

**YONG CHAN KIM, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
HON. EDGAR D. GUSTILO, PRESIDING JUDGE, RTC, 6TH JUDICIAL
REGION, BRANCH 28 ILOILO CITY AND COURT OF APPEALS (13TH
DIVI...**

G.R. No. 84719. January 25, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

This petition seeks the review on certiorari of the following:

1. The decision dated 3 September 1986 of the 15th Municipal Circuit Trial Court (Guimbal-Igbaras-Tigbauan--Tubungan) in Guimbal, Iloilo, in Criminal Case No. 628,[1] and the affirming decision of the Regional Trial Court, Branch XXVIII, Iloilo City, in Criminal Case No. 20958, promulgated on 30 July 1987;[2]
2. The decision of the Court of Appeals, dated 29 April 1988,[3] dismissing petitioner's appeal/petition for review for having been filed out of time, and the resolution, dated 19 August 1988, denying petitioner's motion for reconsideration.[4]

The antecedent facts are as follows:

Petitioner Yong Chan Kim was employed as a Researcher at the Aquaculture Department of the Southeast Asian Fisheries Development Center (SEAFDEC) with head station at Tigbauan, Province of Iloilo. As Head of the Economics Unit of the Research Division, he conducted prawn surveys which required him to travel to various selected provinces in the country where there are potentials for prawn culture.

On 15 June 1982, petitioner was issued Travel Order No. 2222 which covered his travels to different places in Luzon from 16 June to 21 July 1982, a period of thirty five (35) days. Under this travel order, he received P6,438.00 as cash advance to defray his travel expenses.

Within the same period, petitioner was issued another travel order, T.O. 2268, requiring him to travel from the Head Station at Tigbauan, Iloilo to Roxas City from 30 June to 4 July 1982, a period of five (5) days. For this travel order, petitioner received a cash advance of P495.00.

On 14 January 1983, petitioner presented both travel orders for liquidation, submitting Travel Expense Reports to the Accounting Section. When the Travel Expense Reports were audited, it was discovered that there was an overlap of four (4) days (30 June to 3 July 1982) in the two (2) travel orders for which petitioner collected per diems twice. In sum, the total amount in the form of per diems and allowances charged and collected by petitioner under Travel Order No. 2222, when he did not actually and physically travel as represented by his liquidation papers, was P1,230.00.

Petitioner was required to comment on the internal auditor's report regarding the alleged anomalous claim for per

diems. In his reply, petitioner denied the alleged anomaly, claiming that he made make-up trips to compensate for the trips he failed to undertake under T.O. 2222 because he was recalled to the head office and given another assignment.

In September 1983, two (2) complaints for Estafa were filed against the petitioner before the Municipal Circuit Trial Court at Guimbal, Iloilo, docketed as Criminal Case Nos. 628 and 631.

After trial in Criminal Case No. 628, the Municipal Circuit Trial Court rendered a decision, the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the court finds the accused, Yong Chan Kim, guilty beyond reasonable doubt for the crime of Estafa penalized under paragraph 1(b) of Article 315, Revised Penal Code. Records disclose there is no aggravating circumstance proven by the prosecution. Neither there is any mitigating circumstance proven by the accused. Considering the amount subject of the present complaint, the imposable penalty should be in the medium period of arresto mayor in its maximum period to prision correccional in its minimum period in accordance with Article 315, No. 3, Revised Penal Code. Consonantly, the Court hereby sentences the accused to suffer an imprisonment ranging from four (4) months as the minimum to one (1) year and six (6) months as the maximum in accordance with the Indeterminate Sentence Law and to reimburse the amount of P1,230.00 to SEAFDEC.

"The surety bond of the accused shall remain valid until final judgment in accordance herewith.

"Costs against the accused."[5]

Criminal Case No. 631 was subsequently dismissed for failure to prosecute.

Petitioner appealed from the decision of the Municipal Circuit Trial Court in Criminal Case No. 628. On 30 July 1987, the Regional Trial Court in Iloilo City in Criminal Case No. 20958 affirmed in toto the trial court's decision.[6]

The decision of the Regional Trial Court was received by petitioner on 10 August 1987. On 11 August 1987, petitioner, thru counsel, filed a notice of appeal with the Regional Trial Court which ordered the elevation of the records of the case to the then Intermediate Appellate Court on the following day, 12 August 1987. The records of the case were received by the Intermediate Appellate Court on 8 October 1987, and the appeal was docketed as CA-G.R. No. 05035.

On 30 October 1987, petitioner filed with the appellate court a petition for review. As earlier stated, on 29 April 1988, the Court of Appeals dismissed the petition for having been filed out of time. Petitioner's motion for reconsideration was denied for lack of merit.

