

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NIÑA PANTE Y LAYNESA, ACCUSED-APPELLANT.

Ponente: DE GUIA-SALVADOR, R., J.

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### DE GUIA-SALVADOR, R., J.:

This is an appeal from the Decision dated 14 March 2012 of the Regional Trial Court of Naga City, Branch 21, which found Niña Pante y Laynesa (or “appellant”) guilty of estafa in Criminal Case No. RTC 2008-0352. The dispositive portion of the Decision reads:

“WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding [appellant] GUILTY beyond reasonable doubt of the crime of estafa defined and penalized by Article 315, paragraph 2(a) and first paragraph of Article 315 of the Revised Penal Code, as amended, and she is sentenced to suffer an indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to seven (7) years, eight (8) months and twenty-one (21) days of prision mayor, as maximum.

Additionally, said [appellant] is hereby ordered to INDEMNIFY or PAY private complainants Youlie Palima and her mother, Winefreda Palima, the amounts of Php8,000.00 and Php26,000.00, respectively, with legal interest of 6% per annum computed from the filing of this case on September 23, 2008 until its full payment before the finality of this Decision. Thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the finality of this Decision until fully satisfied, plus costs of suit.

SO ORDERED.”[1]

### THE INDICTMENT

On 23 September 2008, appellant was charged with the crime of estafa under Article 315(2)(a) of the Revised Penal Code, as amended. The accusatory portion of the Information reads:

“That within the period from February 16, 2008 to February 19, 2008, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the [appellant] by means of false pretenses, that is by fabricating supernatural stories of p[s]ychic healing and pretending to possess power to discover hidden treasures, did then and there, willfully, unlawfully and feloniously induce herein complaining witnesses, YOLIE PALIMA and W[INEFRED] R. PALIMA to part [with] their money amounting to THIRTY FOUR THOUSAND PESOS (Php34,000.00), making them believe that inside [appellant’s] jar [are] articles of great value, but [appellant], once in possession of the money converted it to her own personal use and benefit, and despite demands made by [private] complainants for [appellant] to return the money, [appellant] failed and refused, to do so, to the damage and prejudice of herein [private] complainants.

ACTS CONTRARY TO LAW.”

Upon arraignment on 14 April 2009, the criminal charge was read to appellant in the Bicol dialect which she well understood and, with the assistance of a counsel de officio, she pleaded “Not Guilty”.

Trial ensued with the prosecution presenting as witnesses private complainants Youlie Palima (Youlie) and her

mother, Winefreda Palima (Winefreda); Biacita Talgtag (Biacita), the faith healer who introduced appellant to the complainants; and Vicky Balistamon (Vicky), another daughter of Winefreda. For the defense, appellant, Leoncio Pante, her husband, and Nolly Pante, their son, testified.

## The Facts

### Version of the Prosecution

The Solicitor General summarized the evidence for the prosecution in the Appellee's Brief as follows:

“On February 16, 2008, at around 1:30 in the afternoon, [Youlie] was at her car shop in Concepcion Grande, Naga City. There, Beacita Talagtag, a psychic healer introduced appellant... to [Youlie] to conduct a 'psychic healing session' to cure the latter's stomach ache and cold feet and hands. Appellant was also a psychic healer according to Talagtag.

During this time, [Youlie] was informed by appellant that she was being possessed by an evil spirit that was staying at the back of her car shop. Appellant added that the evil spirit will cause her to die if a ritual is not conducted at the back of her car shop where a hidden treasure consisting of thirteen (13) bars of gold were kept.

To avoid death, [Youlie] was told by appellant to [give] her Php3,000 wrapped in a newspaper and another Php2,000 which represents closing and opening the treasure. [Youlie] did as he was told because she believed that her life would be in danger if she did not give her the money. Also, appellant represented herself as a rich person who have gold bars hidden beneath her house and chose to stay in a squatter area to avoid being robbed. [Youlie] fully believed appellant's story.

