

ARACELI RAMOS FONTANILLA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, COURT OF APPEALS, OSCAR V. SALUD AND THELMA C. MERCADO, RESPONDENTS.

G.R. No. 120949. July 05, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

This is a petition which seeks the review on certiorari of the decision[1] rendered by the Court of Appeals (Special Fifteenth Division) on March 3, 1995, in CA-G.R. CR No. 14567, which affirmed the decision[2] of the Regional Trial Court, Branch 17, of Cavite City, in Criminal Cases Nos. 298-91 and 299-91.

Petitioner Araceli Ramos Fontanilla was charged with two (2) crimes of Estafa defined and penalized under Article 315, paragraph 1(b), of the Revised Penal Code, under the following Informations:

Criminal Case No. 298-91

"That on or about and during the period from August 30, 1990 until October 25, 1990, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused received in trust from complainant THELMA C. MERCADO the total amount of P70,000.00 with the understanding that the money will be invested by the accused with the Philtrust Investment Corporation at a guaranteed interest of .8 percent per working day and with the further understanding that the amount can be withdrawn anytime through the accused, but the herein accused, once in possession of the amount, with intent to defraud and with grave abuse of confidence, did, then and there, wilfully, unlawfully and feloniously misapply, misappropriate and convert the same to her own personal use and benefit and notwithstanding repeated demands made upon her for the return of the amount, accused herein failed and refused to do so, to the damage and prejudice of Thelma C. Mercado in the aforestated amount of P70,000.00.

Contrary to law."[3]

Criminal Case No. 299-91

"That on or about and during the period from August 3, 1990 until September 4, 1990, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused received in trust from complainant OSCAR V. SALUD the total amount of P50,000.00 with the understanding that the money will be invested by the accused with the Philtrust Investment Corporation at a guaranteed interest of .8 percent per working day and with the further understanding that the amount can be withdrawn anytime through the accused, but the accused herein, once in possession of the amount, with intent to defraud and with grave abuse of confidence, did, then and there, wilfully, unlawfully and feloniously misapply, misappropriate and convert the same to her own personal use and benefit and notwithstanding repeated demands made upon her for the return of the amount, accused herein failed and refused to do so, to the damage and prejudice of Oscar V. Salud in the aforestated amount of P50,000.00.

Contrary to law."[4]

Upon arraignment, the petitioner pleaded "Not Guilty" to both indictments. Joint trial of these cases, thereafter, ensued.

The evidence disclosed the following facts:

Petitioner Araceli Ramos Fontanilla, then 74 years old, (now 77),[5] used to own and manage a canteen in the Philippine Naval Base in Fort San Felipe, Cavite City. Sometime in the early part of August, 1990, she enticed and convinced M/Sgt. Oscar V. Salud[6] and Thelma C. Mercado[7] to invest money with the Philtrust Investment Corporation, alleging that the investment would yield an interest of .8 percent per working day, withdrawable anytime. Consequently, on August 3, 1990, Sgt. Salud and Mercado gave the petitioner, the amounts of P10,000.00 and P5,000.00, respectively, as their initial investment. Petitioner, accordingly, issued to Sgt. Salud and Mercado certifications,[8] acknowledging receipt of the amounts and stating as well that the money could be withdrawn anytime. As interest thereon was at the beginning promptly paid by the petitioner, Sgt. Salud added the amount of P40,000.00[9] on September 4, 1990, his total investment, then amounting to P50,000.00. Mercado put in P30,000.00[10] on August 21, 1990 and another P35,000.00[11] on October 25, 1990, her investment then amounting to P70,000.00. All these additional investments of money given to the petitioner were made under the same terms and conditions, except that the amount of P35,000.00 invested on October 25, 1990 by Mercado was agreed to be withdrawn on December 27, 1990.[12]

The petitioner religiously paid interest to Sgt. Salud on a weekly basis at first, but she failed to do so starting on November 19, 1990 until December 27, 1990. Sgt. Salud went to the petitioner's house in Cavite City to demand payment of the interest due him. On petitioner's bidding, the petitioner's grandson Ferdinand Fontanilla explained to Sgt. Salud that the unpaid interest on his investment would be added to his working capital in the amount of P50,000.00. Apparently satisfied with the explanation, Sgt. acceded and did not persist on his demand.

