

SANTIAGO ONG, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-47674. October 30, 1980

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari to review the decision of the Court of Appeals in CA-G.R. No. 15019-CR,[1] promulgated on October 14, 1977, affirming with modification as to the penalty the judgment of the Court of First Instance of Cebu, Branch IV, in Criminal Case No. V-10933, entitled, "People of the Philippines versus Santiago Ong and Tony Chua alias Chua Tiong," convicting the accused Santiago Ong, petitioner herein, of the crime of estafa, penalized under Article 315 of the Revised Penal Code.[2]

Together with Tony Chua, the petitioner Santiago Ong was charged with estafa in a second amended information dated March 11, 1970 which reads:

"That on the 31st day of March, 1966, at about 11:30 A.M. and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, after having received from Mrs. Florentina Buyco seven (7) pieces of jewelries, described as follows:

One (1) Ring Solo diamond, perfect

12 carats

P 29,000.00

One (1) Ring solo diamond, perfect

9 carats

21,000.00

One (1) Ring solo diamond, perfect

4 carats

12,500.00

One (1) Ring solo diamond, Esmerald

4 ½ carats

12,500.00

One (1) Ring Esmerald cut diamond

5 carats

19,000.00

One (1) Ring Esmerald cut diamond

6 carats

18,000.00

One (1) Ring Esmerald cut diamond

3 carats

11,500.00

T O T A L-

P123,500.00

with the obligation to sell the above listed articles and to turn over the proceeds of the sale thereof if same are sold or to return to Mrs. Florentina Buyco the above mentioned articles if they are unsold an hour after the delivery of the same, the said accused, once in possession of the said jewelries, far from complying with their obligations, with deliberate intent, with intent to gain and of defrauding the said Mrs. Florentina Buyco did then and there misappropriate, misapply and convert to their own personal use and benefit the above mentioned articles or the sum of P123,500.00 which is the value thereof, and have failed and refused and still fail and refuse to comply with their said obligations despite repeated demands made upon them by said Mrs. Florentina Buyco, to the damage and prejudice of the latter in the amount aforestated.

"Contrary to law.

"City of Cebu, Philippines, March 11, 1970."[3]

The record discloses that on April 6, 1966, the City Fiscal of Cebu filed an information for estafa against the petitioner and Tony Chua without any preliminary investigation.[4]

Immediately thereafter, on April 12, 1966, the petitioner moved for a reinvestigation,[5] which was granted by the trial court in an order[6] dated April 16, 1966.

Pursuant to the said order, the assigned Investigating Assistant City Fiscal, Juanito Cabaluna, set the case for reinvestigation on April 29, 1966. On April 26, 1966, the said Assistant City Fiscal received a long distance telephone call from Atty. Reynaldo Depasukat, private prosecutor, requesting for the transfer of the preliminary investigation to April 30, 1966. This request for postponement was reiterated in a telegram dated April 26, 1966. On April 29, 1966, in the presence of the petitioner, his wife, and counsel and despite their manifestation of readiness to proceed with the preliminary investigation, the investigating Fiscal reset the same to April 30, 1966. However, on April 30, 1966 at around 10:30 in the morning, after a considerable wait and when the Investigating Assistant City Fiscal was about to commence the preliminary investigation, a telegram was again sent by Atty. Depasukat, asking for postponement of the hearing to May 17 and 18, 1966. Upon receipt of the telegram, the Investigating Fiscal dictated a resolution denying the petition for transfer on the ground that the same was not presented on time, invoking Section 4, Rule 15 of the Revised Rules of Court.[7]

After the reinvestigation, the Investigating Assistant City Fiscal submitted to the trial court his "Findings and Resolution", dated May 7, 1966 with the concurrence of the Cebu City Fiscal absolving the petitioner of any participation and responsibility in the transaction, subject matter of the information for estafa.[8] On the basis of the said "Findings and Resolution", the Cebu City Fiscal filed a motion for the admission of the "Amended Information" which excluded the petitioner therefrom, and charged only Tony Chua.[9]

