

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANTONIO LEACHON, DEFENDANT AND APPELLANT.

G.R. No. 36112. March 31, 1932

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 24th day of July, 1929, the defendant was charged in the Court of First Instance of Manila with the crime of estafa, alleged to have been committed as follows:

"That in, about and during the period from April 22 to July 1, 1929, in the City of Manila, Philippine Islands, the said accused being then an agent of the Manila Publishing Co., a business concern duly organized and doing business in said city, and authorized as such agent to collect and receive from the different debtors and customers of said company whatever sums of money that might be due and owing the said 'company, under the express obligation on the part of said accused to account for, turn over and deliver to said Manila Publishing Co. at its offices in said City of Manila all the sums so collected and received by him, and having as such agent collected and received from certain customers and debtors of said company various sums of money amounting to P566.57, which he was, as above stated, under the express obligation to account for turn over and deliver to said Manila Publishing- Co., did then and there willfully, unlawfully, and feloniously fail and neglect to comply with his aforementioned obligation notwithstanding repeated demands made upon him to that effect and misappropriate, misapply, and convert the said sum of P566.57, to his own use and benefit, to the damage and prejudice of said Manila Publishing Co. in the aforementioned sum, equivalent to 2,831.85 pesetas."

Upon arraignment the defendant pleaded not guilty, was tried, found guilty of the crime charged and sentenced by J. C. Vickers, judge, to suffer four months and one day of arresto mayor, to indemnify the Manila Publishing Co. in the sum of 3N566.57, with subsidiary imprisonment in case of insolvency, and to pay the costs.

From that sentence the defendant appealed, and now makes the following assignments of error:

"1. The court erred in not considering that the liability of the defendant-appellant to the offended party is in the nature of civil responsibility or civil obligation only and not criminal.

"2. The court erred in not acquitting the accused of the crime charged in the information,"

The facts of this case are not disputed. They are simple and may be stated briefly as follows: The appellant was a salesman of the Manila Publishing Co., the offended party. For the faithful performance of his duties as such agent, the appellant executed in favor of said company a bond or mortgage (Exhibit 4) "to secure the payment or reimbursement of any and all debts, damages, advances, costs and expenses, etc." During the course of his employment as such agent, he collected for said company the sum of P566.57, which it was his duty to turn over and deliver to his principal. Instead of doing so, however, he misappropriated and converted said amount to his own use.

The facts above stated show that the appellant committed a breach of trust, to the damage and prejudice of the Manila Publishing Co., his principal, in violation of article 535, No. 5, of the Penal Code.

The only contention of the appellant is that the bond or mortgage (Exhibit 4) executed by him in favor of the Manila Publishing Company has the effect of exempting him from criminal liability and makes him only civilly liable. This contention is untenable. In our opinion said mortgage or bond guarantees his civil liability only, but does not exempt him from criminal responsibility arising from the misappropriation or conversion of the money or property belonging to his principal. That is the doctrine enunciated by this court in the case of *People vs. Yu Chai Ho* (53 Phil., 874). Said the court:

"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 has 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 ipok 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 G. J., 456.)"

In the case of *People vs. Go Huat* (G. R. No. 34436, Oct. 17, 1931)[1] it was also held that a surety bond filed by an agent does not relieve him from criminal liability, for this undertaking only referred to his civil liability.

The present case differs from that of *Aquino* (in *People vs. Aquino*, 52 Phil., 37), who was acquitted of the charge of estafa, in that *Aquino* had been expressly authorized by *Salmon*, General Agent of the *Insular Life Assurance, Ltd.*, to deduct his commissions from the collections he made in the capacity of subagent; whereas, in this case it appears that the *Manila Publishing Co.*, to enable the defendant to pay for his living and transportation expenses, advanced to him the sum of P75 twice a month against his commissions, which arrangement indicates that he was not to make any deductions from his collections.

Moreover, in the case of *Aquino* even before the information was filed there was already pending in the Court of First Instance of Manila a civil case over the liquidation of accounts between *Aquino* and *Salmon*. Not so in this case.

The bond filed by *Aquino* was for the purpose of insuring the fulfillment of his obligations toward *Salmon*; in other words, that bond would answer for any amounts from his collections which he might fail to turn in to *Salmon*. The defendant in the instant case filed a bond to guarantee his civil liability.

In *Aquino's* case the Attorney-General was of the opinion that the act committed by the defendant did not constitute the crime of estafa and recommended the revocation of the decision appealed from, on the ground that, the defendant having filed a bond to answer for the amounts he might collect and not account for, the relation between him and *Salmon* became one of creditor and debtor. Here, the Attorney-General contends that the crime committed was estafa, under article 535, subdivision 5, of the Penal Code, and penalized in article 534,

subdivision 2, as amended by Act No. 3244.

Apparently a casual reading of some of the decisions of this court would indicate that there is a conflict between some of them and the conclusions in this case. We are of the opinion that whatever conflicts may be noted, they may be harmonized by a careful reading of each of said decisions. Whatever conflict may be discovered, if any, has been clarified by article 315, paragraph (b) of the New Penal Code, which provides that the giving of a bond to guarantee the defendant's obligation shall not relieve him from criminal liability.

In view of all of the foregoing, we are clearly of the opinion that the defendant is guilty of estafa, and the sentence appealed from should be and is hereby affirmed, with the only modification that the accessory penalties of the law are also imposed upon the appellant. With costs. So ordered.

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

[1] See p. 800 post.

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