

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GEORGE M. MAUNAHAN, ACCUSED-APPELLANT.

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

Assailed in this appeal is the Decision[1] that convicted herein accused-appellant, George M. Maunahan, of Estafa through misappropriation under paragraph 1 (b), Article 315 of the Revised Penal Code (RPC), and which disposed as follows:

"WHEREFORE, accused George Maunahan is found guilty beyond reasonable doubt of estafa by misappropriation under Art. 315, par. 1 (b) of the Revised Penal Code involving the amount of P104,666.30. Applying the Indeterminate Sentence Law (Act No. 4103, as amended), he is thereby sentenced to suffer the penalty of 2 years and 4 months of prision correccional as minimum to 14 years and 1 day of reclusion temporal as maximum. He is also ordered to return to the Spouses de Guia the amount of P104,666.30 which he embezzled and to pay them interest at the legal rate computed from 5 May 2000 up to the date of payment.

IT IS SO ORDERED."[2]

Private complainant Leticia S. Mariano de Guia, a retired judge, had a transaction with the accused-appellant sometime in January 1998 where the latter sold to her a parcel of land in Tanauan, Batangas. Pursuant to a Verified Agreement Receipt Form,[3] the private complainant made a down payment of P50,000.00. From 15 August 1998 to 14 February 2000, the private complainant made additional payments in staggered sums amounting to P513,520.00.[4]

On 05 May 2000, in her office at #19 Milan Street, Merville Park, Parañaque City, the private complainant entrusted to the accused-appellant the total amount of P104,666.30, which comprised of P8,100.00 cash and several checks in the sum of P96,566.30, to be deposited to the bank as remittance to the Philippine Charity Sweepstakes Office (PCSO) for her Bingo Pilipino franchise and On Line Lotto outlets. On even date, the accused-appellant signed a document[5] acknowledging receipt of said amounts but he failed to deposit the same. The private complainant inquired, through a telephone call, from the accused-appellant about the money entrusted to him and sent him demand letters dated 25 May 2000 and 09 October 2001 but the accused-appellant took no effort to account for or settle the money he embezzled.

The private complainant claimed that her Lotto and Bingo outlets were subsequently closed by the PCSO because of the accused-appellant's failure to deposit the money. In her Affidavit Complaint,[6] she charged the accused-appellant with Estafa and falsification of commercial documents but in an Information dated 07 November 2003, the accused-appellant was only charged with Estafa under paragraph 1 (b), Article 315 of the RPC before the Regional Trial Court (RTC) of Parañaque City, the accusatory portion of which reads:

"That on or about the 5[th] day of May 2000 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from one LETICIA M. DE GUIA, cash money worth P8,100.00 and checks worth P96,566.30, with the express obligation on the part of the accused to deposit to the bank as remittance to Bingo Pilipino and to On Line Lotto of the Philippine Charity Sweepstakes

Office but the said accused once in possession of the money, far from complying with her aforesaid obligation and despite demands to return or to account the said amount, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the total amount of P104,666.30, to the damage and prejudice of said complainant hereof, in the aforementioned amount of P104,666.30.

CONTRARY TO LAW."[7]

When arraigned on 18 March 2004, the accused-appellant entered a plea of not guilty to the crime with which he had been charged.[8]

Meanwhile, on 15 August 2006, the private complainant, acting as the private prosecutor, manifested that she was amenable to the provisional dismissal of the case with the conformity of the accused-appellant.[9] For failure on the part of the accused-appellant to comply with his commitment to satisfy the civil aspect of the case, the case was re-opened and reinstated upon motion of the private complainant.[10]

The accused-appellant denied that he misappropriated the amount of P104,666.30. He admitted that he received the sum of P104,666.30 to be deposited at Development Bank of Singapore (DBS)-Commonwealth, Quezon City but he did not deposit the amount of P41,666.30 because he needed money at that time to pay the tuition fee of his child. When the private complainant called him up, he told her to deduct the P41,666.30 from the purchase price of the land but the latter did not agree. With respect to the three checks with the total value of P63,000.00, he asserted that, as instructed by the private complainant, he gave them to a certain Cay C. Atas, branch manager of DBS-Commonwealth, Quezon City, who acknowledged receipt[11] thereof on 08 May 2000.[12]

After trial, the RTC found the accused-appellant guilty beyond reasonable doubt as charged. It was convinced that the accused-appellant misappropriated the money because instead of depositing the same to the bank, he used it for his own personal benefit. It was not persuaded that the amount of P63,000.00 was deposited to the private complainant's account at DBS because there was no sufficient proof of such a deposit. It considered the acknowledgment receipt of Cay C. Atas (Exhibit "4") as mere hearsay because the latter was not presented as a witness.