After parting with her money, [Youlie] was told by appellant that she would suffer an attack at 6:00 in the evening of that day. And to avoid it, she would need the help of appellant. Around 6:00 that evening, appellant went to [Youlie's] house and gave her a glass of water with the instruction to keep drinking whenever she felt something painful. Thereafter, [Youlie] suffered stomach ache the whole night, which prompted her to call for appellant. Upon arriving she treated [Youlie] with water and asked for Php500 [to procure an] antidote or 'pangontra.'

During this time, [Youlie's] mother [Winefreda] was around. Her mother informed appellant that she has a house in Tinambac. Then, [Winefreda] was told by appellant that she has also hidden treasure and it must likewise be opened to save [Youlie's] life. Again appellant asked [Youlie] for Php2,500 which the latter gave.

The next day, [Youlie] and [Winefreda] accompanied appellant towards Tinambac. On her way, the car had engine trouble and they stopped by a mechanic's house whose mother passed away. There, appellant convinced [Youlie] that her life was really at stake and she would die on Saturday. The latter got really afraid. When they reached the house, a funeral passed by which led [Youlie] to believe that she will surely die.

At Tinambac, [Winefreda] was told by appellant to wrap Php2,000 as symbol for opening and another Php10,000 as closing ritual. Appellant promised to return the money on Saturday. After this, they went back to Naga City. There they were told to wait at their car shop in Concepcion and the gold bars will be revealed to them by appellant the next day. Thereafter, appellant proceeded to the house, but told [Youlie] that they can take a peek at the container of gold bars beside the washing machine. They saw the gold. Then, was instructed not to touch it until Saturday.

After this, appellant asked Php4,000 from [Youlie] to stop her husband's womanizing. This money was received by appellant. The next day, [Winefreda] accompanied appellant to Tinambac again to take a look at the treasure. There, appellant asked for another Php10,000 for ritual and promising to return the same on Saturday.

Since appellant already got a huge amount of money from [Youlie] and [Winefreda], they suspected appellant as deceitful and checked on the gold bars beside the washing machine. Upon checking, they found nothing. The container was empty. They reported the incident to the Barangay Captain and told him they were victims of “budol-budol.” [Youlie and Winefreda] were deprived of Php34,000 as a result of appellant’s fraud.

Appellant was caught by policemen and brought to the city legal officer [and] a case for Estafa was filed against her.”[2]

#### Version of the defense

The Public Attorney's Office sets forth the defense version in the Appellant's Brief, thus:

“In the afternoon of February 16, 2008, accused NIÑA PANTE (Niña) stayed at their house, as she was busy attending to her twins. At around 11:00 o'clock or 12:00 o'clock midnight, Youlie's husband sought her assistance because Youlie was on the verge of dying (nagdedeliryo). She does not know Youlie and her husband personally but the latter knew her address because of Biacita Talagtag, a 'hilot', who was at Youlie's house at that time. It was Biacita who informed Youlie that she (Niña) can exorcise persons who are being possessed by evil spirits. Initially, she did not accede to the request because it was midnight. Upon Youlie's husband's insistence and out of mercy to Youlie, they went to the latter's house. Upon arrival thereat, Youlie was trembling while uttering 'PAPAYAMANON TAKA, PAPAYAMANON TAKA' (I will make you rich, I will make you rich). She told the husband to let Youlie drink a glass of water. Youlie was relieved. Thereafter, she left because Biacita was not there.

Apart from the FEBRUARY 16, 2008 incident, she never had any contact with Youlie and her family because she was already at Anawan, Camarines Sur on February 17, 18, and 19, 2008 to attend her granddaughter's birthday party.”[3]

### THE TRIAL COURT'S RULING

In convicting appellant of the crime charged, the trial court pointed out that private complainants' testimonies, which were corroborated by their witnesses, are replete with details on how they were deceived by appellant. Having closely observed the demeanors of the private complainants, the trial court found their declarations straightforward, candid, spontaneous, and deserving of full faith and credence. It also noted that private complainants had no ill-motive to falsely institute the charge, except to seek justice for the damage they suffered from the deception perpetrated by appellant.

