

LUZ E. BALITAAN, PETITIONER, VS. COURT OF FIRST INSTANCE OF BATANGAS, BRANCH II, AND RITA DE LOS REYES, RESPONDENTS.

G.R. No. L-38544. July 30, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review on certiorari of the decision of the Court of First Instance of Batangas in Civil Case No. 81 entitled "Rita de los Reyes vs. Luz E. Balitaan, et al." which annulled the orders of the Judge of the Municipal Court of Bauan, Batangas and ordered the questioned testimonies to be stricken out from the record on the ground that they are at variance with the allegations of the Information.

The chronological sequence of the events leading to the filing of the instant petition is as follows:

On April 11, 1973, Special Counsel Arcadio M. Aguila filed with the Municipal Court of Bauan, Batangas, an Information charging respondent Rita de los Reyes of the crime of estafa. The Information reads as follows:

"That in, about and during the period comprised between April 27, 1982 to June, 1972, inclusive, in the Municipality of Bauan, Batangas, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, being then an employee of one Luz E. Balitaan, owner of a baby dresses mending shop in Barrio Aplaya of the said municipality and having collected and received from Uniware, Inc., a business establishment in Makati, Rizal, to which finished baby dresses are turned over after they have been mended and made, the sum of P127.58 in payment of work done on baby dresses by said Luz E. Balitaan, and under the express obligation on the part of the accused to immediately account for and deliver the said amount of P127.58 to said Luz E. Balitaan, with unfaithfulness and grave abuse of confidence and in spite of repeated demands made to the said accused to turn over the said amount of P127.58, did then and there, wilfully, unlawfully and feloniously misappropriate, misapply and convert the sum of P127.58 to her (accused) own use and benefit, to the damage and prejudice of the said Luz E. Balitaan in the aforementioned amount of P127.58.

"Contrary to law."[1]

At the initial hearing on September 18, 1973, complaining witness Luz E. Balitaan, herein petitioner, was called as the prosecution's first witness. She testified that she was the proprietress of a baby dress mending shop, that her business was engaged in the sewing of baby dresses with the accused, Rita de los Reyes, herein respondent, as the one in charge of the management of her business, including the procurement of unsewed baby dresses from, and the delivery of finished dresses to Uniware, Inc. She further testified as follows:

"Q. Sometime in April 27, 1972, do you know if the accused in this case, Rita de los Reyes had made deliveries of baby dresses to Uniware, Incorporated?

A. Yes, sir.

Q. Do you have a receipt or cash voucher to show that those baby dresses were delivered?

A. Yes, sir.

Q. I am going to show you a cash voucher dated April 27, 1972, which appears to be the original carbon copy and which for purposes of identification we ask that the same be marked as Exhibit "A" for the prosecution.

Court:

Mark it.

Atty. Enriquez:

Q. Is this the cash voucher of baby dresses delivered by Rita de los Reyes?

* * * * *

A. Yes, sir.

Q. Do you know this or what is this about?

A. This is receipt of payment made to us for the dresses we have made.

* * * * *

Q. It appears in this voucher, Exhibit "A", that the total payment made and suppose to be received was in the amount of P1,632.27 in words and figures, how was the payment made?

A. By checks sir.

Q. How many checks?

A. Three (3) checks, sir.

Q. Would you know from this Exhibit "A" the number of checks and the corresponding amount appearing in the checks in payment of this P1,632.97? (Witness again shown Exhibit "A").

A. Yes sir.

Q. Where, will you point to this Exhibit "A"?

A. Witnesses pointing to #17000703 and opposite it the amount of P500.00; she was also pointing to #17000702 and opposite it P500.00; and also #17000704, opposite it is the amount of P632.97.

Q. Now, who received the checks in payment of the dresses made in this cash voucher?

A. Rita de los Reyes, sir. (herein respondent)

Q. From where?

A. In Makati.

Q. This cash voucher dated April 27, 1972, Exhibit "A", who received this from Uniware, Incorporated, if it was received?"[2]

At this juncture, counsel for the accused Rita de los Reyes objected to the testimony of complaining witness, Luz E. Balitaan and presented two motions. The transcript of stenographic notes shows what these motions are:

"ATTY. CONTRERAS:

If your Honor please, the defense is respectfully presenting to this Honorable Court two (2) motions: first, to strike out all the testimonies of the witness as far as Exhibit "A" is concerned on the ground that said testimonies are at variance with the allegations in the information, there is no allegation in the information whatsoever

regarding these checks and this cash voucher, your Honor, and we are filing a motion in the nature of an objection to any other question or questions regarding these checks that were allegedly received by the herein accused from the Uniware Incorporated because there is no allegation in the information. If the information will only be read carefully, the sum of P127.58 in payment of work done in baby dresses was re-ceived by the accused, so that all these evidence, having received checks in so much amount . . . It is respectfully submitted by the defense that no evidence could be admissible under the rules.

