

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NENITA M. SARMIENTO, ACCUSED-APPELLANT.

Ponente: VELOSO, J.

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VELOSO, J.:

The Case

On appeal[1] by accused Nenita Sarmiento (“accused-appellant”) is the October 04, 2013 Decision[2] of the Regional Trial Court of Las Piñas City[3] in Crim. Case No. 11-0220 entitled “PEOPLE OF THE PHILIPPINES, Plaintiff, -versus- NENITA M. SARMIENTO, Accused,” the dispositive portion of which reads:

“WHEREFORE, the Court finds accused NENITA M. SARMIENTO, GUILTY beyond reasonable doubt of the crime of estafa as defined under paragraph 1(b) of Article 315 of the Revised Penal Code and is hereby sentenced to an indeterminate penalty of Four (4) Years Two (2) Months of prision correccional, as minimum, and Seventeen (17) Years of Reclusion Temporal, as maximum, as well as to pay private complainant Aida Celestina H. Villog the amount of One Hundred Fourteen Thousand Pesos (Php114,000.00), as civil liability, with legal interest thereon at the rate of twelve (12%) per annum, from filing of the instant case until fully paid.

The civil liability awarded to the private complainant is subject to a lien representing the amount of the docket fees imposed under Section 21 (a) of Rule 141 of the Revised Rules of Court, to be computed by the Clerk of Court of the Regional Trial Court of Las Piñas City.

As such, furnish the Office of the Clerk of Court of the Regional Trial Court of Las Piñas City with a copy of this decision.

SO ORDERED.”[4] (emphasis and italics supplied)

The Facts

The antecedent facts, as found by the trial court, are as follows:

“Before this Court is an Information for Estafa, as defined under Article 315, Paragraph 1(b) of the Revised Penal Code (RPC) filed by Assistant State Prosecutor Mario C. Mangrobang against Nenita M. Sarmiento (accused, for brevity), which reads as follows –

“That on or about the 19[th] day of March, 2010 in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from complainant Aida Celestina H. Villog pieces of jewelry with a total value of P450,000.00 on consignment basis with the express obligation to sell and to return the said jewelry to said complainant if unsold within a reasonable time, however, Accused was able to remit/return some of the jewelries with a total value of P336,000.00 leaving balance of P114,000.00 but said accused once in possession of remaining jewelry and far from complying with her obligation, with abuse of confidence and with intent to defraud said complainant, did, then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to his (sic) own personal use and benefit the proceeds of the remaining pieces of jewelry valued at P114,000.00 and despite repeated demands made by the complainant, accused failed and refused and still fails and refuses to pay said amount or to return

the said jewelry, to her damage and prejudice in that aforementioned amount of P114,000.00.

CONTRARY TO LAW.'

xxx xxx xxx

After several postponements, the prosecution was able to present private complainant Aida Celestina Vilog (Aida, for brevity) on August 23, 2012, who testified that she has been in the business of buying and selling of jewelry since 1990 up to the present. On or about October of 2009, a common friend, a certain Nenita Carmelo (Carmelo, for brevity) introduced the herein accused to her at her (Aida's) house at Block 6, Lot 2, Villa Feliza Homes, Real St., Las Piñas City, and requested if she could accommodate said accused as her agent to sell her jewelry. Aida accepted such request with the arrangement that the accused must return to her the unsold pieces of jewelry within four (4) days after receipt thereof. On the other hand, the payment for the sold pieces of jewelry should be remitted to her by the accused within thirty (30) days from receipt of the jewelry.

According to Aida, the agency between her and the accused for the latter to sell her jewelry was not put into writing as this was her common practice with her other agents.

