

CYNTHIA LUCES, Petitioner, vs. CHERRY DAMOLE, HON. RAMON G. CODILLA, JR., Presiding Judge, Regional Trial Court, Branch 19, Cebu City; and COURT OF APPEALS, FIFTH DIVISION, METR...

G.R. No. 150900. March 14, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court of the Decision[1] of the Court of Appeals (CA) dated August 30, 2001 and its Resolution[2] dated November 20, 2001, in CA-G.R. CR No. 23412.

In July 1993, petitioner Cynthia Luces approached private complainant Cherry Damole at the latter's place of work at the Robinson's Department Store, located along Fuente Osmeña, Cebu City, and asked for Purchase Order (PO) Cards to be sold by her on commission basis. They agreed[3] that petitioner would sell the PO cards to her customers and that she would get her commission therefrom in the form of marked up prices.[4] Petitioner further agreed that she would hold the PO cards as trustee of the private complainant with the obligation to remit the proceeds of the sale thereof less the commission, and before such remittance, to hold the same in trust for the latter.[5] Lastly, petitioner undertook to return the unsold PO cards.[6]

As of September, 1993, petitioner received from the private complainant 870 PO cards with a total face value of P412,305.00. Initially, petitioner complied with her obligations, but later she defaulted in remitting the proceeds. Hence, the demand made by the private complainant, through her lawyer, on the petitioner, but the same was unheeded.

Private complainant thereafter instituted a civil case for collection of sum of money.[7] She, likewise, filed a separate criminal complaint. Petitioner was thus charged with Estafa in an Information dated March 3, 1995, the accusatory portion of which reads:

That sometime in the month of July, 1993, and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, having received Purchase Order (PO) slips worth P412,305.00 from Cherry Damole, with the agreement that she should sell out the said PO slips for and in behalf of Cherry Damole, with the obligation on her part to immediately account for and turn over the proceeds of the sale, if said PO slips are sold, or to return the same to Cherry Damole, if she would not be able to dispose any or all of them within the agreed date, the said accused, once in possession of said PO slips, far from complying with her obligation, with deliberate intent, with intent of gain, with unfaithfulness and grave abuse of confidence and of defrauding Cherry Damole, did then and there misappropriate, misapply and convert into her own personal use and benefit the said PO slips, or the amount of P412,305.00, which is the equivalent value thereof, and in spite of repeated demands made upon her by Cherry Damole to let her comply with her obligation, she has failed and refused and up to the present time still fails and refuses to do so, to the damage and prejudice of Cherry Damole in the amount of P412,305.00, Philippine Currency.

CONTRARY TO LAW.[8]

The Information was filed with the Regional Trial Court (RTC) and was raffled to Branch 19, Cebu City. It was docketed as Criminal Case No. CBU-38420.

On April 27, 1995, petitioner moved for the dismissal of the criminal case and/or suspension of the proceedings in view of the pendency of the civil case for collection filed earlier by the private complainant.[9] She contended that the resolution of the civil case is determinative of her culpability in the criminal case. The RTC initially suspended the case[10] but on motion for reconsideration, the court reversed itself and held that the outcome of the civil case would not, in any way, affect the criminal action.[11] The court, thus, set the case for arraignment where the petitioner pleaded “not guilty.”

During trial, the prosecution established the existence of the trust receipt agreements; the receipt by petitioner of the subject PO cards; and her failure to comply with her obligation to remit the proceeds of the sale and to return the unsold cards to the private complainant. The prosecution likewise proved that petitioner converted the PO cards to her personal use by using such cards herself and by letting the members of her family use them, contrary to their agreement.[12] By reason of such conversion and misappropriation, private complainant suffered damage.

