CRISTETA CHUA-BURCE, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 109595. April 27, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Subject of the present appeal by certiorari is the decision dated November 27, 1992 of the Court of Appeals in CA-G.R. CR No. 12037, (a) affirming in toto the trial court's decision finding petitioner guilty of estafa, and (b) denying her Motion for Reconsideration in a Resolution dated March 25, 1993. The Regional Trial Court, Calapan, Oriental Mindoro, Branch 40, rendered a joint decision finding petitioner guilty of estafa under Article 315, par. 1 (b) of the Revised Penal Code, in Criminal Case No. C-2313, and likewise found petitioner liable for the amount of P150,000.00 in Civil Case No. R-3733. Only the criminal case is before us for review.

The uncontroverted facts, as found by the Court of Appeals, are as follows:

On August 16, 1985, Ramon Rocamora, the Manager (of Metropolitan Bank and Trust Company, Calapan Branch, Oriental Mindoro) requested Fructuoso Peñaflor, Assistant Cashier, to conduct a physical bundle count of the cash inside the vault, which should total P4,000,000.00, more or less. During this initial cash count, they discovered a shortage of fifteen bundles of One Hundred Pesos denominated bills totalling P150,000.00. The One Hundred Peso bills actually counted was P3,850,000.00 as against the balance of P4,000,000.00 in the Cash in Vault (CIV) Summary Sheet, or a total shortage of P150,000.00. The next day, to determine if there was actually a shortage, a re-verification of the records and documents of the transactions in the bank was conducted. There was still a shortage of P150,000.00.

The bank initiated investigations totalling four (4) in all. The first was by Ramon Rocamora, the Manager. The second was by the bank's internal auditors headed by Antonio Batungbakal. Then, the bank's Department of Internal Affairs conducted an independent investigation. Thereafter, the National Bureau of Investigation (NBI) came in to investigate. All of these investigations concluded that there was a shortage of P150,000.00, and the person primarily responsible was the bank's Cash Custodian, Cristeta Chua-Burce, the herein accused.

On November 4, 1985, unable to satisfactorily explain the shortage of P150,000.00, the accused's service with the bank was terminated.

To recover the missing amount, Metropolitan Bank and Trust Company (Metrobank) filed a Civil Case for Sum of Money and Damages with Preliminary Attachment and Garnishment docketed as Civil Case No. R-3733 against petitioner and her husband, Antonio Burce.

Prior to the filing of the Answer, the following Information for Estafa was filed against petitioner:

> "That on or about the 16th day of August 1985, and for a period prior and subsequent thereto, the above-named accused, with unfaithfulness or abuse of confidence, and with intent to defraud, did then and there wilfully, unlawfully, and feloniously, in her capacity as Cash Custodian of the Metrobank, Calapan Branch, take from

> the Bank's Vault the amount of ONE HUNDRED FIFTY THOUSAND (P150,000.00) PESOS, which is under her direct custody and/or accountability, misappropriate and convert to her own personal use and benefit, without the knowledge and consent of the offended party, despite repeated demands for her to account and/or return the said amount, she refused and failed, and still fails and refuses to the damage and prejudice of the Metrobank, Calapan Branch, in the aforementioned amount of ONE HUNDRED FIFTY THOUSAND (P150,000.00) PESOS.
>
> Contrary to Article 315 of the Revised Penal Code.
>
> Calapan, Oriental Mindoro, November 27, 1985."[1]

Both civil and criminal cases were raffled to the same branch of the Regional Trial Court of Calapan, Oriental Mindoro, Branch 40.

Thereafter, petitioner moved for the suspension of the criminal case on the ground of the existence of a prejudicial question, viz., that the resolution of the civil case was determinative of her guilt or innocence in the criminal case.[2] The trial court, over the vehement opposition of the private and public prosecutors, granted the motion and suspended the trial of the criminal case.[3] On petition for certiorari to the Court of Appeals, the appellate court ruled that there was no prejudicial question.[4]