On May 26, 1966, two private prosecutors representing the complainant filed an urgent motion to hold in abeyance the hearing of the motion for admission of the "Amended Information" and for the re-opening of the reinvestigation.[10]

On May 28, 1966, the trial court granted the motion and set aside the "Findings and Resolution" dated May 7, 1966 of the Investigating Assistant City Fiscal.[11]

A second reinvestigation was conducted and both parties were given the opportunity to present their respective evidence and to cross-examine the witnesses. This reinvestigation lasted for several months and about 483 pages of transcripts recorded the proceedings as if the reinvestigation were a real trial on the merits.[12]

Once again, on November 19, 1966, Assistant City Fiscal Cabaluna submitted to the trial court his "Findings and Resolution" in the second reinvestigation absolving the petitioner of any guilt and participation for estafa.[13]

On November 26, 1966, the trial court ordered the private prosecutor to file their opposition to the Motion for Admission of the Amended Information excluding the petitioner from the information.[14]

Three months after they were ordered by the trial court, and only after counsel for the petitioner had moved[15] the trial court to decide the Motion for the Admission of the Amended Information, the private prosecutor filed an opposition thereto on February 23, 1967.[16]

On January 14, 1969, about two years after the motion had been submitted for resolution, the trial court issued an order requiring the Cebu City Fiscal to submit his position on the Amended Information filed by Assistant City Fiscal Cabaluna.[17]

On February 4, 1969, City Fiscal Jose Amadora, in compliance with the order of the Court dated January 14, 1969, filed a manifestation sustaining the action of his Assistant, Fiscal Cabaluna, in asking the Court for the exclusion of the petitioner from the information.[18]

On March 11, 1969, the trial court issued an order directing that the private prosecutor be notified that the "Motion for the Admission of the Amended Information" would be heard on April 11, 1969.[19]

After hearing the parties on April 11, 1969, Judge Jose C. Borromeo of the trial court issued on April 28, 1969 an order dismissing the information as to the petitioner and admitted the Amended Information charging only Tony Chua filed by Investigating Assistant City Fiscal Cabaluna.[20]

However, on March 11, 1970, almost a year later, another Assistant City Fiscal, Diomedes T. Cane, without conducting any new preliminary investigation filed a "Motion to Further Amend the Amended Information" in order to re-include the petitioner as one of the accused.[21] On April 27, 1970, the petitioner filed his objection to the aforementioned motion.[22]

Judge Jose C. Borromeo of the trial court, on April 28, 1970, issued an order reinstating the information against the petitioner and requiring him to post a bond of P30,000.00 for his provisional release.[23]

On May 12, 1970, the petitioner filed an urgent motion for reconsideration of the order of April 28, 1970, on the ground of morality, credibility, and lack of a new preliminary investigation, invoking Section 14, Rule 112 of the Revised Rules of Court, and Article III, Section 1, of the 1935 Constitution.[24] This motion was resolved against the petitioner.

On arraignment, he pleaded not guilty.[25] Without waiving his right to a preliminary investigation, he entered into trial.[26]

Tony Chua, who disappeared with the jewelry and was charged in absentia, was later found and arrested in Manila. He became a mental case and was confined in the mental hospital.[27] Before the hearing of the instant case, he died.[28] Hence, the trial on the merits proceeded only against the petitioner.

On February 10, 1973, the trial court rendered a decision, the dispositive part of which reads:

"WHEREFORE, the Court finds the accused Santiago Ong also known as Ong Pieng Po, guilty beyond reasonable doubt as principal of the crime of Estafa punishable under Article 315 of the Revised Penal Code by prision correccional in its maximum period to prision mayor in its minimum period, to be imposed in its maximum period, and adding one year for each additional P10,000.00 in excess of P22,000.00. Consequently, the said accused is hereby sentenced to suffer an indeterminate penalty of from TEN (10) YEARS of prision mayor as minimum to SIXTEEN (16) YEARS, EIGHT (8) MONTHS and TWENTY-ONE (21) DAYS of reclusion temporal as maximum, to indemnify Florentina Buyco the sum of P123,500.00 and to pay the costs.

