

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARISSA M. DEL ROSARIO, ACCUSED-APPELLANT.

Ponente: ZALAMEDA, R.V., J.

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ZALAMEDA, R.V., J.:

Before Us is an Appeal[1] of the Judgment[2] dated 26 January 2012 rendered by Branch 255, Regional Trial Court of Las Piñas City,[3] finding accused-appellant Marissa M. Del Rosario[4] guilty beyond reasonable doubt of the crime of Estafa under Article 315, paragraph 1 (b) of the Revised Penal Code,[5] the dispositive portion of which states:

"X x x

WHEREFORE, premises considered, the Court finds accused Marissa M. Del Rosario GUILTY beyond reasonable doubt of the crime of Estafa under paragraph 1 (b), Article 315 of the Revised Penal Code. Consequently, after applying the Indeterminate Sentence Law, said accused sentenced to suffer the penalty of imprisonment of eight (8) years of prision mayor as minimum to fourteen (14) years and eight (8) months of reclusion temporal as maximum, plus the accessory penalties provided for by law.

Furthermore, said accused is ordered to pay private complainant Remus T. Taniegra, Jr. the amount of One Hundred Fifteen Thousand Seven Hundred Fifty Five Pesos (Php115,755.00), the equivalent of 300,000 Yen then, by way of actual damages.

SO ORDERED.

X x x"[6]

The facts, as culled from the records, are as follows:

Accused-appellant was charged with the crime of Estafa under Article 315, paragraph 1 (b) of the Revised Penal Code docketed as Criminal Case No. 09-0435 I. S. NO. LP 08-1602 in an Information which alleged:

"X x x

That on or about the 24[th] day of January 2008, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the President of COMPLEAT SKILLS INC. received in trust from one IRENE FURUZAWA, CASH MONEY in the amount of 300,000 Yen, with the express obligation to turn-over/remit the same to complainant REMUS T. TANIEGRA JR. later but said accused, once in possession of said cash money, far from complying with her obligation, with abuse of confidence and intent to defraud, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to her own use and benefit the said cash money despite repeated demands, said accused failed and refused and still fails and refuses to remit the said cash money to REMUS T. TANIEGRA JR. to the damage and prejudice of said complainant in the aforementioned amount.

CONTRARY TO LAW.

X x x"[7]

On arraignment, accused-appellant, duly assisted by counsel, pleaded NOT GUILTY[8] to the charge. After pre-trial conference was conducted, trial on the merits ensued.

The prosecution presented private complainant Remus Taniegra, Jr.[9] as its lone witness and his testimony reveals:

Accused-appellant is the president of Compleat Skills, Inc. who deployed Remus to Japan, on behalf of its principal, Ueda Tekkin Steel, Co. Ltd.,[10] and Bunseki Kiki Kosei Kyodoo Kumiai,[11] as steel man under a three (3)-year contract with a monthly salary of eighty- five thousand (Y85,000.00) yen.[12]

Barely five (5) months after his deployment, Remus' contract of employment was terminated. He was promised one million (Y1,000,000.00) yen-- six hundred thousand (Y600,000.00) yen to be settled in Japan, while the remaining four hundred thousand (Y400,000.00) yen in the Philippines through accused-appellant, as compensation for the pre-termination of his employment contract. Initially, Remus did not agree to the terms of payment but eventually acceded after accused-appellant's assurance: "Remus, don't worry your money is with me;"[13] "as soon as you arrive in the Philippines on 22 December 2007, I will give you the money."[14] Remus then received from Ueda through one Irene Furuzawa six hundred thousand (Y600,000.00) yen in Japan and thereafter was sent home to the Philippines.[15]

On his arrival on 22 December 2007, accused-appellant met Remus at the airport but the latter failed to make good on her promise to pay the four hundred thousand (Y400,000.00) yen balance for the pre-termination of his contract.[16]

