

BELEN REAL, Petitioner, vs. PEOPLE OF THE PHILIPPINES, Respondent.*G.R. No. 152065. January 29, 2008*

Ponente: AZCUNA, J.

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Assailed in this petition for review under Rule 125 of the Revised Rules of Court, in relation to Rule 45 thereof, is the August 3, 2000 Decision[1] of the Court of Appeals in CA-G.R. CR No. 13885, which affirmed the June 23, 1992 Decision[2] of the Regional Trial Court, Branch 2, Batangas City, in Criminal Case No. 4116 finding petitioner guilty of swindling (estafa) under Article 315, paragraph 1 (b) of the Revised Penal Code (RPC).

The facts appearing from the record are as follows:

Petitioner Belen Real was an agent of private complainant Benjamin Uy in his jewelry business. On several occasions, Uy entrusted to petitioner pieces of jewelry with the obligation on the part of the latter to remit the proceeds of the sale or to return the pieces of jewelry if unsold within a specific period of time.

On January 10, 1989, around 8:30 a.m., petitioner arrived at Uy's house at Nueva Villa Subdivision, Barangay Alangilan, Batangas City and requested Uy to lend her some pieces of jewelry as she had a buyer at that time. Because petitioner is his "kumadre," since Uy was one of the sponsors in the wedding of petitioner's daughter, and because petitioner was his agent for quite a time, Uy agreed. He showed petitioner some pieces of jewelry and allowed the latter to select from them.

Petitioner selected seven (7) pieces of jewelry. Uy prepared a receipt for the items selected by petitioner and handed the same to the latter. After checking the receipt, petitioner wrote the name Benjamin Uy at the upper portion thereof and affixed her signature at the lower portion including her address. The receipt reads:

K A T I B A Y A N

PINATUNAYAN KO na aking tinanggap kay Benjamin Uy, ang mga sumusunod na alahas: No. 1449

Bilang

Kalakal

Halaga

1

Collar Emerald Cut Diamond

P155,000.00

1

Pendant Solo Diamante 4 kts

55,000.00

1

Set Solo Marquez Lequids

50,000.00

1

Set 3 Stones Diamante Lequids

47,000.00

1

Domino 12 Stones Men's ring

35,000.00

1

Set Blue Pearl with Lequids

25,000.00

1

Set Corrales with broach

4,500.00

KABUUANG HALAGA

P371,500.00

nasa mabuting kalagayan upang ipagbili ng KALIWAAN lamang sa loob ng 10 araw mula ng aking paglagda; kung hindi ko maipagbili ay isasauli ko ang lahat ng alahas loob ng taning na panahong nakatala sa itaas; kung maipagbili ko naman ay dagli kung [isusuli] at ibigay ang buong pinagbilhan sa [may-ari] ng mga alahas. Ang aking gantimpala ay ang mapapahigit na halaga sa nakatakdang halaga sa itaas ng bawat alahas; HINDI AKO pinahihintulutang [ipautang] o ibigay na hulugan ang alin mang alahas; ilalagak, ipagkakatiwala, ipahihiram, isasangla o ipananagot kahit sa anong paraan ang alin mang alahas sa ibang tao.

NILAGDAAN ko ang kasunduang ito ngayon ika-10 ng January, 1989 sa Batangas City.

(Sgd) Belen Real Aplaya, Bauan, Bats.

LAGDA NG TAO NA TUMANGGAP TINITIRAHAN[3]

NG NASABING ALAHAS SA ITAAS NITO

Ten days thereafter, Uy went to petitioner's house at Aplaya, Bauan, Batangas and asked about their transaction. Petitioner informed Uy that the pieces of jewelry were already sold but the payment was in the form of check. Petitioner showed Uy five (5) pieces of checks all dated January 31, 1989 and requested the latter to collect on said date. Uy acceded, but when he returned on January 31, 1989, petitioner again requested him to return the following day as she had not encashed the checks yet. Uy again agreed but when he demanded the payment the following day, petitioner called him "makulit" and "could not sleep for that matter." Petitioner further remarked

that the more she would not pay Uy.

Constrained, Uy brought the matter to his lawyer, Atty. Dimayacyac, who thereafter sent a demand letter to petitioner. Despite receipt thereof, petitioner failed to make good her obligation. Consequently, Uy lodged a criminal complaint against petitioner before the City Prosecutor of Batangas.

On April 13, 1989, an Information for estafa under Article 315, par. 1 (b) of the RPC was filed by Assistant City Prosecutor Amelia Perez-Panganiban against petitioner before the Regional Trial Court of Batangas City.

When arraigned, petitioner pleaded “Not Guilty.”

While admitting to have had several dealings with private complainant Uy, petitioner claimed that her last transaction with him was on December 22, 1988. She denied the truth of the Katibayan, alleging that there was a time, prior to January 10, 1989, when she got pieces of jewelry from Uy that she was required by him to sign in a blank piece of paper.