"SO ORDERED." [29]

The petitioner interposed an appeal to the respondent Court of Appeals.[30] The Court of Appeals (Tenth Division) rendered a decision finding that the guilt of petitioner has been proven beyond reasonable doubt but modified the penalty imposed thus:

"Summing up, we find that the guilt of the Accused has been proven beyond reasonable doubt.

"The penalty imposed, however, needs correction. Article 315 (1st) of the Revised Penal Code provides as follows:

"ART. 315. Swindling (estafa). - Any person who shall defraud another by way of the means mentioned

herein-below shall be punished by:

"1st. The penalty of prison correccional in its maximum period to prison mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prison mayor or reclusion temporal, as the case may be.

"As the amount involved herein is P123,500.00, the penalty should be imposed in its maximum period, or from six (6) years, eight (8) months and twenty-one (21) days to eight (8) years. The amount in excess of P22,000.00 may be rounded off to P100,000.00. Accordingly, ten (10) years should be additionally imposed. The correct penalty would thus be an indeterminate sentence of four (4) years and two (2) months of prison correccional, as minimum, to eighteen (18) years of reclusion temporal as maximum.[31]

"WHEREFORE, as above modified, the judgment appealed from is hereby affirmed in all other respects, with costs.

"SO ORDERED."[32]

The petitioner appealed to this Court assigning the following errors:

I

"THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND THUS COMMITTED ERRORS IN FINDING, MERELY ON THE BASIS OF SURMISE AND SPECULATION OR MISTAKEN INFERENCE, THAT THE PETITIONER HAD TALKED TO MRS. ORTALIZ (WHO WAS THEN IN BACOLOD) THROUGH LONG DISTANCE TELEPHONE ASKING THAT JEWELRY OF GREATER VALUE BE TAKEN TO HIS RESIDENCE IN CEBU CITY AS HE HAD ALREADY BUYERS: THAT THE TESTIMONY OF FLORENTINA BUYCO TO THAT EFFECT WAS CLEAR, STRAIGHTFORWARD AND CONVINCING; AND THAT IT WAS BY REASON OF THAT CALL THAT COMPLAINANT, ALL THE WAY FROM BACOLOD, TOOK JEWELRY WORTH P123,500.00 TO THE RESIDENCE OF THE ACCUSED IN CEBU CITY ON MARCH 31, 1966, CONTRARY TO THE ADMITTED AND UNDISPUTED CONTENTS OF DOCUMENTARY EVIDENCE BELYING THESE FINDINGS.

"II

"THE RESPONDENT COURT OF APPEALS LIKEWISE GRAVELY ABUSED ITS DISCRETION AND THUS COMMITTED ERROR IN FINDING, MERELY ON THE BASIS OF SURMISE AND SPECULATION OR MISTAKEN INFERENCE, THAT WHILE 'IT IS TRUE THAT EXHIBITS "D" TO "D-7", WHICH ARE TELEPHONE TOOL TICKETS FROM BACOLOD TO CEBU, SHOW THAT IT WAS THE ACCUSED'S WIFE AND NOT THE ACCUSED HIMSELF WHO WAS DIRECTLY CALLED BY MRS. ORTALIZ, THIS FACT, HOWEVER, WOULD NOT PRECLUDE A CONVERSATION BETWEEN THE ACCUSED HIMSELF AND MRS. ORTALIZ, FOR HUSBAND AND WIFE RESIDE IN THE SAME HOUSE AND IT WOULD BE AN EASY MATTER FOR ONE OR THE OTHER TO BE CALLED TO CONVERSE ON THE TELEPHONE', AND THAT 'MOREOVER WHETHER IT WAS MRS. ORTALIZ WHO CALLED ON OR WHETHER IT WAS THE LATTER WHO DID SO WOULD NOT REALLY BE OF MUCH SIGNIFICANCE, THE IMPORTANT CONSIDERATION BEING THAT CONVERSATION ITSELF.'

"III

"THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND THUS COMMITTED ERROR IN GIVING CREDENCE TO EXHIBIT "C" AND THE TESTIMONY THEREON OF FLORENTINA BUYCO AND WITNESS ASTERIA BOCALING, NOTWITHSTANDING THE FACT THAT THE SAID EXHIBIT AND TESTIMONY ARE CONTRARY TO THE ADMITTED EVIDENCE.

