

JOSE A. SADDUL, JR., PETITIONER, VS. THE HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 91041. December 10, 1990*

Ponente: GRINO-AQUINO, J.

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Before the Court is the Second Motion for Reconsideration filed by the petitioner, Jose A. Saddul, Jr., praying that we set aside our resolution of April 16, 1990 denying his petition for review of the decision promulgated on September 1, 1989 by the Court of Appeals in CA-G.R. CR No. 06234, entitled: "The People of the Philippines, Plaintiff-Appellee vs. Jose A. Saddul, Jr., Accused-Appellant" which affirmed on appeal the judgment of the Regional Trial Court of Manila, finding him guilty of estafa under Article 315, par. 1(b) of the Revised Penal Code. After deliberating on the motion for reconsideration and the respondents' comments, the Court resolved to grant the motion and set aside its resolution of April 16, 1990.

In 1973, the petitioner became a vice-president and director of Amalgamated Motors (Phils.) Inc. (AMPI for brevity) (p. 5, tsn, February 15, 1988). AMPI was then a wholly-owned subsidiary of British Leyland (p. 31, tsn, November 9, 1989). It was the sole distributor in the Philippines of British and Japanese heavy equipment, trucks, farm implements, spare parts, and other automotive products and machines manufactured by Leyland International, Land Rover Ltd. (LAND ROVER for brevity), Avelyn Barfourd, Mitsubishi, and Furokawa (p. 7, tsn, February 15, 1988; p. 6, tsn, November 9, 1987).

Since 1980, Felimon R. Cuevas had been a dealer of AMPI for government sales. In 1981, he bought into the company and became its majority stockholder and president (p. 5, tsn, February 15, 1988). Upon Cuevas' ascendancy in the corporation, Saddul was made a director as well as Executive Vice-President and General Manager. As such, he was in charge of the operations of the company and was "delegated" to make sales of some units and spare parts (p. 7, tsn, November 9, 1989). As distributor not only of British but also Japanese automotive products, AMPI carried an inventory of some P15 to P20 million worth of spare parts of the companies it represented in the Philippines (p. 37, tsn, November 9, 1987).

In 1985, LAND ROVER supplied P1.5 million worth of spare parts to the Armed Forces of the Philippines (AFP) through AMPI, but the merchandise were returned to AMPI because they were not the correct items needed by the AFP (p. 27, tsn, February 15, 1988). The parts were kept by AMPI pending disposal instructions from LAND ROVER.

On March 4, 1985, Erwin Lyndsay, LAND ROVER's area manager for Southeast Asia, sent the following letter to Saddul, Executive Vice-President and General Manager of AMPI, regarding the spare parts rejected by the AFP:

"Dear Joe:

"Further to my letter dated 27 February 1985, we have now given consideration to the matter of disposal of the Land Rover parts wrongly supplied to A.F.P. and currently held by Ampi on our behalf, pending disposal instructions from us.

"As agreed in principle during our meeting, we now authorize you to undertake the disposal of the parts at the best possible prices available from your local market.

"We would expect you to detail to us all sales made from this stock in terms of part number, quantity sold and price obtained.

"We agree that a sum amounting to 20% of the sale value be retained by Amalgamated Motors as a handling in a charge and that the balance is placed into a separate client account which will be available to LRPE or any other party authorized by LRPE.

"I trust that these arrangements meet with your approval and will satisfactorily solve the problem of the AFP parts disposal.

"If you have any problems with the above arrangements or need any further authorizations at this stage, please do not hesitate to contact me.

"Yours sincerely,

"(SGD)

"ERWIN LYND SAY

Area Manager? South East Asia" (Underscoring ours: Exh. I or F, pp. 126, 141 RTC Record.)

Saddul sold some of the spare parts (worth P143,085.00) to Rover Motor Parts (a different entity from LAND ROVER) whose president was Jose P. Garcia. The sales were evidenced by AMPI Sales Invoices (Exhs. A, A-1 to A-8) and summarized in the Statement of Accounts dated June 9, 1986 (Exh. B) sent by AMPI to Rover Motor Parts. Payments were made by the buyer to Saddul. AMPI's 20% handling commission on the sale amounted to P28,617.

Pursuant to LAND ROVER'S directive that the sale value of these spare parts be "placed into a separate client account which will be available to LRPE or any other party authorized by LRPE" (Exh. 1 or F), Saddul did not deposit the proceeds of the sales in AMPI's account but held them in trust for LAND ROVER. Saddul testified thus:

"ATTY. ROBLES:

"Q: Is there any reason why you have not remitted to Amalgamated Motors Philippines this 20% handling charge?

