

BENITO SY Y ONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 85785. April 24, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Convicted of Estafa under Article 315, Paragraph 1(b) of the Revised Penal Code by three (3) Courts, namely, the Metropolitan Trial Court, Caloocan City, Branch 52;[1] the Regional Trial Court of the same City, Branch 129;[2] and respondent Court of Appeals, petitioner now seeks to break the chain of convictions.

The indictment against petitioner-accused, filed on 18 August 1986, reads:

"That on or about and during the month of January 1986 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused received from the Panama Sawmill Inc., represented in this case by TE PENG MEN, PBC Check No. 291616 dated January 15, 1986 for P6,000.00 which check was subsequently encashed by said accused for the purpose of and under the express obligation on his part to use the said amount in securing a Marine Insurance coverage for P3,000,000.00 on a shipment of logs owned by Panama Sawmill Inc. but said accused with abuse of trust and confidence reposed upon him far from complying with his obligation and with intent to deceive and defraud said corporation, did then and there willfully, unlawfully and feloniously receive a Marine Insurance coverage for only P1,000,000.00 to cover said shipment of logs, paying therefor only the amount of P2,712.50 as insurance premium without the knowledge and consent of said Panama Sawmill Inc., and thereafter, said accused misappropriated and converted to his own personal use and benefit the balance of P3,287.50, and despite repeated demands upon him, said accused refused and failed to account for said sum of P3,287.50 to the damage and prejudice of said Panama Sawmill, Inc., in the aforestated amount of P3,287.50." (p. 3, Original Record)

After trial on the merits, the Metropolitan Trial Court of Caloocan City convicted petitioner in a Decision, dated 17 December 1986, the dispositive portion of which reads:

"WHEREFORE, by proof beyond reasonable doubt, the accused BENITO SY is found GUILTY of violating Art. 315, par. 3 of the Revised Penal Code, he is sentenced to a straight penalty of FOUR (4) MONTHS imprisonment, to reimburse or give restitution in the amount of THREE THOUSAND TWO HUNDRED EIGHTY SEVEN (P3,287.50) PESOS AND 50/100 CENTAVOS and to pay costs." (p. 37, Original Record)

On appeal before it, the Regional Trial Court of Caloocan City, affirmed the judgment of conviction on 3 June 1987, but increased the penalty, as follows:

"IN VIEW OF THE FOREGOING, this Court finds the accused Benito SY y Ong guilty beyond reasonable doubt of the crime of estafa, thru misappropriation, as defined under par. 1 (b) and penalized under the 3rd par. of Art. 315 of the Revised Penal Code and there being no attendant mitigating nor aggravating circumstance, he is hereby sentenced to suffer an indeterminate penalty of THREE (3) MONTHS OF ARRESTO MAYOR TO ONE (1) YEAR AND ONE (1) DAY OF PRISION CORRECCIONAL; to suffer the accessory penalties provided for by law; and to pay complainant Panama Sawmill Co., by way of reparation, the amount of

P3,287.50. Costs against appellant." (p. 304, Original Record)

On 30 June 1988 respondent Court of Appeals affirmed the Regional Trial Court Decision[3] notwithstanding two (2) Manifestations in lieu of Comment submitted by the Office of the Solicitor General, dated 3 March 1988 and 3 October 1988, respectively, recommending acquittal of petitioner-accused.

Before us now, petitioner re-asserts his innocence. The Solicitor General has also reiterated his recommendation for acquittal.

According to Te Peng Men, Manager of Panama Sawmill, Inc., (henceforth, simply "Panama"), and sole witness of the prosecution, the developments in this case unfolded as follows:

1. Sometime in January 1986 "Panama" engaged petitioner, an insurance agent, to obtain marine insurance in the amount of P3M to cover its log shipment from Palawan to Manila.
2. As instructed, on 14 January 1986 petitioner secured Marine Insurance Policy No. OAC-M-86/002 from Oriental Assurance Corporation ("Oriental", for short), with a face value of P3M (Exhibit "A"). Only the duplicate original of the Policy was left with "Panama".
3. On 15 January 1986, "Panama" gave petitioner Philippine Bank of Communication Check No. 291616 in the amount of P6,000.00 payable to "Oriental" for the policy coverage of P3M.
4. On 28 January 1986 some of the logs valued at P1.2M were lost when the barge transporting the shipment encountered rough seas in the vicinity of Dumaran Island, Palawan.
5. "Panama" filed a claim for loss against "Oriental" only to be informed by the latter that its marine insurance coverage was only for P1M and that petitioner had paid a premium of only P2,712.50 (Exhibit "D").
6. Contending that petitioner had misappropriated the difference of P3,287.50 for his personal use and benefit to its prejudice, "Panama" charged petitioner with Estafa.

