

FRANCISCO DURLAO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 51625. October 05, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

Pending appeal of his conviction for the crime of malversation of public property, the herein petitioner died.[1] His death extinguished his criminal liability, if any. We are concerned now only with the civil liability imposed upon him by the trial court, to wit, to indemnify the Rice and Corn Administration in the amount of P6,738.20, representing the value of his supposed property accountability.[2] This liability will subsist if it is not based on the extinguished criminal liability.

The shortage of 601 cavanes and 28 kilos of palay originally received by the petitioner was not denied and in fact was admitted by him. He claimed, however, that such shortage could be and was adequately explained. In any event, he argued in his brief that the shortage could give rise only to civil or administrative liability but not to criminal responsibility.[3] It is clear, therefore, that civil accountability for the missing property survived the petitioner and may, if proved, be enforced against his estate.

The petitioner was the warehouseman of the Rice and Corn Administration at Midsayap, Cotabato, from August 18, 1962, to October 4, 1963.[4] On October 4, 1963, a routine examination of his accountabilities revealed shortages in his stocks of palay and rice and also of empty sacks.[5]

The summary report of the auditor showed that Dumlaog procured 22,708 cavanes and 18.5 kilos of palay during the period from August 18, 1962, to January 9, 1963. From July 26 to October 4, 1963, he procured an additional 1,623 cavanes and 26.5 kilos, for a total of 29,332 cavanes of palay. From August 21 to October 4, 1963, an additional 430 cavanes and 12 kilos of palay were also transferred to the petitioner's account, increasing his palay accountability to 29,762 cavanes and 12 kilos.[6]

From February 18, 1963 to August 20, 1963, the petitioner released 22,214 cavanes and 25 kilos of palay for milling. From August 21 to October 4, 1963, he again released 1,096 cavanes and 35 kilos for milling. From July 3 to 31, 1963, he further released 4,132 cavanes and 10 kilos, or a total of 27,443 cavanes and 25 kilos. As the total amount of palay received by him was 29,762 cavanes and 12 kilos and the amount of palay he had released was 27,443 cavanes and 25 kilos, there should have been a balance of 2,318 cavanes and 32 kilos.[7]

The inventory of the existing palay stock of Dumlaog amounted to 959 cavans of palay, revealing a shortage of 1,359 cavanes and 32 kilos valued at P15,636.66. The accused was also found short of 339 cavanes and 24 kilos of rice, valued at P6,792.72, and of 117 pieces of empty sacks, valued at P76.05.[8]

The petitioner was informed of these shortages by the auditor. Thereafter, a formal written demand was served upon him for the amount of the missing stocks, without prejudice to the filing of a complaint against him. Unwilling to make restitution, the petitioner was charged with malversation under Article 217 of the Revised

Penal Code.

The evidence of the prosecution consisted of the findings of the auditor who made the examination of accountabilities on October 4, 1963. The evidence of the defense consisted primarily of the testimony of the accused himself, who claimed the shortages were due mainly to the defective scale used, infestation by rodents and the usual shrinkage and spillage.

According to him, the claimed rice shortage of 339 cavanese and 24 kilos could be explained by the use of the defective scale, the calibration of which was corrected only on May 9, 1963, plus the erroneous entry made by the auditor in the milling report on October 4, 1963, and the payment of 175 cavanese under O.R. No. 588518 as per certification by Douglas Salloman, RCA liquidator, Midsayap Agency. The milling report debited to the petitioner the amount of 101 cavanese and 20 kilos although the milling was finished at 4:30 o'clock in the afternoon of October 5, 1963. This entry should have been excluded because the examination of his accountability was only as of October 4, 1963.[9] The petitioner further declared that as per Resolution No. 726 of the RCA board of administrators, he was allowed shrinkage and spillage deductions in the total amount of 24 cavanese and 27 kilos of rice.[10] Moreover, due to the defective scale, which was recording a shortage of 7-1/2 kilos per 450 kilos, there should be deducted 68 cavanese and 12 kilos from the 339 cavanese and 24 kilos.[11]

As for the empty sacks, the petitioner declared that 115 were stolen by his co-employee, Juanito Debesfruto. He had informed the RCA branch manager of this loss in a letter to him dated May 31, 1963. The theft case was also reported to the police but no charge was filed against the erring employee, who was simply dismissed from the service.[12]

In its decision dated July 1, 1972, as affirmed by the respondent Court of Appeals,[*] the lower court sustained the position of the petitioner as to his rice shortage. Judge Felix V. Barbers held that the 175 cavanese of rice paid by the accused under O.R. No. 588518 and the 101 cavanese and 20 kilos of rice recovered after the October 5, 1963, milling should be deducted, leaving a balance of 63 cavanese and 4 kilos of rice. The petitioner was further entitled to a shrinkage and spillage deduction of 24 cavanese and 27 kilos pursuant to Resolution No.726, thus further reducing the balance to 38 cavanese and 33 kilos. Deduction of the amount of 7-1/2 kilos for every 450 kilos weighed due to the defective scale, which was used from February 18, 1962 to May 9, 1963, as well as destruction by rats and loss of weight due to shrinkage and spillage, covered the balance not yet accounted for.