Aida continued to testify that on March 19, 2010, the accused came to her house and received ten (10) pieces of jewelry from her, itemized and described as –

Description

Value

1) Bangle

Php165,000.00

2) Set illusion

Php165,000.00

3) Gucci watch

Php 3,500.00

4) South Sea earrings

Php 7,000.00

5) Cross pendant

Php 7,000.00

6) Men's ring

Php 18,000.00

7) Fossil watch

Php 3,000.00

8) Men's bracelet

Php 55,000.00

9) Rolex ring

Php 9,000.00

and

10) Set

Php 18,000.00

Total

Php450,500.00

As proof of receipt by the accused of the above enumerated pieces of jewelry, Aida presented a Trust Receipt dated March 19, 2010 marked as Exhibit 'A'. Aida claimed that she and the accused agreed that the latter had to return to her the unsold pieces of jewelry within four (4) days after her receipt thereof, and to remit to her the payment for the sold ones within thirty (30) days reckoned also from her receipt of the said pieces of jewelry. Contrary to their agreement, however, the accused, on March 26, 2010, came to her house and returned only the following pieces of jewelry, viz – 1) Bangle (worth Php165,000.00); 2) Set illusion (worth Php165,000.00); and 3) Fossil watch (worth Php3,000.00). The accused purportedly remitted to her only the amount of Php3,500.00 as her payment for the Gucci watch. The accused allegedly told her that she (accused) was still waiting for the payment of her supposed buyers for the rest of the sold pieces of jewelry. Aida just warned the accused that the latter should be able to remit the said payments for the rest of the unreturned pieces of jewelry within the thirty (30)[-]day period earlier agreed upon. Unfortunately, the accused failed to remit such payment within the set period. Thus, sometime in the months of May and June of 2010, Aida went to the house of the accused located at #10, 18[th] St., De Leon Cpd., Sto. NiñoNiño, Parañaque City, and verbally demanded for the payment of the unreturned pieces of jewelry, but to no avail. Hence, on July 19, 2010, Aida wrote the accused a demand letter for the collection of Php114,000.00 (representing the total price of the unreturned pieces of jewelry) which was received by the latter on July 22, 2010. As her demand was ignored by the accused, Aida then decided to file the instant case.

Upon cross-examination, Aida expounded that only the obligation of the accused for her to return the unsold pieces of jewelry within four (4) days from her receipt thereof was included in the Trust Receipt (Exhibit 'A'); that although the Trust Receipt also speak of the accused's obligation for the latter to remit the payment for the sold pieces of jewelry, the period therefor was only agreed upon by them verbally, i.e. thirty (30) days from receipt of such pieces of jewelry; that her first transaction with the accused for the latter to sell her jewelry occurred sometime in early 2009; that an item in the first transaction i.e. the Gucci watch, was incorporated in their transaction made on March 19, 2010; and that the amounts appearing in parenthesis on the Trust Receipts represent the pawn value of the corresponding items.

On September 20, 2012, the prosecution formally offered the following documents, to wit –

Exhibit 'A'

-

Receipt dated March 19, 2010

Exhibit 'B'

-

Demand Letter of private complainant Aida Celestina Vilog to accused;

Exhibit 'C'

-

Stamp registry receipt;

Exhibit 'D'

-

Business mailer registry return receipt; and

Exhibit 'E'

-

Affidavit-Complaint,

which the Court admitted on even date.

Subsequently on January 15, 2013, the accused denied the herein accusation against her. She confirmed, however, that she was introduced by Carmelo, supra, to Aida and that she was able to get pieces of jewelry from said private complainant Aida for purposes of selling some of them and purchasing some for herself. She testified that she and Aida had agreed for her to sell Aida's pieces of jewelry, and if the same are not sold, she was obligated to return the same to Aida. She further testified that she was allowed by Aida to pay for the sold pieces of jewelry on installment basis, depending on how much she could collect from her buyers. According to her, she could no longer remember the duration of the terms of payments she made with Aida.

The accused continued to testify that on March 19, 2010, Aida gave her pieces of jewelry to be sold, as evidenced by the Trust Receipt (common exhibit) which she had signed. She confirmed the allegation of the prosecution that she had already returned the 'Bangle', the 'set illusion' and the Fossil watch to Aida, as shown by the line the latter had made across the said words and their corresponding prices, appearing on the Trust Receipt, and that she had already paid for the Gucci watch, as shown by the notation, 'pd', indicated also on the Trust Receipt, particularly after the price corresponding therefor. She however maintained that she had bought from Aida the South Sea Earrings, the cross pendant, the men's ring, the men's bracelet and the 'Set', on installment basis, and that she had lost the Rolex ring.