On the other hand, the trial court rejected appellant's defenses of denial and alibi as too weak when viewed in the light of private complainants' clear and convincing narration and positive identification of her as the one who deceived them. It ruled that while appellant tried to prove that she did not introduce herself as a psychic healer, she nonetheless acceded to treat private complainant Youlie by telling her to blow into a glass of water before drinking it, out of pity and due to the insistence of the latter's husband. It also held that material inconsistencies between the testimonies of Youlie and her husband further militate against the credibility of her already weak defense. It found that Youlie's alibi that she could not have returned to private complainants' place on February 17, 2008 as she went to her grandchild's birthday party in Anawan, Ocampo, Camarines Sur, and stayed there until February 20, 2008, does not jibe with her husband's testimony that she stayed home the whole day of February 17, and went to Anawan only on February 19, 2008 to attend the birthday celebration of their daughter.

#### The Issue

Appellant urges the reversal of the judgment of conviction on the sole error imputed against the trial court, viz:

“THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(A) OF THE REVISED PENAL CODE DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ELEMENTS THEREOF BEYOND REASONABLE DOUBT.”[4]

### The Court's Ruling

We find the appeal devoid of merit.

Appellant was charged and convicted by the trial court of Estafa by means of deceit under Article 315 of the Revised Penal Code which reads as follows:

Art. 315. Swindling (estafa). – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

xxx xxx xxx

- By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

The elements of Estafa under the above provision of law are as follows:

- 1.) there must be a false pretense, fraudulent acts or fraudulent means;
- 2.) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;
- 3.) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and
- 4.) as a result thereof, the offended party suffered damage.[5]

All these elements were established beyond reasonable doubt by the prosecution through the credible testimonies of private complainants Youlie and Winefreda.

### First Element:

The credible testimony of Youlie and Winefreda proved that appellant had presented herself as a psychic healer who can cure ailments and find treasures

"False" may mean untrue, or designedly untrue, implying an intention to deceive, as where it is applied to the representations of one inducing another to act to its own injury;[6] and "representation" is anything which proceeds from the action or conduct of the party charged and which is sufficient to create upon the mind a distinct impression of fact conducive to action.[7] "False pretense" means any trick or device whereby the property of another is obtained.[8]

Finding the testimonies of Youlie and Winefreda to be straightforward, candid and spontaneous, the trial court ruled that appellant made a false representation to them that she is a psychic healer who can cure Youlie's illness,

viz.:

“...[appellant] led Youlie and [Winefreda] to believe that she is a psychic healer and that Youlie was possessed by an evil spirit guarding a treasure of gold bars located at the back of the latter’s house, as well as the presence of treasures contained in a jar at Winefreda’s house in Tinambac, Camarines Sur, which treasures need to be opened for purposes of healing Youlie’s ailment and protecting their family from the evil spirits lurking in their houses. [Appellant] also led the private complainants to believe that they have to give money to her for the ritual to open and close said gold treasures and to spare Youlie’s life from an impending death.

X X X

X X X

X X X”

It is well-settled that the trial court’s findings of facts, its calibration of the collective testimonies of witnesses, its assessment of the probative weight of the evidence of the parties, as well as its conclusions anchored on the said findings, are accorded great weight, and even conclusive effect because of its unique advantage to observe, at close range, the conduct, demeanor and the deportment of the witnesses as they testify.[9] Our circumspect scrutiny of the records of the case revealed no reason to overrule the trial court’s finding that appellant falsely represented herself to be a faith healer. Moreover, as aptly noted by the trial court, Youlie and Winefreda have no ill motive in implicating appellant in the present case. Where there is no evidence to show any questionable reason or improper motive why a prosecution witness will testify falsely against, or falsely implicate, the accused, the witness’ testimony is worthy of full faith and credit.[10] Hence, Youlie and Winefreda’s assertion that appellant presented herself as a faith healer deserves credence.

Indeed, Youlie asserted that after the appellant was introduced to her by Biacita, appellant attributed the cause of her frequent stomach ache, cold hands, and insomnia[11] to the presence of an evil spirit at her car shop, and gave her an assurance that a ritual will be conducted to drive away that evil spirit by opening the treasure at the back of the car shop. Youlie testified as follows:

“Q

And can you tell us what happened, if any, during the introduction?

