

RICARDO CELINO, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 77569. June 29, 1988

Ponente: CORTES, J.

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CORTES, J.:

On August 14, 1981, the, First Assistant Provincial Fiscal of Laguna filed with the Court of First Instance, Eight Judicial District, Branch IV, Calamba, Laguna, an information for ESTAFA against Zosimo Celino, Ricardo Celino and Requerido Celino. The information alleged the following:

That sometime on or about March 17, 1978 and subsequently thereafter, at Brgy. San Nicolas, Bay, Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud and by means of false pretenses, did then and there willfully, unlawfully, and feloniously conspiring, confederating and helping with each other and falsely pretending to possess power, influence and/or imaginary transaction, induced one JOSE TAN KAPOE to believe that hidden treasures can be recovered in the latter's yard and as a consequence thereof, demands the sum of P50,230.00 in exchange to such treasures, as in fact said accused received said amount in trust, and once in possession thereof, thru deceitful means misappropriated and misapplied said amount to their own personal use and benefit, to the damage and prejudice of JOSE TAN KAPOE in the aforementioned amount of P50,230.00, Philippine Currency.

CONTRARY TO LAW. (p. 8, Rollo)

Assisted by their counsel, Ricardo Celino and Zosimo Celino pleaded not guilty to the crime charged. During the arraignment accused Requerido Celino remained at large. It appears that only Ricardo Celino, the petitioner, stood for trial inasmuch as on July 20, 1983, the trial court dismissed the case against Zosimo Celino who died on June 11, 1983.

In a decision dated May 29, 1985, the trial court found accused Ricardo Celino guilty of the crime charged and sentenced him as follows:

IN VIEW OF ALL THE FOREGOING, the prosecution having established the participation of accused Ricardo Celino as co-principal, beyond reasonable doubt, in the commission of the crime of estafa under Article 315, No. 2 (a) of the Revised Penal Code, the Court hereby finds accused Ricardo Celino guilty thereof and hereby sentences him to suffer imprisonment, after applying the Indeterminate Sentence Law, to two (2) years, eleven (11) months and ten (10) days of prision correccional as the MINIMUM to eight (8) years of prision mayor as the MAXIMUM; and to return to complainant Jose Tan Kapoe the amount of P41,300.00, and to pay the costs of litigation.

SO ORDERED. (p. 9, Rollo)

The prosecution's version of the facts as testified to by complainant Jose Tan Kapoe, his employee-overseer, Feliciano Batitis, his driver, Ricardo de la Cruz and Pat. Jose Batacan, is summarized in the trial court's decision as follows:

Complainant Jose Tan Kapoe testified that on March 17, 1978, accused Zosimo and Ricardo Celino together with two (2) other companions went to his house and informed him that there was a hidden treasure under his lot located in the poblacion of Calauan, Laguna; that accused Zosimo and Ricardo Celino told him that a certain dwarf entering the body of Zosimo is giving instructions to the latter as to the digging operations; that he will be given millions of pesos; that because he and accused Ricardo Celino as well as their fathers were close friends, he believed them; that they dug a hole in his ricemill up to May 31, 1978; that they told him that they discovered a treasure, a jar full of gold; that both accused Ricardo and Zosimo did not allow him to see it by covering it with a sack and white cloth; that both Ricardo and Zosimo told him to give P10,000.00 and he got the money from his safety vault, placed it in a white envelope, 6x3 inches, and gave it to the accused Zosimo; that both Ricardo and Zosimo went inside the little room under the stairs of his house where they brought the jar filled with treasure and placed the money on the treasure; that Ricardo and Zosimo stayed in the room for about hour and then they went out of the room and closed the door; that Zosimo told him that they are going back upon instructions of the dwarf and that they will communicate with him again; that the second time, he was told by the two (2) brothers, Requerido and Cipriano Celino to give P5,000.00 which he also placed in a white envelope; that he gave the money to Zosimo who together with his father, accused Ricardo, went inside again the room and they said that they placed the money on the treasure; that he was forbidden to enter or touch the treasure because the dwarf will be angry; that the third time, it was Requerido Celino who advised him to give money allegedly upon instructions of the dwarf and he withdrew money from the Bank of the Philippine Islands and they went through the same procedure in placing the money in the white envelope and entering the room; that Zosimo required him to go to the church of Landayan, located at San Pedro, Laguna for three (3) consecutive days; that the Celinos continued to ask for money to be put in the jar and he got from said bank (Exh. A-1); that all in all, the money which he had given to the accused amounted to P50,230.00 (Exh. A); that when his savings in the bank was exhausted, he asked them to set a deadline and he was told May 30, 1979; that he was hoping by that time, he will get back the money and the gold; that they did not fulfill their promise on May 30, 1979 and so he opened the jar and found that it contained only newspaper, comics, rocks and soil; that thereafter, he wrote a letter to Zosimo to return his money through his driver Batitis (Exh. B) and Zosimo wrote back that he will return the money (Exh. C), (TSN, Hearings of April 28, 1982 and April 21, 1983).