"ATTY. ENRIQUEZ:

There was already testimony of this witness that there is certain amount received and that portion thereof was not delivered to the offended party. What we are proving here are preliminary evidence going directly to the present issue of P127.58 was received, as the Court would readily see in this cash voucher that the amount subject matter of the information or complaint is indicated in this cash voucher. This exhibit and evidence is germane and I want to show that there is misappropriation of the amount from the total amount of P1,632.97.

"ATTY. CONTRERAS:

The information alleges that the accused received the sum of P127.58, the information does not cite that this amount was only a part of the cash received. All these evidence will be immaterial, there is no allegation in the information by which this information would be tending to sustain.

I submit, your Honor.

"ATTY. ENRIQUEZ:

We submit, your Honor.

"COURT:

Objection overruled."[3]

As clearly seen above, the objection was overruled. Luz E. Balitaan thereby continued with her testimony and declared that accused Rita de los Reyes delivered the said checks and voucher to her; that upon delivery, the said accused represented to her that the baby dresses with style Nos. 648, 151, 161 and 203 were those of Cesar Dalangin whose payment in the amount of P127.58 was included in the checks; that in view of this statement, said Luz E. Balitaan instructed said accused to cash the checks in order to pay Cesar Dalangin; that Rita de los Reyes returned the following day with the cash minus the amount of P127.58. She further declared that two or three weeks afterwards, she noticed that there were too many baby dresses that were lost prompting her to verify the receipts of payment, one of which is the cash voucher, Exhibit "A". In the course of her investigation, she went to see Cesar Dalangin who declared that Style Nos. 648, 151, 161 and 203 were not his and denied having received any amount from Rita de los Reyes or of even knowing the latter; that when she confronted the accused and asked why she deceived her, said accused could not talk, turned pale but later admitted having kept the amount.

At the close of the direct examination of Luz E. Balitaan, counsel for the accused moved to strike out the foregoing testimonies but respondent court also denied the motion.

Consequently, accused Rita de los Reyes instituted in the Court of First Instance of Batangas, Eighth Judicial District, Branch II, Civil Case No. 81, against petitioner-appellant, Luz E. Balitaan, and the Honorable Guillermo B. Magnaye, in his capacity as Judge of the Municipal Court of Bauan, Batangas, a petition for certiorari, with preliminary injunction, to annul the aforementioned orders of the said Municipal Court of Bauan, Batangas, overruling the objections of accused Rita de los Reyes to the testimony of complaining witness on the grounds of immateriality and variance with the Information as well as denying the motion to strike out the same.

In a decision dated March 13, 1973, the Court of First Instance of Batangas sustained respondent's stand and hence, granted the petition for writ of certiorari, the dispositive portion of the same states as follows:

"WHEREFORE, the petition is granted and the orders of respondent Judge overruling petitioner's objection, as well as denying her motion to strike out the testimonies of Luz E. Balitaan above-quoted and appearing on pages 23-32 of the transcript of stenographic notes marked Exhibit "X", are hereby annulled. Let said testimonies be stricken out from the record of the hearing of September 18, 1973, of Criminal Case No. 2172 of the Municipal Court of Bauan, Batangas entitled People vs. Rita de los Reyes. Costs against private respondent Luz E. Balitaan.

SO ORDERED."[4]

From said decision, Luz E. Balitaan filed this instant petition for review with the following assigned errors:

- I. The lower court erred in granting the writ of certiorari to annul the orders of the Municipal Court of Bauan, Batangas in Criminal Case No. 2172.
- II. The lower court erred in holding that there is a variance between the allegation in the information for estafa in Criminal Case No. 2172 and the proof established by the petitioner's testimony thereat.
- III. The lower court, in resolving the present case, erred when it decided the merits of Criminal Case No. 2172 instead of limiting itself to a determination of whether the writ of certiorari should issue or not.[5]

In resolving the issue of variance between allegation and proof, the Court of First Instance ruled:

"Private respondent contends that Luz E. Balitaan's testimonies about the delivery of the checks to petitioner and their having been cashed by her is merely to show the source of the P127.58 misappropriated. True but when she testified that petitioner deducted the said amount from the proceeds falsely representing that the same belonged to Cesar Dalangin, and should be delivered to him, when in fact she did not deliver but misappropriated the same to her own use and benefit, the testimony became objectionable. It became objectionable because it tended to prove estafa committed not in the manner as alleged in the information but in a manner not alleged therein. In overruling petitioner's objection, respondent Judge acted in excess of his jurisdiction because the Rules expressly provides (sic) that evidence should correspond with the allegations of the complaint or information."[6]