On 28 December 2007, Remus received an SMS (text) message from accused-appellant informing him that payment of the balance shall be made at the latter's office. The next day, Remus went to accused-appellant and was paid eighty thousand (Y80,000.00) yen instead of four hundred thousand (Y400,000.00) yen. Remus demanded from accused-appellant full payment of the balance but the latter requested for additional period or until 15 January 2008 to settle the balance amounting to three hundred twenty thousand (Y320,000.00) yen as she was allegedly paying a lot of penalties in Japan. Accused-appellant generously granted her request for extension of payment but Remus still failed to settle her obligation on 15 January 2008.[17]

Through a messenger, accused-appellant subsequently paid Remus twenty thousand (Y20,000.00) yen but thereafter heard nothing from her. Remus sought the assistance of the Barangay officials of Almanza Uno, Las Piñas City for a possible settlement but during their meeting, accused-appellant told him to just see him in court. Hence, the present complaint for estafa filed against accused-appellant.[18]

After the prosecution rested its case, the defense moved for Leave of Court to File a Demurrer to Evidence[19] which motion the RTC denied in its Order[20] dated 09 February 2010. Thereafter, the defense presented one Cristina Limpin.[21] The substance of her testimony which constituted accused-appellant's defense is the alleged failure of the prosecution to establish that the former received in trust for him any sum of money from the latter's employer in Japan, thus –

Cristina was in charge of the daily operations of PNB's España, Manila Branch. According to her, accused-appellant opened a dollar account with their branch on 09 November 2007. From then on until 03 June 2008, the said account neither received inward remittance from Japan amounting to three hundred thousand (P300,000.00) pesos or its equivalent, nor credited a remittance amounting to six thousand (\$6,000.00) dollars.[22] Cristina further testified that accused-appellant has no yen account in the bank and that her dollar account was closed on 01 July 2008.[23]

In its assailed Judgment dated 26 January 2012, the RTC found accused-appellant guilty beyond reasonable doubt

of committing the crime of Estafa punishable under Article 315 paragraph 1(b) of the RPC. Accused-appellant moved for reconsideration but to no avail.

Hence, accused-appellant appealed before this Court positing the following issue, viz:

WHETHER THE ELEMENTS OF THE CRIME OF ESTAFA HAVE BEEN PROVEN BEYOND REASONABLE DOUBT.[24]

We affirm accused-appellant's conviction.

Accused-appellant questions the credibility of the prosecution's witness, herein private complainant Remus. She asserts that the lone and uncorroborated testimony of Remus is insufficient to hold her liable for the crime of estafa.[25]

We disagree.

As a rule, credibility is the sole province of the trial court. It is well-settled that when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[26]

In the present case, We see no reason to deviate from the trial court's factual findings that the accused-appellant defrauded Remus with unfaithfulness and abuse of confidence. In the absence of any evidence showing that the trial judge overlooked or misapplied some facts or circumstances of weight which would affect the result of the case, or that the judge acted arbitrarily, We are bound by the lower court's factual findings.

Accused-appellant argues that his constitutional right to due process was violated because the judge who heard and decided the case below was different from that who resolved the motion for reconsideration.[27]

The argument is specious.

The essence of due process is reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[28]

In this case, the record reveals that, accused-appellant was able to participate in all the proceedings before the court a quo. She was accordingly represented by her counsel and was able to ventilate her cause by presenting her own witness after denial of her Demurrer to Evidence. Accused-appellant cannot thus claim denial of due process as she was given the chance to defend her interest in due course, for as mentioned above, it was such opportunity to be heard that was the essence of due process.

Accused-appellant strongly contends that she cannot be held liable for estafa for failure of the prosecution to prove beyond reasonable doubt that she received money in trust for Remus and thereafter misappropriated or converted the same to her own gain.[29]

We disagree.

Estafa, under Article 315 (1) (b) of the RPC, is committed by –

"X x x

ART. 315. Swindling (estafa). – Any person who shall defraud another by any of the means mentioned

hereinbelow:

x x x x

1. With unfaithfulness or abuse of confidence, namely:

(a) x x x

(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; x x x

X x x"

The elements of estafa with abuse of confidence are as follows: (a) that 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; (b) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) that there is a demand made by the offended party on the offender.[30]

We find that all the above-stated elements have been sufficiently established by the prosecution.