Hence, the present recourse.

On 19 October 1988, the Court resolved to require the respondents to comment on the petition for review. The Solicitor General filed his Comment on 20 January 1989, after several grants of extensions of time to file the same.

In his Comment, the Solicitor General prayed for the dismissal of the instant petition on the ground that, as provided for under Section 22, Batas Pambansa Blg. 129, Section 22 of the Interim Rules and Guidelines, and Section 3, Rule 123 of the 1985 Rules of Criminal Procedure, the petitioner should have filed a petition for review with the then Intermediate Appellate Court instead of a notice of appeal with the Regional Trial Court, in perfecting his appeal from the RTC to the Intermediate Appellate Court, since the RTC judgment was rendered in the exercise of its appellate jurisdiction over municipal trial courts. The failure of petitioner to file the proper

petition rendered the decision of the Regional Trial Court final and executory, according to the Solicitor General.

Petitioner's counsel submitted a Reply (erroneously termed Comment)[7] wherein she contended that the peculiar circumstances of a case, such as this, should be considered in order that the principle barring a petitioner's right of review can be made flexible in the interest of justice and equity.

In our Resolution of 29 May 1989, we resolved to deny the petition for failure of petitioner to sufficiently show that the Court of Appeals had committed any reversible error in its questioned judgment which had dismissed petitioner's petition for review for having been filed out of time.[8]

Petitioner filed a motion for reconsideration maintaining that his petition for review did not limit itself to the issue upon which the appellate court's decision of 29 April 1988 was based, but rather it delved into the substance and merits of the case.[9]

On 10 August 1990, we resolved to set aside our resolution dismissing this case and gave due course to the petition. In the said resolution, we stated:

"In several cases decided by this Court, it had set aside technicalities in the Rules in order to give way to justice and equity. In the present case, we note that the petitioner, in filing his Notice of Appeal the very next day after receiving the decision of the court a quo, lost no time in showing his intention to appeal, although the procedure taken was not correct. The Court can overlook the wrong pleading filed, if strict compliance with the rules would mean sacrificing justice to technicality. The immi-nence of a person being deprived unjustly of his liberty due to procedural lapse of counsel is a strong and compelling reason to warrant suspen-sion of the Rules. Hence, we shall consider the petition for review filed in the Court of Appeals as a Supplement to the Notice of Appeal. As the Court declared in a recent decision, 'x x x there is nothing sacred about the procedure of pleadings. This Court may go beyond the pleadings when the interest of justice so warrants. It has the prerogative to suspend its rules for the same purpose. x x x Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. [Alonzo v. Villamor, et al., 16 Phil. 315]'

Conscience cannot rest in allowing a man to go straight to jail, closing the door to his every entreaty for a full opportunity to be heard, even as he has made a prima facie showing of a meritorious cause, simply because he had chosen an appeal route, to be sure, recognized by law but made inapplicable to his case, under altered rules of procedure. While the Court of Appeals can not be faulted and, in fact, it has to be lauded for correctly applying the rules of procedure in appeals to the Court of Appeals from decisions of the RTC rendered in the exercise of its appellate jurisdiction, yet, this Court, as the ultimate bulwark of human rights and indivi-dual liberty, will not allow substantial justice to be sacrificed at the altar of procedural rigor." [10]

In the same resolution, the parties were required to file their respective memoranda, and in compliance with said resolution, petitioner filed his memorandum on 25 October 1989, while private respondent SEAFDEC filed its required memorandum on 10 April 1990. On the other hand, the Solicitor General filed on 13 March 1990 a Recommendation for Acquittal in lieu of the required memorandum.

Two (2) issues are raised by petitioner, to wit:

- WHETHER OR NOT THE DECISION (sic) OF THE MUNICIPAL CIRCUIT TRIAL COURT (GUIMBAL, ILOILO) AND THE REGIONAL TRIAL COURT, BRANCH 28 (ILOILO CITY) ARE SUPPORTED BY THE FACTS AND EVIDENCE OR CONTRARY TO LAW AND THAT THE TWO COURTS A QUO HAVE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION OR HAVE ACTED WITHOUT OR IN EXCESS OF JURISDICTION.
- WHETHER OR NOT THE DECISION OF THE HONORABLE COURT OF APPEALS IS CONTRARY TO LAW, ESTABLISHED JURISPRUDENCE, EQUITY AND DUE PROCESS.

The second issue has been resolved in our Resolution dated 10 August 1990, when we granted petitioner's second motion for reconsideration. We shall now proceed to the first issue.

We find merit in the petition.

