

PEOPLE OF THE PHILIPPINES, FORTUNE TOBACCO CORPORATION, PRIVATE COMPLAINANT-APPELLANT, VS. EVALYN BAÑA Y GILONGOS, ACCUSED-APPELLEE.

Ponente: SADANG, J.

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SADANG, J.:

Private complainant-appellant Fortune Tobacco Corporation appeals from the Decision[1] dated March 16, 2009 of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 45, in Criminal Case No. R-3766 seeking indemnification despite the acquittal of accused-appellee Evalyn Baña y Gilongos of the crime of estafa, defined and penalized under paragraph 1 (b) of Article 315.

Records show that accused-appellee Evalyn Baña y Gilongos (hereafter, appellee) was charged of estafa in an Information[2] that reads:

That on or about the period starting March 1989 to June 18, 1994, in the Municipality of San Jose, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused, received in trust and for her administration from

Fortune Tobacco Corporation in her capacity as Secretary-Cashier of Fortune Tobacco Corporation Buying Station, various sums aggregating [to] P73,014,500.00 to be disbursed for the specific purpose of paying the purchases of tobacco leaves by the buying station and for other operational expenses, but once in possession of the said amount, the accused, with abuse of confidence and unfaithfulness, did then and there willfully, unlawfully and feloniously misappropriate and convert to her own personal use and benefit, a portion of said sums in the total amount of Six Million Three Hundred Sixty Thousand Two Pesos and Sixty Five Centavos (P6,360,002.65) and upon demand, accused failed and refused and still fails and refuses to reimburse and pay the same, to [the] damage and prejudice of Fortune Tobacco Corporation in the aforesaid amount of P6,360,002.65, Philippine Currency.

CONTRARY TO LAW.[3]

At the arraignment[4] on January 17, 1995, appellee entered a plea of "not guilty;" thereafter, pre-trial and trial ensued.

The prosecution offered the testimonies of Carlos Tan and John Yap, over-all manager and cashier, respectively, of private complainant Fortune Tobacco Corporation's (Fortune, for brevity) warehouse in San Jose, Occidental Mindoro, and the testimony of Federico Duque of Magnum Integrated Services, Inc. who investigated the case of appellee.

In their testimonies, Carlos Tan and John Yap essentially affirmed and expounded on their allegations in their joint Complaint-Affidavit[5] wherein they averred that: appellee had been, since 1973, the secretary-cashier of Fortune's buying station at Labangan, Poblacion, Occidental Mindoro; from March 1989 to June 18, 1994, appellee was entrusted with various amounts on different occasions in the total amount of P73,014,500.00 intended for the purchase of tobacco leaves and other operational purposes of the buying station; per letter[6]

dated April 7, 1994 of vice-president Francisco Tan, John Yap was designated as cashier/accountant of the buying station to be in charge of disbursements for tobacco purchases and the station's operating expenses and collection of present and previous advances; in the first half of June 1994, Fortune did an audit of the sources and uses of company funds and it was found that the beginning balance of the cash on hand in the custody of appellee, as of December 1, 1993, was P5,983,963.18 and the ending balance, as of June 18, 1994, was P6,379,616.75; in a letter[7] dated July 1, 1994, Francisco Tan informed appellee of the cash shortage in the total amount of P6,360,002.65 as of June 18, 1994; Carlos Tan also gave appellee a notice of suspension[8] effective July 1, 1994 for violation of Section 23, Article II of Fortune's company rules and regulations, specifically on misappropriation, malversation, and/or withholding of funds; appellee personally received both letters which requested her to produce the amount involved but she turned over only the amount of P19,614.10,[9] leaving an unaccounted cash amount of P6,360,002.65 covering the monthly cash balances from January 1988 to June 1994;[10] the breakdown of cash in bank[11] of Fortune showed the total amount of P507,430.85 as of December 1, 1993 and P1,944,270.78 as of June 18, 1994; Carlos Tan and Yap prepared a Statement of Sources and Uses of Funds[12] (SSUF, for brevity) covering the period from December 1, 1993 to June 18, 1994, which appellee signed to show her conformity, thus:

FTC – Mindoro

Statement of Sources & Uses of Funds

For the Period Covered December 1, 1993 – June 18, 1994

SOURCES:

Cash Balance, December 1, 1993

Cash in Bank

P507,430.85

Cash on Hand

P5,983,963.18

P6,941,394.03

Total Telegraphic Transfer received

28,700,000.00

Stock Inventory, December 1, 1993 (EXH. A)

1,180,502.60

Stock received from Marikina (EXH. A)

8,773,050.00

Previous Loan Collected (EXH. B)

144,743.14

Over Remittance (EXH. C)

5,376.38

Income from Loan

119,434.00

Tractor works

38,078.35

Outstanding checks

(See Bank reconciliation statement)

