

ELENITA V. UNSON, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-25084. May 16, 1983

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal by certiorari from the decision of the Court of Appeals promulgated on May 26, 1964 affirming the decision of the Court of First Instance of Manila, Branch XV, dated September 19, 1962, finding the accused Elenita V. Unson guilty beyond reasonable doubt of the crime of estafa in Criminal Case No. 53335.

The accused Unson was charged of estafa under paragraph 1-b, Art. 315, Revised Penal Code in the following information:

"That on or about December 4, 1959, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud one Rizalina Pingol in the following manner, to wit: the said accused received from said Rizalina Pingol one (1) pair of earrings, 3.20 kt. brillante (solitaire), valued at P7,000.00, to be sold on commission basis, under the express obligation of accounting for or turning over the proceeds of the sale, or of returning the said piece of jewelry, if not sold, within a period of three (3) days, but the said accused, once in possession of the same, far from complying with her aforesaid obligation and despite repeated demands made upon her to return the said pair of earrings, instead turned over to said Rizalina Pingol a Monte de Piedad y Caja de Ahorros de Manila pawnshop ticket in the name of one Rufina Saldaña covering the same pair of earrings received by the said accused, in the amount of P4,000.00, which pawnshop ticket the said owner Rizalina Pingol later redeemed, thereby causing damage and prejudice to said Rizalina Pingol in the amount of P4,000.00 Philippine Currency."

After trial, the trial court found said accused guilty as charged and sentenced her to suffer imprisonment of four (4) months arresto mayor as minimum to one (1) year and one (1) day of prision correccional as maximum, to indemnify the offended party Rizalina Pingol in the amount of Four Thousand (P4,000.00) pesos, with subsidiary imprisonment, and to pay the costs.

The accused appealed the judgment of conviction to the Court of Appeals which affirmed said decision.

Said accused, not satisfied with the decision of the Court of Appeals, filed with Us the instant petition for certiorari.

The facts are recited in the appealed decision of the Court of Appeals as follows:

"The evidence shows that on December 4, 1959, Elenita V. Unson received from Rizalina Pingol, who was then sick in bed at No. 1990 Katamanan, Tondo, Manila, a pair of earrings worth P7,000.00 to be sold on commission, for which Elenita made out and signed a receipt, Exhibit A. A week thereafter, Elenita told Rizalina that one Rufina Saldaña, to whom Elenita was indebted, happened to see the earrings, and took and pawned them. Rizalina demanded Elenita to return the earrings, and on December 14, 1959, Elenita showed to Rizalina a pawnshop ticket, Exhibit B, showing that the earrings were pawned with the Monte de Piedad Y

Caja de Ahorros de Manila on December 9, 1959 in the amount of P4,000.00 and in the name of Rufina Saldaña, 595 Kansas, Ermita. Rizalina took the pawnshop ticket but not without making Elenita sign a statement, Exhibit C, to save herself from liability to the Saldaña woman. Exhibit C reads:

'SA PAMAMAGITAN NG KASULATANG ITO, ay pinatutunayan ko na ng ika-4 ng Diciembre, 1959, sa bahay ni MRS. RIZALINA R. DE PINGOL, Katamanan No. ___, Tondo, Maynila, ay kinuha sa kanila ang isang pares na hikaw na ang bawat kabiak ay mayroong batong brillante na ang timbang o laki ay 3.20 kilatis, solitario, at ang halaga ng isang pares na hikaw na ito ay P7,000.00 at ang aming kasunduan ay ipagbibili ko ng kaliwaan sa loob ng tatlong araw (3 araw) mula ng Diciembre 4, 1959, kung hindi ko maipagbibili sa loob ng nabanggit na plazo ay isasauli ko sa kanyang tahanan ng nasa mabuting kalagayan; kung maipagbili ko naman sa loob ng nabanggit ng taning na panahon ay dagli kong isusulit sa kanya ang boong P7,000.00, at ang aking magiging comision o gantimpala ay ang halaga aking mapahihigit sa P7,000.00.

'Sa mahigpit kong pangangailangan ng kuarta dala ng malaki at maselang kong compromiso ay isinangla ko ang nabanggit na isang pares na hikaw, na mayroon ngang halagang P7,000.00 sa halaga lamang na APAT NA LIBONG (P4,000.00) KUARTANG FILIPINO sa MONTE DE PIEDAD sa Santa Cruz, Maynila, noong ika-9 ng Diciembre, 1959, at ang No. ng papelete ng pagkasangla ay 6652 at ang pangalang Rufina Saldaña ang siyang naka-sulat sa papelete ng agencia.

'Dahil sa aking malaking pagkukulang at pagka-labag sa aming kasunduan ni Mrs. Rizalina R. de Pingol, ay hinihiling kont tangapin na niya ang papelete de agencia ng Monte de Piedad, tubusin na niya kung siya ay mayrong itutubos, at ang lahat ng halagang aking nasira ay babayaran ko siya sa loob ng lalong madaling panahon. Tuloy ako ay humihingi ng pamanhin sa kaniya na kung uubra sa kasalanan kong nagawa ay huwag na niya akong ipagsakdal sa kasalanang ESTAFA.