"A: The reason is this transaction covered a lot of spare parts and the P143,085.00 was only a part of the entire shipment so that there is still an amount due to Land Rover Ltd. I was requested by Land Rover Ltd. to hold on to the 20% until a proper account of the other side could be made and proceeds of items which I do not know, only they would know, how much is owing Amalgamated Motors Philippines, Inc." (p. 10, tsn, February 15, 1988.)

"ATTY. CALIMA:

"Q: So, in other words, the instructions were given to you before you sold to Rover Motor Parts?

"A: Generally, the instruction was to sell it for Land Rover and which I did, sir. Subsequently, when sales proceeds were received, I asked them what will I do with the money and they said, keep the money until I can give you the necessary authority to open an account for Land Rover.

"Q: My question to you is when did you receive the instruction from Land Rover? After the sale or before the sale was effected to Rover Motor Parts?

"A: Instructions for what?

"Q: To withhold the proceeds and not to remit the proceeds?

"A: The instruction to hold, it is after the sale, sir." (p. 23--24, tsn, February 15, 1988.)

"ATTY. CALIMA:

"Q: And inspite (sic) of the fact that Amalgamated Motors Philippines, Inc. can retain 20% handling charge you were still instructed not to remit the 20% to Amalgamated Motors?

"xxx xxx xxx

"J. SADDUL JR.:

"A: Yes, sir. I was told pending full accounting of the entire volume of the transaction. As soon as the entire transaction is worked out through the accounting process then we will know whether Land Rover will owe Mr. Cuevas or Mr. Cuevas will owe Land Rover.

"Q: But again Mr. Witness, you will agree to this portion referring to the handling charge, it is not qualified by proper accounting?

"A: No, it is not, sir. In the letter, it is not." (p. 28, tsn, February 15, 1988.)

Saddul was "terminated" by AMPI in the early part of 1986 for cause or causes that Cuevas did not disclose, but, according to Edgar Guilatco, a prosecution witness, Saddul "left the company" (pp. 6-7, tsn, January 6, 1988). He thereupon formed his own outfit which he named "Multipart Motors International, Inc." What appears in the record is that on May 30, 1986, Lyndsay wrote a letter to Saddul enclosing "a note which effectively authorizes you to act as our distributor" (Exh. 5).

This appointment, although not yet official, must have leaked to, and deeply wounded AMPI's President Felimon Cuevas. It was presumably the reason why in a letter of the same date, May 30, 1986, through counsel Atty. Benjamin G. Calima, AMPI demanded from Saddul an accounting of the spare parts supposedly worth P575,053.50 sold by him to Rover Motor Parts "during the time when you were still connected with the company" (Exh. E).

On November 10, 1986, Lyndsay wrote a letter to Cuevas requesting for a statement on AMPI's inventory of British Leyland spare parts, indicating:

- "1. Opening stock by part number.
- "2. Sales made by part number and price obtained.
- "3. Net proceeds credited to client account.
- "4. Present stock holding by part number." (p. 127, Exh. G, RTC Record.)

Cuevas replied by telex that some of those spare parts had been sold by Saddul who did not turn over the proceeds to AMPI, and that he (Cuevas) filed a criminal case against Saddul "to recover the money so I can remit immediately" (Exh. H).

On March 26, 1987, Lyndsay sent a reply-telex requesting information as to "which items have been sold and at what price and which items remain in stock" and sought "a reconciliation of this stock" (Exh. I).

On June 3, 1987, based on Cuevas' complaint, an information for estafa in the amount of P143,085.00 (I.S. No. 86-20607) was filed against Saddul in the Regional Trial Court of Manila:

"That in or about and during the period comprised between February 12, 1985 and September 10, 1985, inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously defraud AMALGAMATED MOTORS (PHILS.), INC., a corporation duly organized and existing under the laws of the Republic of the Philippines with business address at Leyland House, 21st corner Railroad Sts., Port Area, this City, in the following manner, to wit: the said accused, being then the Executive Vice-President and General Manager of said Amalgamated Motors (Phils.), Inc., having been authorized by Land Rover Parts & Equipment Ltd., England, to undertake disposal of rejected spare parts and engines at the best possible prices available in the local market, which rejected spare parts and engines were then held by Amalgamated Motors (Phils.), Inc. in behalf of the Land Rover Parts & Equipment Ltd. pending disposal and instructions from the latter company, actually disposed and offered the said parts and engines for sale to a certain Jose P. Garcia and obtained from the latter the sum of P143,085.00 as purchase price of the same, and the said accused, once in possession of the said sum of P143,085.00, far from complying with his obligation to turn over the proceeds of the sale to said Amalgamated Motors Phils., Inc., failed and refused, and still fails and refuses to do so notwithstanding demands made upon him, and instead, with intent to defraud, he wilfully, unlawfully and feloniously, misappropriated, misapplied and converted the same to his own personal use and benefit, to the damage and prejudice of said AMALGAMATED MOTORS (PHILS.) INC. in the aforesaid total amount of P143,085.00, Philippine currency." (Emphasis supplied; p. 1, RTC Record).

On August 6, 1987, Lyndsay wrote Cuevas requesting that all British Leyland parts in the possession of AMPI be delivered to Saddul's Multipart Motors Philippines, Inc. "who is our new parts distributor for the Philippines." He further advised Cuevas that "in view of the change in distributorship to Multipart Motors, we will not hold you (AMPI) liable" for the proceeds (P143,085.00) of the spare parts sold by Saddul to Rover Motor Parts. The letter reads as follows:

"6 August 1987

"Amalgamated Motors (Phils.) Inc.

Railroad Street Corner 21st Street

Port Area

Manila

Philippines

Attention Col. Felimon R. Cuevas

Dear Sirs,

"We have been advised that Security Bank and Trust Co. have obtained a Writ of Attachment over your properties and assets. We further understand that the parts supplied in error to Philippine Armed Forces and returned to Amalgamated Motors for safe keeping have been included under the Attachment. We therefore request that you inform the bank and the Court that these parts do not form part of your properties and assets and should in consequence, be released from the Attachment.

"We should also be pleased if you would transfer these parts to:

"Multipart Motors Philippines Inc. who is our new parts distributor for the Philippines.

"We would take this opportunity to raise the matter of the parts and major units which were already disposed of before the granting of the Writ of Attachment.

"We have been advised by Mr. Jose A. Saddul that he is holding proceeds of sale, amounting to Pesos 143,084.00, of some of the subject parts in line with instructions contained in our letter dated 4 March 1985.

We believe that you are aware of this arrangement. Please note that in view of the change in distributorship to Multipart Motors, we will not hold you liable for this amount, but will accept accounts from Mr. Saddul covering the parts he has sold. As agreed, we will provide Amalgamated Motors with a handling charge amounting to 20% of the proceeds and sale of these parts.

"With regard to the balance of parts held by you, we shall be grateful if you will provide to us an account detailing sales made. Upon receipt we will settle your handling charges at 20% of sales as agreed.

"We look forward to hearing from you.

"Yours sincerely,

(SGD)

ERWIN LYND SAY

Regional Manager

Export Sales" (Underscoring supplied; Exh. 2, pp. 142-143, RTC Record)

Despite the advice from Land Rover, AMPI prosecuted the criminal case against Saddul. On August 29, 1988, the trial court rendered a decision finding him guilty of estafa with unfaithfulness or abuse of confidence (Art. 315, subpar. 1-b, Rev. Penal Code). The dispositive part of the decision reads as follows:

"WHEREFORE, the Court finds the accused Jose A. Saddul, Jr. guilty beyond reasonable doubt of the crime of estafa, defined and penalized under Article 315, par. 1(b) of the Revised Penal Code, involving the amount of P28,617.00 and in the absence of any modifying circumstance, hereby sentences him to suffer an indeterminate penalty ranging from six (6) months and one (1) day of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, to indemnify the offended party, Amalgamated Motors (Phils.), Inc., in the amount of P28,617.00 without subsidiary imprisonment in case of insolvency, and to pay the costs." (p. 26, Rollo.)

Saddul appealed to the Court of Appeals (CA-G.R. CR No. 06234.) On September 1, 1989, the Court of Appeals affirmed the trial court's decision. Hence, this petition for review.

The Court has carefully considered the petition for review on certiorari and its annexes, as well as the comments of the public respondent, including the original records which the Court caused to be elevated for examination. We find merit in the petition for review.

One of the ways of committing the crime of estafa with unfaithfulness or abuse of confidence is:

"(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." (Art. 315, par. 1 subpar. b, Rev. Penal Code.)