Petitioner was arraigned and assisted by counsel de parte, entered a plea of not guilty.[5] While the trial of the criminal case was suspended, the trial of the civil case continued. At the time of arraignment, the civil case was already submitted for decision. Hence, during the pre-trial conference of the criminal case, the parties agreed to adopt their respective evidence in the civil case as their respective evidence in the criminal case.[6] The trial court ordered the parties to submit their written agreement pursuant to Section 4 of Rule 118 of the Rules of Court.[7] Thereafter, petitioner, duly assisted by her counsel, with the conforme of the public prosecutor, entered into the following pre-trial agreement:[8]

> "COMES NOW, the accused, assisted by counsel, and unto this Honorable Court most respectfully submits this Pre-Trial agreement:
>
> 1. That the evidence already adduced by the plaintiff in Civil Case No. R-3733 will be adopted by the prosecution as its evidence in Criminal Case No. C-2313;
>
> 2. That the evidence to be adduced by the defendant in Civil Case No. R-3733 will also be adopted as evidence for the defense in Criminal Case No. C-2313.
>
> WHEREFORE, premises considered, it is prayed that the foregoing pre-trial agreement be admitted in compliance with the Order of this Court dated April 19, 1988.
>
> RESPECTFULLY SUBMITTED.
>
> Calapan, Oriental Mindoro, August 20, 1990.
>
> CRISTETA CHUA-BURCE (sgd.)
> Accused
>
> Assisted By:
> RODRIGO C. DIMAYACYAC (sgd.)
> Defense Counsel
> San Vicente, Calapan
> Oriental Mindoro
> IBP O.R. No. 292575
> May 11, 1990

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With Conformity:
EMMANUEL S. PANALIGAN (sgd.)
Prosecuting Fiscal

Pursuant to the pre-trial agreement, the public prosecutor filed a Motion to Adopt Evidence.[9] Both the pre-trial agreement and said Motion were granted by the trial court.[10]

On March 18, 1991, the trial court rendered a consolidated decision[11] finding petitioner (a) guilty of estafa under Article 315 (1) (b) of the Revised Penal Code in the criminal case, and (b) liable for the amount of P150,000.00 in the civil case. The dispositive portion of decision provides -

- In Criminal Case No. C-2313 -

WHEREFORE, the Court hereby finds the accused Cristeta Chua-Burce guilty beyond reasonable doubt of the crime of Estafa, punishable under Art. 315, paragraph 1 (b) of the Revised Penal Code, which imposes a penalty of prision correccional in its maximum period to prision mayor in its minimum period but considering that the amount involved exceeds P22,000.00, the penalty provided for shall be imposed in its maximum period, adding one year for each additional P10,000.00, but the total amount not to exceed twenty years.

Applying the Indeterminate Sentence Law, the imposable penalty shall be one degree lower as minimum of arresto mayor with a penalty range of One Month and One Day to Six Months, as minimum to prision mayor in its maximum period, as maximum, or a penalty of Six years to Twelve Years. Considering the mitigating circumstance of voluntary surrender, the court hereby imposes upon the accused to suffer imprisonment from SIX (6) MONTHS of arresto mayor in its maximum period, as minimum, to EIGHT (8) YEARS of prision mayor, in its minimum period, as maximum. The civil liability shall not be imposed in this case due to a separate civil action.

- In Civil Case No. R-3733 -

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Metrobank, ordering defendants Cristeta Chua-Burce and Antonio Burce, spouses, to pay Metrobank the amount of P150,000.00 representing the amount misappropriated with the legal rate of six percent (6%) per annum from August 15, 1985 until fully paid and to pay the costs of suit.

SO ORDERED."

Petitioner seasonably appealed her conviction in the criminal case to the Court of Appeals. Petitioner filed a separate appeal in the civil case.

In a decision dated November 27, 1992,[12] the Court of Appeals affirmed the trial court's decision in toto. Petitioner's Motion for Reconsideration was likewise denied.[13] Hence, the recourse to this Court.

Petitioner raises the following issues:[14]

1. IS THE RESULT OF POLYGRAPH EXAMINATION ADMISSIBLE IN EVIDENCE?

2. CAN THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT ADMIT IN EVIDENCE THE EVIDENCE WHICH WAS ALREADY DENIED ADMISSION IN THE ORDER OF THE FORMER JUDGE OF THE SAME COURT?