This Court cannot agree with accused-appellant's postulation that she neither acquired material nor juridical possession of the money alleged to be held in trust for Remus as compensation for the latter's pre-termination of his contract. To recall, Remus insisted that he be paid the entire amount of one million (Y1,000,000.00) yen before leaving Japan. It was only after accused-appellant's assurance of her possession of the lacking four hundred thousand (Y400,000.00) yen and her promise to hand the same as soon as Remus arrives at the airport that the private complainant agreed to go home without his full compensation being settled. Given the foregoing, it is apparent that accused-appellant acquired not only physical possession but also juridical possession over the money she held in trust for Remus.

The essence of estafa under Article 315, par. 1 (b) 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.[31]

As aptly found by the RTC, the bare denial of accused-appellant cannot prevail over the evidence of the prosecution consisting not only of the testimony of herein private complainant Remus but also the document entitled, "Katunayan sa Pagtanggap." [32] The said document clearly established that accused-appellant made herself under obligation to deliver to Remus the sum amounting to four hundred thousand (Y400,000.00) yen.[33] Besides, there is no logical explanation for accused-appellant to partially pay Remus and at the same time affix her signature on the Katunayan ng Pagtanggap's notation that she was to settle Ueda and Bunseki's obligation, had she not received the money supposed to be delivered to Remus.

More, We are perplexed why accused-appellant never presented herself to rebut private complainant's testimony. The only witness presented by the defense, the bank employee Cristina, did not disprove accused-appellant's commission of the crime of estafa. Indeed, no evidence was shown that the subject amount was coursed through the bank account of accused-appellant. But this did not discount that money due private complainant was not

received by her in some other manner. Thus, the uncontroverted testimony of Remus that accused-appellant received the amount in trust and was obligated to deliver to him the balance amounting to three hundred (Y300,000.00) yen remains. And instead of turning over the said amount she held in trust, she misappropriated the same to the prejudice of Remus and despite repeated demands, failed to account for or return the same. It has been held that "failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation." [34]

We now come to the propriety of the penalty imposed on accused-appellant.

The penalty prescribed for estafa under Article 315 of the RPC is prision correccional in its maximum period to prision mayor in its minimum period, if the amount defrauded is over twelve thousand (P12,000.00) pesos but does not exceed twenty-two thousand (P22,000.00) pesos, and if such amount exceeds the latter sum, the penalty shall be imposed in its maximum period, adding one (1) year for each additional ten thousand (P10,000.00) pesos; but the total penalty that may be imposed shall not exceed twenty (20) years. In such cases, and in connection with the accessory penalties that may be imposed under the provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

To compute the maximum period of the prescribed penalty, prisión correccional maximum to prisión mayor minimum should be divided into three (3) equal portions of time each of which portion shall be deemed to form one period in accordance with Article 65 [35] of the RPC. [36] In the present case, the amount involved is one hundred fifteen thousand seven hundred fifty-five (P115,755.00) pesos, which exceeds twenty-two thousand (P22,000.00) pesos, thus, the maximum penalty imposable should be within the maximum period of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of prision mayor. Article 315 of the RPC also states that a period of one year shall be added to the penalty for every additional ten thousand (P10,000.00) pesos defrauded in excess of twenty-two thousand (P22,000.00) pesos, but in no case shall the total penalty which may be imposed exceed twenty (20) years.

Considering that the amount of one hundred fifteen thousand seven hundred fifty-five (P115,755.00) pesos is ninety-three thousand seven hundred fifty-five (P93,755.00) pesos more than the twenty-two thousand (P22,000.00) pesos ceiling set by law, then, adding one (1) year for each additional ten thousand (P10,000.00) pesos, the maximum period of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of prision mayor minimum would be increased by nine (9) years. Taking the maximum of the prescribed penalty, which is eight (8) years, plus an additional nine (9) years, the maximum of the indeterminate penalty is seventeen (17) years. From the foregoing, this Court finds that the accused-appellant should be meted out an indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to seventeen (17) years of reclusion temporal, as maximum.