A

[Appellant] told me that I [should] not be afraid because she will help me, because at present, according to her, I am possessed by an evil spirit who is staying at the back of my car shop, ma’am.

Q

And what is the relationship of that evil spirit at the back of your car shop to you?

A

I would die ma’am.

Q Why? Can you explain to us why?

A Because of the treasure that is located at the back of our car shop, ma'am.

Q Can you tell us what must be done on the treasure at the back of your car shop?

A [Appellant] would conduct a ritual ma'am.

Q Why? If that would not be opened, what would be the consequence?

A My life would be at stake, ma'am.

Q What did you feel with those statements uttered by the [appellant]?

A I have been thinking of it the whole day and I feared the condition of my life, ma'am.

x x x

x x x

x x x

Q And did you feel secure that [appellant] offered to help you?

A Yes, ma'am."[12]

Winefreda, who came to Youlie's house on the date of the incident, corroborated her daughter's testimony. Initially doubtful of the faith healing powers of appellant, Winefreda was eventually convinced when she saw that Youlie's condition improved after appellant conducted a ritual and made the latter drink a glass of water.[13]

The mere fact that it was Biacita who first introduced appellant to be a faith healer to Youlie is of no moment. After such introduction, appellant acted, and by her own acts persuaded Youlie of her being a faith healer. She told Youlie that she is being possessed by an evil spirit, conducted rituals, and revealed to her that the evil spirit can be driven away by opening the treasure at her car shop.

From her own testimony, appellant admitted that she is known in her neighborhood as a psychic healer, and she performed acts and rituals as such. A long time neighbor of appellant, Biacita even informed Youlie's family of appellant's knowledge of exorcism.[14] In fact, when Youlie's husband sought appellant's help as Youlie was on the verge of death, appellant never denied being a faith or psychic healer.[15] Appellant's acts after seeing Youlie's condition betrayed her pretense that she never made steps to heal the latter, thus:

**“Q**

Seeing [Youlie] in that condition, what advice did you give to the member[s] of [her] family?

**A**

I told them that they should let her drink water...

**Q**

Okay. Will you agree with me that before [Youlie] was made to drink water you performed somewhat a ritual on the water, is it not?

**A**

No. maám. It was even [Youlie] who was instructed to blow a glass of water before she drinks it.

**Q**

Who gave [Youlie] the advice to blow the water first before drinking?

**A**

Me, ma' am.

**COURT:**

Wait.

**Q**

What prompted you to give an advice [to Youlie] to blow first the water before drinking it...?

**A**

Because, as I have said, I have seen it on television on cases where a person is possessed by evil spirits. Your Honor.

Q What made you so interested in those kind of healing?

A Because Biaseta [Talagtag] cannot treat [Youlie]. That is why she sought for my assistance, Your Honor.”[16]

From the foregoing, it is clear that appellant acted as a faith healer and exorcised the evil spirit which allegedly possessed Youlie by performing a ritual to open the treasure at the back of the car shop .

Second Element:

After convincing Youlie and Winefreda that she is a faith healer, appellant led them to believe that certain rituals should be made to make her (Youlie) well and to open the treasure in their respective

houses

After she had inveigled Youlie to believe that her ailments were caused by her being possessed by an evil spirit, appellant swayed her to obtain an amulet (“pangontra”) to repel the evil spirit from possessing her.[17] Appellant likewise persuaded her that to remove the peril in her life posed by the evil spirit, the treasure consisting of thirteen (13) bars of gold located at the back of her car shop must be opened with a ritual “opening” and “closing” the same.[18] She further made her believe that the treasure in the house of Winefreda in Tinambac, Camarines Sur should also be opened to protect her life.[19]

On the other hand, Winefreda entirely believed appellant that a treasure can be found in her house in Tinambac, Camarines Sur. She brought appellant to Tinambac where the latter remarked that there are “lots of treasures” at the back of her house and asked for Php2,000.00 to conduct a ritual in opening the treasure.[20] On their second trip to Tinambac, appellant told Winefreda that the treasure would appear at the vacant room of the house.[21]

Third Element:

Youlie parted with the total amount of Php8,000.00[22] to ensure her well being and her life, while Winefreda gave appellant Php2,000.00 to “open” the treasure

