

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. YU CHAI HO, DEFENDANT AND APPELLANT.*G.R. No. 29278. October 03, 1928*

Ponente: OSTRAND, J.

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This is an appeal from a decision of the Court of First Instance of Cebu in which the defendant was found guilty of the crime of estafa under paragraph 5 of article 535 of the Penal Code and was sentenced to suffer five months of arresto mayor and to pay the costs.

It appears from the evidence that on December 19, 1925, the accused Yu Chai Ho, in representation of his firm, Gui Sing & Co., of which he was the managing partner, placed an order with Wm. H. Anderson & Co. for a quantity of Colgate perfumes and soap to be shipped from New York to Cebu. The order was transmitted to Colgate & Co., New York, and the merchandise was by them shipped to Cebu, consigned to themselves and subject to their order. The bill of lading and the invoices were forwarded to the Cebu branch of the International Banking Corporation, subject to delivery to the purchaser on payment of the purchase price, \$259.70. The shipping documents were accompanied by a draft on Gui Sing & Co., who accepted the draft but was unable to pay. The International Banking Corporation of Cebu, therefore, retained the shipping documents and invoices, without which the merchandise could not be cleared through the customhouse and delivered to the defendant or his firm. Through the intervention of Morrison, the Manager of the Cebu branch of Wm. H. Anderson & Co., the International Banking Corporation agreed to deliver the documents to Gui Sing & Co. upon their giving a trust receipt. The trust receipt was duly executed by Gui Sing & Co. and delivered to the International Banking Corporation, whereupon the shipping documents were surrendered to the defendant, who upon presentation of them to the customs authorities, obtained delivery of the merchandise. The defendant thereupon sold the merchandise but, in violation of the terms of the trust receipt, failed to make payment to the International Banking Corporation, and Wm. H. Anderson & Co., as guarantors, were compelled to pay the amount of the draft for the purchase price of the merchandise to the International Banking Corporation.

The trust receipt is in the usual form and, among other things, contains the following provisions:

"I/We hereby agree to hold said goods in trust for the said corporation, and as its property with liberty to sell the same for its account, but without authority to make any other disposition whatever of the said goods or any part thereof (or to proceeds thereof) either by way of conditional sale, pledge, or otherwise.

"In case of sale I/We further agree to hand the proceeds, as soon as received, to the International Banking Corporation to apply against the relative acceptances (as described above) and for the payment of any other indebtedness of mine/ours to the International Banking Corporation."

That under this trust receipt the title to the merchandise remained in the International Banking Corporation and did not pass to the defendant, is almost too elementary for discussion. It is sufficient to quote the language of the court in the case of *In re Dunlap Carpet Co.* (206 Fed., 726), in regard to trust receipts:

"By this arrangement a banker advances money to an intending importer, and thereby lends the aid of capital, of credit, or of business facilities and agencies abroad, to the enterprise of foreign commerce. Much of this trade could hardly be carried on by any other means, and therefore it is of the first importance that the fundamental factor in the transaction, the banker's advance of money and credit, should receive the amplest protection. Accordingly, in order to secure that the banker shall be repaid at the critical point—that is, when the imported goods finally reach the hands of the intended vendee—the banker takes the full title to the goods at the very beginning; he takes it as soon as the goods are bought and settled for by his payments or acceptances in the foreign country, and he continues to hold that title as his indispensable security until the goods are sold in the United States and the vendee is called upon to pay for them. This security is not an ordinary pledge by the importer to the banker, for the importer has never owned the goods, and moreover he is not able to deliver the possession; but the security is the complete title vested originally in the bankers, and this characteristic of the transaction has again and again been recognized and protected by the courts. Of course, the title is at bottom a security title, as it has sometimes been called, and the banker is always under the obligation to reconvey; but only after his advances have been fully repaid and after the importer has fulfilled the other terms of the contract." (*Italics ours.*) (See also *Moors vs. Kidder*, 106 N. Y., 32; *Farmers & Mechanics' Nat. Bk. vs. Logan*, 74 N. Y., 568; *Barry vs. Boninger*, 46 Md., 59; *Moors vs. Wyman*, 146 Mass., 60; and *New Haven Wire Co. Cases*, 5 L. R. A., 300.)

But counsel for the defendant argues vigorously that inasmuch as the price of the merchandise in question had been paid to the International Banking Corporation by Wm. H. Anderson & Co., the bank had suffered no loss, and that, therefore, an essential element of the crime of estafa was lacking; that the only party prejudiced by the actions of the defendant was Wm. H. Anderson & Co. and that as to the latter, the defendant had incurred a civil obligation.

We cannot accept this theory. Paragraph 5 of article 535 of the Penal Code reads as follows:

"Any person who, to the prejudice of another, shall convert or misappropriate any money, goods, or other personal property received by such person for safe-keeping, or on commission, or for administration, or under any other circumstances giving rise to the obligation to make delivery of or to return the same, or shall deny having received such money, goods, or other property."