The accused also claimed that her installment payment for the pieces of jewelry she had bought depended on the monthly allowance she would receive from her child who is abroad.

When cross-examined, the accused explained that her highest educational attainment was up to first year Bachelor of Science in Elementary Education; that because she knows how to read and understand English, she thoroughly understood the contents of the Trust Receipt; that she could no longer remember where the South Sea earrings are; and that she has given the pendant cross to her grandchild, a certain Christian.

On July 25, 2013, the defense further presented Joylie Ann Sarmiento (Joylie, for brevity) who testified that she is the granddaughter of the accused, the latter being the mother of her father. Joylie claimed that on March 19, 2010, she was at her home located at 18[th] Street, Col. De Leon Compound, Wawa, Sto. Niño, Parañaque City, with her baby stepbrother, Christian Joy Sarmiento, the accused and the 'yaya' of her aforementioned stepbrother. That same day, she had heard the accused speaking to someone over the phone and was thereafter ordered (by the accused) to dress up her stepbrother as they were going to herein Aida's place in Las Piñas. The four (4) of them rode a taxi and upon arriving at Aida's home, they were told by the accused to just wait inside the said taxi as she would not take long. After waiting for about 30-45 minutes, the accused stepped out from Aida's home and told

them to go inside. When already inside Aida's home, Joylie confirmed that Aida had showed the accused pieces of jewelry. The accused then asked her (Joylie) to choose from among those shown pieces of jewelry. As such, she then chose a set composed of a ring and earrings, particularly described by her as 'White gold with a lot of stones'. According to her, the accused gave her the set as a gift for her birthday about two (2) months ago in January. The accused also bought for her baby brother the pendant cross.

Joylie continued to testify that after the accused had bought the 'set' and the cross pendant from Aida on March 19, 2010, the former handed the latter the payment therefor and had signed something before they left.

When asked where the pieces of jewelry bought for them by the accused are now, Joylie replied that she purportedly does not know.

When cross-examined, Joylie pointed out from the Trust Receipt the items or pieces of jewelry which were given by the accused to her and to her stepbrother, i.e. the set worth Php18,000.00 and the pendant cross. However, she maintained that she did not know about what Aida and the accused had agreed upon with respect to the amount to be paid therefor. Joylie also does not know the total number of pieces of jewelry the accused had received from Aida that day."^[5] (emphasis and italics supplied)

The Ruling of the RTC

On October 04, 2013, the court a quo convicted the accused-appellant of the crime of estafa under paragraph 1(b) of Article 315 of the Revised Penal Code, ratiocinating:

"The sole issue to be resolved is whether or not accused is guilty beyond reasonable doubt of Estafa, as defined under Article 315, paragraph 1 (b) of the RPC.

Stripped of the non-essentials, evidence on record established that Aida has been in the business of buying and selling of jewelry since 1990 up to the time she had given her testimony on August 23, 2012. On or about October of 2009, a common friend of Aida and the accused, a certain Nenita Carmelo introduced the said accused to Aida at the latter's house situated at Block 6, Lot 2, Villa Feliza Homes, Real St., Las Piñas City. Upon request of Carmelo, Aida accommodated the accused as her agent to sell her pieces of jewelry. Based on the Trust Receipt (Exhibit 'A' and '1'), the accused, on March 19, 2010, received from Aida the following ten (10) pieces of jewelry, particularly described as – Bangle; Set illusion; Gucci watch; South Sea earrings; Cross pendant; Men's ring; Fossil watch; Men's bracelet; Rolex ring; and a 'Set.' Also based on the Trust Receipt, supra, it was agreed upon by Aida and the accused that – a) the latter shall personally sell 'with corresponding percentage as payment for my (her) efforts' the pieces of jewelry received by her from Aida, and that she will not allow anyone else to sell the same; and b) the latter shall return the unsold pieces of jewelry 'after four (4) days' and will remit the payments for those which were sold. The period for remittance of payment for the sold pieces of jewelry was verbally agreed upon by Aida and the accused to be within thirty (30) days from receipt by the accused of said pieces of jewelry from Aida.