It is undisputed that petitioner received a cash advance from private respondent SEAFDEC to defray his travel expenses under T.O. 2222. It is likewise admitted that within the period covered by T.O. 2222, petitioner was recalled to the head station in Iloilo and given another assignment which was covered by T.O. 2268. The dispute rose when petitioner allegedly failed to return P1,230.00 out of the cash advance which he received under T.O. 2222. For the alleged failure of petitioner to return the amount of P1,230.00, he was charged with the crime of Estafa under Article 315, par. 1(b) of the Revised Penal Code, which reads as follows:

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

x x x x x x x x

"1. With unfaithfulness or abuse of confidence, namely:

(a) x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of; or to return, the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property."

In order that a person can be convicted under the abovequoted provision, it must be proven that he had the obligation to deliver or return the same money, goods or personal property that he had received.[11]

Was petitioner under obligation to return the same money (cash advance) which he had received? We believe not. Executive Order No. 10, dated 12 February 1980 provides as follows:

"B. Cash Advance for Travel

x x x x x x x x

"4. All cash advances must be liquidated within 30 days after date of projected return of the person. Otherwise, corresponding salary deduction shall be made immediately following the expiration day."

Liquidation simply means the settling of an indebtedness. An employee, such as herein petitioner, who liquidates a cash advance is in fact paying back his debt in the form of a loan of money advanced to him by his employer, as per diems and allowances. Similarly, as stated in the assailed, decision of the lower court, "if the amount of the cash advance he received is less than the amount he spent for actual travel x x x he has the right to demand reimbursement from his employer the amount he spent coming from his personal funds." [12] In other words, the money advanced by either party is actually a loan to the other. Hence, petitioner was under no legal obligation to return the same cash or money, i.e., the bills or coins, which he received from the private respondent. [13]

Article 1933 and Article 1953 of the Civil Code define the nature of a simple loan.

"Art. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum.

Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In commodatum the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower."

"Art. 1953. - A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality."

The ruling of the trial judge that ownership of the cash advanced to the petitioner by private respondent was not transferred to the latter is erroneous. Ownership of the money was transferred to the petitioner. Even the prosecution witness, Virgilio Hierro, testified thus:

"Q.

When you gave cash advance to the accused in this Travel Order No. 2222 subject to liquidation, who owns the funds, accused or SEAFDEC? How do you consider the funds in the possession of the accused at the time when there is an actual transfer of cash? x x x

A

The one drawing cash advance already owns the money but subject to liquidation. If he will not liquidate, he is obliged to return the amount.

Q.

xxx xxx xxx.

So why do you treat the itinerary of travel temporary when in fact as of that time the accused owned already the cash advance. You said the cash advance given to the accused is his own money. In other words, at the time you departed with the money it belongs already to the accused?

A

Yes, but subject for liquidation. He will be only entitled for that credence if he liquidates.

Q

In other words, it is a transfer of ownership subject to a suspensive condition that he liquidates the amount of cash advance upon return to station and completion of the travel?

A

Yes, sir.

(pp. 26-28, tsn, May 8, 1985)."[14]

Since ownership of the money (cash advance) was transferred to petitioner, no fiduciary relationship was created. Absent this fiduciary relationship between petitioner and private respondent, which is an essential element of the crime of estafa by misappropriation or conversion, petitioner could not have committed estafa.[15]

Additionally, it has been the policy of private respondent that all cash advances not liquidated are to be deducted correspondingly from the salary of the employee concerned. The evidence shows that the corresponding salary deduction was made in the case of petitioner vis-a-vis the cash advance in question.

WHEREFORE, the decision dated 3 September 1986 of the 15th Municipal Circuit Trial Court in Guimbal, Iloilo in Criminal Case No. 628, finding petitioner guilty of estafa under Article 315, par. 1(b) of the Revised Penal Code and the affirming decision of the Regional Trial Court, Branch XXVIII, Iloilo City, in Criminal Case No. 20958, promulgated on 30 July 1987 are both hereby SET ASIDE. Petitioner is ACQUITTED of the criminal charge filed against him.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Annex "A", pp. 32-51, Rollo

[2] Annex "B", pp. 52-55, id.

[3] Annex "C", pp. 56-62, id.

[4] Annex "D", pp. 63-64, id.

[5] Rollo, pp. 50-51

[6] Id., p. 55

[7] Id., p. 138

[8] Id., p. 142

[9] Id., p. 143

[10] Id., pp. 181-182

[11] Yam vs. Malic, 94 SCRA 30

[12] Rollo, p. 39

[13] Yam vs. Malic, supra.

[14] Recommendation for Acquittal, pp. 10-11; Rollo, pp. 257-258

[15] Galvez vs. Court of Appeals, 42 SCRA 278

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