The language of the paragraph is clear and requires no special construction. As will be seen, the person whose interests are prejudiced through the" conversion or misappropriation of the money, goods, or other personal property need not necessarily be the owner thereof; if such had been the intention of the authors of the Code, the phrase "to the prejudice of another" would have read "to the prejudice of the owner."

Our opinion is also supported by the Supreme Court of Spain in its sentence of May 8, 1884, which in principle is exactly in point. The facts of that case are that one Enrique Mariano handed his watch to his friend, the accused, to keep for him while he, Mariano, was engaged in certain professional work in a circus. Instead of returning the watch to its owner, Mariano, the accused pawned it in a pawnshop for a loan of 225 pesetas, Mariano recovered the watch from the pawnbroker almost immediately and without any expense. In that case, as in the present one, it was argued that as the owner of the watch suffered no loss, no estafa had been committed. The Spanish Supreme Court held that it was immaterial whether the loss had been suffered by the owner or by a third person, and among other things, said:

"Considering that in view of the literal terms of the provision of said article, as well as its spirit and legal reason, whenever damages are caused as a consequence of the aforesaid appropriation or taking away, the act constitutes the crime of estafa, even though the person who suffered the damage is a third party and not the one to whom the misappropriated or converted goods belongs or to whom it is to be returned, for this is an incidental element which in no way affects the juridical nature of the crime."

The correctness of the view we have taken seems quite clear when it is considered that the action is not one between the defendant and Wm. H. Anderson & Co. or between the defendant and the International Banking Corporation; it deals with a public offense and is brought against the defendant by the People of the Philippine Islands. The very evident object of the article of the Penal Code under which the action is brought is to discourage dishonesty and unfaithfulness in the administration or care of money, goods, or other personal property received for such purposes. The object is not simply to enforce payment of indemnities; that is merely a side issue of a quasi civil nature and is not the gist of the crime or the cause of action.

The fact that the defendant gave surety for the fulfillment of his obligations under the trust receipt, is of no consequence and does not alter the case. In the case of *United States vs. Tabotabo* (11 Phil., 372), the court said: "Assuming that the surety company had in fact paid the sum misappropriated, this payment by the bonding company, made by virtue of its obligation to guarantee the liability of their client, does not exempt the latter from the punishment provided for * * *."

In the case of *Canal-Commercial Trust & Savings Bank vs. N. O. Tex. & Mex. Ry. Co.*, Appt., *International Trading & Rice Company*, Warrantor, Appt. (49 A. L. R., 274), it was held that the bank could recover from the appellants, including the warrantor, the value of the sugar, the bill of lading for which had been delivered upon trust receipt. In that case the court said: "The improper use of pledged securities, by the pledgor holding them under a trust receipt, is a species of embezzlement."

In the case of *People vs. De Lay* (80 Cal., 52), the defendant, an assignee for the benefit of creditors, was convicted of embezzlement of funds which came into his possession by virtue of collections of accounts and sales of property of the assignor. The court said: "The fact that Nunan and Lowney took a written indemnity from the defendant in no way affects the guilt or innocence of the defendant, who is charged with embezzling the property intrusted to him for certain purposes by Mrs. Furlong."

"The fact that a defendant has given an indemnity bond is no defense to a prosecution for embezzlement;" (20 C. J., 456).

It has been asserted that the information upon which the present action is brought is defective in that it is alleged therein that the offense was committed to the prejudice of Wm. H. Anderson & Co. when it should have been alleged that the International Banking Corporation was the prejudiced party inasmuch as the loss suffered by Wm. H. Anderson & Co. was not contemporaneous with the commission of the crime. The information itself is the best answer to this proposition. It reads as follows in translation:

"The undersigned, sworn, accuses Yu Chai Ho of the crime of estafa, because on or about April 25, 1926, in the municipality of Cebu, Province of Cebu, the above-named defendant, under a trust receipt and a guaranty signed by Wm. H. Anderson & Co., in favor of the International Banking Corporation, withdrew and received from said International Banking Corporation, 2 cases of merchandise worth P539.65, consisting of bottles of perfumes and soap, Colgate brand, belonging to Colgate & Co., which merchandise was consigned to said bank in Cebu for the purpose of holding them in trust and selling them with the express obligation of turning over the proceeds of the sale to said International Banking Corporation, but the said accused, instead of complying with this obligation, willfully, unlawfully, and criminally, with intent of gain, and through fraud, converted said merchandise to his own use and benefit, to the damage of Wm. H. Anderson & Co., who for lack of payment by the accused, notwithstanding the repeated demands made to that effect, had to pay the sum of P539.65 to said International Banking Corporation. Contrary to law.