In defense, petitioner claimed that her liability to private complainant is purely civil, considering that the trust receipt agreements were in fact contracts of sale which transferred to petitioner the ownership of the questioned PO cards, and that, therefore, there was no misappropriation to speak of. Petitioner, likewise, testified that she was authorized to sell the PO cards on installment which she did by selling them to a certain Evelyn Tamara who, however, failed to pay. Petitioner further claimed that no damage was ever caused to the private complainant as she continuously paid monthly amortizations. She also insisted that the civil case filed against her by the same complainant is a prejudicial question; hence, the criminal case should have been dismissed.[13]

On August 25, 1997, the RTC rendered a Decision convicting petitioner of the crime of estafa.[14] On appeal, the CA affirmed petitioner’s conviction, but modified the penalty imposed by the lower court. The appellate court found that all the elements of estafa, with abuse of confidence through misappropriation, were established, and stressed that the civil case for collection of sum of money would not, in any way, be determinative of the guilt or innocence of petitioner.[15] The CA, however, imposed the indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to twenty (20) years of reclusion temporal, as maximum, instead of that imposed by the RTC.[16]

Hence, the instant petition raising the following issues:

I.

RESPONDENT COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THIS HONORABLE SUPREME COURT, OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT AND THE CONCLUSIONS ARE FOUNDED ON MERE SPECULATION, SURMISE AND CONJECTURE.

II.

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN AFFIRMING WITH MODIFICATION THE DECISION OF THE HONORABLE REGIONAL TRIAL COURT AND DENYING DUE COURSE THE PETITIONER’S MOTION FOR RECONSIDERATION OF THE JUDGMENT.

III.

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT GIVING WEIGHT THE ISSUE OF PREJUDICIAL QUESTION RAISED BY PETITIONER.

IV.

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT GIVING WEIGHT THE POSITIVE ASSERTION OF THE PETITIONER THAT SHE IS NOT CRIMINALLY LIABLE BUT ONLY CIVIL.[17]

The petition lacks merit.

Also known as “swindling,” estafa is committed by any person who shall defraud another by any of the means mentioned in the Revised Penal Code (RPC).[18] Petitioner was tried and convicted for violation of Article 315(1)(b) which states that, among others, 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.[19]

Specifically, the elements of estafa through misappropriation or conversion are: 1) that the 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 deliver or 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 the offended party on the offender.[20]

In the instant case, it was established that petitioner received from the private complainant the subject PO cards to be sold by the former on commission, as evidenced by their Trust Receipt Agreements (TRAs).[21] The Agreements contain identical terms and conditions as follows:

- That the TRUSTEE intends to give P.O. to different cardholders and received (sic) commission in a form of mark-up price but TRUSTEE assumes the responsibility of paying the amount due including penalty, if any, on due dates;
- That the TRUSTEE holds P.O. in storage as the property of TRUSTOR, with the right to sell the same for each for TRUSTOR’S account and to hand the proceeds thereof to the trustor less the commission mentioned above;
- That TRUSTEE agrees that before remittance to TRUSTOR, she/he shall hold the sum in trust for the TRUSTOR;
- That the TRUSTEE is aware that her failure to remit the proceeds or return the P.O. when demanded by the TRUSTOR give rise to CRIMINAL LIABILITY and CIVIL LIABILITY.[22]

By such terms and conditions, petitioner agreed to hold in trust the following: the PO cards, for the purpose of selling them to different cardholders and returning to private complainant the cards unsold; and the proceeds of the sale, if any, for remittance to the private complainant.

And so, we ask the questions: Were the PO cards disposed of in accordance with their agreements? If so, did petitioner remit the proceeds to the private complainant?

The evidence shows that petitioner sold most of the PO cards to Ms. Tamara. The transaction was testified to by petitioner; confirmed by Ms. Tamara; and was, in fact, admitted by the private complainant during cross-examination.[23] Private complainant clearly stated in open court that she was aware of the sale of the PO cards to Ms. Tamara, and that she personally received payment made by the latter through the petitioner.[24]

To repeat, the PO cards were entrusted to petitioner for the purpose of selling them to cardholders. Petitioner was

at liberty to sell them either in cash or on installment. In fact, the private complainant agreed that the proceeds of the sale may be turned over to her in four installments. When she sold the cards to Ms. Tamara, petitioner did so pursuant to their TRA. It appears, however, that the proceeds of that sale could not be turned over to the private complainant, because Ms. Tamara failed to pay the purchase price of the subject PO cards. Technically, then, there was no conversion since the PO cards sold to Ms. Tamara were not devoted to a purpose or use different from that agreed upon.

