

CECILIO J. AMORSOLO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 76647. September 30, 1987

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a Petition for Review on Certiorari of the decision[1] of the Court of Appeals, dated September 26, 1986 affirming in toto the decision[2] of the trial court finding the petitioner guilty of the crime of estafa under Section 315, par. 1(b) of the Revised Penal Code, allegedly committed as follows:

"That on or about the 23rd of March 1983, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from one Raul Isidro two (2) acrylic paintings in the total amount of P19,000.00 to be sold on commission basis, with the express obligation on the part of the accused to account for the proceeds and/or to return the said acrylic paintings if not sold, but the accused once in the possession of said paintings, far from complying with his obligation, with intent to gain, grave abuse of confidence, and to defraud said Raul Isidro, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit the proceeds and despite repeated demands failed and refused and still fails and refuses to return the same/or the proceeds thereof, to the damage and prejudice of said Raul Isidro, in the aforementioned total amount of P19,000.00."

(p. 9, Rollo)

In open court, complainant Raul Isidro was the lone witness for the prosecution, while accused Cecilio Amorsolo was the lone witness for the defense. After considering their testimonies, the trial court declared –

"From the foregoing evidence the court finds that on April 11, 1983, Isidro entrusted his two paintings to accused to be sold for P9,500.00 each with the latter being entitled to a commission of 30% (exh. 1). The agreement was for the accused to remit the proceeds of the paintings if sold or return them if not sold. There was no time limit to the agreement. Accused was not prohibited from consigning the paintings.

"After first offering them on said date to a Jorge Tee who did not like the paintings, accused on the following day brought them to the Heritage Gallery of Mario Alcantara, (sic) where they were consigned to be sold (Exhs. 3 and 2-A).

"When Isidro learned in May 1983 that accused had already sold the paintings to Alcantara (tsn., pp. 12, 16-18, 30, June 21, 1984), he (Isidro) caused his lawyer Atty. Armando S. Leyva, Jr., to send accused a letter dated May 18, 1983 demanding remittance of the payment for the two paintings at P9,500.00 each or a total of P19,000.00 within ten (10) days from receipt of the letter (Exh. B). The letter was received on June 20, 1983 (Exh. B-1). Obviously, accused was unable to remit the money or return the paintings as a charge of estafa was subsequently filed by Isidro against the (accused) (sic) in the fiscal's office.

"On July 28, 1983, accused was able to pull out one of the paintings entitled 'shadows' from the gallery and

brought it to the fiscal's office where he offered to return it. Isidro refused to accept, insisting that accused return both paintings. As of August 9, 1983, accused could not return the other painting alleging that it was still with the art patrons of Alcantara. He undertook to return it to Isidro the moment he was assured that the art patrons of Alcantara would not buy it. He further committed that in the event it would be sold, the payment would be remitted to him by Alcantara and in turn, accused would remit it to Isidro. (counter Affidavit of accused subscribed and sworn to before an assistant fiscal on August 9, 1983; Exhs. D & D-1, also Exhs. 5 & 5-A).

"On August 15, 1983, accused was able to retrieve the other painting with yellow motif from Alcantara who referred him to J. P. Lomotan who bought the same, paying accused with a Metro-bank check dated August 15, 1983 payable to accused for P6,500.00 (Exh. "4") and promising to pay the balance of P3,000.00 in cash after 15 days. The check, deposited by accused on August 15, 1985, bounced the next day for the reason 'account closed' (Exh. "4-B"). Accused kept (on) trying to collect from Lomotan but the check was not made good and the cash (sic) not paid.

"On October 9, 1984, Isidro accepted the painting that accused had earlier offered to return, plus the amount of P4,000.00. Accused was willing to pay the balance of P5,500.00, obviously from the sale of the other painting he sold to Lomotan (tsn., pp. 26-29, February 7, 1985). But he never did.

"Where a property is delivered to an agent for sale on commission, and no time is fixed within which he is to make the sale or return the property, it is the duty of the agent to return it upon the demand of the owner, and the failure to do so is evidence of the conversion by the agent (Aquino on the Revised Penal Code, p. 1579), Vol. 3, 1976, ed.).