1,255,766.05

TOTAL

P46,708,344.55

LESS: USES:

A. Tobacco Purchases (sic) (EXH. D)

P27,976,559.80

B. Operating Expenses (EXH. E)

3,654,295.18

C. Fixed Assets (EXH. E)

22,340.00

D. Accounts Receivable (EXH. F)

2,102,145.44

E. Stock Inventory, June 18, 1994
(EXH. G)

4,629,116.60

(P38,384,457.02)

Cash Balance, June 18, 1994

P8,323,887.53

Less: Cash in Bank

(P1,944,270.78)

Cash on hand per Book

P6,379,616.75

Less: Cash on hand per count (See Cash Count Sheet)

(19,614.10)

Difference or shortage incurred by Mrs. Evalyn Baña

P6,360,002.65

Conforme:

Submitted by:

(Signed)

Mrs. Evalyn Baña

(Signed)

Mr. John Yap

Reviewed & Checked:

(Signed)

Mr. Carlos Tan

CC: Mr. Frank T. Tan

Mr. Henry Ng

Mr. Carlos Tan

File

According to Carlos Tan and Yap, appellee explained that an NPA group demanded money and threatened to harm her and her family if she does not accede and she showed a list of the amounts that she paid to the NPA. The list showed that appellee paid P25,000.00 on December 15, 1993 and P20,000.00 on December 30, 1993. As shown in the SSUF the cash on hand in appellee's custody, as of December 1, 1994, was P5,983,963.18 and, assuming that she gave a total of P45,000.00 to the NPA, the cash shortage should only be P6,028,963.18, not P6,360,002.65. After an administrative investigation was conducted, Fortune demanded from appellee to pay the cash shortage but she failed and refused to settle her obligation.

In her defense, appellee also affirmed and explained her allegations in her Counter-Affidavit[13] that: she has been employed by Fortune for more than 20 years as an ordinary employee; sometime in 1985 or 1986, Carlos Tan took over as manager; from that time on, she was an all-around employee, doing the work of a secretary, bookkeeper, cashier, verifier, and disbursing officer; she also paid the farmers for tobacco leaves they sold to Fortune, advanced cash loans to farmers, and paid the salaries of employees and contractual employees; Fortune remitted money to several banks in San Jose, Occidental Mindoro under its current accounts and the money was withdrawn through checks signed by the manager; the checks were encashed by whoever went to San Jose and the money was delivered to her and such was the practice since 1973; in June 1994, she requested for an accounting from 1973 to June 1994 in order not to further prolong the year to be included in an audit; however, Fortune prepared the SSUF covering the period from December 1, 1993 to June 18, 1994 instead of conducting a formal

audit from 1973 to June 18, 1994; she was asked to sign her conformity to the SSUF before the audit would be conducted; she insisted that an audit must first be made but she was threatened with a criminal suit and required to prepare a counter-affidavit; after she signed the SSUF, she was requested to proceed to the main office of Fortune where she was investigated administratively by Lt. Duque; the money that she gave to the NPA group belonged to her; she is an ordinary employee and not a cashier or officer of Fortune to whom cash was entrusted; and that not all funds remitted by Fortune to the buying station where she was an employee should be in her account but only those specified for a particular purpose; there is a strong possibility that considerable sums were in the possession of other accountable employees of the buying station but were reflected to have been received by her without her knowledge; and she is not a signatory to the checks.

Appellee averred that she prepared two cash count sheets[14] certifying that the petty cash and operational fund, as of June 18, 1994, in the amounts of P11,965.00 and P7,649.10, respectively, or a total amount of P19,614.10[15] were counted in her presence on June 20, 1994 and returned intact and that there were no other funds in her possession for which she is accountable to Fortune or funds left in her custody by other parties.

In a Decision[16] dated March 16, 2009 the trial court acquitted appellee of the crime of estafa. The fallo reads:

WHEREFORE, foregoing premises considered, this Court hereby ACQUITS the accused EVALYN BAÑA Y GILONGOS, of the crime of Estafa defined and penalized under Article 315, par (1) subpar. [b] of the Revised Penal Code, for failure of the prosecution to prove her guilt beyond iota of doubt.

The cash bond in the amount of FORTY THOUSAND (P40,000.00) PESOS posted by the accused for her temporary liberty is hereby released upon presentment of the official receipt by the bondsman.