For his part, petitioner maintains that the following details constitute the truth:

- a) Petitioner had never, at any one time, dealt with prosecution witness, Te Peng Men. It was only through one Tau Tian that petitioner had any contact with "Panama."
- b) "Oriental" had issued a Marine Insurance Policy in the amount of P3M in favor of "Panama" through petitioner's efforts.
- c) However, Tau Tian requested petitioner to return the Policy since the rate was quite high and "Panama" wanted to pay only P6,000.00. Thereafter, Tau Tian returned the original of the Policy to petitioner but retained the duplicate copy. Tau Tian instructed petitioner to obtain a reduction of the premium from P8,137.50 to P6,000.00.
- d) Since petitioner was not able to secure a reduction in the premium, he obtained instead a P1M policy from "Oriental" paying for that purpose a premium of P2,712.50. In addition, he obtained a P2M policy from the First Integrated Insurance Co., Inc., paying a premium therefor of P3,255.00. The two policies totalled P3M and the premiums paid reached P5,967.50, or almost P6,000.00.
- e) The real reason why "Panama" was not able to recover on the aforementioned policies was because the policy or "Oriental" was for total loss only and not for partial loss. In fact, even the Tan Gatue Adjustment Company sustained the rejection of "Panama's" claim for that reason.

Defense witness, Kent Cotoco, the Underwriting Manager of "Oriental." corroborated petitioner's testimony that the P3M Policy first issued by "Oriental" (Exhibit "1") was cancelled and replaced by a P1M Policy (Exhibit "3").

He explained that before the P3M Policy was cancelled, petitioner had surrendered the original to "Oriental"; that the original and the replacement Policies bear the same serial number 86/002 because it is company policy for the replacement Policy to carry the same number as the original Policy; and that he was aware that the First Integrated Insurance Co., Inc., had issued a P2M Policy for "Panama" (t.s.n., November 21, 1986. pp. 78-80) because the latter company charges a lower premium rate than "Oriental" (ibid., pp. 80-82).

Is the accused guilty of Estafa committed through misappropriation under paragraph 1(b) Article 315 of the Revised Penal Code? Said provision reads:

"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

"(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."

For the crime of Estafa through misappropriation to exist, the following elements must be present:

1. That money, goods or other personal property is 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;
2. That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
3. That such misappropriation or conversion or denial is to the prejudice of another: and
4. That there is a demand made by the offended party to the offender (II Criminal Law, Luis B. Reyes, 12th Edition, p. 717)

Have the foregoing elements been met in respect of petitioner-accused? Petitioner, supported by the Solicitor General, avers that they have not because no conversion or misappropriation has been committed and that there was no demand for the return of the P6,000.00 given to petitioner. In other words, elements 2, 3, and 4 of the crime are lacking.

The totality of the evidence yields the following incontrovertible data in chronological order:

Jan. 14, 1986 -

Issuance of Oriental Marine Insurance Policy No. OAC-M-8/002 for P3M, with a total premium of P8,137.50, "against total loss only." (carbon copy, Exhibit "A", original, Exhibit "1").

Jan. 15, 1986 -

PBC Check No. 291616 payable to Oriental Assurance Corporation for P6,000.00 (Exhibit "C"), endorsed at the back by petitioner (Exhibit "C-1"), and stamped "cleared" on the same day, January 15, 1986.

Jan. 15, 1986 -

Issuance of First Integrated Marine Insurance Policy No. 00266 for P2M with a premium of P3,000.00 plus P225.00 documentary stamps, with a coverage "Total Loss by Total Loss of the Vessel Only" (Exhibit "2").

Jan. 20, 1986 -

Issuance of "Oriental" Marine Insurance OAC-M-86/002 for P1M, with a total premium of P2,712.50 "against total loss only." (Exhibit "3").

Jan. 21, 1986 -

Official Receipt of "Oriental" for P2,712.50 representing premium for Policy No. M-86/002 in the amount of P1M (Exhibits "D" and "4").

Jan. 28, 1986 -

Partial loss of the log shipment.

Feb. 28, 1986 -

Report of the Tan-Gatue Adjustment Co., Inc., that the loss was not compensable under, the terms and conditions "Total Loss Only" stipulated in the "Oriental" Policy (Exhibit "6").

May 2, 1986 -

Endorsement No. M-0001 of First Integrated declaring that its Marine Cargo Policy No. 00266, issued on January 15, 1986, is "CANCELLED effective as of its inception date, for non-payment of premium" (Exhibit "E"; "E-1").

May, 1986 -

Investigation of case by City Fiscal of Caloocan City.

June 10, 1986 -

First Integrated Official Receipt for P3,255.00 in payment of premium for Marine Cargo Policy No. 00266 issued (Exhibit "5")

June 10, 1986 -

Endorsement No. NPA/M-0002/86 First Integrated, reinstating Marine Cargo Policy No. 00266 provided no loss "has occurred prior to the date of issuance of this endorsement" (Exhibit "7").

August 18, 1986-

Information for Estafa filed before the Metropolitan Trial Court, Caloocan City.

Upon the established facts, there can be no dispute that petitioner received a check in the amount of P6,000.00 from "Panama" for the particular purpose of securing a marine insurance coverage of P3M. That marked the creation of a fiduciary relation between them, the existence of which, either in the form of a trust or under any other obligation involving the duty to make delivery of the same, is an essential element of the crime of Estafa by misappropriation or conversion. The first element of the crime of Estafa, therefore, is satisfied.