3. DOES PRIMA FACIE PRESUMPTION OF MISAPPROPRIATION OR CONVERSION EXISTS (sic) AGAINST THE PETITIONER WHEN THERE WERE OTHER PERSONS WHO HAD DIRECT AND GREATER ACCESS IN THE CASH-IN-VAULT?

4. IS RULE 111 SECTION 2 (a) OF THE REVISED RULES ON CRIMINAL PROCEDURE APPLICABLE IN (sic)THE CASE AT BAR?

5. WAS THERE A VALID PROCEEDING WHEN THE FISCAL WAS NOT ACTUALLY PRESENT AND DID NOT CONTROL AND SUPERVISE THE PROSECUTION OF THE CASE?

In gist, (1) petitioner contends that the trial court erred in taking into account the results of the polygraph examination as circumstantial evidence of guilt considering the inherent unreliability of such tests, and the fact that the previous trial judge who handled the case already ruled such evidence as inadmissible; (2) petitioner insists that there can be no presumption of misappropriation when there were other persons who had access to the cash in vault; and (3) petitioner questions the validity of the trial of criminal case considering that the pre-trial agreement dispensed with the intervention of the public prosecutor in a full-blown trial of the criminal case.

The Office of the Solicitor General, for the State, contends that the guilt of petitioner has been proven beyond reasonable doubt by the following facts which were duly established during trial - first, petitioner was the cash custodian who was directly responsible and accountable for the cash-in-vault. Second, the other persons who had access to the vault facilities never used the duplicate keys to open the safety deposit boxes and the cash safe from where the P100.00 bill denominations were located. In fact, the duplicate keys were offered in evidence still in their sealed envelopes. Third, alterations and superimposition on the cash-in-vault summary sheet were made by petitioner to cover the cash shortage. Lastly, there was a valid joint trial of the civil and criminal cases.

The crucial issues, in our mind, are (1) whether there was a valid trial of the criminal case, and (2) whether the elements of the crime of estafa under Article 315 (1) (b) of the Revised Penal Code were duly proven beyond reasonable doubt.

First, petitioner assails the validity of the proceedings in the trial court on the ground that the public prosecutor did not intervene and present any evidence during the trial of the criminal case. The records clearly show that the pre-trial agreement was prepared by petitioner with the conforme of the public prosecutor. Thereafter, petitioner filed a consolidated memorandum for both civil and criminal cases. Section 5 of Rule 110[15] requires that all criminal actions shall be prosecuted under the direction and control of the public prosecutor. The rationale behind the rule is "to prevent malicious or unfounded prosecutions by private persons."[16] The records show that the public prosecutor actively participated in the prosecution of the criminal case from its inception. It was during pre-trial conference when the parties agreed to adopt their respective evidence in the civil case to the criminal case. This is allowed under Section 2 (e) of Rule 118 of the Rules of Court[17] which provides that during pre-trial conference, the parties shall consider "such other matters as will promote a fair and expeditious trial." The parties, in compliance with Section 4 of Rule 118,[18] reduced to writing such agreement. Petitioner, her counsel, and the public prosecutor signed the agreement. Petitioner is bound by the pre-trial agreement, and she cannot now belatedly disavow its contents.[19]

On the second issue. Petitioner was charged with the crime of estafa under Article 315 (1) (b) of the Revised Penal Code.[20] In general, the elements of estafa are: (1) that the accused defrauded another (a) by abuse of confidence or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.[21] Deceit is not an essential requisite of estafa with abuse of confidence, since the breach of confidence takes the place of the fraud or deceit, which is a usual element in the other estafas.[22]

The elements of estafa through conversion or misappropriation under Art. 315 (1) (b) of the Revised Penal Code are:[23]

(1) that personal property is received in trust, on commission, for administration or under any other

> circumstance involving the duty to make delivery of or to return the same, even though the obligation is guaranteed by a bond;
>
> (2) that there is conversion or diversion of such property by the person who has so received it or a denial on his part that he received it;
>
> (3) that such conversion, diversion or denial is to the injury of another and
>
> (4) that there be demand for the return of the property.

Have the foregoing elements been met in the case at bar? We find the first element absent. When the money, goods, or any other personal property is received by the offender from the offended party (1) in trust or (2) on commission or (3) for administration, the offender acquires both material or physical possession and juridical possession of the thing received.[24] Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner.[25] In this case, petitioner was a cash custodian who was primarily responsible for the cash-in-vault. Her possession of the cash belonging to the bank is akin to that of a bank teller, both being mere bank employees.

