

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JENNY ANN LAGAHID Y BAANG, ACCUSED-APPELLANT.

Ponente: DIAMANTE, FRANCHITO N., J.

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DIAMANTE, FRANCHITO N., J.:

Assailed before this Court is the February 21, 2013 Decision^[1] of Baguio City Regional Trial Court (RTC), Branch 60, in Criminal Case No. 32134-R, finding accused-appellant Jenny Ann Lagahid y Baang (“Lagahid” for brevity) guilty beyond reasonable doubt of violation of Article 315, Paragraph 1(b) of the Revised Penal Code.

An Appellant's Brief was filed on June 9, 2014 and the Appellee's Brief was subsequently filed on November 14, 2014. Accused-appellant Lagahid's “Manifestation In Lieu of Reply”^[2] averring that, for reasons therein stated, she elected not to file a reply brief to the plaintiff-appellee's brief is hereby noted. In view thereof, the instant case is deemed submitted for decision.

The facts are as follows:

An Information dated June 24, 2011^[3] for the violation of Article 315, Paragraph 1(b) of the Revised Penal Code was filed against accused-appellant Lagahid. The Information reads:

“The undersigned accuses JENNY ANN LAGAHID of the crime of ESTAFA under Article 315, 1(b) of the Revised Penal Code, committed as follows:

That sometime in the month of May, 2010 and subsequent thereto, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud and with unfaithfulness and grave abuse of confidence, did then and there willfully, unlawfully and feloniously defraud ANDRES BALTAZAR ZAMORA, LOIDA ZAMORA BARRIENTOS and NELLIE LUCERO-AGIRRE, who are the key officers of ANDRES ZAMORA NCLEX REVIEW CENTER, herein represented by MINDA TABANGIN, Attorney-in-Fact of herein complainants, in the following manner, to wit: the accused after receiving in trust from the private complainant Minda Tabangin cash having a total amount of Php143,000.00 for the purpose of paying the rentals of the review center to the Holy Innocents Episcopal Church Easter College, and once in possession of the said amount, misappropriated, used and converted the same to her own personal use and benefit, and that despite demands made by the private complainant upon discovery of the fraud for her to return the amount of Php143,000.00, the accused refused, neglected and failed to do so, to the damage and prejudice of herein private complainant in the aforementioned amount of ONE HUNDRED FORTY THREE THOUSAND (Php143,000.00) PESOS, Philippine currency.

CONTRARY TO LAW.”

When arraigned, accused-appellant Lagahid, then assisted by her counsel, Atty. Amando Lawagan, pleaded not guilty. Trial on the merits thereafter ensued.

The evidence for the prosecution consisted of the testimonies of Minda Tabangin, William Lacbongen and Policarpio Cambod. In the Brief for the plaintiff-appellee,^[4] the Solicitor General summarized the facts as follows:

“Minda Tabangin is the cousin of the owners of the Andres Zamora NCLEX Review Center, who are Andres Zamora, Loida Zamora Barrientos and Lenni Lucero Aguirre. Although the said owners are residents of the United States of America, they established the Center for nurses who intend to take up the NCLEX examination in order to qualify them to work abroad. Andres Zamora is the majority owner of the Center.

The Center was originally conducting business at the GP Arcade, Baguio City, in 2007, until it transferred to the basement of the Holy Innocents Episcopal Church/Easter College in Guisad, Baguio City in 2009. In both places, the Center leased spaces to conduct their business. In 2007, the Center employed Rhodora Generalao as its secretary, who was tasked to oversee the operations of the Center like paying monthly rentals, utility bills, answering telephone calls, and registering nurse reviewees, among other duties. While Generalao was still under the employ of the Center, she recommended appellant to work in the Center and she was accepted.

Generalao, eventually resigned sometime in March or May 2009, and appellant was designated by the owners to take over the work of Generalao with the same duties.

The Center started to transfer to the basement of the Church building when one of the contracts of the Center with the GP Arcade expired in July 2009. The Center did renovation works in their new place while waiting for the expiration of the other contract with GP Arcade in September 2009. During that time, appellant was tasked to deliver the payments of monthly rentals to both the owners of both places. It was also appellant who was tasked to deliver the payment for the renovation of the new place.

