

CARMEN LIWANAG, PETITIONER, VS. THE HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, REPRESENTED BY THE SOLICITOR GENERAL, RESPONDENTS.

G.R. No. 114398. October 24, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

Petitioner was charged with the crime of estafa before the Regional Trial Court (RTC), Branch 93, Quezon City, in an information which reads as follows:

“That on or between the month of May 19, 1988 and August, 1988 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent of gain, with unfaithfulness, and abuse of confidence, did then and there, willfully, unlawfully and feloniously defraud one ISIDORA ROSALES, in the following manner, to wit: on the date and in the place aforementioned, said accused received in trust from the offended party cash money amounting to P536,650.00, Philippine Currency, with the express obligation involving the duty to act as complainant’s agent in purchasing local cigarettes (Philip Morris and Marlboro cigarettes), to resell them to several stores, to give her commission corresponding to 40% of the profits; and to return the aforesaid amount of offended party, but said accused, far from complying her aforesaid obligation, and once in possession thereof, misapplied, misappropriated and converted the same to her personal use and benefit, despite repeated demands made upon her, accused failed and refused and still fails and refuses to deliver and/or return the same to the damage and prejudice of the said ISIDORA ROSALES, in the aforementioned amount and in such other amount as may be awarded under the provision of the Civil Code.

CONTRARY TO LAW.”

The antecedent facts are as follows:

Petitioner Carmen Liwanag (Liwanag) and a certain Thelma Tabligan went to the house of complainant Isidora Rosales (Rosales) and asked her to join them in the business of buying and selling cigarettes. Convinced of the feasibility of the venture, Rosales readily agreed. Under their agreement, Rosales would give the money needed to buy the cigarettes while Liwanag and Tabligan would act as her agents, with a corresponding 40% commission to her if the goods are sold; otherwise the money would be returned to Rosales. Consequently, Rosales gave several cash advances to Liwanag and Tabligan amounting to P633,650.00.

During the first two months, Liwanag and Tabligan made periodic visits to Rosales to report on the progress of the transactions. The visits, however, suddenly stopped, and all efforts by Rosales to obtain information regarding their business proved futile.

Alarmed by this development and believing that the amounts she advanced were being misappropriated, Rosales filed a case of estafa against Liwanag.

After trial on the merits, the trial court rendered a decision dated January 9, 1991, finding Liwanag guilty as charged. The dispositive portion of the decision reads thus:

“WHEREFORE, the Court holds, that the prosecution has established the guilt of the accused, beyond reasonable doubt, and therefore, imposes upon the accused, Carmen Liwanag, an Indeterminate Penalty of SIX (6) YEARS, EIGHT (8) MONTHS AND TWENTY ONE (21) DAYS OF PRISION CORRECCIONAL TO FOURTEEN (14) YEARS AND EIGHT (8) MONTHS OF PRISION MAYOR AS MAXIMUM, AND TO PAY THE COSTS.

The accused is likewise ordered to reimburse the private complainant the sum of P526,650.00, without subsidiary imprisonment, in case of insolvency.

SO ORDERED.”

Said decision was affirmed with modification by the Court of Appeals in a decision dated November 29, 1993, the decretal portion of which reads:

“WHEREFORE, in view of the foregoing, the judgment appealed from is hereby affirmed with the correction of the nomenclature of the penalty which should be: SIX (6) YEARS, EIGHT (8) MONTHS and TWENTY ONE (21) DAYS of prision mayor, as minimum, to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of reclusion temporal, as maximum. In all other respects, the decision is AFFIRMED.

SO ORDERED.”

Her motion for reconsideration having been denied in the resolution of March 16, 1994, Liwanag filed the instant petition, submitting the following assignment of errors:

“1. RESPONDENT APPELLATE COURT GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE ACCUSED-PETITIONER FOR THE CRIME OF ESTAFA, WHEN CLEARLY THE CONTRACT THAT EXIST (sic) BETWEEN THE ACCUSED-PETITIONER AND COMPLAINANT IS EITHER THAT OF A SIMPLE LOAN OR THAT OF A PARTNERSHIP OR JOINT VENTURE HENCE THE NON RETURN OF THE MONEY OF THE COMPLAINANT IS PURELY CIVIL IN NATURE AND NOT CRIMINAL.