In January 1991, the petitioner paid Sgt. Salud partial interest but defaulted in the months of February and March 1991 despite several demands. Exasperated, Sgt. Salud again went to the petitioner's house and demanded not only the payment of the interest due but also the return of the principal, and when he was given the runaround, he decided to file, as he did, a complaint with the police on March 17, 1991 charging the petitioner with Estafa.[13]

Thelma Mercado's investment appeared also to have gone on smoothly at first as the petitioner religiously paid Mercado the corresponding interest. However, when Mercado sought to withdraw P35,000.00 on December 27, 1990 pursuant to their agreement, the petitioner could not pay her the said amount and, instead, gave her a check in the account of the petitioner's grandson payable on January 10, 1991. This check was dishonored because its corresponding account had been closed. When this fact was brought to light, the petitioner promised to pay, and, by way of assurance showed a letter from Phoenix Investment Corporation addressed to her which indicated that said corporation would be releasing the money from February 11, 1991 to February 28, 1991.[14] Ms. Mercado clarified in this connection that the petitioner withdrew the amount originally invested with Philtrust Investment Corporation and deposited the same with the Phoenix Investment Corporation. The transfer was done without the complainant's knowledge and consent.[15] As it turned out, nothing came out of the petitioner's promises. Hence, she was constrained to file this complaint.[16]

Cmdr. Nolato, Cmdr. Gandoza, Lt. Sarmiento, Cpo. Godilano and some others were said to have entrusted their money with the petitioner for investment with Philtrust Investment Corporation. Their investment suffered the same fate as those of the herein complainants.[17]

In her defense, the petitioner testified to the effect that complainants had instead made the offer to lend her money and, when she agreed, complainants gave her the money as evidenced by the certifications.[18] She identified her signatures therein. The said certifications, allegedly prepared by Sgt. Salud and Mercado, were already signed by

them when presented to her for her signature. Acknowledging receipt of the money, she paid weekly interest thereon in the total amount of P40,000.00, more or less, or P20,000.00 each Sgt. Salud and Mercado. However, when her business floundered about the middle part of November, 1990, she could no longer make any payment of interest. She promised to pay her creditors once she could recover financially. Complainants could not wait indefinitely and so, they caused to be instituted the present charges.

After trial, the trial court rendered judgment on December 15, 1992 convicting the petitioner in both cases, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused Araceli Fontanilla guilty beyond reasonable doubt of ESTAFA as defined and penalized under Art. 315, par. 1-B in both Criminal Cases Nos. 298-91 and 299-91 and she is hereby sentenced to an indeterminate term of imprisonment of six (6) months aresto (sic) mayor as maximum to ten (10) years of prision mayor as maximum to indemnify the offended party Thelma C. Mercado in the amount of P70,000.00 without subsidiary imprisonment in case of insolvency in Criminal Case No. 298-91; to undergo an indeterminate term of imprisonment of six (6) months of aresto (sic) mayor as minimum to eight (8) years of prision mayor as maximum to indemnify the offended party Oscar V. Salud the amount of P50,000.00 without subsidiary imprisonment in case of insolvency in Criminal Case No. 299-91 and to pay the costs in both instances."[19]

On appeal, the Court of Appeals affirmed in toto the foregoing judgment of conviction in a decision dated March 3, 1995.

The petitioner filed a Motion for Reconsideration before the appellate court but the same was denied in a Resolution,[20] dated July 17, 1995.

Hence, this petition for review, anchored on the following grounds.

I

THE COURT OF APPEALS SERIOUSLY ERRED IN FINDING AND HOLDING THAT THE AGREEMENT BETWEEN THE ACCUSED-APPELLANT AND THE PRIVATE COMPLAINANTS IS NOT A CONTRACT OF LOAN WHICH IS PATENTLY CONTRARY AND CONFLICTING WITH THE EVIDENCE ON RECORD AND LAW.

II

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT TOTALLY IGNORED THE UNCONTROVERTED EVIDENCE ON RECORD WHICH SHOWS THAT ACCUSED-APPELLANT IS THE ONE PAYING THE "INTERESTS" TO THE PRIVATE COMPLAINANTS AND NOT THE PHILTRUST INVESTMENT CORPORATION WHICH PROVES THAT THE AGREEMENT BETWEEN THEM IS A CONTRACT OF LOAN.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT ALL THE ELEMENTS OF ESTAFA AS DEFINED AND PENALIZED UNDER ARTICLE 315 (1) (B) OF THE REVISED PENAL CODE HAVE BEEN ESTABLISHED BEYOND REASONABLE DOUBT BY THE PROSECUTION IS CONTRARY TO LAW, JURISPRUDENCE AND EVIDENCE.

IV

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN FAILING TO CONSIDER THE MITIGATING CIRCUMSTANCE OF OVER SEVENTY YEARS IN FAVOR OF THE ACCUSED-APPELLANT.