"Cebu, Cebu, P. I., August 24, 1926.

"(Sgd.) LUCIO SANCHEZ
"Deputy Provincial Fiscal"

As will be seen, the facts of the case are fully set forth in the information; it clearly shows the consequences of the defendant's acts to the International Banking Corporation as well as to Wm. H. Anderson & Co. and was entirely sufficient to enable the defendant to prepare his defense. Assuming for the sake of the argument, that the fiscal erred in alleging that Wm. H. Anderson & Co. suffered damages by reason of the defendant's acts, the alleged error was, therefore, non-prejudicial and did not vitiate the proceedings. (Sec. 10, G. O., 58.)

We do not, however, think that the fiscal erred in alleging¹ that the commission of the crime resulted to the prejudice of Wm. H. Anderson & Co. It is true that originally the International Banking Corporation was the prejudiced party, but Wm. H. Anderson & Co. compensated it for its loss and thus became subrogated to all its rights against the defendant (article 1839, Civil Code). Wm. H. Anderson & Co., therefore, stood exactly in the shoes of the International Banking Corporation in relation to the defendant's acts, and the commission of the crime resulted to the prejudice of the firm previously to the filing of the information in the case. The loss suffered by the firm was the ultimate result of the defendant's unlawful acts, and we see no valid reason why this fact should not be stated in the information; it stands to reason that, in the crime of estafa, the damage resulting therefrom need not necessarily occur simultaneously with the acts constituting the other essential elements of the crime.

In the sentence of the court below provision for the payment of indemnity is omitted on the ground that the defendant being insolvent, the prejudiced party has probably presented his claim in the insolvency proceedings. There being no direct evidence to that effect, we do not think that there is sufficient reason for such omission.

For the reasons stated the appealed sentence is modified by ordering the defendant to indemnify Wm. H. Anderson & Co. in the sum of P519, with subsidiary imprisonment in case of insolvency. In all other respects the judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

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

DISSENTING

STREET, J.:

The offense of estafa was certainly committed by the appellant in this case; and if the information had been properly drawn, there would have been no difficulty in sustaining the conviction. The information, however, is defective, as I shall proceed to show; and I concur in the recommendation of the Solicitor-General to the effect that the appellant should be acquitted, but I hasten to add that this would be without prejudice to further prosecution upon a proper information.

Subsection 5 of article 535 of the Penal Code, under which the appellant was convicted, declares that anyone who, "to the prejudice of another," shall commit any of the various forms of embezzlement defined in that section, shall be subject to the penalty prescribed in article 534. No one can question that the words "to the prejudice of another," in said subsection, define an essential element of the offense, and this element of the offense should be charged in the information with truth and legal precision. In the case before us it is alleged that the offense was committed to the prejudice of Wm. H. Anderson & Co., and I now propose to show that this allegation is untrue.

In this connection we note that the accused was manager of the partnership "Gui Sing & Co.;" and in this capacity he appears to have signed a trust receipt, engaging to take certain merchandise in trust from the International Banking Corporation with the obligation to sell the same and deliver the proceeds to said bank, to be applied to the indebtedness owing by Gui Sing & Co. upon account of the firm's acceptance of the draft for the same goods.

Now, I have no criticism to make upon the opinion of the court in its exposition of the proposition that the title to the goods taken out upon a trust receipt remains in the trustor, nor with the further proposition that the appropriation of the proceeds by the accused, as manager of Gui Sing & Co., was an embezzlement punishable under subsection 5 of article 535 of the Penal Code. Indeed, I consider the act thus done to fall most literally and directly under said provision.

This brings us to consider the manner in which Wm. H. Anderson & Co. is related to the case. This is explained by the following note written by Wm. H. Anderson & Co., under date of April 6, 1924, and addressed to the International Banking Corporation:

"GENTLEMEN: We refer you to Colgate draft in the amount of \$259.70 drawn on the above-mentioned party [Gui Sing & Co.]. Please deliver shipping documents to them and we hereby guarantee payment on due date, provided trust receipt is furnished."

In a word Wm. H. Anderson & Co. became guarantor of the draft accepted by Gui Sing & Co.; and as a consequence of the failure of Gui Sing & Co. to take up the draft at its due date, Wm. H. Anderson & Co. was called upon to make good on its guaranty, which it did.