"IV

"RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND THUS COMMITTED ERROR IN DISREGARDING EXHIBIT 6, THE ENTRY IN THE POLICE BLOTTER, WHERE ASTERIA BOCALING, IN REPORTING THE INCIDENT TO THE POLICE MENTIONED ONLY TONY CHUA AND DID NOT MENTION PETITIONER, ALLEGEDLY FOR THE REASON THAT 'THAT REPORT DID NOT STATE THAT TONY CHUA ALONE WAS RESPONSIBLE FOR THE INCIDENT TO THE EXCLUSION OF ONG (PETITIONER)', 'THAT AT THE OFFICE OF THE CITY FISCAL, HOWEVER, BOTH TONY CHUA AND ONG (PETITIONER) WERE ALREADY IMPLICATED BY COMPLAINANT IN HER AFFIDAVIT EXHIBIT E, AND THAT 'THE FACT THAT TONY CHUA ALONE WAS MENTIONED TO THE POLICE WOULD NOT PRECLUDE THE INCLUSION OF ONG (PETITIONER) IN THE CRIMINAL CHARGE EVENTUALLY FILED IF THE EVIDENCE SO WARRANTED', THESE REASONS BEING MANIFESTLY MISTAKEN, ASSUMED, AND IMPOSSIBLE.

"V

"THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND THUS COMMITTED ERROR IN FINDING AS NOT WELL TAKEN PETITIONER'S CLAIM THAT THIS CRIMINAL CASE IS MERELY TO MAKE HIM AND HIS WIFE PAY THE JEWELRY ABSCONDED BY TONY CHUA AND CONCLUDING 'THAT BOTH ONG (PETITIONER) AND CHUA RECEIVED THE JEWELRY, WERE UNDER OBLIGATION TO RETURN THE SAME WITHIN ONE HOUR, BUT FAILED TO DO SO TO THE PREJUDICE OF THE COMPLAINANT' AND THAT 'IF CHUA ALONE WAS INVOLVED THERE WOULD HAVE BEEN NO NEED FOR THE 'NEGOTIATION' TO HAVE BEEN CONDUCTED IN THE HOUSE OF ONG (PETITIONER) AND THAT THE FACTS AND CIRCUMSTANCES DO SHOW CONSPIRACY BETWEEN THEM AS FOUND BY THE TRIAL COURT';

"VI

"THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND THUS COMMITTED ERROR IN FINDING THAT THE EVIDENCE FOR THE PROSECUTION SATISFIED THE LEGAL REQUIREMENT OF CLEAR AND CONVINCING EVIDENCE TO PROVE CONSPIRACY BETWEEN PETITIONER AND TONY CHUA.

"VII

"THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THE SUPREME COURT IN HOLDING "THAT THERE IS NO DOUBT THAT HAS TO BE RESOLVED IN THE ACCUSED'S FAVOR' AND IN HOLDING THAT THE FOLLOWING FINDINGS OF THE TRIAL COURT ARE SUPPORTED BY THE EVIDENCE:

"The evidence on record clearly shows that:

- '1. Accused Santiago Ong had previous jewelries transactions with Elena Ortaliz where Santiago Ong and his wife received jewelries belonging to Elena Ortaliz to be sold on profit and return the proceeds of the sale or the unsold jewelries;
- '2. Previous to March 31, 1966 Santiago Ong had contracted Elena Ortaliz in Bacolod City and asked the latter to send jewelries of bigger value because he had a buyer.

'3. The jewelries brought by Florentina Buyco and Asteria Bocaling on March 31, 1966, were intended for Santiago Ong and his wife;

'4. The letter of Elena Ortaliz marked Exhibit C was handed to Santiago Ong in his house in the morning of March 31, 1966, and after reading it he demanded for the jewelries mentioned in the letter.

'5. After the jewelries were shown to Santiago Ong he told Tony Chua to select seven pieces after he and Chua had a conversation in Chinese.