On March 26, 2010, or a week after the accused had received the ten (10) pieces of jewelry listed in the Trust Receipt, supra, said accused, as admitted by her, returned to Aida only the following pieces of jewelry, viz: - 1) Bangle (worth Php165,000.00); 2) Set illusion (worth Php165,000.00); and 3) Fossil watch (worth Php3,000.00). It was also established that the accused had paid Aida the amount of Php3,500.00 for the Gucci watch indicated in the Trust Receipt, therefore leaving a balance of Php114,000.00 for the remaining unreturned pieces of jewelry. Considering that there is no evidence as to when the accused had made such payment of Php3,500.00, it is not clear to the Court if this was the payment made by the accused to Aida which Joylie had seen when she went with the said accused to Aida's place on March 19, 2010.

With the above finding of facts, the Court finds that the charge against the accused was proven beyond reasonable doubt by the prosecution.

It is well-settled that for an estafa under paragraph 1(b), Article 315 of the Revised Penal Code to be committed, the following elements must be present:

(1)

Accused defrauded another by abuse of confidence or by means of deceit;

(2)

Damage or prejudice capable of pecuniary estimation is caused to the offended party or third person;

(3)

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;

(4)

There is misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;

(5)

Such misappropriation or conversion or denial is to the prejudice of another; and

(6)

There is a demand made by the offended party to the offender.

As to the first element, the prosecution need not show that deceit was perpetrated by the accused in appropriating the subject pieces of unreturned jewelry. As held by the Supreme Court in the case of *Brokmann vs. People* (G.R. No. 199150, February 6, 2012), '(D)eceit is not an essential requisite of estafa by abuse of confidence; the breach of confidence takes the place of fraud or deceit, which is a usual element in the other estafas.' In this case, the charge against the accused was for estafa committed by abuse of confidence.

The second element is also apparent in that Aida was prejudiced in the total amount of Php114,000.00 when the accused did not return the unpaid pieces of jewelry upon her demand. The Court does not believe the testimonies of the accused and her granddaughter that the 'set' and the cross pendant both worth Php18,000.00 each were bought by said accused to be given to her grandchildren Joylie and Christian Joy. Except for such easily concocted story, this bare allegation was not substantiated by any other evidence. The Court finds it ludicrous that when the accused and Joylie were asked to produce those pieces of jewelry supposedly bought by the said accused, they conveniently just stated that they no longer know where the same were. And even if so bought by the accused for her grandchildren, her obligation to remit the payment therefor to Aida is not extinguished. The accused ought to know that if she could not pay for such pieces of jewelry, then she should return the same to the owner thereof, taking into account Article 19 of the New Civil Code which mandates that every person to, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. Moreover, the Court suspects the testimony of the accused when she readily stated that she either do not know where the unreturned pieces of jewelry are, or she could not recall the person to whom she had given the same. To the mind of the Court, the accused knew from the very start that she could no longer return those unpaid pieces of jewelry. Thus, the accused testified--

'PROS. AZARES:

Q. Ms. Witness, you told us that you allegedly bought this South Sea earring?

A. Opo.

Q. Where is that now? (Can) you show it to us?

A. “Matagal na po iyon eh. Hindi ko na po matandaan.” (It’s a long time ago. I could no longer remember.)

Q. You also told us that you bought this pendant cross?

A. Opo.

Q. And you gave it to whom, or you used that?

A. Binigay ko po sa apo ko – kay Christian Joy po. (I gave it to my grandchild – to Christian Joy.)

Q. Can you undertake, Ms. Witness, to show it to us next time – this pendant?

A. Hindi po. Kasi po nabigay ko po iyon sa nanay niya eh. Hindi ko po alam kung saan na po nila inilagay. (No, because I had given it to his mother. I do not know anymore where they had put it.)

PROS. AZARES: We will wait, Ms. Witness, until you can produce any of these pieces of jewelry that you claimed you bought from the private complainant and show us.

Q. Can you show that to us? When?

A. ‘Malamang po hindi na po kasi sa katagalan po hindi ko na po alam kung anong pinaggagawa nila.’ (Most probably not anymore because of the long period which had lapsed, I no longer know what they had done with them.)