The owners asked Tabangin to manage the Center but she demurred because she could not attend the affairs of the Center as she was then managing their family's water distribution business and canteen. Furthermore, she is pharmacist, not a nurse. She never had any table in the office of the Center because she would stay there only for about ten minutes. However, she acceded to the request of the owners that the money that they would be sending from the United States of America for the payment of the expenses of the Center would be deposited to Tabangin's bank account in Baguio City. This is because appellant did not have any bank account. Tabangin, upon receiving the money for the monthly bills of the Center would deliver the money to appellant, who was tasked to pay the monthly rentals, telephone and other utility bills of the Center. Together with the money for the payment of monthly bills of the Center, appellant's salary of Php2,700.00 would also be sent by the owners.

For the entire year of 2009, the monthly rentals of the Center have been paid. For the year 2010, Tabangin had been giving to appellant the money for the payments of the monthly rentals of the Center, as evidenced by the receipts which appellant signed. Appellant was also given the money for the payment of the half-month rent for January, 2011. The total amount that appellant received for the payment of the monthly rentals amounted to Php315,000.00.

The Center had intended to end their lease contract with the Church when it would expire on December 31, 2010 and had asked a 15-day period in January, 2011 to move out of the leased area, for which period, Tabangin gave appellant the amount of Php15,000.00 to be delivered to the Administrator of the said Church.

Tabangin had all along thought that Lagahid had delivered the payments for the monthly rentals. However, when the owner's representative was about to haul the office equipment and furniture from the leased premises, the Church building administrator prevented him from doing so. It was then that Tabangin found out that Lagahid had not paid a total amount of Php140,000.00 for the Center's rent, based on the Statement of account given by the Church to its Accountant, William Lacbongen, who, in turn delivered the said Statement of Account to Tabangin.

Lacbongen told Tabangin that he had confronted appellant about the non-payment of the monthly rentals. Appellant cried and was trembling as she confessed to Lacbongen that she had indeed spent the amount for her own personal use. Lagahid also returned to Lacbongen the amount of Php12,000.00 out of the Php15,000.00 which was supposed to be delivered to the Church in payment of the rental for January 1 to 15, 2011.

Tabangin's lawyer-husband then wrote a demand letter to appellant for the return of the amounts that she failed to deliver to the Church.

Lacbongen, upon the request of appellant, accompanied the latter to the residence of Tabangin so she could apologize and appeal to Tabangin for a solution to her problem. At the meeting at the residence of Tabangin between appellant and Tabangin and witnessed by Lacbongen, Tabangin told appellant that she should talk to the Administrator and representatives of the Church.

Lacbongen arranged a meeting between appellant and the representatives of the Church. Lacbongen then accompanied appellant and her mother to the meeting with the Manager of the Church building and two members of the board of trustees of the Church. At the meeting, the Church representatives proposed to appellant that they would allow the release of the office equipment and furniture of the Center provided that appellant shall pay the unpaid rentals over a period of time and as security for the compliance of her obligation, a real property must be provided by appellant, as collateral. The mother of appellant refused the proposal and walked out of the meeting. No settlement was, therefore, reached and so the owners of the Center decided to file a complaint against appellant.

The said owners executed a power of attorney in favor of Tabangin for the purpose of authorizing Tabangin to file a complaint against Appellant. Tabangin and Lacbongen then executed their respective affidavits which Tabangin used in support of the complaint against appellant.

Policarpio Cambod, the Building Administrator of the Church issued a Statement of Account showing that as of November 30, 2010 the unpaid rentals of the Center was Php140,000.00. However, as of July 23, 2012, the outstanding balance was Php110,000.00, after the Church deducted the Php30,000.00 deposit that the Center paid at the start of their contract.”[5]

After the prosecution presented its witness and its Formal Offer of Evidence⁶ to which the defense filed a Comment and Objection thereto dated February 13, 2012,[7], the defense was directed to adduce its evidence.