2. RESPONDENT APPELLATE COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-PETITIONER ON GROUNDS OF REASONABLE DOUBT BY APPLYING THE ‘EQUIPOISE RULE’.”

Liwanag advances the theory that the intention of the parties was to enter into a contract of partnership, wherein Rosales would contribute the funds while she would buy and sell the cigarettes, and later divide the profits between them.[1] She also argues that the transaction can also be interpreted as a simple loan, with Rosales lending to her the amount stated on an installment basis.[2]

The Court of Appeals correctly rejected these pretenses.

While factual findings of the Court of Appeals are conclusive on the parties and not reviewable by the Supreme Court, and carry more weight when these affirm the factual findings of the trial court,[3] we deem it more expedient to resolve the instant petition on its merits.

Estafa is a crime committed by a person who defrauds another causing him to suffer damages, by means of unfaithfulness or abuse of confidence, or of false pretenses of fraudulent acts.[4]

From the foregoing, the elements of estafa are present, as follows: (1) that the accused defrauded another by abuse of confidence or deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third party,[5] and it is essential that there be a fiduciary relation between them either in the form of a trust, commission or administration.[6]

The receipt signed by Liwanag states thus:

“May 19, 1988 Quezon City

Received from Mrs. Isidora P. Rosales the sum of FIVE HUNDRED TWENTY SIX THOUSAND AND SIX HUNDRED FIFTY PESOS (P526,650.00) Philippine Currency, to purchase cigarrets (sic) (Philip & Marlboro) to be sold to customers. In the event the said cigarrets (sic) are not sold, the proceeds of the sale or the said products (shall) be returned to said Mrs. Isidora P. Rosales the said amount of P526,650.00 or the said items on or before August 30, 1988.

(SGD & Thumbemked) (sic)

CARMEN LIWANAG

26 H. Kaliraya St.

Quezon City

Signed in the presence of:

(Sgd) Illegible (Sgd) Doming Z. Baligad”

The language of the receipt could not be any clearer. It indicates that the money delivered to Liwanag was for a specific purpose, that is, for the purchase of cigarettes, and in the event the cigarettes cannot be sold, the money must be returned to Rosales.

Thus, even assuming that a contract of partnership was indeed entered into by and between the parties, we have ruled that when money or property have been received by a partner for a specific purpose (such as that obtaining in the instant case) and he later misappropriated it, such partner is guilty of estafa.[7]

Neither can the transaction be considered a loan, since in a contract of loan once the money is received by the debtor, ownership over the same is transferred.[8] Being the owner, the borrower can dispose of it for whatever purpose he may deem proper.

In the instant petition, however, it is evident that Liwanag could not dispose of the money as she pleased because it was only delivered to her for a single purpose, namely, for the purchase of cigarettes, and if this was not possible then to return the money to Rosales. Since in this case there was no transfer of ownership of the money delivered, Liwanag is liable for conversion under Art. 315, par. 1(b) of the Revised Penal Code.

WHEREFORE, in view of the foregoing, the appealed decision of the Court of Appeals dated November 29, 1993, is AFFIRMED. Costs against petitioner.

SO ORDERED.

Melo, Francisco, and Panganiban, JJ., concur.

Narvasa, C.J., (Chairman), on leave.

[1] Rollo, p. 20.

[2] Ibid., p. 22.

[3] *Meneses v. Court of Appeals*, 246 SCRA 162 (1994).

[4] Article 315, Revised Penal Code.

[5] *People v. Bautista*, 241 SCRA 216 (1995).

[6] Galvez v. Court of Appeals, 42 SCRA 278 (1971).

[7] Reyes, The Revised Penal Code, 1993, p. 675, citing People v. De la Cruz, G.R. No. 21732, September 3, 1924.

[8] Art. 1953, Civil Code.

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