first semester of the insurance policy of Mr. Magno has been duly delivered to the company, and that corresponding to the second semester has likewise been turned over by Mr. Salmon to the company, though with some delay; that before the information in this case was filed, or on October 13, 1927, there had been a civil case No. 30633 pending decision in the Court of First Instance of Manila ever since October 1926, for the liquidation of the accounts between the defendant Aquino and Mr. Salmon, in which complaint the plaintiff, among other things, alleged that he had employed the defendant as a life insurance agent for the period from August 1, 1925 until the month of May 1926, during which time he had insured several people, whose premiums were payable quarterly, semiannually, or annually, and he had the right to charge 55 per cent of said premiums as his commission, while the defendant prayed, among other things, that the defendant and his bondsmen be sentenced jointly and severally to pay the balance due from agent Aquino amounting to P634.25, with interest at 10 per cent; and that agent Aquino's current account Exhibit 4-A, where the debit balance of P634.25 appears, the following two items are included as of August 16 and 31, 1926.

Prem. on Pol. No. 20162, G. Magno..... P78.71

Com. on Pol. No. 20162..... 36.01

In view of the foregoing proven facts, the legal question to be decided is whether or not the defendant is guilty of the crime of estafa, for having appropriated a part of the sum collected from the insured Graciano G. Magno. The attorney for the defense contends that he is not, and in support of his contention discusses in his brief the four errors which he alleges were committed by the trial court. On his part, the Attorney-General is of opinion that the act committed by the defendant does not constitute estafa, and recommends that the appealed judgment be reversed and the defendant acquitted, maintaining that "from the time the defendant, at the requirement of Mr. Salmon, executed a bond to answer for the sums he might collect and fail to turn over as agreed upon, the relation created between the two was changed to that of debtor and creditor, and the fact that Mr. Salmon required the defendant to execute a bond in his favor is evidence of his intention merely to require civil liability of him."

In this case, Graciano G. Magno and C. S. Salmon testified for the prosecution, and Mr. Salmon himself for the defense. The rest of the evidence is documentary. Having considered the evidence before us, we are of opinion that the two essential elements of the crime of estafa herein involved have not been proven beyond a reasonable doubt, that is, deceit, and the fraud or prejudice caused by deceit. If, as the record shows, the defendant was authorized to retain his commission out of the amounts he collected; if in consequence of said authorization agent Aquino had a current account with the general agent, Mr. Salmon, wherein the sums collected by the defendant appear, which he was bound to deliver to the general agent or to the Insular Life Assurance Co., Ltd., and the commissions corresponding to him; if a civil case concerning the liquidation of accounts between the defendant and the general agent is pending in the Court of First Instance of Manila, we believe that the fact that the defendant retained the amount claimed to have been embezzled, does not prove the deceit which constitutes one of the essential elements of the crime of estafa. And there was no fraud or prejudice caused by the deceit, for it appears from the record that the insurance company received everything corresponding to it in payment of the policy for one year collected by the defendant, and the general agent Mr. Salmon, has the security of the bond given by the defendant in the sum of P4,000. And as to the insured Graciano, there is no proof in the record that his insurance policy was impaired by agent Aquino's omission to deliver to the general agent the whole amount which he collected for the premiums on that policy.

In the case of *United States vs. Santiago* (27 Phil., 408), which is similar to the instant case, the court said:

"With no evidence before us tending to prove that the accused was not justified in relying upon the instructions and authority of the company's agent in this regard we do not think that he can be held criminally liable for the retention of any amount which, in good faith, he believed the company was indebted to him.

"The real question for determination in this case is, therefore, whether the accused in good faith, believed the company to be indebted to him in the amount which it is charged and admitted he collected and failed to turn over. Upon this point we are of opinion that the evidence is not sufficiently conclusive to sustain a finding beyond a reasonable doubt. It is quite evident that there were differences between the accused and the company's local and general agents as to whom the commissions on various policies should be paid; and giving the accused the benefit of the doubt, we do not think that the evidence of record is sufficient to maintain a finding that his claim of indebtedness against the company was not made in good faith, in the honest belief that he was entitled to the commissions claimed by him."

In virtue of the foregoing, the appealed judgment is reversed, and the defendant Claro P. Aquino must be, as he hereby is, acquitted, with the costs de officio. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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