As for his palay shortage, the lower court found that because of the defective scale, the total palay received by the petitioner amounted to only 29,300 cavanese and 21 kilos and not to 29,762 cavanese and 12 kilos. Moreover, the total palay released by him consisted only of 27,565 cavanese and 20 kilos and not 27,443 cavanese and 25 kilos. Deductions should also be allowed at the rate of 7-1/2 kilos for every 450 kilos of palay due to the defective scale, together with the 296 cavanese and 13 kilos authorized by Resolution No. 726 of the RCA board of administrators. As there were 959 cavanese of palay in the petitioner's possession, the shortage would only be 601 cavanese and 21 kilos of palay, representing, at the rate of P11.20 per cavan, the total amount P6,738.20.[13]

The Court notes that while it is true that no direct evidence was presented to show that the 601 cavanese and 28 kilos of palay were all eaten up by rats, it is equally true that the trial court accepted the defense of rat infestation to explain the rice shortage and the loss of the empty sacks although evidence to this effect was also not submitted. In exonerating the petitioner from liability on the rice shortage amounting to 38 cavanese and 33 kilos, the trial court admitted that the extent of destruction by rats could never be determined. Thus:

"x x x. Also, after deducting the amount of 7-1/2 kilos for every 450 kilos weighed due to the defective scale, which was used from February 18, 1962 to May 9, 1963 including destruction by rats which could never be determined plus spillage, loss of weight due to storage, the length of time not being definite, will definitely

more or less cover the remaining balance not yet accounted for."

It is strange that although the trial court accepted the defense that the missing rice had been eaten by the destructive rodents, the same explanation was not considered with regard to the missing palay.

As the Court sees it, there is no valid reason why the tolerable allowance for rat infestation granted by the trial court with respect to the rice shortage should not have been applied also to the petitioner's palay shortage. It is illogical to conclude that the rats ate up all the missing rice but ignored the palay, which was in the same warehouse and as available as the rice the rats had devoured. No evidence has been presented to show that rats prefer rice to palay and that they will touch the former but not the latter.

The shortage in the petitioner's rice stock was 38 cavanese and 33 kilos, or (at the rate of 56 kilos per cavan) a total of 2,161 kilos of rice.

For every 450 kilos, a 7-1/2 deficiency was allowed by the trial court due to the defective scale used. Dividing 2,161 kilos by 450 kilos will give a quotient of 4.8, which should be multiplied by 7.5 to get the total deficiency caused by the defective scales for the entire stock of rice. The product will be 36 kilos, which, subtracted from 2,161 kilos will leave a difference of 2,125 kilos, or 37 cavanese and 53 kilos of rice. This amount of rice, which was recognized by the trial court as having been consumed by rodents, represents 9% of the total rice shortage of 339 cavanese and 24 kilos.

If the trial court allowed a 9% deduction for rat infestation on the rice shortage, there is no reason why the same deduction should not have been allowed the petitioner on his palay shortage, on the assumption that the palay was equally accessible to and also eaten up by the rodents. 9% of the total palay stock of 29,300 cavanese is 2,637 cavanese. This is more than sufficient to cover the petitioner's shortage of only 601 cavanese and 28 kilos of palay.

It thus appears from the above computation that the petitioner incurred no shortage at all in the palay entrusted to his care as warehouseman. Since both the stocks of rice and the stocks of palay have been satisfactorily accounted for under the formula devised by the trial court, and the loss of the empty sacks has also been explained, no civil liability can attach to him under the appealed decision.

The petitioner's death pending his appeal of his conviction has resulted in the automatic dismissal of the charge against him pursuant to Article 89 of the Revised Penal Code. Nevertheless, the Court feels that it should make a pronouncement of his innocence, belated though it may be, to vindicate his sullied honor and redeem his memory from an undeserved accusation. We do so now. That is the least we can do in the circumstances. An honorable name is still the most precious legacy a parent can leave to his children, and we hereby restore it untarnished to the petitioner, albeit posthumously.

WHEREFORE, the challenged decision is SET ASIDE.

It is ordered.

Narvasa, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 138.

[2] Brief for Defendant-Appellant, p. 46, Rollo, p. 43.

[3] Brief for the Petitioner, p. 7, Rollo, p. 105.

[4] Brief for Defendant-Appellant, pp. 21-22, Rollo, p. 43.

[5] Ibid., p. 22.

[6] Id.

[7] Id., p. 35.

[8] Id., p. 23.

[9] Id., p. 31.

[10] Id.

[11] Id., pp. 31-32.

[12] Id., p. 32.

[*] Cuevas, J., ponente, with San Diego and Serrano, JJ., concurring.

[13] Id., pp. 35-36.

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