The gravamen of estafa under Article 315 (2)(a) of the Revised Penal Code is the intent to deceive, or fraudulent intent. Intent, being a state of the mind, may be proved by words or by the conduct of the accused before, during and after the transaction, subject of the case, independent of and distinct from the non-compliance of the promise or representation of the accused.[23] The successful prosecution of this felony requires that the false statement or representation of the accused constitutes the very cause or the only motive which induced the offended party to part with his money.[24]

In the case at bench, Youlie testified that she gave appellant the amount of Php500.00 to obtain a “pangontra” in Pili, Camarines Sur to ward off the evil spirit causing her illness.[25] Likewise warned by the appellant that her life would be at stake if the treasure would not be opened,[26] Youlie handed to appellant the amounts of Php2,000.00, and Php3,000.00, for the purpose of ensuring her safety, thus:

**“Q**

And you made mention that the [appellant] told you to wrap money. How? What was the instruction given?

**A**

[Appellant] instructed me to wrap money separately. The first amount is P3,000.00, and the second amount is P2,000.00. That represent the opening and the closing of the treasure, ma’am.

**Q**

And did you give those amounts to the [appellant]?

A Yes, ma’am.

Q Why?

A Because my life will be at stake if I will not do that, ma'am."[27]

Another amount of Php2,500.00 was also handed by Youlie to appellant to "open" the treasure in Tinambac.[28] Appellant previously warned Youlie that to protect her life against the evil spirit, the treasure in the house of Winefreda in Tinambac, Camarines Sur should be opened.[29]

With the belief that her life was at risk and that she will be protected from the curse of the evil spirit which caused her ailments, Youlie gave appellant the total amount of Php8,000.00. Notwithstanding her college education, Youlie's desire to find a cure for her supposed ailments led her to believe appellant's representations. In like manner, Winefreda believed that appellant can verify the presence of treasure in her house in Tinambac, Camarines Sur. Thus, she handed appellant Php2,000.00 "for her doing the ritual in opening that treasure at the back of [her] house..."[30]

Fourth element:

Youlie and Winefreda  
suffered damage

In her Appellant's Brief, appellant admitted[31] that she received from Youlie and Winefreda the amounts of money the private complainants alleged to have handed to her but argued that the same were loaned from private complainants. Appellant likewise acknowledged that both Youlie and Winefreda suffered material damage when she failed to pay the amounts lent to her.[32]

In sum, the prosecution has established that appellant committed two (2) separate counts of estafa under Article 315 (2)(a) of the Revised Penal Code against Youlie in the amount of Php8,000.00, and against Winefreda in the amount of Php2,000.00.

In seeking her acquittal of the crime charged, appellant maintains that the prosecution was not able to prove beyond reasonable doubt the element of deceit consisting of false statement or fraudulent representation. She denies having misrepresented herself as a psychic healer to Youlie and Winefreda.[33] She questions how Youlie, a well-established businesswoman who graduated with a college degree in commerce, can be so easily fooled by supernatural stories or superstitious beliefs.[34] She also claims that even assuming for the sake of argument that she misrepresented herself as a psychic healer, such misrepresentation was not the cause for which Youlie and Winefreda parted with their money. Instead, she pointed out that they lent her the money out of her promise to return the same amount by Saturday.[35]

We agree with the trial court that against the positive and credible testimonies of the prosecution witnesses, appellant's defenses of denial and alibi fail to persuade. Appellant's defenses are inherently weak, easy to fabricate and self-serving. As between a categorical testimony that rings of truth on one hand and a bare denial on the other, the former is generally held to prevail.[36] In the same vein, appellant's alibi of being in Anapawan, Ocampo, Camarines Sur on February 17 to 19, was belied by the testimony of her husband who attested that she merely left on February 19 to attend her daughter's birthday (not grand daughter as related by appellant).

Citing portions of Youlie's testimony on cross-examination[37], appellant also argues that private complainants parted with their money because of appellant's promise to return the same that weekend. Appellant concluded that such agreement of the parties constitute a contract of loan, hence, she cannot be held criminally liable for not paying her debt. [38]

Appellant's argument is flawed.