The evidence for the defense consisted of the testimony of accused-appellant herself. The defense’ version of the events, as stated in its Brief,[8] is as follows:

“xxx xxx

12. JENNY ANN LAGAHID was informed by a former employee, Rodora Generalao, of a job vacancy in the review center. She subsequently applied for it and was hired by the latter. She met the owners only after two to three months. Rodora was separated from the review center in 2009 because of misappropriation of funds.

13. Upon Rodora's dismissal, she met Minda. She was tasked to recruit reviewees for the center and was never authorized to handle money matters of the review center. There were times, however, that she received rental payments from Minda which she paid to the church.

14. She admitted receiving Sixty Thousand Pesos (60,000.00) in October 2010: Thirty Thousand Pesos (P 30,000.00) in November and FifteenThousand (P15,000.00) in December. She did not apply it for rental payments and from the Fifteen Thousand Pesos (P15,000.00) she had received in December, she returned the Twelve Thousand Pesos (P12,000.00) to William. She denied incurring liability in the amount of One Hundred Forty Three Thousand Pesos (P143,000.00) but only for Ninety Three Thousand Pesos (P 93,000.00).”[9]

On February 21, 2013, the court a quo promulgated its Decision[10] convicting accused-appellant Lagahid of the crime charged, the dispositive portion of which reads:

“WHEREFORE, premises considered, the Court finds the accused, JENNY ANN LAGAHID, GUILTY beyond reasonable doubt of the crime charged against her. There being no aggravating and mitigating circumstances, and applying the Indeterminate Sentence Law, the Court hereby sentences the said accused to

suffer the penalty of 4 years and 2 months of prision correccional, as the minimum, up to 20 years of reclusion temporal as the maximum. She is, furthermore, ordered to pay unto the private complainants, ANDRES BALTAZAR ZAMORA, LOIDA ZAMORA BARRIENTOS and MELLIE LUCERO-AGIRRE, the sum of Php143,000.00 with interest at 12 percent per annum, from the date of the filing of the Information until the full amount is paid.

SO ORDERED.”[11]

Accused-appellant Lagahid filed a Notice of Appeal as Pauper Litigant dated March 12, 2013[12] which was given due course by the court a quo in an Order dated March 14, 2013.[13] In her Brief, accused-appellant Lagahid submitted a lone assigned error that:

“THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HER GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.”[14]

We partly grant the appeal.

The elements of the crime of Estafa under Article 315, paragraph 1 (b) of the Revised Penal Code sought to be established by the prosecution are as follows:

- That money, goods or other personal properties are 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;
- That there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt;
- That such misappropriation or conversion or denial is to the prejudice of another; and,
- That there is a demand made by the offended party on the offender.”[15]

The court a quo, in convicting accused-appellant Lagahid guilty of the crime charged, found that all the elements of estafa under Article 315 1(b) were present in the case at bench, to wit: first, evidence would show that accused-appellant Lagahid received sums of money from Tabangin as indicated in the receipts; second, accused-appellant Lagahid likewise admitted that she did not deliver the sums of money she received and instead she used it for her personal use; third, the misappropriation committed by the accused-appellant worked to the prejudice of the petitioners; and, fourth, the prosecution proved the fourth element through the demand letter of the private complainants' lawyer to accused-appellant Lagahid which bore the signature of the latter.[16]

Accused-appellant Lagahid, however, submitted that the prosecution failed to prove the first element given that when she received the rental payments from the owners of the Andres Zamora NCLEX Review Center (herein referred to as “Center”), she only received the material and physical possession of the money and the juridical possession remains in the said owners.[17]

We find for the accused.

In the case of *Andre L. D' Aigle vs. People of the Philippines*,[18] the High Court emphasized that in estafa under subdivision 1, par. (b) of Art. 315 of the Revised Penal Code, when the money, goods, or any other personal property is received by the offender from the offended party (1) in trust or (2) on commission or (3) for administration, the offender acquires both material or physical possession and juridical possession of the thing received. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner.