Prosecution witness Feliciano Batitis who is working for complainant Tan Kapoe as an overseer confirmed the fact that he was instructed by complainant to go to the house of Ricardo and Zosimo at Barrio Maslit and bring the letter (Exh. B) after the jar was opened and complainant found nothing; and, the fact that Zosimo wrote a letter signed by "Apo Dapo" the alleged name of the dwarf who were (sic) possessing ("sumasapi") Zosimo (Exh. C). He likewise testified that he had seen Ricardo and his sons Zosimo and Requerido in the house of complainant many times in 1978 but he did not hear what they were talking about; that he saw them after that excavating and digging inside the ricemill; that he saw complainant give the amounts of P10,000.00 and P5,000.00 to accused Zosimo and Ricardo. (TSN, Hearing of May 16, 1983).

The third prosecution witness, Ricardo dela Cruz is the driver of herein complainant. He testified that he saw the three (3) accused digging inside the ricemill; that he accompanied complainant to get money from the Bank of Philippine Islands; that he saw complainant give an envelope to accused Ricardo who handed the same to Zosimo and the latter went inside the room under the stairs, that after Zosimo got out of the room, complainant was told not to touch the envelope containing money which he left inside the room; that accused Ricardo was present when this was said; that he saw only the giving of P10,000.00 (TSN, Hearing of July 20, 1983).

Pat. Jose Batacan merely attested to the fact that upon his investigation when the matter was reported to the police by complainant, he found a hole dug in the ricemill of complainant; that he saw the jar containing sand and pieces of paper. (TSN, Hearing Of October 19, 1983).

On the other hand, the defense relied on the testimonies of accused Ricardo Celino and one Gualberto Libres:

In his defense, accused Ricardo Celino testified that he never discussed with complainant about a hidden treasure; that if indeed complainant gave money to his son Zosimo Celino (now deceased), he did not know anything about it; that complainant got angry with him because complainant wanted him to return the money given to his son Zosimo; that when he asked his son Zosimo if complainant gave him money, Zosimo denied it; that complainant told him that he had given money to Zosimo and if they will not admit that he gave money, he will file a case against them; that he told complainant not to include him in the case he will file because he had not done anything wrong to him and complainant told him that if he (accused Ricardo) will not return the money, he will be included in the charge; that he answered him why will he return the money when his son did not give him any money; that witnesses Batitis and dela Cruz testified against him because they are complainant's servants; that he and his son Zosimo were likewise charged of estafa at San Pablo City where his son pleaded guilty and the case against him dismissed. (TSN, Hearing of June 20, 1984).

Gualberto Libres testified that he is a neighbor of accused Ricardo Celino and that his house is one (1) meter away from the house of Ricardo; that when complainant was looking for Zosimo, he never asked about accused Ricardo Celino. (TSN, Hearing of January 23, 1985).

The Court of Appeals affirmed the decision of the trial court finding the accused Ricardo Celino guilty beyond reasonable doubt. The case is now before this Court for review. There are two (2) errors allegedly committed by the appellate court, to wit:

I

THE COURT OF APPEALS ERRED IN NOT APPLYING PROVISIONS OF LAW AND THE JURISPRUDENCE LAID DOWN BY THE SUPREME COURT, IN THE CASE AT BAR.

II

THE COURT OF APPEALS ERRED IN ARRIVING AT A CONCLUSION WHICH IS CONTRARY TO THE FACTS AND CIRCUMSTANCES OF THE CASE.

After a careful scrutiny of the record of this case, the Court finds that the Court of Appeals committed no reversible error in affirming Ricardo Celino's conviction.

There is no merit to the petitioner's pretense that the transaction between him and the complainant was one of "joint venture" and that if he had any liability at all, it is civil in nature. The evidence presented in this case conclusively shows that Ricardo Celino, together with his two sons, Zosimo (deceased) and Requendo, led the complainant to believe that there was a hidden treasure underneath his lot; that a dwarf whose spirit supposedly entered the body of Zosimo directed the digging operations; that to obtain said treasure and upon instructions of the "dwarf," it was necessary for the complainant to give the accused money which amounted to P41,300.00 all in all and to pray in the church for three (3) consecutive days.

Under the abovestated facts, both the trial court and the Court of Appeals found that there was proof beyond reasonable doubt that the act committed by the petitioner constitutes the crime of estafa defined and punished under Article 315 2(a) of the Revised Penal Code, to wit:

Art. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

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2. By means of any of the following false pretenses of fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property,

credit, agency, business or imaginary transactions; or by means of other similar deceits. (*Italics supplied*)

Furthermore, no evidence was adduced by petitioner in support of his contention that he and the complainant were partners in a "joint venture" transaction. The case of *U.S. v. Clarin* [17 Phil. 85 (1910)] cited by the petitioner is therefore not applicable. The facts clearly show that petitioner together with his sons pretended to possess power to find hidden treasure in order to fleece the complainant of his hard-earned money. Contrary to the petitioner's allegation, the trial court and the Court of Appeals correctly applied the law and jurisprudence laid down by this Court on the matter. Under the cases of *People v. Scott* [62 Phil. 553 (1935)] and *US v. de los Reyes* [34 Phil. 693 (1916)] bearing similar facts as the case at bar, the acts committed by the petitioner constitute a classic case of swindling under Art. 315 2 (a) of the Revised Penal Code aforequoted.

WHEREFORE, the petition for certiorari is DENIED for lack of merit. The Court of Appeals decision dated November 11, 1986 is AFFIRMED.

Fernan (Chairman), Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., on leave.

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