Youlie never stated that appellant's capability to repay her is the reason why she parted with her money. Youlie testified that the amounts she gave to appellant were for the purpose of protecting herself from the evil spirit, i.e., Php500.00 for "pangontra;"[39] Php2,000.00, Php3,000.00[40] and Php2,500.00[41] for opening and closing the treasure in her car shop and Winefreda's house. Clearly, appellant's false representation that she can make the evil spirit that causes Youlie's ailments disappear induced the latter to make the payments.

As to the amounts of money given by Winefreda to appellant, the former's testimony on her intent or motivation for doing so is the best evidence. Notably, this element involves the state of mind of the offended party, hence, the offended party's testimony will credibly establish its presence. Youlie's account cannot supplant Winefreda's testimony as to what induced her (Winefreda) to yield to appellant's requests for money. Thus, the trial court correctly found that appellant committed estafa when she succeeded in convincing Winefreda that Php2,000.00 is necessary for the "ritual in opening [the] treasure at the back of [her] house..."[42]

However, the trial court erred in holding appellant liable for estafa with respect to the other amounts of money subsequently handed by Winefreda to appellant. Winefreda's act of twice handing appellant the sum of Php10,000.00 or a total amount of Php20,000.00 was due to her belief that appellant will pay her back on a certain date. Winefreda's direct testimony reads:

**“Q**

And after that what else happened?

**A**

And she again asked for P10,000.00 but she told us that she would just return it because she is a rich person, and she doesn't need money, ma'am.

**Q**

So what was the P10,000.00 for?

**A**

[Appellant] told us that she would just return it and in fact she wrapped it in a newspaper so that we won't be able to get hold of it and that money will just be returned to us, ma'am.

**Q**

Madam Witness, if the [appellant] will just return it to you, why did she asked for P10,000.00?

**A**

According to [appellant], she would just return [it] because she is a rich person and owns a CRV,[43] ma'am."[44]

Winefreda's repeated answers on why she handed to appellant Php10,000.00 revealed that appellant's false statement of the presence of treasure in her house is not the very cause or the only motive which induced Winefreda to part with her money, but her belief that she would be repaid, thus:

**“Q**

Can you tell us the reason why again you gave that P10,000.00?

**A**

I just trusted her because she told me that she would just return it, ma’am.

Q Aside from trust, what motivated you to give that amount of P10,000.00 to [appellant]?

A I just acceded because she told me that she would just return it because she is a rich person and she’s doing it because she wants to help us, ma’am.” [45]

The same motivation prompted Winefreda in giving appellant another Php10,000.00 which she borrowed from her other daughter, Becky Balistamon:

**“Q**

Did your daughter give the P10,000.00 you are borrowing from her?

**A**

Yes, ma’am....

**Q**

Did [appellant] tell the reason why she is again asking for P10,000.00?

**A**

She just asked for that amount of P10,000.00 ans to wrapped it. That money, she would just return it to us.

**Q**

Can you tell us the reason why you keep on giving her money?

**A**

Because I... trust her, ma’am.

**Q**

And aside from that, can you tell us the reason why you keep on giving her money?

## A

No other reason but she would just return it, ma'am." [46]

So also, the evidence with respect to the Php4,000.00 given to appellant will not satisfy the test of moral certainty. Youlie testified that Winefreda gave appellant said amount. [47] On the contrary, Winefreda testified that it was Youlie who handed the Php4,000.00 to appellant. [48] With the uncertainty on who actually gave appellant the amount of Php4,000.00, the motive or the cause of the giver in parting with her money (the third element of the crime charged) cannot be established beyond reasonable doubt.

## THE CRIMINAL AND CIVIL LIABILITIES

Despite the fact that two (2) counts of estafa were committed by appellant, Assitant City Prosecutor of Naga City erroneously lumped the two crimes in a single Information. [49] As a result, the trial court likewise erred in adding together the total amount of Php34,000.00 as subject of a single fraud when it actually represents the aggregate sum of the separate amounts of Php8,000.00 and Php26,000.00 of which Youlie and Winefreda were defrauded by appellant, and in sentencing appellant to a single penalty of imprisonment of four (4) years and two (2) months of prision correccional, as minimum, to seven (7) years, eight (8) months and twenty-one (21) days of prision mayor.