Petitioner vehemently objected to the resolution of the issue in that manner, contending that what counsel for Rita de los Reyes presented before the Municipal Court of Bauan were only these two motions, viz: (1) to strike out complaining witness' testimony concerning the cash voucher on the ground of immateriality and variance with the Information which did not allege the existence of said voucher and three checks; and (2) a motion objecting to any and all other questions concerning the checks in the total amount of P1,632.97 on the ground of variance inasmuch as the Information recited that the accused received and misappropriated the amount of P127.58 only.

In other words, it is petitioner's stand that since these were the only motions that were denied by the Municipal Court, it is their denial that is accordingly questioned by way of certiorari before the Court of First Instance and that when the latter court went beyond the merits of the motions in question, it acted improperly for in so doing, it did not give the adverse party a chance to argue the point and receive evidence on the question.

We disagree. The facts of the case, culled from petitioner-appellant's brief itself, show that aside from the two motions above-mentioned, private respondent moved to strike out complaining witness' testimony "relating to the receipt (voucher) of the three checks" and the cashing thereof by the accused Rita de los Reyes which, according to counsel, is at variance with the allegation in the Information, it appearing that there is no allegation or averment therein that "the accused received the checks", that those checks "were cashed by the accused", and that the

accused got a portion of the amount or cash "for the purpose of having it delivered to Cesar Dalangin." [7]

The issue of variance between the mode or form of estafa alleged in the Information and that sought to be proved by the testimony may be inferred from the foregoing motion to strike out. Contrary also to petitioner's contention in her brief before this Court that this issue was not raised in Civil Case No. 81 in the Court of First Instance of Batangas, private respondent aptly quoted her arguments in her memorandum dated February 3, 1974 before said court showing that the issue was in fact raised, to wit:

"x x x the information charges the accused with Estafa under Article 315, 4th par., No. 1, letter (b) of the Revised Penal Code, the allegation being that the accused, with unfaithfulness and abuse of confidence, misappropriated and converted the amount of P127.58 which she received in trust for a certain specific purpose. But, the evidence consisting of the testimony of the complainant, as already adverted to in the foregoing discussion, tends to prove another kind of estafa which may fall under Article 315, 4th par., No. 2, letter (a) of the Revised Penal Code wherein the punishable act consists of using false pretenses or fraudulent act. This is so because, according to the complainant's testimony, the accused made false pretense or misrepresentation that the amount of P127.58 was due in favor of Cesar Dalangin. The essence therefore of the criminal act shown by the testimonial evidence is the element of deceit, and this is an entirely different kind of estafa (from that) charged against the accused in the information under which she was arraigned and pleaded not guilty." [8]

After threshing out this preliminary matter of whether the issue at hand was raised or not, We now proceed with the resolution of the said issue.

It is fundamental that every element of which the offense is composed must be alleged in the complaint or information. What facts and circumstances are necessary to be stated must be determined by reference to the definitions and the essentials of the specific crimes. [9]

Thus, in the case at bar, inasmuch as the crime of estafa through misappropriation or with grave abuse of confidence is charged, the information must contain these elements: (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; (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. [10]

The main purpose of requiring the various elements of a crime to be set out in an information is to enable the accused to suitably prepare his defense. He is pre-sumed to have no independent knowledge of the facts that constitute the offense. [11]

However, it is often difficult to say what is a matter of evidence, as distinguished from facts necessary to be stated in order to render the information sufficiently certain to identify the offense. As a general rule, matters of evidence, as distinguished from facts essential to the description of the offense, need not be averred. [12] For instance, it is not necessary to show on the face of an information for forgery in what manner a person is to be defrauded, as that is a matter of evidence at the trial. [13]

Moreover, reasonable certainty in the statement of the crime suffices. All that is required is that the charge be set forth with such particularity as will reasonably indicate the exact offense which the accused is alleged to have committed and will enable him intelligently to prepare his defense, and if found guilty to plead her conviction, in a subsequent prosecution for the same offense. [14]

Applying these principles, We rule that the existence of the three checks need not be alleged in the Information. This is an evidentiary matter which is not required to be alleged therein. Further, that these checks, as testified by

petitioner amounted to P1,632.97 did not vary the allegation in the Information that respondent Rita de los Reyes misappropriated the amount of P127.58. Proof of the checks and their total amount was material evidence of the fact that respondent misappropriated the amount of P127.58 which was but a part of the total sum of the checks.