Upon these facts we propound the question, Who was prejudiced, in a correct legal sense, by the estafa committed in this case? On this point I think it self-evident, and true beyond any possibility of cavil, that the person really prejudiced by the act denounced was the International Banking Corporation. That entity was the trustor in the trust receipt and was therefore in immediate contractual relation with the accused. It was to the bank that the appellant was required to account, and when the accused converted the proceeds of the goods which had been received upon the trust receipt, he appropriated the money which he was bound to deliver to the bank. Wm. H. Anderson & Co. was a complete stranger to the trust relation, and when the proceeds of the goods were embezzled, no legal damage thereby resulted to Wm. H. Anderson & Co. It was only when this company had complied with its contract of guaranty by taking up the draft that said entity can be said to have suffered a loss. It will be seen that the incurring of this loss was not contemporary with the act of estafa. Of course it is obvious that under subsection 5 of article 535 of the Penal Code, the prejudice which is contemplated in the law must arise from the act of estafa and the incurring of the prejudice must consequently be contemporaneous with the embezzlement. In the case before us the bank suffered a prejudice in the very instant that the embezzlement was committed, and the bank was the only person then in a position to incur such prejudice.

Of course, under well recognized principles of civil law, when Wm. H. Anderson & Co. paid the draft, an obligation arose on the part of the accused to indemnify or exonerate said company, his guarantor; but, again, this obligation did not arise at the time the estafa was committed but only when the draft was paid. Moreover, while it is true that Wm. H. Anderson & Co., upon satisfying its contract of guaranty, was subrogated to the rights of the bank, yet this circumstance cannot in any wise affect the criminal liability of the appellant, which already existed.

If the information in this case had alleged—as it should have alleged—that the estafa was committed to the prejudice of the International Banking Corporation, the prosecution would have been soundly planted, and in view of the subrogation, of Wm. H. Anderson & Co. to the rights of the bank, it would have been proper for the court to have ordered the indemnity incident to this fraud to be paid to Wm. H. Anderson & Co.

There is another point which, though of a somewhat technical nature, I consider to be clear. It is this: Wm. H. Anderson & Co. entered into a contractual relation with the International Banking Corporation, guaranteeing the payment on due date of the draft above mentioned, and in the event that occurred Wm. H. Anderson & Co. paid the draft. In doing this act Wm. H. Anderson & Co. suffered no legal prejudice, for compliance with a fair contract cannot be recognized in law as being a prejudice to either of the contracting parties. What happened was

that, in compensation for payment of the acceptance, Wm. H. Anderson & Co. acquired a right to demand indemnification from the appellant. This is a civil right which the law concedes to every guarantor as against his principal.

The decision of the Supreme Court of Spain, of May 8, 1884, cited in the opinion of the court, in no wise supports the court upon the point now under criticism. In that case the owner of a watch had trusted it to the keeping of a friend, who pawned it without authority for a loan of 225 pesetas. The owner came along and reclaimed his watch from the pawnshop, without paying the amount for which the watch had been pledged. This of course means that the pawnbroker lost the money which had been advanced by him to the person pledging the watch; and it was merely held by the Supreme Court of Spain, in the decision referred to, that the person who falsely pawned the watch could be convicted of the estafa committed against the pawnbroker. This was right enough, because it was the pawnbroker who had been defrauded; and the fraud upon the pawnbroker, be it noted, was committed in the very act of misappropriation of the watch by the person who pledged it.

It is not our contention that the words "to the prejudice of another" must be interpreted to mean "to the prejudice of the owner." They should, however, be interpreted to mean to the prejudice of the person defrauded in the very act of embezzlement. The word "another," in the expression quoted, should not be stretched to apply to any person upon whom the loss may ultimately fall as a result of a contract to which the accused is a stranger. The decision of the Supreme Court of Spain to which we have referred does not reveal the form in which the information was drawn in that case; but it must be supposed that it was so drawn as to allege, as the proof showed, that the estafa had been committed to the prejudice of the pawnbroker, assuming that Spanish jurisprudence attaches importance to this fundamental.

The truth is that a person who commits estafa against a pawnbroker by falsely representing himself to be the owner of a watch which is pawned by the person making such representation, is not—as against the pawnbroker—guilty of estafa (embezzlement) under subsection 5 of article 535 of our Penal Code, but of estafa (deceit) incident to the fraudulent misrepresentation of ownership,—an offense falling under subsection 1 of the same article. The contention of the accused, in the Spanish case referred to, was therefore entirely misconceived; and the Supreme Court of Spain, while not in error in holding that the accused was guilty of estafa, was inadvertently misled into considering the offense in relation with subsection 5, when the decision would have been more logical if based on subsection 1.

With reference to the case now before us, it is evident that the bank was not only the owner of the embezzled goods, but it was the entity in whose immediate prejudice the act was done; and this fact seems so obvious as not to require or even admit of elaborate exposition. In the light of these facts the conclusion is irresistible that the information in this case is defective in alleging that the offense in question was committed in prejudice of Wm. H. Anderson & Co., when the facts show that the person truly prejudiced was the International Banking Corporation. It results, in my opinion, that the conviction upon this information was improper; the judgment should therefore be reversed, and the accused should be held to answer to a new information in which it should be stated that the offense was committed to the prejudice of the bank. I therefore dissent from the decision affirming the present appeal.

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