SO ORDERED.[17]

In this appeal, Fortune raises this lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN RENDERING THE DECISION ACQUITTING THE ACCUSED BAÑA, WITHOUT ANY PRONOUNCEMENT AS TO HER CIVIL LIABILITY, PARTICULARLY OF THE CRIME OF ESTAFA DEFINED AND PENALIZED UNDER ARTICLE 314, (SIC) PARAGRAPH [1], SUBPARAGRAPH [B] OF THE REVISED PENAL CODE DESPITE THE FACT THAT THERE WAS PREPONDERANCE OF EVIDENCE TO JUSTIFY AN ORDER THAT WOULD REQUIRE HER TO PAY THE PLAINTIFF FTC THE AMOUNT OF PESOS: SIX MILLION THREE HUNDRED SIXTY THOUSAND TWO HUNDRED (sic) TWO AND SIXTY FIVE CENTAVOS (P6,360,002.65).[18]

RULING

Simply put, the issue is whether the trial court erred in not finding appellee civilly liable to Fortune for the amount of P6,360,002.65 in spite of the judgment of acquittal.

The Rules of Court provides:

Section 2 (Rule 111). When separate civil action is suspended. –

x x x x x x x x

The extinction of the penal action does not carry with it the extinction of the civil action. However, the civil action based on delict may be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist. (Underscoring supplied.)

Section 2 (Rule 120). Contents of the judgment. -

x x x x x x x x

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to

prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist. (Underscoring supplied.)

The Civil Code provides:

Article 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proven beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

If in a criminal case, the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground. (Underscoring supplied.)

In *Manantan v. Court of Appeals*,^[19] it was ruled that under the foregoing provisions, there are two (2) kinds of acquittal and they have different effects on the civil liability of the accused, thus:

Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no delict, civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the delict complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. This is the situation contemplated in Article 29 of the Civil Code, where the civil action for damages is "for the same act or omission." (Underscoring supplied.)

Fortune contends that it has proved the civil liability of appellee with preponderance of evidence by citing the testimony of Carlos Tan on the employment of appellee as cashier, her duties as such, and her failure to return the subject amount in spite of demand. Fortune also stated that Tan testified that: appellee admitted having a shortage running in the millions and claimed that she was abducted by a woman who belonged to the NPA (taong labas) who wanted money from Fortune; appellee showed him a note with the words "sapat na ang 7M" and a list of contributions signed by her; appellee signed the SSUF and was investigated administratively; appellee underwent polygraph examination and the result thereof showed that she was not telling the truth; appellee received Fortune's demand letter. Fortune points out that Carlos Tan identified checks (Exhs. R and series) payable to appellee or to cash and endorsed by her, bank statement (Exh. U) and reconciliation statements (Exh. T to T-1-A).^[20] Fortune also cites the testimony of John Yap that appellee prepared a reconciliation statement (Exh. F to F-1). Finally, Fortune points to the documentary evidence offered by the prosecution to prove appellee's civil liability.

The elements of *estafa* through misappropriation or with abuse of confidence under Article 315, paragraph 1 (b) of the Revised Penal Code are: 1) 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) there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; 3) such misappropriation or conversion or denial is to the prejudice of another; and 4) there is demand by the offended party to the offender.^[21]

The essence of *estafa* under the law is the appropriation or conversion of money or property received to the prejudice of the owner. 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 for 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.[22] It takes place when a person actually appropriates the property of another for his own benefit, use and enjoyment. The failure to account, upon demand, for funds or property held in trust is circumstantial evidence of misappropriation. The one to whom the money or property is entrusted has the duty to return the same upon demand of the owner and the failure to do so is evidence of his conversion of the money or property. In other words, the demand for the return of the thing delivered in trust and the failure of the accused to account for it are circumstantial evidence of misappropriation.[23]

In acquitting appellee, the trial court ratiocinated thus:

Very clear from the entirety of the testimony of prosecution witness Mr. Carlos Tan, that there was no regular audit (informal or formal) made by the company since he assumed his position as Over-all Manager of FTC (Fortune) Buying Station, San Jose, Occidental Mindoro from 1985-1994. The admission is quite surprising if not mind baffling considering the giant business stature of FTC. Also, he admits that there was no Internal Auditor stationed in the Buying Station, thus, he performs the task of an Auditor but only audits those with supporting documents. In the judicious mind of the Court, this kind of management applied by the said Over-all Manager, which is obviously tolerated by the Main Office, had caused the chaotic or disorderly handling of the finances of the Buying Station.

It is true that audit is not an essential element of the crime of Estafa under Article 315, par. (1) sub-par. (b), yet, it cannot just be discarded in the ascertainment of factual truth to the fullest satisfaction of the Court that indeed misappropriation or conversion was committed by the herein accused. The statement of uses and sources of funds (Exh. "F") duly signed by the herein accused and by another prosecution witness, Mr. John Yap, is mere circumstantial evidence of misappropriation. However, this presumption is rebuttable.

The trial court also cited the testimony of Carlos Tan wherein he admitted that the monthly reports and reconciliation reports were submitted by appellee from 1985 to 1994 and yet he did not, as auditor, make findings of shortages against the appellee during that period.

