

**THE PEOPLE OF THE PHILIPPINES, PETITIONER-APPELLANT, VS.
JUDGE REGINO T. VERIDIANO II OF THE COURT OF FIRST INSTANCE
OF ZAMBALES, OLONGAPO CITY BRANCH I AND BRIAN L. MOLLY,
RESP...**

G.R. No. 57540. March 26, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the appellate jurisdiction of the Court of First Instance over a city court's decision convicting the accused of estafa involving the amount of six thousand pesos.

The city court of Olongapo City in its decision dated February 27, 1981 in Criminal Case No. 1416-80 convicted of estafa Brian L. Molly, a serviceman in the United States Navy telecommunications center at Subic Bay and sentenced him to suffer imprisonment of one year and one day of arresto mayor (should be prision correccional and should be one year only if the penalty is not indeterminate) and to indemnify the offended party in the sum of six thousand pesos "with subsidiary imprisonment in case of insolvency" (this is wrong because now the subsidiary imprisonment refers only to the fine).

Molly seasonably appealed to the "appellate court" which appeal was understood by the city judge as referring to the Court of First Instance of Zambales and Olongapo City (pp. 100-01, Record).

The record was forwarded to the Court of First Instance where the fiscal filed a motion to dismiss on the ground that the appeal should have been made to the Court of Appeals or the Supreme Court as the case may be (p. 130, Record). Molly opposed that motion.

On May 18, 1981 respondent judge filed with the clerk of court his decision dated May 12, 1981 wherein he held that the estafa case was within the exclusive original jurisdiction of the city court. Hence, he denied the motion to dismiss.

He reversed the city court's judgment of conviction, acquitted Molly on the ground that his liability to the complainant was "purely civil in nature" and directed him "to comply with his civil obligation to return to the complaining witness" the sum of P6,000 (p. 146, Record).

From that decision, the fiscal appealed directly to this Court. He was required to file the appropriate petition under Republic Act No. 5440, a 1968 law (not known to some judges and lawyers up to this time) which superseded Rule 42 and section 1, Rule 122 of the Rules of Court in the sense that an appeal to this Court on a question of law is no longer a matter of right. We have discretion to give due course to the appeal or deny it outright. That is one remedy for preventing the clogging of the docket of this Court.

We hold that the judgment of acquittal rendered by the Court of First Instance is void for lack of appellate jurisdiction (*coram non iudice*). The estafa imputed to Molly falls within the concurrent jurisdiction of the city

court and the Court of First Instance under section 44(f) and 87 of the Judiciary Law.

Section 5 of Republic Act No. 5967 (a 1969 law raising the status of city judges and enlarging their jurisdiction), which is also not known to many judges and lawyers, provides that the decisions of the city court in criminal cases (except in offenses punishable by arresto mayor or imprisonment not exceeding six months or fine not exceeding P200, or both, or violations of city ordinances, to which the instant case does not belong), are "directly appealable to the Court of Appeals or Supreme Court, as the case may be, in accordance with the Rules of Court applicable to appeal from (the) judgment of the Court of First Instance" (Nogoy vs. Mendoza, G.R. No. 54324-28, November 19, 1980, 101 SCRA 200; Pelaez vs. Reyes, L-48168, August 31, 1978, 85 SCRA 233; Contreras vs. Villaraza, G.R. No. 53372, August 21, 1980, 99 SCRA 329; People vs. Argel, L-45975, May 25, 1981, 104 SCRA 497).

WHEREFORE, the lower court's judgment of acquittal is set aside. Since the appeal involves factual issues, the records of the estafa case should be transmitted to the Court of Appeals so that the appeal of the accused may be decided. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., De Castro, Ericta, and Escolin, JJ., concur.

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