Q. Pictures; do you have pictures of those? Wearing these...

A. ‘Wala po akong picture nun. Wala po akong makukuhang picture nun.’ (I have no picture of those. I cannot present pictures of them.)

Q. In other words, Madam Witness, aside from your claim today inside this Honorable Court that you bought these items from Aida Celestina Vilog, you have no other proof to show us that you are indeed the buyer of these pieces of jewelry?

A. Yes, sir.’

Damage as an element of estafa may consist in – 1) the offended party being deprived of his money or property as a result of the defraudation; 2) disturbance in property right; or 3) temporary prejudice.

Anent the third element, without a doubt, as admitted by the accused, she had acquired material possession of Aida’s jewelry. Additionally, by the terms and conditions of the Trust Receipt, the accused agreed to hold in trust the subject pieces of jewelry for the purpose of selling them and with the obligation to remit the proceeds of those sold and return the items unsold. What was created was an agency for the sale of jewelry, in which the accused as an agent has the duty to return upon demand of its owner, herein private complainant Aida.

On the fourth and fifth elements, misappropriation was clearly evident. Aida sent a demand letter to the accused (Exhibit ‘B’), which was received by the latter on July 22, 2010, reminding the latter of her subsisting obligation. However, it was simply ignored by the accused. The demand for the return of the thing delivered in trust and the failure of the accused-agent to account for it are circumstantial evidence of misappropriation.

Lastly, on the sixth element, it has been duly established that appellee demanded for the payment and return of the pieces of jewelry, through the letter dated July 19, 2010 (Exhibit ‘B’, supra). However, as earlier stated, the same was unheeded by the accused. Incidentally, records show that as of August 23, 2012, after more than a year from the execution and approval of the compromise agreement between the parties, the accused had failed to comply with her obligation thereunder.

Premises considered, in view of all the foregoing, the Court finds that all of the above elements for estafa as defined under paragraph 1(b) of Article 315 of the Revised Penal Code, were proven by the prosecution beyond reasonable doubt against the accused.”[6] (emphasis and italics supplied)

Hence, this appeal.

Issue

In her Brief,[7] accused-appellant argues:

“THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PROSECUTION’S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HER FAVOR.”[8]

Such is the issue which We shall resolve in this case.

Our Ruling

Accused-appellant assails her conviction for estafa contending that there is absolutely no proof beyond reasonable doubt that she misappropriated the proceeds in the sale of jewelry;[9] that there was no written agreement as to the due date for the remittance of the payment of the jewelry sold;[10] and that the complained incident is purely civil in nature and the remedy thereon is an action for payment of sum of money.[11]

Art. 315, paragraph 1(b) of the Revised Penal Code provides:

“Art. 315. Swindling. (estafa).—any person who shall defraud another by any of the means mentioned herein below shall be punished by:

xxx xxx xxx

1. With unfaithfulness or abuse of confidence, namely:

(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 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.”[12]

The elements of estafa with abuse of confidence under this paragraph are: (1) that money, goods or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same; (2) that there be misappropriation or conversion of such money or property of the offender; or denial on his part of such receipt; (3) that such misappropriation or conversion or denial to the prejudice of another; and (4) that there is a demand made by the offended party to the offender.[13]

Anent the transaction, accused-appellant testified:

“Q

And what happened during that encounter?

A

‘Noon pong makipagkita ako kay Mrs. Villog ay kumuha po ako sa kanya ng alahas.’

Q

And what is the purpose of you getting jewelry?

A

‘Para po ibenta at bumili po akong pansarili ko.’

xxx xxx xxx

Q

And do you recall the terms... the duration regarding this transaction you had with Mrs. Vilog?

A

'Opo.'

Q

And what were the conditions?

A

"Na iyon po ay ibebenta ko. Pag hindi ko po nabenta ibabalik ko sa kanya. Tapos po yung iba huhulug-hulugan ko every month." [14] (emphasis Ours)

On cross-examination, accused-appellant further testified:

"Q

Let me direct you, Ms. Witness, to the first paragraph of this contract which says that the following pieces... and I quote: 'THIS IS TO CERTIFY THAT I have received from Mrs. AIDA CELESTINA H. VILOG the following pieces of jewelry listed below to sell with corresponding percentage as payment for my efforts.' Do you understood [sic] this, Ms. Witness?