A review of the judgment of acquittal shows that the trial court was not convinced that appellee had misappropriated the funds of Fortune, noting the lack of a regular audit and the absence of an internal auditor in the buying station.[24] The trial court observed that the reconciliation report should have immediately provided "the data of whether there was balance or shortage of funds held and kept by accused (appellee)." In short, it was not shown that appellee perpetrated the act complained of. The trial court thus acquitted the appellee "for failure of the prosecution to prove her guilt beyond reasonable doubt."

To support its contention that appellee is civilly liable, Fortune refers to the checks payable to appellee and indorsed by her and the bank statements. However, these pieces of evidence merely prove that the checks were encashed by appellee, albeit other signatures appear on the back of the check. They are not competent evidence to show that appellee did not account for the proceeds of the checks. Indeed, an audit report would have shown the amounts received by appellee from her encashment of the checks and whether said amounts were accounted for. If an anomaly took place, Fortune could have easily verified and proved it through said audit.[25] As correctly contended by appellee, Fortune merely prepared the SSUF which covered only the period from December 1, 1993 to June 18, 1994 instead of conducting an audit for the period from 1973 to June 18, 1994.

The finding of the trial court that there is no proof of misappropriation closed the door for civil liability *ex delicto* against appellee because, as held in *Manantan*, a person who has not been found to be the perpetrator of any act or omission can never be liable for such act or omission.

Considering that the acquittal of appellee was not based on reasonable doubt, Article 29 of the Civil Code does

not apply. In other words, the civil liability of the appellee for damages "for the same act or omission" may not even be established by preponderance of evidence. Thus, the next issue to be resolved is whether appellee is civilly liable on grounds other than delict as provided by Rule 111 of the Rules of Court. Unfortunately, the testimonial and documentary evidence cited by Fortune did not establish any civil liability that arises from any of the other sources of obligation provided in Article 1157[26] of the Civil Code. In fact, Fortune does not even allege the source of appellee's civil liability other than the crime charged.

WHEREFORE, the appeal is DENIED. The Decision dated March 16, 2009, of the Regional Trial Court, Branch 45, San Jose, Occidental Mindoro, in Criminal Case No. R-3766, is AFFIRMED.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Penned by Judge Jose S. Jacinto, Jr., RTC Records, Vol. I, pp. 570-585.

[2] Id. at 1-2.

[3] Id. at 1.

[4] Certificate of Arraignment, id. at 43.

[5] Complaint-Affidavit dated July 11, 1994, Exh. K, RTC Records (Vol. II), pp. 895-897; also RTC Records (Vol. I), pp. 468-470.

[6] Exh. C, RTC Records (Vol. II), p. 864.

[7] Exh. I, RTC Records (Vol. II), p. 893; also RTC Records (Vol. I), p. 466.

[8] Exh. J, RTC Records (Vol. II), p. 894.

[9] The Cash Count Sheets, both dated June 18, 1994, certified the following breakdown of the total amount of P19,614.10 turned over to FTC: (1) Total Bills of P11,965.00, Exh. F-2, RTC Records (Vol. II), p. 871; and (2) Total bills and coins of P7,649.10, Exh. F-3, RTC Records (Vol. II), p. 872.

[10] Exh. L, RTC Records (Vol. II), pp. 898-899 (the continuation of the breakdown in arriving at total amount of P6,360,002.65 was not included in the marking of this exhibit); also RTC Records (Vol. I), pp. 471-473.

[11] Exh. F-1, RTC Records (Vol. II), p. 870.

[12] Exh. F, RTC Records (Vol. II), p. 869.

[13] Counter-Affidavit of Evalyn Baña y Gilongos dated September 19, 1994, Exh. M, RTC Records (Vol. II), pp 900-902 ; also Exh. 1, RTC Records (Vol. I), pp. 497-500.

[14] Exh. F-2 to F-3, RTC Records (Vol. II), pp. 871-872.

[15] Supra note 9.

[16] Supra note 1.

[17] Rollo, p. 585

[18] Appellant's Brief, id. at 75.

[19] G.R. No. 107125, January 29, 2001, 350 SCRA 387, 397.

[20] Appellant's Brief, rollo, pp. 67-91, at p. 79.

[21] Jandusay v. People, G.R. No. 185129, June 17, 2013 citing Asejo v. People, 555 Phil. 106, 112-113 (2007).

[22] Burgundy Realty Corporation v. Reyes, G.R. No. 181021. December 10, 2012.

[23] Filadams Pharma, Inc. v. Court of Appeals, G.R. No. 132422, March 30, 2004. (Citations omitted.)

[24] TSN (Carlos Tan), September 29, 1994, RTC Records (Vol. II), p. 911.

[25] Sarabia Optical v. Camacho, G.R. No. 155502, June 18, 2009.

[26] Art. 1157. Obligations arise from:

- (1) Law;
- (2) Contracts;
- (3) Quasi-contracts;
- (4) Acts or omissions punished by law; and
- (5) Quasi-delicts.

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