

ALEJANDRO JAVIER, PETITIONER AND APPELLANT, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT AND APPELLEE.*G.R. No. 47083. November 18, 1940*

Ponente: LAUREL, J.

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This petition for a writ of certiorari is predicated on two grounds: (1) That the Court of Appeals erred in convicting Alejandro Javier of estafa on the strength merely of his admissions contained in Exhibits A and B which were repudiated by him as having been obtained through duress and compulsion, and therefore inadmissible; and (2) That the Court of Appeals erred in affirming the penalty imposed by the trial court which is not in accordance with law.

Alejandro Javier, petitioner-appellant in this case, was formerly a sales agent of German and Company, Ltd. While in the employ of said firm it was his duty to prepare "purchase orders" of such merchandise as were sold by him subject to the approval of the manager. The collection of the purchase price of the sales made was also entrusted to him. Some time in January, 1935, it was discovered by the management of the company that there was a big outstanding and uncollected account and that some of the persons whose names appeared in the invoices did not live at the addresses specified, or if they were existing persons they pretended ignorance of any sales made to them. On February 7, 1935, the manager, Mr. Bergman, compiled a list (Exhibit A) of all the sales made by Alejandro Javier and gave it to Attorney Pedro Franco, who showed it to Javier. Javier declared that some of the customers appearing therein were solvent customers and would pay, but that most of them were fictitious. Upon request of Atty. Franco, Javier indicated the customers who were fictitious and those who were not. Thereafter, in a written confession (Exhibit B), he admitted having misappropriated the amount of P12,052.577 by means of fictitious orders he had made. To check up Alejandro's statement, Atty. Franco wrote letters to several of the customers requesting payment but most of them were returned. Nevertheless, Alejandro Javier was given a chance to repay the amount he had misappropriated. He agreed to pay on account to German and Company, Ltd., the sum of fifty pesos (P50) monthly. But no more than four incomplete payments were made by him.

Charged with estafa in the amount of P12,052.57, it was proved at the trial that defendant had paid over to the company the sum of ₱62 on account of the amount embezzled. The Court of First Instance of Manila convicted him of the offense charged under paragraph 1 of article 315 of the Revised Penal Code, and sentenced him to an indeterminate term of from one year, eight months, and twentyone days to five years, five months, and eleven days of prison correctional, to indemnify German and Company, Ltd., in the amount of ₱1,990.57, with subsidiary imprisonment in case of insolvency, to suffer the accessory penalties provided by law and to pay the costs. Upon appeal to the Court of Appeals this decision was affirmed in its totality.

The point is now raised by the petitioner-appellant that he should not have been convicted merely on the strength of his admission contained in Exhibits A and B which, it is alleged, were obtained through duress and compulsion. As to whether said admissions were made voluntarily or obtained by means of force or threat, we need only say that the Court of Appeals as well as the Court of First Instance of Manila found no such duress or

compulsion.

Besides, Alejandro Javier was not convicted on the strength of his admission or confession alone. The facts and circumstances of the case were laid before the courts a quo, and these, considered together with the admissions of the accused, wove out a clear case of estafa and pointed to the guilt of Alejandro Javier beyond reasonable doubt.

It is also vehemently contended that since the appellant was able to make partial payments amounting to P62 of the P12,052.57, the remaining amount of P11,990.57 should serve as the basis of determining the penalty to be suffered by the appellant. Thus, it is argued, because the amount embezzled by appellant does not exceed the amount of P12,000, his case falls under the second paragraph of Article 315 of the Revised Penal Code and he should, therefore, be sentenced only to a minimum of one year, eight months and twenty-one days and a maximum of two years, eleven months and ten days. We find to merit in this contention. It is a well-settled rule in this jurisdiction that payment made subsequent to the commission of the crime of estafa does not alter the nature of the crime committed nor[^]oes it relieve the defendant from the penalty prescribed by law. (U. S. vs. Ongtengco, 4 Phil., 144; US. vs. Rodriguez, 9 Phil., 153; U. S. vs. Sevilla, 43 Phil., 186; People vs. Velazco, 42Phil., 75; People vs. Ylaya, G. R. No. 35597; People vs. Quingpua, G. R. No. 37770; People vs. Jardin, G. R. No. 41302; People vs. Quintos, G. R. No. 42125.) In Anglo-American law the same rule obtains. (20 C. J., sec. 50, p. 455.)

The alleged error with reference to the denial by the Court of Appeals of the petition for new trial need not be considered in this petition for certiorari.

The judgment sought to be reviewed is affirmed, with costs against the petitioner. So ordered.

Avanceña, C.J., Imperial, Diaz, and Horrilleno, JJ., concur.

Judgment affirmed.

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