It bears to stress that when an accused fails to file a motion to quash prior to arraignment, [50] she is deemed to have waived the defect in the Information, and she may be convicted of as many offenses as those charged in the information and proved during the trial. [51] In this case, appellant is deemed to have waived the formal defect of the duplicitous information filed against her when she failed to file a motion to quash before she entered her plea. Hence, she may be convicted for two (2) counts of estafa under Article 315 (2)(a) of the Revised Penal Code as alleged in the Information and proved by the prosecution during the trial.

The penalty for the crime of estafa depends upon the amount defrauded. [52] Article 315 of the Revised Penal Code provides:

"ART. 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

`1[st]. The penalty of prision correccional in its maximum period to prision 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 case, 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 prision mayor or reclusion temporal, as the case may be;

`2[nd]. The penalty of prision correccional in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

`3[rd]. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

`4[th]. By arresto mayor in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means."

Accordingly, for defrauding Youlie in the amount of Php8,000.00, appellant should be meted the penalty under paragraph 2[53] of Art. 315 of the Revised Penal Code, which is prision correccional in its medium period [54] or

from one (1) year, eight (8) months and twenty one (21) days, to two (2) years, eleven (11) months and ten (10) days.[55] Applying the Indeterminate Sentence Law, appellant is sentenced to an indeterminate penalty of imprisonment for 6 months of arresto mayor, as minimum,[56] to 2 years, 11 months of prision correccional, as maximum.[57] On the other hand, for defrauding Winefreda in the amount of Php2,000.00, appellant is sentenced[58] to an indeterminate penalty of 3 months of arresto mayor,[59] as minimum to 1 year and 1 day of prision correccional, as maximum.[60]

As for the civil liabilities, the trial court correctly held appellant liable to Youlie and Winefreda in the respective amounts of Php8,000.00, and Php26,000.00. These were the amounts appellant admitted to have received[61] from Youlie and Winefreda, and were never repaid.

Finally, the 12% per annum (p.a.) interest rate that the trial court imposed in case the amount adjudged remains unpaid “from finality of this Decision until fully satisfied” should be reduced to 6%. This is in line with the Monetary Board Circular No. 799[62] which states that “the rate of interest for the loan or forbearance of money, goods, or credits and the rate allowed in judgments, in the absence of an express contract as to such interest, shall be 6 percent per annum.”

WHEREFORE, the appealed Decision dated 14 March 2012 in Criminal Case No. RTC 2008-0352 is AFFIRMED with MODIFICATION. Accordingly, appellant Niña Laynesa y Pante is found GUILTY beyond reasonable doubt of not just one but of two (2) counts of estafa under Article 315, paragraph 2(a) of the Revised Penal Code, as amended. For the first count of estafa, she is meted the indeterminate sentence of 6 months of arresto mayor, as minimum, to two (2) years, eleven (11) months of prision correccional, as maximum. For the second count of estafa, she is meted the indeterminate sentence of three (3) months of arresto mayor, as minimum to one (1) year and one (1) day of prision correccional, as maximum. Further, the 12% per annum interest rate that the trial court imposed if the amount adjudged remains unpaid from finality of this Decision until fully satisfied is REDUCED to 6% per annum.

### **SO ORDERED.**

### **CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Garcia, R.R., and Bueser, D.Q., JJ., concur.

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[1] Records, pp. 138-139; Rollo, pp. 45-46

[2] Rollo, pp. 57-59. Citations omitted.

[3] Rollo, p. 24. Citations omitted.

[4] Rollo, p. 25

[5] *Franco v. People*, G.R. No. 171328, February 16, 2011.

[6] *Preferred Home Specialties Inc., v. Court of Appelas*, G.R. NO. 163593, 16 December 2005. Citations omitted.

[7] *Ibid.*

[8] Ibid.

[9] See *People v. Trestiza*, G.R. No. 193833, 16 November 2011.

[10] *People vs. Malate*, G.R. No. 185724, 5 June 2009.

[11] TSN, 08 October 2009, p. 06.