'The fact that the said Exhibit A was signed by Chua does not make him the one or the only one responsible for the misappropriation of the jewelries. Florentina Buyco and Asteria Bocaling categorically testified that if they allowed Tony Chua to sign the receipt instead of Santiago Ong it was because the latter has assured them that he is the one responsible for the jewelries and that the transaction is for both of them (Ong and Chua). Florentina Buyco or Asteria Bocaling could not have entrusted the jewelries to Tony Chua with whom they did not have previous dealing. It is only because they trusted Santiago Ong and they believed what he said that they consented that the receipt be signed only by Tony Chua.'

"VIII

"THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND THUS COMMITTED ERROR ON FINDING THAT THE GUILT OF PETITIONER HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

"IX

"THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND THUS COMMITTED ERROR IN NOT ACQUITTING PETITIONER ON THE GROUND THAT THE EVIDENCE AGAINST HIM DOES NOT FULFILL THE TEST OF MORAL CERTAINTY AND IS NOT SUFFICIENT TO SUPPORT A CONVICTION." [32]

The testimonies of Florentina Buyco and Asteria Bocaling upon which the trial court and the Court of Appeals based their decisions may be summarized thus:

"At about 11:30 in the morning of the said date [March 31, 1966] Mrs. Buyco, Mrs. Asteria Bocaling and her son Dominador arrived at Cebu City and proceeded to the house of the Accused Santiago Ong at 353 Mango Avenue, Apartment 7, Cebu City [it should be Maria Cristina Street, Cebu City]. Upon arrival at the house of the accused Santiago Ong, the latter's wife and accused Tony Chua were present. Complainant Mrs. Buyco was introduced to accused Santiago Ong by her sister Mrs. Asteria Bocaling (tsn, Buyco, pp. 30-31 and 34-35, March 31, 1971). In turn, accuse Santiago Ong introduced her (referring to Mrs. Buyco) to accused Tony Chua as his relative, his uncle and the one whom he could trust in his business. (Ibid., pp. 35-36). Likewise, accused Santiago Ong introduced her (referring to Mrs. Buyco) to his wife Elisa Yu Ong (Ibid., pp. 37-38).

"After the introduction and social amenities, Mrs. Buyco, Mrs. Bocaling and her son Dominador, talked in the sala with accused Tony Chua (Ibid., p. 38). Then Mrs. Bocaling told accused Santiago Ong that her sister Mrs. Ortaliz has a note for him and handed the short letter now marked Exhibit 'C' in the folder of Exhibits for the prosecution. After reading the letter, accused Santiago Ong returned the note to Mrs. Bocaling and at the same time asked, 'where are the jewelries mentioned in this note.' (Ibid., pp. 38-39). After said inquiry, Mrs. Bocaling answered that the jewelries are with her sister, Mrs. Buyco (Ibid., p. 40). At this precise moment, complainant Florentina Buyco opened her bag, took out from it a tin can which contained the jewelries. (Ibid., p. 41). Accused Santiago Ong, his wife Elisa Ong and accused Tony Chua looked at the jewelries and they talked in Chinese which they could not understand. After sometime, accused Santiago Ong told accused Tony Chua to select, and accused Tony Chua chose seven (7) pieces of jewelries. Complainant Mrs. Buyco was requested to list down the selected seven (7) pieces of jewelries and she obliged (Ibid., p. 42). After Mrs. Buyco listed down the seven (7) pieces of jewelries in her receipt to the total amount of P123,500.00 she gave

it to the accused Santiago Ong for signature. Mrs. Buyco explained to accused Santiago Ong and Tony Chua that as stated in the receipt, the jewelries will be sold in cash and their commission is the over-price they might make and if they cannot sell them, they will return to her the jewelries within one hour (Ibid., p. 43). After accused received the receipt for his signature, he in turn handed it to accused Tony Chua and told him 'You sign the receipt' (Ibid., pp. 44-45). Her sister Mrs. Bocaling protested that accused Santiago Ong should be the one to sign that receipt, but accused Ong assured them that the transaction is for both of them (referring to Ong and Chua) and that he will be responsible for it (pp. 45-46, Ibid.). Mrs. Buyco likewise told accused Ong, that he should be the one to sign the receipt since her sister Mrs. Ortaliz told her that it should be accused Ong who will sign the receipt, but accused assured her that Tony Chua is his relative and that he will be responsible for it (pp. 40-47, Ibid.). So, it was accused Tony Chua who signed the receipt (Ibid., p. 56).