The petitioner maintains that the various sums of money admittedly received by her from private respondents Mercado and Salud constituted a mere forbearance of money, or a simple loan, the certifications,[21] not having made any reference to any agreement to invest the said sums of money with Philtrust Investment Corporation, or any understanding to that effect. Additionally, she points out that it was the petitioner herself and not Philtrust Investment Corporation who agreed to pay interest. Thus, petitioner claims that, pursuant to Article 1933 and 1953 of the New Civil Code, ownership of the money delivered passed on to the petitioner and so, it cannot be said that the petitioner received the money in trust or in fiduciary capacity. So, petitioner argues that no fiduciary relationship has been shown to exist between the petitioner and the private respondents, and, absent this relationship, the petitioner could not have committed the crime of estafa through misappropriation or conversion as herein charged.

Evidently, the question posed herein relates to the nature of the transaction and/or agreement between the petitioner and the private respondents. Both the trial court and the Court of Appeals have made a determination thereof, and in so doing, gave weight and credence to the testimonies of the private respondents to the effect that their money was given to the petitioner as investments and also to the certifications embodying the terms and conditions relative to the said investments. The respondent court thus ruled that:

"The prosecution established that appellant received in trust the amounts of P70,000.00 and P50,000.00 from complainants Thelma C. Mercado and Sgt. Oscar V. Salud, respectively. According to appellant, the said amounts should be invested with Philtrust Investment Corporation in her (appellant's) name; that the said investment would earn an '.8 percent interest per working day' and the '(T)he said amount(s) can be withdrawn from her (Mrs. Araceli R. Fontanilla) by the investor at anytime.' Such is the tenor of the 'Certification' issued by the petitioner. x x x"[22]

and, in rejecting the petitioner's contention that her agreement with the private respondents is a forbearance of money or a simple loan agreement, stated that:

"Firstly, the agreement between appellant and private complainants is not a contract of loan for appellant did not acquire ownership of the money which she received from private complainants nor was she bound to pay to the latter an equal amount of money (Art. 1953, New Civil Code). The money was entrusted by the private complainants to appellant for the purpose of investing the same in her own (appellant's) name with the Philtrust Investment Corporation that would yield an .8 percent interest per working day, with the obligation to return it upon demand by the complainants. x x x

Secondly, since the appellant received the money in trust, as it was entrusted to her for investment with the obligation to return it upon demand, complainants entrusted to appellant not only the physical possession but also the juridical possession of the subject money. As such, a fiduciary relationship existed between complainants and appellant. x x x "[23]

Well-entrenched is the rule that the findings of fact of the trial court, as well as those of the Court of Appeals, are accorded great weight and respect and are even binding on this court[24] which may only review and correct errors of law.[25] The rule is subject only to a few established or well-defined exceptions as where the findings of the Court of Appeals and the trial court are contrary to each other[26] or when the inference made by the Court of Appeals on its factual findings is manifestly mistaken.[27] As we perceive nothing in the findings of the Court of Appeals as would make the same an exception, we shall not therefore disturb the said findings.

Indeed, the aforementioned certifications do not contain any express or written provision regarding investing private respondents' money with the Philtrust Investment Corporation, but they do show that the money entrusted by the private respondents to the petitioner was an investment to be managed by the latter for their account and benefit. Significantly, said certifications are not inconsistent with and are, in fact, supportive of our conclusion

that the petitioner's transaction with the private respondents was not a simple loan agreement. Furthermore, assuming *arguendo* that said certifications do not directly or clearly prove such conclusion, the testimonies of the prosecution witnesses are categorical in this respect and such testimonies had been found to be credible by the trial court. On the matter of credibility of witnesses, the court has consistently ruled that evaluation or judgment of the trial court appertaining thereto is accorded great weight and respect[28] and will not generally be interfered with in the absence of a showing of some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[29]

The fact that the petitioner paid the stipulated interest allegedly from her own pocket is no argument against our conclusion as above-stated and that the interest paid by the petitioner represented earnings on private respondents' investment. In fine, we cannot see how such fact could operate to alter the import of the certifications and the testimonies of the prosecution witnesses which established that the transaction between the petitioner and the private respondents was not one of loan or forbearance of money.

The elements of estafa through misappropriation as defined in and penalized under paragraph 1 (b) of the Revised Penal Code are: (1) that money, goods or other personal property is received by the offender in trust, or in 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 by the offender or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by offended party on the offender.[30]

These elements were amply and clearly established in these cases. First, the petitioner received in trust the money from the private respondents for the particular purpose of investing the same with the Philtrust Investment Corporation, with the obligation to make delivery thereof upon demand, thereby creating a fiduciary relationship between them. Second, the petitioner misappropriated private respondents' money as shown by the fact that she failed to return the same despite demands, and more importantly, by her own admission that she used the money for her business;[31] and, third, the misappropriation prejudiced the private respondents.