'SA KATUNAYAN NG LAHAT ay nilagdaan ko ang kasulatang ito ngayong ika ___ ng Diciembre, 1959, dito sa Maynila.

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(t.) ELENITA V. UNSON'

Thereafter, Rizalina asked a friend, Policarpio Guevara, to redeem the earrings from the pawnshop for P4,020.00 on December 15, 1959. Elenita did not pay or reimburse the amount paid by Rizalina to the pawnshop to redeem the earrings in question. Hence, this criminal action for estafa.

Testifying as witness in her behalf, Elenita Unson admitted having received the earrings to be sold on commission basis, but claimed that she delivered the same to Rufina Saldaña in exchange for the latter's loose diamond stones which she (Elenita) delivered to Rizalina; that Rufina Saldaña pawned the earrings; that she did not want to sign Exhibit C because it was in Tagalog and she was a Visayan, but she signed it 'by force of circumstances'; that this occurred in the store or Cosmic Electronics where she was threatened, and that on that occasion, Rizalina grabbed and forcibly took from her the 'papeleta', Exhibit B, for which reason she filed a complaint against Rizalina for robbery in the Fiscal's Office, which was dropped upon her desistance.

The trial court did not give credence to defendant's testimony saying:

'The said defense of the accused is, however, undermined, if not belied, by the following facts and circumstances, among others: In the first place, while her receipt of the jewelry in question from the complainant is evidenced by Exhibits A and C, her alleged delivery of Rufina Saldaña's loose stones to the complainant is not evidenced by any receipt, hence the improbability of the delivery just mentioned. In the second place, the accused did not even bother to present Rufina Saldaña to corroborate her story regarding the loose stones in question. In the third place, the accused also did not take the trouble to present any witness to corroborate a portion of her aforequoted testimony that she was threatened, intimidated or robbed by the

complainant, and this notwithstanding her version that there were other persons present on the said occasion. In the fourth place, the alleged robbery rap was subsequently dropped by her, thereby showing that she could have fabricated the same. In the fifth place, this Court has observed that while the complainant testified in a natural and straight forward manner, thus giving a ring of truth and conviction to her resulting testimony, the accused, on the other hand, was evasive and apparently groping in the course of her narrative, thus giving the latter a forced and fabricated tenor. In the sixth place, the complainant who, to the mind and in the observation of this Court, is more trustworthy than the accused, rebutted the vague and uncertain testimony of the latter. In the seventh place, the accused appears to be a mature and experienced woman, the kind who cannot be easily imposed upon or over-reached by another in her line of business. Finally, Exhibit C, the accused's own affidavit totally gives the lie to her testimony, and fully confirms that of the complainant's." [1]

In her Brief, petitioner submits the following assignment of errors:

- The Honorable Court of Appeals seriously erred on questions of law when it disregarded and excluded, in the determination of the issue on who pawned the pair of earrings in question, in violation of the best evidence rule, the best evidence - the Monte de Piedad pawn ticket No. 6652 dated December 9, 1959, Exhibit "B", and the application to pawn, Exhibit "B-1", both signed by and issued to Rufina Saldaña and not the accused-appellant as testified to by prosecution's own witness and as admitted by private prosecutor himself. Exhibits "B" and "B-1" were identified and submitted as prosecution's own evidence.

- The Honorable Court of Appeals seriously erred on questions of law when it made a ruling in law that it was the duty of the accused-appellant herein petitioner to present Rufina Saldaña in order to corroborate her testimony that it was not she but Rufina Saldaña who pawned the pair of earrings in question when the law imposes that duty (to present said Rufina Saldaña) to the prosecution because Rufina Saldaña should be, if the case for the prosecution should prosper, presented as rebuttal witness by the prosecution considering that:

- 1) The pawn ticket and the application to pawn, Exhibits "B" and "B-1" for the prosecution were signed by and issued in the name of Rufina Saldaña. These exhibits for the prosecution already established the fact of pawning of the pair of earrings by Rufina Saldaña herself;

- 2) The accused-appellant in stating that Rufina Saldaña pawned the pair of earrings only confirmed what appears on said Exhibits "B" and "B-1" of the prosecution. Rufina Saldaña therefore, need not testify for the accused-appellant to confirm further such fact;

- 3) Consequently, since it is the theory of the prosecution that the accused-appellant and not Rufina Saldaña who pawned the pair of earrings then it is prosecution's duty (and not the accused-appellant) to present Rufina Saldaña in rebuttal to rebut what is stated in prosecution's own Exhibits "B" and "B-1" as well as the testimony of the accused-appellant (herein Petitioner) that Rufina Saldaña pawned the pair of earrings, which only confirms the contents of said exhibits.

The aforesaid ruling of the Court of Appeals on a question of law, in effect, shifted the burden of proof from the prosecution to the defense in violation of the following: the prosecution has the burden of proof in criminal cases; the prosecution must prove its case beyond reasonable doubt; and the accused is presumed innocent until proven guilty beyond reasonable doubt.