"After accused Tony Chua signed the receipt, he kept and wrapped the seven pieces of jewelries with his handkerchief. Accused Santiago Ong and Tony Chua went to the dining room and they talked in Chinese (Ibid., pp. 36-37) while they stayed in the sala. Later, accused Tony Chua left the house of accused Santiago Ong while they waited for his return (Ibid., p. 59).[33]

From a careful review of the facts of record, it is clear that the petitioner is not guilty of the crime charged.

It is an essential element of estafa that the goods misappropriated or converted by the accused to the prejudice of another were received by him "in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return the same." [34] Absent a showing by proof beyond reasonable doubt that the accused received such goods, he cannot be convicted thereunder of the crime of estafa.[35]

In the receipt, Exhibit "A", [36] reproduced as follows:

"R E C E I P T

"THIS IS TO CERTIFY, that, I received from MRS. FLOR L. BUYCO the following jewelries:

D E S C R I P T I O N S

P R I C E

One ring solo diamond Perfect 12 carats

----- P 29,000.00

One ring solo diamond " 9 "

-----21,000.00

One ring solo diamond " 4 "

-----12,500.00

One ring solo diamond Esmerald 4 1/2"

-----12,500.00

One ring Esmerald Cut diamond 5 carats

-----19,000.00

One " " " " 6 "

-----18,000.00

One " " " " 3 "

-----11,500.00

T O T A L

P123,500.00

in good condition to be sold in CASH ONLY with one (1) day from date of signing this receipt; if I could not sell, I shall return all the jewelries with a period mentioned above; if I would be able to sell, I shall immediately deliver and account the whole proceeds of sale thereof to the owner of jewelries at his/her

residence; my compensation or commission shall be the over price on the value of each jewelry quoted above; I am prohibited to sell any jewelry on credit or by installment; deposit, save for safekeeping, lend, pledge or give as security or guaranty under any circumstance or manner, any jewelry to other person or persons.

I sign my name this 31st day of March 1966 at Cebu City, Philippines.

Witness:

(SGD) ASTERIA L. BOCALING

(SGD) TONY CHUA

(Signature of person who received Jewelries)

Address _____”

allegedly evidencing the jewelry transaction in question, the name of the petitioner was neither handwritten nor typewritten as the contracting party, guarantor, or recipient of the jewelries.

If the petitioner was really the person with whom Mrs. Ortaliz had the transaction over long distance telephone, his name would have been handwritten or typewritten in the said receipt which was already accomplished when brought to the residence of the petitioner by Ester Bocaling and Florentina Buyco. Moreover, the petitioner would certainly have been made to sign the said receipt, if as claimed by the prosecution, the petitioner guaranteed the transaction or had any intervention therein. The complaining witness, Florentina Buyco, testified that she had been engaged in the jewelry business for ten years.[37] It is highly incredible that she just allowed the petitioner to orally guarantee a jewelry transaction involving no less than P123,500.00 in 1965 when the value of money was more than at present, and entrust to the deceased Tony Chua, whom they claimed to be a mere acquaintance and with whom they never had any previous transaction,[38] the seven (7) pieces of jewelry.