The accused-appellant now questions before us the decision of the RTC based on the following assignment of errors:

"I.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S VERSION AND INSTEAD RELYING HEAVILY ON THE PROSECUTION WITNESS TESTIMONY."[13]

We sustain the accused-appellant's conviction.

The accused-appellant was tried and convicted for violation of Article 315 (1) (b) which provides, among others, that fraud may be committed with unfaithfulness or abuse of confidence in the following manner.

"(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property."

Specifically, the elements of estafa with abuse of confidence through misappropriation are:

- a) that money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same;
- b) that there be misappropriation or conversion of such money or property by the offender; or denial on his part of such receipt;
- c) that such misappropriation or conversion or denial is to the prejudice of another; and
- d) That there is a demand made by the offended party to the offender.[14]

The accused-appellant contends that the first element of estafa under Article 315, paragraph 1 (b) of the RPC has not been proven because while he may have material possession of the subject amount, he had no juridical possession over the same because the amount he received was for a specified purpose and he had no right to dispose of it as his own.

This argument is not well-taken. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner. It is well-settled that when the money, goods, or any other personal property is received by the offender from the offended party in trust or on commission or for administration, the offender acquires both material or physical possession and juridical possession of the thing received.[15] Undeniably, the money was received in trust by the accused-appellant from the private complainant in order to be deposited to the bank. Thus, the moment the accused-appellant received the P104,666.30 from the private complainant, he acquired not just material or physical possession but also juridical possession.

Significantly, the accused-appellant admitted that he received the sum of P104,666.30 from the private complainant which amount should have been deposited to the bank. His admission was consistent with the document that he signed on 05 May 2000 that contained the following statement, "Received from Judge Leticia M De Guia the above cash & cheques for deposit to your account." [16] Thus, there can be no doubt that the accused-appellant received the P104,666.30 with the obligation to deposit it to the bank and so, the first element is satisfied.

Anent the second element, the accused-appellant argues that there was no criminal intent on his part to misappropriate the amount of P41,666.30 because his failure to deposit the same was not impelled by evil intent to defraud the private complainant but due to the fact that he was in dire need of money to pay the tuition fee of his child. Besides, he believed in good faith that he had the right to use the said amount because the private complainant still owed him P200,000.00, the balance of the purchase price of the land that he sold to the latter.

The words "misappropriate" and "convert" as used in the above-cited provision of law connote an act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon.[17] During the trial, the accused-appellant readily admitted that he did not deposit the amount of P41,666.30 because he used it to pay for the tuition fee of his child. This is a clear evidence of misappropriation. Under Section 4, Rule 129 of the Revised Rules of Evidence, a judicial admission requires no further proof.

We cannot take the accused-appellant's defense of lack of criminal intent to misappropriate the money because he knew that the money was for deposit but he deliberately used it for his personal benefit. That he may have receivables from the private complainant is of no moment because he categorically admitted during trial that the money he received from the private complainant was for deposit and not as payment of the land that he sold to the private complainant.

There is also misappropriation or conversion by the accused-appellant of the three checks with the aggregate

value of P63,000.00. The accused-appellant's assertion that he deposited those checks in the private complainant's account in DBS was only anchored on Exhibit "4." Cay C. Atas, however, was never presented to testify on the veracity of her signature, much less the contents of said document. A private certification is hearsay where the person who issued the same was never presented as a witness.[18] This principle may be applied here inasmuch as it applies to letters.[19] Thus, the RTC did not err in finding Exhibit "4," hearsay. As such, it may not be given weight because hearsay evidence whether objected to or not has no probative value.[20] There being no other proof of deposit, the RTC's finding of misappropriation by the accused-appellant with respect to the amount of P63,000.00 is not without any basis.

The third element was also established. The accused-appellant's failure to deposit the money had evidently prejudiced the private complainant. 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.[21] Here, not only was the private complainant deprived of the money but her Bingo and Lotto outlets, her businesses, were closed as a consequence.

With regard to the necessity of demand, the accused-appellant argues that the prosecution failed to prove that he received the demand letters allegedly sent to him by the private complainant. The rule is that demand is not an element of the felony or a condition precedent to the filing of a criminal complaint for estafa.[22] In several past rulings of the Supreme Court, demand was not even included as an element of the crime of estafa through abuse of confidence, or under paragraph 1 (b). Indeed, the accused may be convicted of the felony under paragraph 1(b), Article 315 of the RPC if the prosecution proved misappropriation or conversion by the accused of the money or property subject of the Information. Simply stated, in a prosecution for estafa, demand is not necessary where there is evidence of misappropriation or conversion. Since it has been duly established that the accused-appellant misappropriated the P104,666.30, demand is thus unnecessary.