"On June 20, 1983, accused received the formal demand of Isidro to return the painting within ten (10) days. As he could not immediately pull them out from Alcantara's gallery by virtue of the consignment, the accused may not be faulted for the delay (pp. 1569-70, id.) in recovering one painting only on July 28, 1983. When however, on August 15, 1983, he was able to retrieve the other painting, and instead of return (sic) it to the owner as he had committed to do, accused, for having failed to return the same or pay its value to Isidro, committed estafa. Appropriating to one's own use includes not only conversion to one's personal advantage but every attempt to dispose of the property of another without right (Francisco on the Revised Penal Code, p. 1130, Book 2, Part 2, 2nd ed.). Accused no longer had any right to dispose of the painting when he recovered it on August 15, 1985.

"The partial payment of accused on October 9, 1984 in the amount of P4,000.00, made subsequent to the commission of the crime of estafa does not alter the nature of the crime committed nor does it relieve accused from the penalty prescribed by law (p. 1199, id.)." (Decision, pp. 13-15, Rollo)

Premises considered, the trial court ruled:

"WHEREFORE, the Court finds accused guilty beyond reasonable doubt of the crime charged and hereby sentences him to suffer four (4) months and twenty-one (21) days of arresto mayor to one (1) year, eight (8) months and twenty-one (21) days of prision correccional, to indemnify the offended party in the amount of P5,500.00 and to pay the costs.

"SO ORDERED." (p. 15, Rollo)

Accused appealed to the Intermediate Appellate Court, now known as the Court of Appeals, with the following assigned alleged errors:

I

The Court a quo gravely erred in holding that the accused-appellant converted and misappropriated the property of private complainant for his own personal use and benefit.

II

The court a quo gravely erred in convicting the accused-appellant of the crime of estafa despite the lack of evidence to support it.

After deliberating on the evidence for both parties, the appellate court rendered a decision the pertinent portions reading as follows:

"There is no dispute that the appellant received two paintings worth P9,500.00 each, or in the total amount of P19,000.00 (Exh. C). There is also no dispute that proper demand was made upon the appellant for the remittance of the aforesaid amount within ten (10) days from receipt of the letter-demand dated May 18, 1983 which was actually received by the appellant on June 20, 1983 (Exh. B and Exh. D-1) Exhibit B reads, as follows:

'Our client, Mr. Raul G. Isidro, has referred to us for necessary action the matter of your non-remittance of the payment for two (2) pieces of paintings at P9,500.00 each or in the total amount of NINETEEN THOUSAND PESOS (P19,000.00) which he entrusted to you on consignment basis.

'Although we received a definite instruction from our client to file the corresponding complaint in court, after he had confirmed your transaction with Atty. Mario Alcantara followed by several (sic) demands for you to remit the above amount, we took it upon ourselves to defer the same with hope that you might come forward to settle your account.

'Hence, we demand from you to remit immediately the above amount either to our client or to our office within ten (10) days from receipt of this letter, otherwise, should you fail to do so, we will be constrained to file the necessary action against you with all the attendant damages recoverable without further notice.

'We trust that you will see your way clear towards an amicable settlement and, thus avoid further difficulties and inconvenience on your part.

'Your earlier settlement of the above is deeply appreciated."

"There is also no dispute that the appellant failed to pay the price of the paintings or to return the paintings within the period stated in the demand.

The appellant would insist that in spite of the fact, that he received the paintings and failed to return them, or to pay the price thereof upon demand, there were 'circumstnaces surrounding the failure of appellant to return the paintings or its value to Isidro. At the time the demand for the paintings was made, it was already in the hand of a buyer, Mr. J. P. Lomotan. This fact was known to Mr. Isidro. As a matter of fact, Mr. Isidro saw the check issued by Mr. Lomotan to appellant in payment of the painting, which unfortunately bounced, for reason of 'account closed,' 'xx xx xxx' Appellant therefore may not be blamed or faulted for its failure to return the painting or its value xx xx," (p. 4, Brief for the Appellant).

The appellant argues that his liability should be civil, in nature, and not penal.