In People v. Locson,[26] the receiving teller of a bank misappropriated the money received by him for the bank. He was found liable for qualified theft on the theory that the possession of the teller is the possession of the bank. We explained in Locson that -

> "The money was in the possession of the defendant as receiving teller of the bank, and the possession of the defendant was the possession of the bank. When the defendant, with grave abuse of confidence, removed the money and appropriated it to his own use without the consent of the bank, there was the taking or apoderamiento contemplated in the definition of the crime of theft."[27]

In the subsequent case of Guzman v. Court of Appeals,[28] a traveling sales agent misappropriated or failed to return to his principal the proceeds of things or goods he was commissioned or authorized to sell. He was, however, found liable for estafa under Article 315 (1) (b) of the Revised Penal Code, and not qualified theft. In the Guzman case, we explained the distinction between possession of a bank teller and an agent for purposes of determining criminal liability -

> "The case cited by the Court of Appeals (People vs. Locson, 57 Phil. 325), in support of its theory that appellant only had the material possession of the merchandise he was selling for his principal, or their proceeds, is not in point. In said case, the receiving teller of a bank who misappropriated money received by him for the bank, was held guilty of qualified theft on the theory that the possession of the teller is the possession of the bank. There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his principal. In the former case, payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous, right to retain money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault (Article 1915, [N]ew Civil Code; Article 1730, old)."

Petitioner herein being a mere cash custodian had no juridical possession over the missing funds. Hence, the element of juridical possession being absent, petitioner cannot be convicted of the crime of estafa under Article 315, No. 1 (b) of the Revised Penal Code.[29]

WHEREFORE, the petition is hereby granted and petitioner is ACQUITTED of the crime of estafa under Article 315 (1) (b) of the Revised Penal Code. Petitioner is ordered RELEASED from custody unless she is being held for

some other lawful cause. No costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] RTC Records, pp. 1-2.
[2] Id. at 52.
[3] Id. at 74.
[4] Id. at 179-185.
[5] Id. at 190.
[6] Id. at 199.
[7] Id. at 198.
[8] Id. at 200.
[9] Id. at 201.
[10] Id. at 203.
[11] Id. at 248-261.
[12] Rollo, pp. 29-35.
[13] Id. at 37.
[14] Id. at 19-21.
[15] SEC. 5. Who may prosecute criminal actions.—All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. ...
[16] U.S. v. Narvas, 14 Phil. 410, 411 (1909).
[17] SEC. 2. Pre-trial conference; subjects.—The pre-trial conference shall consider the following:

> x x x
> (e) Such other matters as will promote a fair and expeditious trial.

[18] SEC. 4. Pre-trial agreements must be signed.—No agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him and his counsel.
[19] Pre-trial in criminal cases is now governed by Republic Act No. 8493, otherwise known as the Speedy Trial Act of 1998, and Supreme Court Circular No. 38-98.
[20] "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 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.
>
> x x x

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

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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."
[21] Reyes, L., The Revised Penal Code, Vol. II, 1993 ed., p. 654.
[22] U.S. v. Sevilla, 43 Phil. 186, 189 (1922).
[23] Fontanilla vs. People, 258 SCRA 460, 470 (1996); Sy v. People, 172 SCRA 685, 692 (1989).
[24] See Santos v. People, 181 SCRA 487, 492 (1990).
[25] See Note 19 at 680-681, citing People v. Marcelino Nicolas, et. al., C.A. 58 O.G. 472; People v. Maglaya, 30 SCRA 606, 610-612 (1969).
[26] 57 Phil. 325 (1932).
[27] Id. at 334.
[28] 99 Phil. 703, 706-707 (1956).
[29] Could the present Information sustain a conviction for qualified theft under Article 310 of the Revised Penal Code? A perusal of the Information shows that it did not allege the essential elements of "intent to gain" and "without the use of violence against or intimidation of persons or force upon things."

Cf. People v. Sison, G.R. No. 123183, January 19, 2000, where a Branch Operation Officer of a bank was convicted of qualified theft on the basis of circumstantial evidence.

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