In *Ernesto Pideli vs. People of the Philippines*[19] citing the case of *The United States vs. Nieves De Vera y Gayte*, it was explained by the High Court that not all misappropriation is estafa. With that, it is highly important to make a distinction whether the offender, on receiving the property, acquired the material and juridical possession of the property. The established principle is that where both material and juridical possessions are transferred, misappropriation of the property would constitute estafa.[20]

After a judicious scrutiny of the records of the case, We found justification to deviate from the findings of the court a quo. Not all the elements of estafa under Article 315 1(b) were met in this case.

We highlight the fact that what is involved in the case at bench is the possession of money in the capacity of an employee.[21]

As laid down by the High Court in a long line of cases, when the element of juridical possession being absent, an accused cannot be convicted of the crime of estafa under Article 315, No. 1 (b) of the Revised Penal Code. In *Cristeta Chua-Burce vs. Court of Appeals, et al.*,[22] the petitioner therein, a cash custodian who was primarily responsible for the cash-in-vault, was acquitted of the crime of estafa under Article 315, No. 1 (b) of the Revised Penal Code. The High Court held that her possession of the cash belonging to the bank is akin to that of a bank teller, both being mere bank employees. Again in *Ernesto Pideli vs. People of the Philippines*,[23] citing *People of the Philippine Islands vs. Teodoro I. Locson*, the High Court considered deposits received by a teller in behalf of a bank as being only in the material possession of the teller. Juridical possession remains with the bank.

Thus, in the case of *Sheala P. Matrido vs. People of the Philippines*,[24] the High had the occasion to rule that:

“xxx xxx A sum of money received by an employee in behalf of an employer is considered to be only in the material possession of the employee. The material possession of an employee is adjunct, by reason of his employment, to a recognition of the juridical possession of the employer. So long as the juridical possession of the thing appropriated did not pass to the employee-perpetrator, the offense committed remains to be theft, qualified or otherwise. xxx xxx” [Emphasis and underscoring supplied]

Following, by analogy, the foregoing legal doctrines, We believe that there can be no crime of estafa committed in the case at bench. To Our mind, the delivery of the money to herein accused-appellant Lagahid intended for the payment of monthly bills of the Center, did not have the effect of transferring the juridical possession to accused-appellant.

We note the undisputed fact that accused-appellant Lagahid is an employee of the Center and was personally hired by the owners thereof, as testified to by Minda Tabangin.[25] Minda Tabangin further stated that as the secretary of the office, accused-appellant's tasks include watching the office, receiving calls and she was the one in-charge of paying the rentals.[26] In fact, she was receiving Php2,700.00 as monthly salary[27] and the owners of the Center even made her a member of the Social Security System (SSS).[28]

With the above circumstances considered, it behooves Us now to emphasize that accused-appellant Lagahid's possession of the money belonging to the owners of the Center is necessarily connected to her task of paying the monthly bills of the office, and therefore, by reason of her employment. Thus, it can be safely said that when accused-appellant Lagahid received the money intended for rental payments, she was entrusted only with the material or physical possession of the money and the juridical possession remained in the owners of the Center. Elsewise stated, the possession of the money by accused-appellant Lagahid is also the possession of, or merely an extension of the owners of the Center because accused-appellant is an employee thereof whose primary task is to pay the monthly bills.

Verily, the element of juridical possession is lacking, and accused-appellant cannot be convicted of the crime of

estafa under Article 315, No. 1 (b) of the Revised Penal Code. Echoing the case of *Sheala P. Matrido vs. People of the Philippines*,^[29] [accused-appellant] did not have juridical possession over the amount or, in other words, she did not have a right over the thing which she may set up even against private complainants is clear. In fact, [accused-appellant] never asserted any such right, hence, juridical possession was lodged with private complainants and, therefore, estafa was not committed.

In light of the above disquisitions, We see no need to belabor other issues with respect to the criminal aspect of the case. Anent, however, with the civil liability of the accused-appellant, a discussion thereof is in order.