As to the second element of "misappropriation or conversion" of the money or property received, petitioner contends that the same is inattendant because petitioner had, in fact, procured the P3M insurance coverage from two companies, spending therefor all of the entrusted amount of P6,000.00 for premiums.

We find ourselves in disagreement.

To "convert" ("distrar") connotes the act of using or disposing of another's property as if it were one's own. And to "misappropriate" ("appropriar") means to own, to take something for one's own benefit (II Criminal Law, Luis B. Reyes, 12th Edition, p. 729). That there was conversion or misappropriation by petitioner is immediately shown by the fact that, as admitted by him on cross-examination, he had deposited the "Panama" check, of

P6,000.00 payable to "Oriental" in his own personal account (t.s.n, November 21, 1986. p. 30) even though he was not authorized to do so by "Oriental" being merely an ordinary, not a special agent, as testified to by the underwriting agent of "Oriental" (ibid., pp. 70-74). Petitioner assumed the right to dispose of it as if it were his, thus committing conversion with unfaithfulness and a clear breach of trust. A check, while not regarded as legal tender is normally, under commercial usage, a substitute for cash. The credit represented by it in stated monetary value is properly capable of appropriation (Galvez vs. Court of Appeals, L-22760, November 29, 1971, 42 SCRA 278).

More, petitioner only gave a duplicate original copy of the "Oriental" policy to "Panama", which accepted it as the right policy. If, as petitioner alleges, "Panama" had asked him to secure a reduction in premium, it would have been a simple matter for him to have informed "Panama" of the second Policy for P1M he had secured from "Oriental", as well as the P2M Policy from First Integrated. But, no. All these were fraudulently concealed from "Panama" and were brought out only during the preliminary investigation of the case before the City Fiscal's Office.

Petitioner's obtainment of the First Integrated Policy, with a coverage of P2M, was only on paper. He had failed to pay the premium therefor of P3,255.00 at the time of issuance so that the Policy never became valid and binding (Sec. 77, Insurance Code of 1978). Eloquent proof of that is the Endorsement of 2 May 1986 of First Integrated canceling its said Policy for non-payment of premium "effective as of its inception date," or on 15 January 1986. Petitioner's explanation that he paid for the premium twice - the first time on 21 January 1986 except that he was not issued a receipt because he paid for it in cash (t.s.n., November 21, 1986, pp. 36-37), and the second time on 10 June 1986 "because the first time my sub-agent did not pay it directly to the company on the first time so I paid it again," (ibid., p. 38) - is prevarication, pure and simple.

Petitioner paid the premium for the First Integrated Policy only on 10 June 1986 or five (5) months after its issuance and five (5) months after the partial loss of the shipment, and while the case was already pending investigation at the City Fiscal's Office. The company reinstated the Policy, also on 10 June 1986, but on the condition that "no loss had occurred prior to the date of issuance of this endorsement." It was a useless reinstatement, therefore, and the stark fact remains that at the time of loss there was no coverage from First Integrated because of non-payment of premium. Evidently, petitioner paid the premium at that late date in a futile attempt to revive the Policy and as a last-ditch effort to show that the entire P6,000.00 amount received from "Panama" was used by petitioner for the purpose intended - namely, the payment of premium for marine insurance coverage of P3M. Indications are that no payment of premium to First Integrated would have been made either, but for this criminal charge. The evidence is clear that he had utilized the balance of the P6,000.00 (after deducting the premium of P2,712.50 paid to "Oriental") for his own benefit, and with abuse of confidence, which is the very essence of misappropriation. And he would have gotten away scot-free if no loss of the shipment had occurred.

The third element of Estafa is likewise present. The misappropriation or conversion resulted in prejudice to "Panama" which had believed all along that its shipment was insured for P3M. There was disturbance in its property rights and, although temporary, is sufficient to constitute injury within the meaning of Article 315 (1-b) of the Revised Penal Code (Lu Hayco vs. Court of Appeals, L-49607-13 & 55775-86. August 26, 1985, 138 SCRA 227).

As to the fourth essential element, that of demand made by the offended party to the offender, which petitioner claims is wanting in this case, suffice it to state that demand is not necessary when there is evidence of misappropriation as in this case.

"It so happens only that failure to account, upon demand, for funds or property held in trust, is circumstantial

evidence of misappropriation. The same may, however, be established by other proof, such as that introduced in the case at bar." (Tubb vs. People, et al., 101 Phil. 114 (1957))

All the essential elements of Estafa through misappropriation or conversion being present, we do not see our way clear to breaking the chain of convictions by the other Courts before us. The guilt of petitioner-accused has been proven beyond reasonable doubt.

WHEREFORE, the judgment under review is hereby **AFFIRMED**. With costs against petitioner-accused, Benito Sy y Ong.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Presided over by Judge Carlos C. Ofilada.

[2] Presided over by Judge Domingo M. Angeles.

[3] Penned by Justice Segundino G. Chua and concurred in by Justices Fidel P. Purisima and Nicolas P. Lapena, Jr.

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