The record discloses that prior to March 31, 1966, Elena Ortaliz, through her sister Asteria Bocaling, had jewelry business with Elisa Ong, wife of the petitioner. In fact on March 28, 1966, there were still left with Mrs. Ong 9 carats diamond ring worth P20,000.00, 3 carats diamond ring worth P6,000.00 and a Lady's bracelet worth P1,500.00.[39]

Pursuant to a note, marked Exhibit "2".[40] from Elena Ortaliz, Mrs. Ong delivered to Dominador Bocaling, the unsold 9 carats diamond ring, for which Dominador issued a receipt marked as Exhibit "3".[41] On April 1, 1966, Asteria Bocaling also received from Mrs. Ong, the 3 carats diamond ring and a Lady's bracelet, as evidenced by Exhibits "4" and "5", respectively.[42]

Thus, it is apparent that it was Elisa Ong alone who had business dealing with Mrs. Ortaliz. Likewise, it is shown that in all these transactions, for every jewelry received a receipt was signed by Mrs. Ong.[43]

It was, therefore, a departure from their usual course of business that when Exhibit "A" was given to the petitioner for his signature, Mrs. Bocaling and Mrs. Buyco were satisfied only to have the signature of Tony Chua because petitioner verbally assured them that he is the one responsible for the jewelries. If it were true that the petitioner was the one with whom they had a transaction over the jewelries, the complainant would not have agreed to have the signature of Tony Chua alone, considering that in previous transactions worth P50,000 or P100,000, she

demanded receipts from Mrs. Ong.[44]

The fact remains that only the name of Tony Chua appears in Exhibit "A" as the party who received the jewelries in question, a circumstance which belies the contention that the petitioner was a party to the transaction.

According to prosecution witnesses Asteria Bocaling and Florentina Buyco, Exhibit "C",[45] reproduced as follows:

"March 31, 1966

"Dear Mr. and Mrs. Ong:

I am sending my sister to get the six thousand (P6,000.00) pesos, which you told me you will pay as per our telephone conversation. Also she is bringing several pieces of jewelry which you told me to send to you.

Mrs. please do not forget to send the P100.00 you still owe me for the bracelet.

Thanks.

(Sgd) ELENA ORTALIZ
Bacolod City"

was allegedly delivered to the petitioner on the day they arrived at the petitioner's residence. It is also averred that the petitioner, after reading the note, asked "Where are the jewelries?" If it were true that Exhibit "C" was delivered to the petitioner, why was it in the possession of complaining witness, Asteria Bocaling? Granting arguendo that Exhibit "C" was really prepared and actually delivered to the petitioner, it is unnatural for an addressee and recipient of a letter not to keep said letter addressed and delivered to him. There is reason to believe that the letter, Exhibit "C", is a fabrication.

Besides, if the purpose of petitioner in allegedly calling Mrs. Ortaliz in Bacolod City by long distance telephone was to defraud her, the petitioner would not have returned Exhibit "C" to the bearer and thus clearly establish a case against him.

As regards the alleged long distance telephone calls made by the petitioner to Mrs. Ortaliz in Bacolod City, it is unlikely that petitioner would call for more jewelries of "big value" since as previously shown, there were still unsold jewelries in the possession of his wife, which were returned to Mrs. Ortaliz through her nephew, Dominador Bocaling.

The deceased Tony Chua, although not able to testify during the trial, had executed an affidavit, Exhibit "9",[46] before Notary Public Jose R. Fileo of Manila, absolving the petitioner from any participation in his jewelry transaction with Asteria Bocaling. This affidavit confirmed his signature on Exhibit "A". It is also a declaration against his own interest, and should be given weight.[47]

Patrolman Jose D. Cabrera of the Cebu City Police Department who investigated the case and who entered the complaint of Asteria Bocaling in the police blotter,[48] testified that Mrs. Bocaling told him on the occasion of the investigation that "she was not in doubt of Mr. Ong (petitioner) and did not implicate him when she made the report." [49] Moreover, Patrolman Cabrera executed an affidavit, Exhibit "8" (Translation)[50] stating inter alia:

"x x x In my investigation, Mrs. Bocaling never said that Mr. Santiago Ong was there or that he had any part in the transaction because according to Mrs. Bocaling, Tony Chua was afraid that Mr. Ong would know of that transaction. And according to Mrs. Bocaling, Mr. Ong had no part in the transaction."

The petitioner's participation in the jewelry transaction or his receipt of the jewelries in question, not having been sufficiently proved by the prosecution, he is entitled to acquittal.

Moreover, it is very significant that after two long reinvestigations, the petitioner was excluded in the amended information. This fact alone induces reasonable doubt on the guilt of the petitioner.