A

'Opo.'

Q

It says here and you agree with me, Madam Witness, that for every jewelry or pieces of jewelry that you will sell, you will earn a corresponding income by way of percentage. That's what the document says?

A

'Opp.' [sic]

Q

You also entered into the contract with the term that if you will not be able to sell these pieces of jewelry, you will have to return these items to the private complainant?

A

'Opo.'

Q

And whatever you sold – if you sold any – you will remit your payments within four (4) days from the... this payment was made to this complainant – to the private complainant?

A

'Opo.'

Q

And this is your signature, as appearing thereto?

A

‘Opo.’”[15] (emphasis Ours)

On the other hand, the private complainant testified:

“Q

xxx Now, Madam Witness, you mentioned of ten (10) items that were delivered to accused?

A

Yes Sir.

Q

And there were only three (3) items that were returned to you; is that correct, Madam Witness?

A

Yes Sir.

Q

Which means that seven (7) items were sold; am I correct?

A

Yes Sir.

Q

Now, what happened to the proceeds for the sale of those seven items?

A

One items was paid – that was the 3,500, and the other items were not remitted to me.

Q

And what was the explanation or justification given by accused Sarmiento, if any, on why the proceeds of those items were not yet remitted to you at that time?

A

According to her, she was waiting for her collection from her buyers.

xxx xxx xxx

Q

What actions, if any, did you take after you demanded the remittance of the proceeds for the unreturned pieces of jewelry on May 2010?

A

On July 19, 2010, I decided to formally send her a demand letter.

Q

When you said you formally sent her a demand letter, what do you mean?

A

I sent her a letter thru mail – my demand letter, Sir.

Q

Do you have any proof to show that indeed you sent her a demand letter thru mail?

A

Yes Sir.

PROS. SUAREZ: Will you please present it before this Honorable Court.

A

This one, Sir.

PROS. SUAREZ: The witness presented the original of a demand letter dated July 19, 2010. Attached therewith was a Registry Receipt dated July 19, 2010 and the Business Mailer Registry Return Receipt dated July 22, 2010. The originals of the said documents and the photocopies thereof are being presented to the defense counsel for comparison.

ATTY. SARMIENTO: The documents, your Honor, are faithful reproductions of the originals.”[16] (emphasis Ours)

The elements of estafa under paragraph 1 (b), Art. 315 of the Revised Penal Code were then amply and clearly established in this case.

First, accused-appellant received the jewelry for the purpose of selling the same under an express obligation to remit to complainant the proceeds thereof or to return those she is unable to sell thereby creating a fiduciary relationship between the[m]. Second, accused misappropriated the jewelry as shown by the fact that she failed to return the same or the proceeds thereof despite demand and Third, the misappropriation prejudiced the private complainant.[17]

The absence of a written document showing receipt of jewelries or other property in trust does not necessarily mean that no contract exists between the parties. So with the date of remittance of the sales proceeds. Contracts can be made verbally as long as there is a meeting of the minds of the parties thereto.[18] The private complainant positively and categorically testified on the transaction that transpired between her and the accused-appellant and that certainly, there has been a meeting of the minds between them on such matters.

In an agency for the sale of jewelries, it is the agent’s duty to return the jewelry upon demand of the owner and failure to do so is evidence of conversion of the property by the agent. In other words, the demand for the return of the thing delivered in trust and the failure of the accused to account for it are circumstantial evidence of misappropriation. However, this presumption is rebuttable. If the accused is able to satisfactorily explain his failure to produce the thing delivered in trust or to account for the money, he may not be held liable for estafa.[19]

Accused-appellant misappropriated private complainant’s properties, which she held in trust, by failing to remit the sale price of the jewelries or return the same upon the expiration of the stipulated period, despite demand by the latter.[20] Failure to account upon demand for the return of the thing delivered in trust raises a presumption of misappropriation.[21]

Finally, accused-appellant’s failure or refusal to account for or return the jewelries to private complainant had evidently prejudiced the rights and interests of the latter. Not only did private complainant fail to recover her investment, but she also lost the opportunity to realize profits from the sales of the jewelries. Private complainant further incurred expenses in hiring a lawyer and in litigating the present case.[22] No doubt, accused-appellant is

guilty of the offense charged.