- The Honorable Court of Appeals seriously erred on questions of law in concluding that the element of conversion or misappropriation in the specie of estafa defined in par. I-B, Article 315 of the Revised Penal Code is attendant in the instant case notwithstanding the fact that the conversion or misappropriation, if any, was committed by a person other than the accused-appellant.

- The Honorable Court of Appeals seriously erred on questions of law when it made conclusion of facts, particularly the conclusion that the alleged misappropriation or conversion of the pair of earrings of the complainant witness prejudiced or damaged the latter, thereby sustaining an erroneous verdict of guilt when

the facts from which the conclusion was drawn can, and more favorably so, sustain a conclusion consistent with the innocence and acquittal of the accused such conclusion of facts being manifestly mistaken and absurd is subject to review by this Honorable Court under the doctrine set forth in the case of *Agustin de Luna, et al. vs. Jose Linatoc*, 74 Phil. 15.

- The Honorable Court of Appeals seriously erred on questions of law in convicting the petitioner of the offense charged.

The first error assigned by petitioner-accused is without merit. The finding of the respondent court, affirming that of the trial court, that it was the accused who pawned the earrings is correctly based on the affidavit of the accused herself (Exhibit C) wherein she stated among other things that because of her pressing obligation and need for money, she pawned the jewelry with the Monte de Piedad Pawnshop in Manila in the amount of P4,000.00 on December 9, in the name of Rufina Saldaña. This statement is an admission against accused's interest which both the trial court and the appellate court considered controlling, notwithstanding Exhibit "B" (the pawnshop ticket No. 6652) and Exhibit "B-1" (the application to pawn).

Petitioner faults the appellate court for violation of the best evidence rule in disregarding and excluding in the determination of the issue on who pawned the pair of earrings in question the Monte de Piedad pawn ticket (Exhibit "B") and the application to pawn (Exhibit "B-1"). Under Section 2, Rule 130 of the Rules of Court, there can be no evidence of a writing the contents of which is the subject of inquiry, other than the original writing itself, except in the following cases: (a) When the original has been lost, destroyed, or cannot be produced in court; (b) When the original is in the possession of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (c) When the original is a record or document in the custody of a public officer; (d) When the original has been recorded in an existing record a certified copy of which is made evidence by law; (e) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole.

We find no error in the courts' a quo ruling in the light of accused's statement in her affidavit, Exhibit "C", which reads: "Sa mahigpit kong pangangailangan ng kuarta dala ng malaki at maselang kong compromiso ay isinangla ko ang nabangit na isang pares na hikaw, na mayroon ngang halagang P7,000.00 sa halaga lamang na APAT NA LIBONG (P4,000.00) KUARTANG FILIPINO sa MONTE DE PIEDAD sa SANTA CRUZ, Maynila, noong ika 9 ng Diciembre, 1959, at ang No. ng papelete ng pagkasangla ay 6652 at ang pangalang Rufina Saldaña ang siyang naka-sulat sa papelete ng agencia." We agree with the court that this means of proof is the best evidence which affords the greatest certainty of the fact in question.

At any rate, the finding of the trial court as affirmed by the appellate court that the accused pawned the jewelry is a finding of fact which is binding upon Us, a rule well-established in Our jurisprudence.

There is likewise no merit to petitioner's second assigned error. The Court of Appeals in rejecting the version of the accused, had cited the failure of the defense to call Rufina Saldaña to corroborate the story of the accused in her testimony at the trial, that she exchanged the earrings with the loose diamond stones of Rufina Saldaña and that Rufina Saldaña pawned the earrings. Certainly, it was the duty of the accused to call Rufina Saldaña to give corroborative testimony, and not for the prosecution to present her as its witness to corroborate the version of the prosecution. As far as the prosecution is concerned, it had already presented sufficient proof that the accused was the one who pawned the jewelry in question as admitted in the affidavit of the accused, Exhibit "C". Since the weight of the prosecution evidence has been accepted by the trial court as proof beyond reasonable doubt and affirmed by the appellate court, based on the credibility of the witnesses and the admissibility of the documentary evidence presented, We cannot review the findings of facts of the courts a quo.

We further reject the third assignment of error, such alleged error being based on the assumption that the accused was not the one who pawned the earrings and misappropriated the money received from the transaction. As stated earlier, this Court is bound to respect the findings that said accused pawned the earrings. Accordingly, the third error lacks factual basis and for this reason We overrule petitioner's contention.

The clear lack of reason and merit of the fourth and fifth assignments of error can readily be discerned as mere consequence of the rejection of the first three assigned errors hereinbefore made.

Reviewing the penalty imposed, We find the same to be correct.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment of the respondent Court of Appeals is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Makasiar (Chairman), Aquino, Abad Santos and De Castro, JJ., concur.
Concepcion Jr. and Escolin, JJ., no part.

[1] Court of Appeals Decision, pp. 76-81, Petitioner's Brief.

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