This notwithstanding, petitioner is not free from criminal liability. As to the PO cards covered by Trust Receipt No. 4103 with a face value of P33,600.00, the prosecution sufficiently established that they were used by petitioner herself and her relatives as evidenced by the copies of the PO cards they actually used bearing their names.[25] Although there was no prohibition for petitioner to use or for her relatives to purchase the PO cards, they should have paid the corresponding price, and petitioner should have remitted the proceeds to the private complainant. There being no adequate explanation why she personally used and allowed her relatives to use the cards, there is ample circumstantial evidence of estafa. Using the PO cards as owner is conversion. Accordingly, we agree with the CA's ratiocination in this wise:

Thus, using or disposing by LUCES for her and her relatives' own personal purpose and benefit of the said P.O. cards, constitutes breach of trust, unfaithfulness and abuse of confidence. The failure of LUCES to account for them establishes the felony of estafa through abuse of confidence by misappropriation or conversion.[26]

The essence of estafa under Article 315, par. 1(b) is the appropriation or conversion of money or property received, to the prejudice of the owner. The words "convert" and "misappropriate" 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. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without a right.[27]

The prosecution further showed that the misappropriation or conversion by petitioner caused prejudice to 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.[28] Under the given circumstances, it is beyond cavil that private complainant was deprived of her right to enjoy the proceeds of the sale as a result of petitioner's unauthorized use of the PO cards.

As regards the appropriate penalty, the RPC provides:

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

1[st]. 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.

Under the Indeterminate Sentence Law,[29] the maximum term of the penalty shall be "that which in view of the attending circumstances, could be properly imposed" under the RPC and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense.[30]

The range of the penalty provided for in Article 315 is composed of only two periods; thus, to get the maximum

period of the indeterminate sentence, the total number of years included in the two periods should be divided into three. Article 65 of the RPC requires the division of the time included in the prescribed penalty into three equal periods of time, forming one period for each of the three portions. The minimum, medium and maximum periods of the prescribed penalty are therefore:

Minimum period – 4 years, 2 months and 1 day to 5 years, 5 months and 10 days

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

Maximum period – 6 years, 8 months and 21 days to 8 years.[31]

The amount defrauded is in excess of P22,000.00; the penalty imposable should be the maximum period of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of prision mayor. However, Article 315 also provides that an additional one year shall be imposed for each additional P10,000.00. Here, the total amount of the fraud is P33,600.00 (P33,600.00-P22,000.00 = P11,600.00). Thus, while we are disposed to impose six (6) years, eight (8) months and twenty-one (21) days of the maximum period provided by the RPC, an additional penalty of one year should likewise be imposed. Accordingly, we hold that the maximum term of the indeterminate sentence shall be seven (7) years, eight (8) months and twenty-one (21) days of prision mayor.

The minimum period of the indeterminate sentence, on the other hand, should be within the range of the penalty next lower to that prescribed by the RPC for the crime committed. The penalty next lower than prision correccional maximum to prision mayor minimum is prision correccional in its minimum and medium periods. Thus, the minimum term of the indeterminate sentence shall be two (2) years, eleven (11) months and eleven (11) days.

Lastly, as to whether the civil case filed by the private complainant is a prejudicial question, we note with approval the appellate court's conclusion, thus:

It is clear from the questioned civil case that the civil liability of LUCES to DAMOLE was founded on the former's failure or refusal to remit to the latter the proceeds arising from the sales of P.O. cards. In contrast, in the instant criminal case, the court a quo was tasked to determine whether or not the non-remittance of the proceeds of the sale of P.O. cards or the return thereof by LUCES to DAMOLE, was due to misappropriation or conversion. Stated simply, the issue in the civil (MAN-2031) is DAMOLE's right to recover from LUCES the amount representing the value of the P.O. cards allegedly embezzled by the latter. While the issue in the criminal case is whether LUCES' failure to account for the proceeds of the sale of P.O. cards and/or to return the unsold P.O. cards as DAMOLE's trustee constitutes estafa under Article 315 par. 1 (b) of the Revised Penal Code. A finding in the civil case for or against the appellant is not juris et de jure determinative of her innocence or guilt in the estafa case.[32]

WHEREFORE, premises considered, the petition is hereby DENIED. The Decision of the Court of Appeals, dated August 30, 2001, and its Resolution dated November 20, 2001, in CA-G.R. CR No. 23412, are AFFIRMED with MODIFICATION. Petitioner Cynthia Luces is sentenced to suffer the indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of prision correccional, as minimum, to seven (7) years, eight (8) months and twenty-one (21) days of prision mayor, as maximum.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Eubulo G. Verzola and Marina L.

