

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EUSEBIO CLARIN, DEFENDANT AND APPELLANT.

G.R. No. 5840. September 17, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Pedro Larin delivered to Pedro Tarug P172, in order that the latter, in company with Eusebio Clarin and Carlos de Guzman, might buy and sell mangoes, and, believing that he could make some money in this business, the said Larin made an agreement with the three men by which the profits were to be divided equally between him and them.

Pedro Tarug, Eusebio Clarin, and Carlos de Guzman did in fact trade in mangoes and obtained P203 from the business, but did not comply with the terms of the contract by delivering to Larin his half of the profits; neither did they render him any account of the capital.

Larin charged them with the crime of estafa, but the provincial fiscal filed an information only against Eusebio Clarin in which he accused him of appropriating to himself not only the P172 but also the share of the profits that belonged to Larin, amounting to P15.50.

Pedro Tarug and Carlos de Guzman appeared in the case as witnesses and assumed that the facts presented concerned the defendant and themselves together.

The trial court, that of First Instance of Pampanga, sentenced the defendant, Eusebio Clarin, to six months' arresto mayor, to suffer the accessory penalties, and to return to Pedro Larin P172, besides P30.50 as his share of the profits, or to subsidiary imprisonment in case of insolvency, and to pay the costs. The defendant appealed, and in deciding his appeal we arrive at the following conclusions:

When two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves, a contract is formed which is called partnership. (Art. 1665, Civil Code.)

When Larin put the P172 into the partnership which he formed with Tarug, Clarin, and Guzman, he invested his capital in the risks or benefits of the business of the purchase and sale of mangoes, and, even though he had reserved the capital and conveyed only the usufruct of his money, it would not devolve upon one of his three partners to return his capital to him, but upon the partnership of which he himself formed part, or if it were to be done by one of the three specifically, it would be Tarug, who, according to the evidence, was the person who received the money directly from Larin.

The P172 having been received by the partnership, the business commenced and profits accrued, the action that lies with the partner who furnished the capital for the recovery of his money is not a criminal action for estafa, but a civil one arising from the partnership contract for a liquidation of the partnership and a levy on its assets if there should be any.

No. 5 of article 535 of the Penal Code, according to which those are guilty of estafa "who, to the prejudice of another, shall appropriate or misapply any money, goods, or any kind of personal property which they may have received as a deposit on commission for administration or in any other character producing the obligation to deliver or return the same," (as, for example, in commodatum, precarium, and other unilateral contracts which require the return of the same thing received) does not include money received for a partnership; otherwise the result would be that, if the partnership, instead of obtaining profits, suffered losses, as it could not be held liable civilly for the share of the capitalist partner who reserved the ownership of the money brought in by him, it would have to answer to the charge of estafa, for which it would be sufficient to argue that the partnership had received the money under obligation to return it.

We therefore freely acquit Eusebio Clarin, with the costs de oficio. The complaint for estafa is dismissed without prejudice to the institution of a civil action.

Torres, Johnson, Moreland, and Trent, JJ., concur.

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