All told, We find that the court a quo rightly found accused-appellant guilty beyond reasonable doubt of having committed the crime of Estafa penalized under Article 315, paragraph 1 (b) of the Revised Penal Code.

Further, the amounts awarded to each of the victims should be adjudged legal interest at the rate of six percent (6%) per annum, from the date of finality of judgment until fully paid. [37]

WHEREFORE, premises considered, the instant Appeal is DENIED. The Judgment dated 26 January 2012 rendered by Branch 255, Regional Trial Court of Las Piñas City, is hereby AFFIRMED with MODIFICATION to read as follows:

"WHEREFORE, premises considered, the Court finds accused Marissa M. Del Rosario GUILTY beyond reasonable doubt of the crime of Estafa under paragraph 1 (b), Article 315 of the Revised Penal Code. Consequently, after applying the Indeterminate Sentence Law, said accused sentenced to suffer the penalty of

imprisonment of four (4) years and two (2) months of prision correccional as minimum to seventeen years of reclusion temporal as maximum, plus the accessory penalties provided for by law.

Furthermore, said accused is ordered to pay private complainant Remus T. Taniegra, Jr. the amount of one hundred fifteen thousand seven hundred fifty-five (Php115,755.00) pesos, the equivalent of three hundred thousand (Y300,000.00) yen then, by way of actual damages.

The amount of damages awarded is subject further to interest of six (6%) percent per annum from the date of finality of this judgment until they are fully paid.

SO ORDERED."

SO ORDERED.

Bato, Jr., (Chairperson) and Sempio Diy, JJ., concur.

[1] Rollo, pages 50 to 67.

[2] Records, pages 407 to 418; Penned by Presiding Judge Romulo SG. Villanueva.

[3] "RTC," for brevity.

[4] "Accused-appellant," for brevity.

[5] "RPC," for brevity.

[6] Records, page 412.

[7] Records, page 01.

[8] Order dated 16 April 2009. Id. at 78.

[9] "Remus," for brevity.

[10] "Ueda," for brevity; accepting company in Japan/direct employer of Remus.

[11] "Bunseki," for brevity; accepting organization in Japan/assigned to process employee's documents.

[12] TSN dated 02 June 2009, pages 07 to 09 and 12 to 13.

[13] Id. at 17.

[14] Id.

[15] Id. at 13 to 17.

[16] Id. at 18 to 19.

[17] Id. at 19 to 22.

[18] Id. at 23 to 29.

[19] Records, pages 207 to 212.

[20] Id. at 227.

[21] "Cristina," for brevity; Sales and Service Head of the Philippine National Bank (PNB), España, Manila Branch.

[22] TSN dated 23 June 2011, pages 05 to 10.

[23] Id. at 13 to 14.

[24] Rollo, page 53.

[25] Id. at 55.

[26] People of the Philippines vs. Abel Diaz, G.R. No. 200882, 13 June 2013.

[27] Rollo, page 53 to 54.

[28] Ralph P. Tua vs. Hon. Cesar A. Mangrobang, Presiding Judge, Branch 22, Regional Trial Court, Imus, Cavite; and Rosanna Honrado-Tua, G.R. No. 170701, 22 January 2014.

[29] Rollo, pages 54 to 56.

[30] Lito Corpuz vs. People of the Philippines, G.R. No. 180016, 29 April 2014.

[31] Burgundy Realty Corporation vs. Jose "Jing" C. Reyes and Secretary Raul Gonzalez of the Department of Justice, G.R. No. 181021, 10 December 2012.

[32] Records, page 30.

[33] Id. at 411.

[34] Abelardo Jandusay vs. People of the Philippines, G.R. No. 185129, 17 June 2013.

[35] ART. 65. Rule in Cases in Which the Penalty is Not Composed of Three Periods. – In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

[36] Lito Corpuz vs. People of the Philippines, G.R. No. 180016, 29 April 2014.

[37] People vs. Galagar, Jr., G.R. No. 202842, 09 October 2013.

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