In the case of *Elizabeth Eusebio-Calderon vs. People of the Philippines*,^[30] the High Court stressed that an accused who is acquitted of Estafa may nevertheless be held civilly liable where the facts established by the evidence so warrant. Similarly, in the case of *Virgie Serona vs. Court of Appeals, et al.*,^[31] the High Court declared that there was no estafa within contemplation of the law. Notwithstanding, however, petitioner therein was not entirely free from any liability. Considering that the civil action for the recovery of civil liability arising from the offense is deemed instituted with the criminal action, petitioner was held liable to pay the complainant the value of the unpaid pieces of jewelry. In the said case also, the accused admitted that she received the jewelry from petitioner and sold the same to a third person. She further acknowledged that she owed the complainant a sum of money.

In accordance with the foregoing, and having categorically admitted that she did not deliver the sums of money she received and instead used it for her own personal use,^[32] We hold that accused-appellant Lagahid is still required to indemnify private complainants the amount of Php143,000.00. Said amount was clearly supported by the Statement of Account^[33] given by the Episcopal Church to its accountant William Lacbongen and the admission of accused-appellant that she had spent the Php3,000.00 rental payment for January 1 to 15, 2011 for her private benefit.^[34] With regard, however, to the interest rate imposed by the court a quo, We hold that the same was erroneous. In line with the ruling in *Amada Resterio vs. People of the Philippines*,^[35] the interest rate that should be imposed is 6% per annum on the principal amount, reckoned from the date of the filing of Information or on June 24, 2011 until finality of decision. In addition and as enunciated in *Dario Nacar vs. Gallery Frames and/or Felipe Bordey, Jr.*,^[36] a legal rate of six percent (6%) per annum is hereby imposed from the date of finality of this decision until the amount is fully paid.

WHEREFORE, the appeal is PARTLY GRANTED. Accordingly, the February 21, 2013 Decision of Baguio City Regional Trial Court, Branch 60, in Criminal Case No. 32134-R is hereby MODIFIED. Accused-appellant Jenny Ann Lagahid y Baang is hereby ACQUITTED of the crime of violation of Article 315, Paragraph 1(b) of the Revised Penal Code as charged. However, accused-appellant is held civilly liable in the amount of Php143,000.00 as actual damages with interest of 6% from the date of the filing of information until finality of this decision, and another 6% per annum from the date of finality of this decision until the amount is fully paid.

SO ORDERED.

Dimaampao, J. B., Chairperson, and Salandanan Manahan, C., JJ., concur.

[1] Records, pp. 148-152; Rollo, pp. 57-60.

[2] Rollo, p. 81.

[3] Records, p. 1.

[4] Rollo, pp. 85-104.

- [5] Rollo, pp. 89-92.
- [6] Records, pp. 84-88.
- [7] Id. at 89-90.
- [8] Rollo, pp. 37-55.
- [9] Rollo, pp. 43-44.
- [10] See note 1.
- [11] Records, p. 152.
- [12] Id. at 156-158.
- [13] Id. at 159.
- [14] Rollo, p. 44.
- [15] Jean D. Gamboa vs. People of the Philippines, G.R. No. 188052, April 21, 2014.
- [16] Records, p. 151.
- [17] Rollo, p. 47.
- [18] G.R. No. 174181, June 27, 2012.
- [19] G.R. No. 163437, February 13, 2008.
- [20] Id.
- [21] Paraphrasing the High Court in the case of Suncion Galang Roque vs. People of the Philippines, G.R. No. 138954, November 25, 2004.
- [22] G.R. No. 109595, April 27, 2000.
- [23] Supra, note 19.
- [24] G.R. No. 179061, July 13, 2009.
- [25] TSN dated January 18, 2012, p. 17; TSN dated January 25, 2012, p. 7.
- [26] TSN dated January 30, 2012, p. 5.
- [27] TSN dated June 18, 2012, p. 10.
- [28] Id. at 6.
- [29] Supra, note 24.
- [30] G.R. No. 158495, October 21, 2004.
- [31] G.R. No. 130423, November 18, 2002.
- [32] TSN dated June 11, 2012, p. 15.
- [33] Records, p. 18.
- [34] TSN dated June 11, 2012, p. 14; See also Records, p. 19.

[35] G.R. No. 177438, September 24, 2012.

[36] G.R. No. 189871, August 13, 2013.

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