

MACARIO EMBUSCADO Y DAYUNOT, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, JUDGE GERONIMO R. MARAVE, JUDGE OF THE COURT OF FIRST INSTANCE OF OZAMIZ CITY, BRANCH II, RESPONDENTS.

G.R. No. 38984. November 24, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision of the Court of First Instance of Misamis Occidental, Branch II, Ozamiz City, finding the petitioner, who had been charged with and convicted of the crime of estafa by the City Court of Ozamiz City, guilty of the crime of theft.

The petitioner is a tenant of one Prima Macasongsong Vda. de Acapulco, on the latter's agricultural land since 1958. As such tenant, he receives a share of 1/3 of the products harvested on the land, consisting of coconuts and mangoes. On May 22, 1973, the said agricultural land yielded 320 mangoes, all of which, on said date were harvested by petitioner without the knowledge and consent of his landlord, and sold them on May 27, 1973, to Lucio Cabahug, Jr., for P30.20. Before the accused could collect the selling price of the mangoes, he was apprehended by the police force of Ozamiz City (Rollo, pp. 37-38).

In an information filed with the City Court of Ozamiz City, Branch III, the petitioner was charged with the crime of estafa. The City Court found him guilty and imposed upon him the penalty of 2 months and 1 day of arresto mayor and to pay the costs.* (Rollo, p. 13).

The petitioner appealed to the then Court of First Instance of Misamis Occidental, Branch II, Ozamiz City, which found him guilty of the crime of theft and sentenced him to suffer the penalty of 4 months and 1 day of arresto mayor, and to pay the costs.** (Rollo, p. 17).

His motion for reconsideration having been denied, the petitioner filed the instant petition.

The issue in this case is whether or not an accused charged with estafa can be convicted of the crime of theft.

The petitioner argues that he was convicted of theft a crime with which he had not been charged hence, he was denied his constitutional right to be informed of the nature and cause of the accusation, and to due process.

The Solicitor General, in his memorandum for the respondents, recommended the reversal of the decision of the respondent Judge of the Court of First Instance of Misamis Occidental convicting petitioner of the crime of theft and affirmance instead of the judgment of the City Court of Ozamiz City, finding said petitioner guilty of the crime of estafa as defined and penalized by Article 315, subdivision 4, paragraph 1(b) of the Revised Penal Code.

The Solicitor General in effect agreed with the petitioner that since the crime charged against the latter in the information filed with the City Court of Ozamiz City is estafa, he cannot on appeal to the respondent Court of First Instance, be legally convicted by the latter court of the crime of theft, since the crime of theft is not included

in the crime of estafa charged in the information. In convicting petitioner of a crime not charged in the information against him, the trial court had actually denied him his constitutional and legal right to due process of law.

The penalty prescribed by Article 315, subdivision 4, paragraph 1(b) of the Revised Penal Code for the crime of estafa is arresto mayor in its medium and maximum periods (from 2 months and 1 day to 6 months). In view of the absence of any aggravating or mitigating circumstances in this case, the penalty should be at least 3 months and 11 days.

PREMISES CONSIDERED, the decision of the respondent court is SET ASIDE, and the judgment of the city court is REINSTATED with the modification that the penalty imposed is increased to 3 months and 11 days.

SO ORDERED.

Sarmiento and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

Padilla, J., See dissent.

* Judge Ceferino T. Ong wrote the decision.

** Judge Geronimo R. Marave rendered the decision.

Emboscado vs People : L-38984 : November 24, 1989 : J. Padilla : Second Division : Dissenting Opinion Normal
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DISSENTING OPINION

PADILLA, J.:

My opinion is that the City Court of Ozamis City had no jurisdiction over the case because the controversy involved arose from agrarian relations which was within the original exclusive jurisdiction of the then existing Court of Agrarian Relations. [Sec. 154 (1), Rep. Act 3844]. This opinion is based on the following considerations: (1) petitioner was admittedly a tenant of the complainant Prima Macasongsong Vda. de Acapulco in the latter's land planted with coconut and mango trees and, as tenant, petitioner received a share corresponding to 1/3 of the products harvested from the land; (2) on 22 May 1973, the petitioner harvested mangoes from the land without the knowledge and consent of the landowner and sold them for P30.20.

It is also my opinion that the petitioner cannot be found guilty of estafa because the mangoes allegedly misappropriated by him were not given to him in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of, or to return the same, as provided for in Art. 315, par. 4, No. 1(b) of the Revised Penal Code. What was entrusted to him for cultivation was a landholding planted with coconut and mango trees and the mangoes, allegedly misappropriated by him, were the fruits of the trees planted on the land. Consequently, the action, if any, should have been for accounting and delivery of the landlord's share in the mangoes sold by the petitioner.

I vote to grant the petition and to acquit the petitioner.

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