The appropriation or conversion of money or property received, to the prejudice of the owner thereof, is the essence of estafa through misappropriation (Ramirez, 9 Phil. 67). The words "convert" and "misappropriate" 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 to 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. (Webber vs. Court of Appeals, 57 OG 2937; People vs. Panes 37 Phil. 118.)

Conversion is an unauthorized assumption and exercise of the right of ownership over goods or personal chattels

belonging to another, resulting in the alteration of their condition or the exclusion of the owner's rights. It takes place when a person actually appropriates the property of another to his own benefit, use, and enjoyment (Trinidad vs. Court of Appeals, 53 OG 731 citing Bouvier's Law Dictionary).

The elements of the crime of embezzlement or estafa with abuse of confidence are:

- (a) that personal property is received in trust, on commission, for administration or under any other circumstance involving the duty to make delivery of or to return the same, even though the obligation is guaranteed by a bond;
- (b) that there is conversion or diversion of such property by the person who has so received it or a denial on his part that he received it;
- (c) that such conversion, diversion or denial is to the injury of another, and
- (d) that there be demand for the return of the property. (p. 247, Vol. III, 1988 Ed., Revised Penal Code by R.C. Aquino)

The first element of the crime does not exist in this case because Saddul did not receive the Leyland Automotive spare parts from Cuevas or AMPI in trust, on commission, for administration, or under a duty to make delivery of, or return the same. Saddul received the Leyland spare parts from the AFP in trust for LAND ROVER which authorized him to sell them ("we now authorize you to undertake the disposal of the parts at the best possible prices available from your local market" - Exh. 1 or F, p. 126, RTC Record).

Since Saddul did not convert or divert the property (he sold them in accordance with the authority given to him by Land Rover) nor did he deny that he received them, the second element of the crime was also not present.

Saddul's failure to deliver the proceeds of the sale of the spare parts to AMPI or Cuevas did not constitute a conversion or diversion to the injury of the latter who, not being the owner of the property, incurred no loss and suffered no injury on account of Saddul's retention of the said proceeds while awaiting Land Rover's instructions regarding the special account where he should deposit them. Saddul simply complied with the directive in Land Rover's letter of March 4, 1985 that the proceeds be "placed into a separate client account which will be available to LRPE or any other party authorized by LRPE" (Exh.1 or F). Implicit in this directive was an injunction not to deliver the proceeds to AMPI. The third element of the crime charged is absent.

The fourth and final element of demand for the return of the property is also lacking. AMPI or Cuevas made no demand for the return of the spare parts sold by Saddul because Cuevas knew that those spare parts were to be sold for the account of Land Rover.

While it is true that under Lyndsay's letter of March 4, 1985 (Exh. 1 or F) AMPI was entitled to a handling commission of 20% of the sale value of the spare parts (equivalent to P28,617.00) which Saddul failed to deliver to AMPI, Saddul explained that he subsequently received instructions from Land Rover to hold the 20% commission until AMPI shall have given an accounting of the remaining Leyland spare parts (worth P1.2 million) still held by AMPI. (pp. 10, 23-28, tsn, February 15, 1988.)

That testimony of Saddul was not controverted by the complainant. On the contrary, it was confirmed by Lyndsay's letter dated August 6, 1987 to AMPI or Cuevas (Exh. 2) asking for an accounting of "balance of the parts held by you x x x upon receipt (of which)* we will settle your handling charges at 20% of sales as agreed."

By obeying the instructions of Land Rover to withhold payment of AMPI's 20% handling charge (P28,617.00) Saddul did not become liable for embezzlement to AMPI for he did not receive that sum from AMPI. It was part of the price he received from Rover Motor Parts, the buyer of the spare parts.

"Where the accused did not receive the money from the complainant for safekeeping or on commission or for administration and in trust, he is not criminally liable for failure to return the money." (Jose Barredo vs. Court of Appeals, 54 OG 1037).

AMPI's recourse, in order to recover its 20% handling charge, is to file a civil action to collect that amount from its erstwhile principal, Land Rover, not this criminal action for estafa against Saddul.

WHEREFORE, the petitioner's motion for reconsideration of the resolution dated April 16, 1990 is granted. The decision dated September 1, 1989, of the Court of Appeals in CA-G.R. No. 06234 is hereby reversed and set aside. The petitioner is acquitted of the crime charged, with costs de oficio.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.^z

* Words in parenthesis supplied.

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