On June 23, 1992, the trial court rendered a Decision,[4] the decretal portion of which reads:

WHEREFORE, in view of the foregoing, the Court finds accused Belen Real guilty beyond reasonable doubt of the crime of Estafa, defined and penalized under the provisions of Article 315, par. 1 (b) of the Revised Penal Code, and she is hereby sentenced to suffer the penalty of imprisonment of TWENTY (20) YEARS of reclusion temporal, to indemnify Benjamin Uy in the amount of P371,500.00, to pay the costs, and to suffer all the accessories of the law.

SO ORDERED.[5]

The trial court ratiocinated:

From the evidence adduced during the trial of this case, it has been clearly established that all the elements of the crime of estafa with abuse of confidence are present in the commission of the offense and that the guilt of the accused has been proven beyond reasonable doubt.

Undoubtedly, accused had received the seven (7) pieces of jewelry from Benjamin Uy on January 10, 1989 at around 8:30 o'clock in the morning at Nueva Villa Subdivision, Alangilan, Batangas City in trust or on commission[,] with the obligation on her part to return the said pieces of jewelry if unsold, or to deliver the proceeds of the sale, if sold within ten (10) days from receipt. This agreement is clearly embodied in the receipt dated January 10, [1989] signed by the accused.

That there was misappropriation or conversion of such money or property by the accused is very evident in this case. The fact that the accused had failed to deliver the proceeds of the sale of said jewelry items nor had she returned the same jewelry items when demanded to do so by the private complainant shows that accused had misappropriated or converted to her personal use the amount of P371,500.00. In fact, she even required the private complainant to return to her house for several times so that she could remit the proceeds of the sale to him. However, accused did not comply with her obligation.

In a litany of cases, the Supreme Court held that the failure to account upon demand, for funds or property held in trust is a circumstantial evidence of misappropriation. In an agency for the sale of jewelry, it [is] the agent's duty to return the jewelry upon demand by the owner and the failure to do so is evidence of that conversion of the property by the agent.

It was also established that there was a demand made by the private complainant from the accused, verbal and written[,] as shown by the letter of demand which was received by the accused.

Notably in the instant case[,] accused enjoyed the full trust and confidence of Benjamin Uy when the latter entrusted the pieces of jewelry to the accused, it being a fact that the latter is a “kumadre” of Benjamin Uy, the

latter having been a sponsor in marriage of a daughter of the accused, aside from the fact that previous to January 10, 1989 there had been transaction between Benjamin Uy and accused involving a great amount of money.

Obviously, accused abused the trust and confidence reposed upon her by Benjamin Uy when she refused and failed to comply with her obligation. Her intention to defraud Benjamin Uy of P371,500.00 is[,] therefore, definitely clear.

The defense of the accused that she had not transacted with Benjamin Uy on January 10, 1989 and that her last transaction with the [latter] was on December 22, 1988 deserves not even a scant consideration in the face of the positive declaration made by Benjamin Uy and his witness and supported by the receipt, [Exhibit "A"], embodying their agreement.

On the allegation of the accused that she was required by Benjamin Uy to sign blank receipts [the same] is also unbelievable considering the fact that accused had reached third year in college and had been a sales agent of private complainant for quite a time before January 10, 1989.[6]

Petitioner elevated the case to the Court of Appeals, which, on August 3, 2000, affirmed the judgment of the trial court.[7] Petitioner's motion for reconsideration was also denied.[8]

Petitioner now raises the following points:

- That one element of estafa under Article 315, par. 1 (b) of the RPC does not exist, hence, acquittal from the crime charged is proper; and
- That the courts below erred in imposing a penalty that contravenes the imperative mandate of the Indeterminate Sentence Law.[9]

Petitioner argues that a reading of the trial court's decision reveals its total silence on the presence of damage or prejudice caused to private complainant Uy; ergo, she could not be held guilty of estafa under Art. 315, par. 1 (b) of the RPC. Moreover, petitioner advances that instead of imposing a straight penalty of twenty (20) years of reclusion temporal, the trial court should have imposed a penalty with minimum and maximum periods in accordance with the Indeterminate Sentence Law.

The petition is in part meritorious.

The elements of estafa under Art. 315, par. 1 (b) of the RPC[10] are as follows: (1) 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; (2) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; and (3) that such misappropriation or conversion or denial is to the prejudice of another.[11]

Although the trial court only mentioned in passing that damage was caused to private complainant Uy, it cannot be denied that there exists a factual basis for holding that petitioner's refusal to account for or return the pieces of jewelry had prejudiced the rights and interests of Uy. Certainly, disturbance of property rights is equivalent to damage and is in itself sufficient to constitute injury within the meaning of Art. 315, par. 1 (b) of the RPC.[12] In this case, Uy, who is a businessman, not only failed to recover his investment but also lost the opportunity to realize profits therefrom. Anxiety also set in as he ran the risk of being sued by the person who likewise entrusted him the same pieces of jewelry. To assert his legal recourse, Uy further incurred expenses in hiring a lawyer and in litigating the case.