WHEREFORE, the decision of the Court of Appeals sought to be reviewed is hereby set aside and the petitioner is ACQUITTED of the crime charged in the second amended information in Criminal Case No. V-10933 of the Court of First Instance of Cebu, Branch IV, with costs de oficio.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Guerrero, and De Castro,[*] JJ., concur.
Melencio-Herrera, J., took no part.

[*] Mr. Justice de Castro was designated to sit with the First Division.

[1] Annex "A", Petition, Rollo, pp. 45-65 (Decision was penned by then CA Justice Ameurfina Melencio-Herrera and concurred in by Justice Vicente Ericta and Justice Simeon M. Gopengco).

[2] Appendix "A", Brief for the Accused-Appellant, pp. 62-96, Rollo, p. 94.

[3] Original Record of Criminal Case No. V-10933, Vol. I, pp. 399-400.

[4] Original Record, Vol. I, pp. 1-3.

[5] Ibid., p. 9; Exhibit 10 for the Defense.

[6] Ibid., p. 11; Exhibit 11 for the Defense.

[7] "Findings and Resolution", Exhibit 12 for the Defense, Original Record, Vol. I, pp. 17-25.

[8] Ibid.

[9] Original Records, Vol. I, pp. 27-28.

[10] Exhibit 13; Original Records, Vol. I, pp. 40-42.

[11] Exhibit 14; Original Records, Vol. I, p. 43.

[12] TSN, Reinvestigation, as certified to by Stenographer Remedios Q. Ramas, dated February 3, 1967.

[13] Exhibit 15; Original Records, Vol. I, pp. 48-51.

[14] Original Records, Vol. I, p. 54.

[15] Ibid., pp. 101-102.

[16] Ibid., pp. 105-117.

[17] Ibid., pp. 175-176.

[18] Ibid., pp. 184-188.

[19] Original Records, Vol. I, p. 196.

[20] Ibid., p. 204.

[21] Ibid., p. 397.

- [22] Original Records, Vol. I, pp. 403, 404-412.
- [23] Ibid., pp. 404-405.
- [24] Ibid., pp. 415-419.
- [25] Original Records, Vol. I, p. 559.
- [26] TSN., pp. 5-8, March 31, 1977.
- [27] Exhibit 1, Chua, Original Records, Vol. I, p. 523.
- [28] Original Records, Vol. II, pp. 221-223.
- [29] Appendix "A", Brief for the Accused-Appellant, pp. 95-96; Rollo, p. 95.
- [30] Original Records, Vol. II, p. 449.
- [31] Original Records, Vol. II, p. 449.
- [32] Annex "A", Petition, Rollo, pp. 64-65.
- 32 Annex "A", Petition, Rollo, pp. 64-65.
- [33] Annex "A", Petition, pp. 2-5, Rollo, pp. 46-49.
- [34] Article 315, subdivision 4, paragraph 1(b) Revised Penal Code.
- [35] The elements of estafa under Art. 315, subdivision 4, par. 1(b) are:
- 1)
that the accused has received the thing;
 - 2)
that the thing received be personal property;
 - 3)
that the thing he received for safekeeping or on commission, or for administration, or under any obligation involving the duty to make delivery or return the same; and
 - 4)
that there be misappropriation or conversion by the accused of the thing received to the prejudice of another.
- [36] Folder of Exhibits for the Prosecution.
- [37] TSN., p. 53, March 31, 1971.
- [38] TSN., p. 48, July 28, 1972.
- [39] TSN., p. 15, 16, 17, February 28, 1972.
- [40] Folder of Exhibits for the Defense.
- [41] Ibid.
- [42] Ibid.

[43] TSN., pp. 12, 32, February 28, 1972.

[44] TSN., p. 12, February 28, 1972.

[45] TSN., p. 12, February 28, 1972.

[46] Folder of Exhibits for the Defense.

[47] Sec. 32, Rule 130, Revised Rules of Court.

[48] Exhibit "6", Folder of Exhibits for the Defense.

[49] TSN., pp. 18-19, April 12, 1972.

[50] Folder of Exhibits for the Defense.

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