Anent the penalty, Article 315 of the Revised Penal Code states:

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

1st. 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 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 prision mayor or reclusion temporal, as the case may be.”[23]

The penalty prescribed by Article 315 is composed of two, not three, periods, in which case, Article 65 of the same Code requires the division of the time included in the penalty into three equal portions of time included in the penalty imposed so as to form one period for each of the three portions.[24] Applying the latter provisions, the maximum, medium and minimum periods of the penalty would then be:

“Maximum – 6 years, 8 months, 21 days to 8 years

Medium – 5 years, 5 months, 11 days, to 6 years, 8 months, 20 days

Minimum – 4 years, 2 months, 1 day to 5 years, 5 months, 10 days”[25]

Since in this case, the amount involved is P114,000.00 and thus exceeds P22,000.00, the imposable penalty should consequently be the maximum period of 6 years, 8 months and 21 days to 8 years of prision mayor.

Article 315 further states that a period of one year shall be added to the penalty for every additional P10,000.00 defrauded in excess of P22,000.00, but in no case shall the total penalty which may be imposed exceed 20 years.[26] Here, the amount swindled from private complainant greatly exceeds the amount of P22,000.00. Translated to the additional penalty of one year for every P10,000.00 defrauded, such would amount to an additional penalty of nine (9) years.

Applying now the Indeterminate Sentence Law in computing the proper penalty, the penalty prescribed by law for the crime of estafa as charged against accused-appellant is prision correccional maximum to prision mayor minimum. The penalty next lower would then be prision correccional in its minimum to medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months, while the maximum term of the indeterminate sentence should be anywhere within 6 years, 8 months and 21 days to 8 years of prision mayor,[27] plus the additional nine (9) years.

Hence, the trial court was correct in imposing a prison term of “Four (4) Years Two (2) Months of prision correccional, as minimum, and Seventeen (17) Years of reclusion temporal, as maximum.”

We also affirm the RTC's Order that the private complainant be indemnified with actual damages in the sum of P114,000.00 it being supported by the records[28] of the case.

WHEREFORE, the appeal is DENIED for lack of merit. The assailed October 04, 2013 Decision is AFFIRMED.

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

[1] Records, p. 173.

[2] Ibid., pp. 155-162.

[3] Branch 255.

[4] Records, p. 162.

[5] Records, pp. 155-158.

[6] Records, pp. 159-162.

[7] Rollo, pp. 37-47.

[8] Ibid., p. 39.

[9] Ibid., p. 45.

[10] Ibid.

[11] Ibid., p. 46.

[12] Ocampo-Paule vs. Court of Appeals, G.R. No. 145872, February 04, 2002.

[13] Ibid., citing L.B. REYES, THE REVISED PENAL CODE, BOOK TWO, 14th Ed., p. 734 (1998).

[14] TSN, January 15, 2013, p. 3.

[15] Ibid., pp. 8-9.

[16] TSN, August 23, 2012, pp. 11-12, 14.

[17] Ocampo-Paule, supra, citing Decision of the Court of Appeals, p. 5.

[18] Ceniza-Manantan vs. People of the Philippines, G.R. No. 156248, August 28, 2007, citing Article 1356 of the New Civil Code; Delos Santos v. Jebsen Maritime, Inc., G.R. No. 154185, 22 November 2005, 475 SCRA 656, 669.

[19] Note 18, supra., citing Filadams Pharma, Inc. v. Court of Appeals, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 468.

[20] Ibid.

[21] Ibid.

[22] Ibid.

[23] Ibid.

[24] Note 18, supra., citing Cosme, Jr. v. People, G.R. No. 149753, 27 November 2006, 508 SCRA 190, 212.

[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] Records, pp. 123-126.

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