While sustaining the conviction of petitioner of the crime charged, this Court rules, however, that the penalty

imposed by the trial court and affirmed by the Court of Appeals was improper.

Under the Indeterminate Sentence Law,[13] in imposing a prison sentence for an offense punished by the RPC or its amendments, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the RPC, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the RPC for the offense. The penalty next lower should be based on the penalty prescribed by the RPC for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.[14]

Specifically, the penalty provided in the RPC for estafa is as follows:

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.

The penalty prescribed by Art. 315 above-quoted is composed of two periods; hence, 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 included in the penalty imposed, forming one period for each of the three portions. Thus, the maximum, medium and minimum periods of the penalty prescribed for estafa under Art. 315, par. 1 (b) of the RPC are:

Minimum

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

Medium

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

Maximum

– 6 years, 8 months, and 21 days to 8 years[15]

In the present case, as the amount involved is P371,500, which obviously exceeds P22,000, the penalty imposable should be the maximum period of 6 years, 8 months and 21 days to 8 years of prision mayor. However, Art. 315 further states that a period of one year shall be added to the penalty for every additional P10,000 defrauded in excess of P22,000 but in no case shall the total penalty which may be imposed exceed 20 years. The amount swindled from Uy exceeds the amount of P22,000 which, when translated to the additional penalty of one year for every P10,000 defrauded, goes beyond 20 years (close to additional 35 years to be exact). Hence, under the law, the maximum penalty to be imposed to petitioner should be 20 years of reclusion temporal.

On the other hand, the minimum period of the indeterminate sentence should be within the range of the penalty

next lower to that prescribed by Art. 315, par. 1(b) of the RPC. In this case, the penalty next lower to prison correccional maximum to prison mayor minimum is prison correccional minimum (6 months and 1 day to 2 years and 4 months) to prison correccional medium (2 years, 4 months, and 1 day to 4 years and 2 months). Therefore, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months.[16]

Considering the attendant factual milieu as well as the position of the Office of the Solicitor General in the present case, this Court is convinced that the appropriate penalty to be imposed upon petitioner, which is in accordance with law to best serve the ends of justice, should range from four (4) years and two (2) months of prisión correccional, as minimum, to twenty (20) years of reclusión temporal, as maximum.

WHEREFORE, the August 3, 2000 Decision of the Court of Appeals in CA-G.R. CR No. 13885, which affirmed the June 23, 1992 Decision of the Regional Trial Court, Branch 2, Batangas City, is **AFFIRMED WITH MODIFICATION** as to the penalty imposed. Petitioner is hereby sentenced to suffer an indeterminate sentence of four (4) years and two (2) months of prisión correccional as minimum to twenty (20) years of reclusión temporal as maximum.

Associate Justice Jose L. Sabio, Jr. of the Court of Appeals is hereby required to explain why he concurred in the decision aforementioned applying the wrong penalty, the explanation to be submitted in thirty (30) days from receipt of a copy of this Decision, which copy is hereby directed to be furnished upon him forthwith upon finality of this Decision.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Leonardo-De Castro, JJ., concur.

[1] Penned by Associate Justice Demetrio G. Demetria, with Associate Justices Ramon Mabutas, Jr. and Jose L. Sabio, Jr., concurring.

[2] Penned by Judge Ireneo V. Mendoza.

[3] Records, p. 74.

[4] Records, pp. 203-209.

[5] Id. at 209.

[6] Records, pp. 207-208.

[7] CA rollo, pp. 90-96.

[8] Id. at 130.

[9] See Rollo, p. 13.

[10] Art. 315, par. 1 (b) of the RPC provides:

ART. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

xxx

- With unfaithfulness or abuse of confidence, namely:

xxx

(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;

xxx

[11] *Ceniza-Manantan v. People*, G.R. No. 156248, August 28, 2007, p. 10.

[12] *Batulanon v. People*, G.R. No. 139857, September 15, 2006, 502 SCRA 35, 57-58; *Ilagan v. Court of Appeals*, G.R. No. 110617, December 29, 1994, 239 SCRA 575, 587-588; and *Sy v. People*, G.R. No. 85785, April 24, 1989, 172 SCRA 685, 695.

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

[14] See *Perez v. People*, G.R. No. 150443, January 20, 2006, 479 SCRA 209, 222; *Sim, Jr. v. Court of Appeals*, G.R. No. 159280, May 18, 2004, 428 SCRA 459, 470; and *People v. Menil, Jr.*, 394 Phil. 433, 459-460 (2000).

[15] *Ceniza-Manantan v. People*, supra at 17; *Bonifacio v. People*, G.R. No. 153198, July 11, 2006, 494 SCRA 527, 533; and *Perez v. People*, id. at 223.

[16] *Ceniza-Manantan v. People*, id. at 18; *Bonifacio v. People*, id. at 534; *Perez v. People*, id. at 222; *Sim, Jr. v. Court of Appeals*, supra at 471; and *People v. Menil, Jr.*, supra at 460.

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