[12] TSN, 08 October 2009, pp. 07-09. emphasis added.

[13] TSN, 08 October 2009, p. 06.

[14] TSN, 17 May 2011, p. 06.

[15] TSN, 17 May 2011, pp. 05-06. Appellant's apprehension were (1) it was already late in the evening, and she does not personally know Youlie and her husband ( TSN, 17 May 2011, p. 07).

[16] TSN, 17 May 2011, pp. 14-15.

[17] TSN, 08 October 2009, p. 15.

[18] TSN, 08 October 2009, p. 09.

[19] TSN, 08 October 2009, p. 17.

[20] TSN, 28 January 2010, p. 12.

[21] TSN, 28 January 2010, p. 20.

[22]  $\text{Php}500 + 2,000.00 + 3,000.00 + 2,500.00$

[23] *Preferred Home Specialties, Inc. v. Court of Appeals*, G.R. No. 163593, 16 December 2005, cited in *Cesar v. Gomez*, A.M. No. RTJ-07-2059, 10 August 2007.

[24] *Ambito v. People*, G.R. No. 127327, 13 February 2009, citing *Aricheta v. People*, G.R. No. 172500, 21 September 2007.

[25] TSN, October 08, 2009, p. 15.

[26] TSN, 08 October 2009, p. 08.

[27] TSN, 08 October 2009, p. 09.

[28] TSN, 08 October 2009, p. 18.

[29] TSN, 08 October 2009, p. 17.

[30] TSN, 28 January 2010, p. 12.

[31] Rollo, pp. 28-30.

[32] Ibid..

[33] Rollo, p. 26.

[34] Id., p. 27.

[35] Id., pp. 27-28.

[36] *People vs. Arofo and Fortaliza*, G.R. No. 139433, April 11, 2002.

[37] TSN, November 5, 2009, pp. 4-8, 10

[38] Rollo, pp. 27-30.

[39] TSN, October 08, 2009, p. 15.

[40] TSN, 08 October 2009, p. 09.

[41] TSN, 08 October 2009, p. 18.

[42] TSN, 28 January 2010, p. 12.

[43] A variant of a Honda-made car.

[44] TSN, 28 January 2010, pp. 12-13.

[45] TSN, 28 January 2010, p. 14.

[46] TSN, 28 January 2010, pp. 21-22.

[47] TSN, 08 October 2009, p. 32.

[48] TSN, 28 January 2010, pp. 18-19.

[49] Rule 110, Section 13 of the Rules of Court reads:

“Duplicity of the offense. – A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.”

[50] Pertinent provisions of Rule 117 of the Rules of Court provides:

“Section 1. Time to move to quash. – At any time before entering his plea, the accused may move to quash the complaint or information.

x x x

x x x

x x x

Sec. 3. Grounds. – The accused may move to quash the complaint or information on any of the following grounds:

x x x

x x x

x x x

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

x x x

x x x

x x x"

[51] Sec. 3, Rule 120 of the Revised Rules Rules of Criminal Procedure provides:

“Judgment for two or more offenses. – When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.”

[52] Pamintuan vs. People, G.R. No. 172820, June 23, 2010.

[53] Prision correccional in its minimum and medium periods.

[54] See People v. Pascua, G.R. No. 125081, 03 October 2001.

[55] Reyes, The Revised Penal Code, Book II, 15th edition, p. 1022.

[56] The minimum period of the indeterminate sentence should be within the range of the penalty next lower than that prescribed by the Revised Penal Code for the crime committed. The penalty next lower than prision correccional in its minimum and medium periods is arresto mayor in its medium and maximum periods or two (2) months and one (1) day to six (6) months.

[57] People v. Pascua, G.R. No. 125081, 03 October 2001.

[58] See Sy v. People, G.R. No. 85785, 24 April 1989.

[59] The penalty next lower in degree is 1 month and 1 day to 4 months of arresto mayor.

[60] The imposable penalty is arresto mayor in its maximum period to prision correccional in its minimum period (4 months and 1 day to 2 years and 4 months).

[61] Rollo, pp. 28 and 30.

[62] Effective July 1, 2013

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