Inasmuch as the Information herein sufficiently charges the crime of estafa under paragraph 1(b) of Article 315, Revised Penal Code, We shall now determine whether the testimonies of complaining witness prove the same or tend to prove instead estafa under paragraph 2(a) of the same article.

It is true that estafa under paragraph 1(b) is essentially a different offense from estafa under paragraph 2(a) of the same article because the elements of these two offenses are not the same. In estafa under paragraph 1(b), which is committed with grave abuse of confidence, it must be shown that the offender received money or other personality 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 but misappropriated it to the prejudice of another. It is also necessary that previous demand be made on the offender. To sustain a conviction for estafa under paragraph 2(a), on the other hand, deceit or false representation to defraud and the damage caused thereby must be proved. And no demand is necessary.[15]

This does not mean, however, that presentation of proof of deceit in a prosecution for estafa under paragraph 1(b) is not allowed. Abuse of confidence and deceit may co-exist. Even if deceit may be present, the abuse of confidence will characterize the estafa as the deceit will be merely incidental or as the Supreme Court of Spain held, is absorbed by abuse of confidence.[16]

It has also been held that as long as there is a relation of trust and confidence between the complainant and the accused and even though such relationship has been induced by the accused thru false representations and pretense and which is continued by active deceit without truthfully disclosing the facts to the complainant, the estafa committed is by abuse of confidence although deceit co-exists in its commission.[17]

Thus, the questioned testimony eliciting the fact that accused respondent falsely represented to the complainant-petitioner that the amount of P127.58 out of the total of P1,632.97 belonged to Cesar Dalangin may not be said to be at variance with the allegations of the Information. The presence of deceit would not change the whole theory of the prosecution that estafa with abuse of confidence was committed. Besides, in estafa by means of deceit, it is essential that the false statement or fraudulent representation constitutes the very cause or the only motive which induces the complainant to part with the thing.[18] The municipal court properly denied, therefore, the motion to strike out the testimonies anent use of false representations.

WHEREFORE, the decision of the Court of First Instance of Batangas, Branch II in Civil Case No. 81, ordering the questioned testimonies to be stricken from the record is hereby REVERSED and SET ASIDE.

SO ORDERED.

Concepcion, Jr., Abad Santos, and De Castro, JJ., concur. Barredo, J., (Chairman), concur for the reasons stated in the concurring opinion of J. Aquino. Escolin, J., in the result.

[1] Rollo, p. 35.

[2] Rollo, pp. 11-12.

[3] Rollo, pp. 27-29.

[4] Rollo, p. 46.

- [5] Brief for Petitioner, pp. 1-2.
- [6] CFI Decision, Rollo, p. 43.
- [7] Petitioner-appellant's brief, p. 12, underscoring supplied.
- [8] Respondent's Comment on the Petition, Rollo, pp. 52-53.
- [9] Francisco, The Revised Rules of Court, Criminal Procedure, p. 77.
- [10] Aquino, The Revised Penal Code, Vol. III, 1977 ed., p. 1560 citing Samo, CA-GR. No. 20844-R, March 7, 1960; Tordesillas, Jr., CA 56 O.G. 3412; Papagayo, CA 51 O.G. 199.
- [11] Francisco, op. cit., p. 77.
- [12] Ibid., p. 108.
- [13] Mead vs. State, 53 NJ Law 601, 23 Atl. 209.
- [14] Francisco, op. cit., p. 99.
- [15] People vs. Torres, 1 CA Rep. 833.
- [16] Gregorio, Fundamentals of Criminal Law Review, p. 409.
- [17] US vs. Lim, 30 Phil. 682.
- [18] People vs. Gines, et al., 5 CA Rep. 249.

CONCURRING OPINION

AQUINO, J.:

I concur in the result. The Court of First Instance grievously erred (and thus delayed the disposition of a simple estafa case) in entertaining the certiorari petition of the accused, Rita de los Reyes, wherein she complained of the alleged errors of the trial court in the reception of the evidence of complainant Luz E. Balitaan. Appeal, not certiorari, is the remedy for correcting those errors. Certiorari is a remedy for correcting 'errors of jurisdiction (Nocon vs. Geronimo, 101 Phil. 735).

Certiorari is an extraordinary remedy. Its use is confined to extraordinary cases wherein the action of the inferior court is wholly void. (Herrera vs. Barreto and Joaquin, 25 Phil. 245, 271). That situation does not obtain in this case.

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