The Court notes, however, that the penalty imposed by the trial court, as affirmed by the Court of Appeals, is utterly erroneous.

Article 315 of the Revised Penal Code provides:

"Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

"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. x x x."

Under the Indeterminate Sentence Law,[32] if the offense is punished by the Revised Penal Code, such as estafa, the court shall sentence the accused to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.[33]

Applying the foregoing rules, the indeterminate penalty that We impose upon petitioner in Criminal Case No. 298-91 involving the amount of P70,000 shall be four(4) years and two (2) months of prision correccional as the minimum to twelve (12) years, as the maximum.

In Criminal Case No. 299-91, with P50,000 as the total amount defrauded, the penalty that We impose is four (4)

years and two (2) months of prision correccional as the minimum to ten (10) years, as the maximum.

The mitigating circumstances of being over seventy years old at the time of the commission of the crime is merely a generic mitigating circumstance, which is considered only in determining the proper term (i.e. minimum, medium, maximum) that should be imposed within the range of the prescribed penalty (i.e., prision correccional, prision mayor, et al.). Sadly for the petitioner, it is not a privileged mitigating circumstances, which has the clement effect of lowering the imposable penalty by one degree, thus resulting in a much shorter prison sentence for the petitioner.

WHEREFORE, the petition is DENIED and the decision of the Court of Appeals is hereby AFFIRMED with the modification that the petitioner is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months as minimum, to twelve (12) years as maximum in Criminal Case No. 298-91. In Criminal Case No. 299-92, the petitioner is hereby sentenced to undergo an indeterminate prison term of four (4) years and two (2) months as minimum, to ten (10) years as maximum.

Costs against the petitioner.

SO ORDERED.

Padilla, Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Rollo, pp. 27-41.

[2] Penned by Judge Rolando G. Diaz, RTC, Branch 17, Cavite City; Record in Criminal Case No. 299-91, pp. 36-43.

[3] Record, p. 1.

[4] Record, p. 1.

[5] Petition, Rollo, p. 6.

[6] A member of the Philippine Navy stationed at Cavite City and complainant in Criminal Case No. 299-91.

[7] A civilian employee of the Philippine Navy in Cavite City and complainant in Criminal Case No. 298-91.

[8] Exhibit A, Criminal Case No. 299-91, Record p. 19; Exhibit A, Criminal Case No. 298-91, Record, p. 20.

[9] Exhibit B, Criminal Case No. 299-91, Record, p. 20.

[10] Exhibit B, Criminal Case No. 298-91, Record, p. 66.

[11] Exhibit C, Id., p. 67.

[12] See Note 11.

[13] Decision of the Regional Trial Court, supra, p. 38.

[14] TSN, May 26, 1992, p. 25.

[15] Decision of the Regional Trial Court, supra, pp. 39-40.

[16] Exhibit D, Criminal Case No. 298-91, Record, p. 68.

[17] TSN, March 30, 1992, p. 4.

[18] Exhibits 1 and 2 (also Exhibits A and B), Record, Criminal Case No. 299-91, pp. 19-20.

[19] Decision of the RTC, *supra*, pp. 42-43.

[20] Rollo, p. 43.

[21] See Note 18.

[22] Decision of the Court of Appeals, p. 11; Rollo, p. 37.

[23] *Supra*, pp. 12-13; Rollo, pp. 38-39.

[24] *Verdejo v. Court of Appeals*, 238 SCRA 781, 784 [1994]; *Aspi v. Court of Appeals*, 236 SCRA 94, 98 [1994]; *Tay Chun Suy v. Court of Appeals*, 229 SCRA 151, 156.

[25] *Ting v. Court of Appeals*, 237 SCRA 797, 803 [1994].

[26] *Cayabyab v. Intermediate Appellate Court*, 232 SCRA 1, 4 [1994].

[27] *Aspi v. Court of Appeals*, *supra*, p. 98.

[28] *People v. Dolar*, 231 SCRA 414, 422 [1994]; *People v. Machete*, 231 SCRA 272, 277 [1994].

[29] *People v. Lagrosa, Jr.*, 230 SCRA 298, [1994].

[30] *The Revised Penal Code*, Book II, Luis B. Reyes, 13th ed., p. 658.

[31] TSN, October 6, 1992, p. 29.

[32] Act No. 4103, as amended by Act No. 4225.

[33] *Ibid*, Section 1.

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