

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SEVERINO CAMARA, DEFENDANT AND APPELLANT.*G.R. No. 9459. October 19, 1914*

Ponente: ARELLANO, C.J.

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Severino Camara was charged before the Court of First Instance of Tayabas "with having, in December, 1912, taken and received from Calixto Berbari, as the representative of Berbari Hermanos, the sum of P425.10 for the purchase, on commission, of copra, and with having appropriated the said sum to himself, to the prejudice of Berbari Hermanos." (Complaint filed by the fiscal.)

The record shows that from this sum of P425.10 there must be deducted the amount of P8.50, which, according to the document presented in evidence by the said Calixto Berbari, is the value of one sack of rice that Berbari sold to Camara on credit. This being the actual fact, the charge made in the complaint is unfounded, to wit, that the defendant appropriated to himself money, goods, or other personal property received on commission for the purchase of copra, and therefore he cannot be guilty of the crime of estafa, but is a debtor for the price of the sale. Paragraph 5 of article 535 of the Penal Code does not, nor can it, specify a contract of sale as one that gives rise to the obligation to deliver or to return the thing received, as occurs with contracts for safe-keeping, or of commission, or administration, and others such as commodatum, which certainly involve the obligation to deliver or return the thing received. A person who buys rice on credit becomes the owner of it and indebted for its price, but is not guilty of the crime of estafa by reason of not paying for it. Hence, the sum which the defendant is alleged to have embezzled is not P425.10, as stated in the complaint, but P416.60.

Besides this reduction, the trial court makes another of P36.06, the value of the copra furnished by the defendant, as admitted by Berbari in his testimony. Consequently the amount specified in the complaint should be reduced to P380.54.

Severino Camara was an agent of Berbari Hermanos for the purchase of copra on their order and account. On February 1, 1913, the manager of Berbari Hermanos filed a complaint of estafa for the aforesaid sum of P425.10. During the trial he was required to present a statement of the accounts of Severino Camara with the firm, which he did, and that statement now appears in evidence on page 61 of the record. The title reads as follows: "Extract from the account current of Mr. Severino Camara with Messrs. Berbari Hermanos, Atimonan." And at the close: "1913—January 31—Balance due us from him (for this balance he was sued in the justice of the peace court of Atimonan) P425.10." It is evident that the sum mentioned in the complaint as having been taken and received on commission is the balance of an account containing entries of amounts received by Camara and amounts received by Berbari Hermanos.

As the settlement of account ended with a balance sued for in the justice of the peace court, it also began with a balance likewise sued for in the Court of First Instance. The account begins thus: "1911—September 30—Balance in our favor, as per receipts (for this balance suit was instituted against him), P413.35." Notwithstanding this, in

May, 1912, the account with Severino Camara was resumed to the extent that, on October 31st of that year, the debit amounted to P3,467.69 and the credit to P1,621.82.

In this trial, the manager of Berbari Hermanos, on cross examination by the defense, testified that in November, 1912, Camara was sued before the Court of First Instance for the sum of P1,700 and was absolved; and that Camara executed a contract of sale, under right of repurchase, of two parcels of coconut land, containing an area of 6 hectares planted to 700 coconut trees, for the price of P1,722.50, stipulating the term of one year for their redemption. This price of P1,722.50 was undoubtedly security for the payment of the said balance of P1,700 and appears in the said settlement of November 12, 1912. Hence, on this date, November 12, 1912, there was no balance in favor of Berbari Hermanos for which action could be brought as a sum embezzled, but there was only an amount owed by the defendant as the price he would have to pay in case of the repurchase of those two parcels of land. Subsequent to this date and up to December 29, 1912, various items continued to be debited, up to a total of P729.58, among which were four of P8.50, each of which must have been, as was seen, the price of one sack of rice, and various items were also credited to an aggregate total of P770. Hence there is a balance, not in favor of, but against Berbari Hermanns, and yet, on January 31, 1913 there appeared the "balance in their favor sued for in the justice of the peace court of Atimonan" that is the subject matter of the present case, to wit, P425.10.

Such are the actual facts disclosed by the record. They are the proven facts. A grave error is committed by bringing a criminal complaint for estafa in order to collect a sum alleged to be due, when such amount is nothing but the price of the parcels of land which the vendor sold, should he desire to repurchase them, for, if the repurchase is not effected, the vendor; far from being a debtor, is for various reasons a creditor.

And even though the said settlement of the account kept by the creditor himself should disclose that a balance was actually due him, he is not entitled to bring a criminal action for estafa by reason of such balance in order to obtain its payment by first imprisoning the debtor.

A mere shortage in an account does not prove the misappropriation and abstraction for which punishment is provided in the code. (Decisions of June 9, 1884, and November 7, 1889.) If a previous settlement is necessary in order to determine the balance, as in the present case, where the court ordered one to be made, the crime of estafa does not exist. (Decision of May 5, 1886.) Delay in the execution of a commission, or in the delivery of a sum received by reason thereof, only involves civil liability. (Decisions of November 24, 1886, and December 23, 1890.) In the case at bar there was not even any delay, for, after all, there was only an agreement to repurchase pending. When, in February, 1912, the criminal complaint was filed, the defendant was not in debt to the complainant, even if we take into account the items owed for the rice purchased on credit, which cannot form the basis of an action for estafa.

The judgment appealed from is reversed and the defendant is acquitted, without special finding as to the costs in this instance.

Torres, Johnson, Carson, Moreland, and Araullo, JJ., concur.

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