The crime for which the appellant is charged, was duly proved. He had received the paintings, in trust, from the private complainant to be sold on commission basis, with the express obligation on the part of the appellant to account for the proceeds thereof, or to return the said paintings, if not sold. Demand for the return of, or for the

proceeds of, the paintings, was undisputably made upon the appellant. He failed to remit the proceeds of, or to return, the paintings, within the time frame stated in the letter of demand which he had unequivocally received on June 20, 1983 (Exh. B-1). His guilt for the crime of estafa was duly proved.

"WHEREFORE, the judgment appealed from is hereby AFFIRMED in toto. No costs.

"SO ORDERED." (pp. 31-33, Rollo)

Hence, the instant petition for review on certiorari filed by accused with the following issues presented for Our resolution:

"Whether or not the acts of petitioner constituted the crime of estafa under Article 315, paragraph 1(b) of the Revised Penal Code and whether or not said crime has been duly proved by the prosecution, despite the appellate court's decision finding him guilty beyond reasonable doubt of estafa."

It is the position of petitioner that the fact of misappropriation or conversion has not been duly established by the complainant, Raul Isidro. Petitioner contends that he has not converted the paintings in question as the same were not devoted to a purpose or use different from that agreed upon. Likewise, he has not misappropriated the same or the proceeds thereof, as the same were not taken for his own use and benefit. Petitioner invites the court's attention to the circumstances surrounding the failure of the petitioner to return one of the paintings or its value to complainant, particularly the fact that at the time the demand for the return of the second painting was made, it was already in the hands of a prospective buyer, Mr. Lomotan, whose check (in payment of the painting) bounced. This fact was made known to the complainant and therefore petitioner should not be faulted for his failure to return the painting or pay for its value.

Petitioner further contends that his act of paying from his own pocket the amount of P4,000.00 to private complainant as partial payment of the painting covered by the bounced check of Mr. Lomotan is not in itself an admission of misappropriation. He was merely answering for the shortcomings of Mr. Lomotan, at that he could not pay private complainant the full value of the unreturned painting in the amount of P9,500.00. At most his liability is only civil (so he contends) as the fact of misappropriation, an essential element of estafa, has not been convincingly proven.

Petitioner's allegations merit consideration.

It is well-settled that the essence of estafa thru misappropriation is the appropriation or conversion of money or property received to the prejudice of the owner (U.S. vs. Ramirez, 9 Phil. 67). The words "convert" and "misappropriated" connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes, not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right (U.S. vs. Panes, 37 Phil. 118).

In the instant case, complainant delivered his paintings to the accused due to his trust in him since he is the brother of a fellow artist-painter and also because of a previous business transaction he had had with him. When accused-petitioner consigned the same paintings to a third entity (Heritage Gallery) which is not known to complainant, accused did not commit an abuse of the confidence reposed upon him by the complainant. Petitioner assumed (and the assumption was correct) that he could do this in view of the authorization given him to sell the property and certainly this could include a sale by consignment.

While it is true that accused had an opportunity to return the second painting, still it was his desire to continue with the sale because he believed that in Mr. Lomotan he had a ready buyer who could make possible the

accomplishment in full of the agency to sell what had been entrusted to him. There was no desire to appropriate anything for himself, no intent to defraud or prejudice in any way the complainant. Truth to tell, he gave Lomotan's check to Isidro. The fact that it bounced is not the fault of the accused. Moreover, accused paid Isidro with the former's own check, even if partially, and he recognized his obligation to pay the balance. Under the premises, it is obvious that no criminal intent or liability exists. Thus, his liability is plainly merely a civil one, as manifested in the letter of demand dated May 18, 1983, sent to the accused by Isidro's counsel.

PREMISES CONSIDERED, accused is hereby ACQUITTED of the crime with which he was charged, but as he himself admits he should pay Isidro the balance of the unpaid selling price MINUS his agreed-upon commission. Thus, he should pay the net amount of P2,650.00.

SO ORDERED.

Teehankee, C.J., Narvasa, and Cruz, JJ., concur.
Gancayco, J., on leave.

[1] Penned by Justice Nathanael P. de Pano, Jr. with the concurring votes of Justices Jose A. R. Melo and Segundino G. Chua.

[2] Penned by Judge Ansberto P. Paredes.

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