Buzon, concurring; rollo, pp. 48-60.

[2] Id. at 62-63.

[3] Petitioner's and private complainant's agreements were embodied in an instrument denominated as Trust Receipt Agreement; records, pp. 11-17.

[4] Rollo, p. 50.

[5] Records, pp. 11-17.

[6] Rollo, p. 50.

[7] The case was docketed as Civil Case No. MAN-2031; records, pp. 302-305.

[8] Records, pp. 1-2.

[9] Id. at 70-72.

[10] Embodied in an Order dated April 28, 1995; id. at 80.

[11] Records, p. 118.

[12] TSN, September 5, 1996, pp. 5-9.

[13] Rollo, p. 51.

[14] The dispositive portion of the RTC decision reads:

WHEREFORE, foregoing premises considered, the court finds the accused guilty beyond reasonable doubt of the crime of estafa as defined and penalized under Article 515, paragraph 1, and hereby sentences the accused to suffer an imprisonment of 5 years, 4 months and 21 days of prision correccional, maximum, as minimum, to 12 years of prision mayor, as maximum, applying the Indeterminate Sentence Law. With all the accessory penalties provided by law.

SO ORDERED. (Records, p. 280.)

[15] Rollo, p. 58.

[16] Id. at 59.

[17] Id. at 15.

[18] Tan v. People, G.R. No. 153460, January 29, 2007, 513 SCRA 194, 202.

[19] REVISED PENAL CODE, Art. 315 (1)(b).

[20] Asejo v. People, G.R. No. 157433, July 24, 2007, 528 SCRA 114, 120-121; Isip v. People, G.R. No. 170298, June 26, 2007, 525 SCRA 735, 757-758; Tan v. People, supra note 18, at 202-203; Serona v. Court of Appeals, 440 Phil. 508, 517 (2002).

[21] Exhs. "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," "N,"; records, pp. 11-20.

[22] TRA Nos. 4111, 4103, 4131, 4128, 4161, 4144, 4180, 4177, 4188, 4182, 4956, 4952, 4963 and 4969; id. at 11-26.

[23] TSN, July 22, 1996, pp. 3-5.

[24] The testimony of the private complainant reads:

ATTY. NODADO

And because of her failure to remit some amount that she collected from her customer, you filed a case for collection of sum of money before the court in Mandaue City, Branch 28, am I correct?

WITNESS

Yes, sir.

ATTY. NODADO

And in that case the defendant also failed (sic) a third party complaint against a certain Evelyn Tabara (sic), are you aware of that?

WITNESS

Yes, I am aware of that.

ATTY. NODADO

And in fact after she filed a case for collection of sum of money from third party defendant Tabara (sic) in the sum of P1,600.00 on July 1993, am I right?

WITNESS

Yes, I was able to collect from Tamara but through Cynthia Luces. (TSN, July 22, 1996, pp. 3-5.)

[25] Specifically, the PO cards bore the names of petitioner Cynthia Luces, Geraldine Rosel, and Cristituto Rosel.

[26] Rollo, p. 56.

[27] Tan v. People, supra note 18, at 204; Lee v. People, G.R. No. 157781, April 11, 2005, 455 SCRA 256, 267; Serona v. Court of Appeals, supra note 20, at 42.

[28] Tan v. People, supra note 18, at 205.

[29] Act No. 4103 as amended by Act No. 4225.

[30] Pucay v. People, G.R. No. 167084, October 31, 2006, 506 SCRA 411, 424; Bonifacio v. People, G.R. No. 153198, July 11, 2006, 494 SCRA 527, 532-533.

[31] Pucay v. People, id. at 424-425; Bonifacio v. People, id. at 533.

[32] Rollo, p. 58.

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