Besides, demand need not be formal. It may be verbal.[23] In *Barrameda v. Court of Appeals*,[24] the Supreme Court ruled that even a query as to the whereabouts of the money is tantamount to a demand. In this case, the accused-appellant admitted in his testimony that the private complainant called him up to ask why he did not deposit the money.[25] Thus, even if we are to disregard the demand letters allegedly sent by the private complainant to the accused-appellant because there was no proof that those were received by the latter, the verbal demand would suffice.

Article 315, paragraph 1 of the RPC provides for the penalty in estafa cases, where the amount defrauded exceeds P22,000.00, as in this case, to wit:

"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 correctional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 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."

The penalty prescribed by Article 315 is composed of only 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 prescribed, forming one period of each of the three portions.[26] Applying the latter provisions, the maximum, medium and minimum periods of the penalty prescribed are:

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[27]

In the present case, since the amount misappropriated is P104,666.30, which exceeds P22,000.00, the penalty to be imposed should 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.

Considering that the amount of P104,666.30 is P82,666.30 more than the P22,000.00 ceiling set by law, then, adding one year for each additional P10,000.00, the maximum period of 6 years, 8 months and 21 days to 8 years of prision mayor minimum would be increased by 8 years or to a maximum range of 14 years to 16 years. The maximum term of the indeterminate sentence set at fourteen (14) years and one (1) day by the RTC being within the range of the increased maximum period of the prescribed penalty, we see no necessity to revise it.

Applying the Indeterminate Sentence Law, since the penalty prescribed by law for the estafa charged against the accused-appellant is prision correccional maximum to prision mayor minimum, the penalty next lower would then be prision correccional in its minimum and 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. Again, the minimum term of 2 years and 4 months set by the RTC being within the minimum range allowable, we also need not revise it.

The RTC was also correct when it ordered the accused-appellant to return to the private complainant the amount of P104,666.30. As to the interest, the guidelines laid down in *Eastern Shipping lines, Inc. v. Court of Appeals*[28] are applicable to the present case, which partly provide:

"xxx xxx xxx

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

xxx xxx xxx

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty.

Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit."

Since the obligation of the accused-appellant does not constitute a loan or forbearance of money, the interest rate is only 6% and it shall begin to run from the time of the filing of the complaint because although there was extrajudicial demand, it cannot be ascertained when the verbal demand was made and when the demand letters were received by the accused-appellant.

WHEREFORE, the appeal is DENIED. The decision appealed from is AFFIRMED with the MODIFICATION that the interest of 6% per annum shall begin to run from the date of filing of the action until finality of the judgment. After the judgment becomes final and executory, the amount due shall further earn interest at 6%^[29] per annum until the obligation is fully satisfied.

IT IS SO ORDERED.

Reyes, Jr., (Chairperson), and Gaerlan, JJ., concur.

[1] Written by Judge Rolando G. How of the Regional Trial Court of Parañaque City, Branch 257, on 22 May 2013, Records, pp. 215-218.

[2] Records, p. 218.

[3] Exhibit "C," Records, p. 141.

[4] Exhibit "E," Records, pp. 143-145.

[5] Exhibit "B-5 to B-9," Records, p. 140.

[6] Exhibit "A," Records, p. 138.

[7] Records, p. 01.

[8] Records, p. 43.

[9] Records, p. 78.

[10] In an Order dated 20 June 2008; Records, p. 95.

[11] Exhibit "4," Records, p. 199.

[12] TSN, 18 November 2010, pp. 6-14.

[13] Rollo, p. 39.

[14] Asejo v. People of the Philippines, G.R. No. 157433, 24 July 2007.

[15] Diaz v. People of the Philippines, G.R. No. 171121, 26 August 2008.

[16] Exhibit "B-5" to "B-9," Records, p. 140.

[17] Ceniza-Manantan v. People of the Philippines, G.R. No. 156248, 28 August 2007.

[18] Philippine Realty Holdings Corporation v. Firematic Philippines, Inc. G.R. No. 156251, 02 April 2007.

[19] Tin v. People of the Philippines, G.R. No. 126480, 10 August 2001, 362 SCRA 594.

[20] Philippine Realty Holdings Corporation v. Firematic Philippines, Inc., *supra*.

[21] Lucas v. Damole, G.R. No. 150900, 14 March 2008.

[22] Cosme v. People of the Philippines, G.R. No. 149753, 27 November 2006.

[23] Lee v. People of the Philippines, G.R. No. 157781, 11 April 2005, 455 SCRA 256.

[24] G.R. No. 96428, 02 September 1999, 313 SCRA 477.

[25] TSN, 18 November 2010, p. 9.

[26] Cosme v. People of the Philippines, G.R. No. 149753, 27 November 2006.

[27] Ibid.

[28] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[29] Pursuant to BSP Circular No. 799, Series of 2013 which took effect on 01 July 2013 and which effectively modified the interest rate ruling in *Eastern Shipping Line, Inc. v. Court of Appeals*, *supra*.

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