CRISANTA B. BONIFACIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 153198. July 11, 2006

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari[1] seeking to reverse the decision[2] and the resolution[3] of the Court of Appeals in CA-G.R. No. 24614 entitled People of the Philippines v. Crisanta B. Bonifacio.

Private complainant Ofelia Santos was a businesswoman and a buy-and-sell agent of jewelry. Sometime in March 1996, petitioner Crisanta Bonifacio was introduced to her. She expressed interest to see the pieces of jewelry Santos was selling.

On March 21, 1996, petitioner received several pieces of jewelry from Santos. She signed a document acknowledging receipt of the jewelry and agreeing to sell these items on commission basis. She also promised to remit the proceeds of the sale or return the unsold items to Santos within 15 days.

Petitioner failed to turn over the proceeds of the sale within the given period. She, however, returned some of the unsold items at a later date. The value of the pieces unaccounted for amounted to P154,000.

On March 28, 1996, petitioner asked Santos for new sets of jewelry to sell under the same terms and conditions. Again, on due date, petitioner failed to account. This time, the value of the unpaid and unreturned items amounted to P91,500.

On April 3, 1996, petitioner once more accepted several pieces of jewelry and signed an acknowledgment receipt under the same terms and conditions. On due date, petitioner again failed to pay. The pieces of jewelry left unpaid and unreturned amounted to P38,500.

In a letter dated July 25, 1996, Santos demanded from petitioner the payment of the total amount of P244,500. Petitioner gave her two checks amounting to P30,000 as partial payment. The checks, however, bounced for being drawn against insufficient funds and being drawn against a closed account, respectively.

Petitioner was thereafter charged with the crime of estafa under Article 315 (1)(b)[4] of the Revised Penal Code (RPC) in an Information filed before the Regional Trial Court (RTC), Branch 258, National Capital Judicial Region, Parañaque City:

> That on or about the 21st and 28th of March 1996, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from the complainant Ofelia Santos, sets of jewelries worth P244,000.00 for the purpose of selling the same with the express obligation to remit the proceeds thereof, if sold, and return if not sold, but the accused once in possession of said sets of jewelries, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate and convert the same for her own personal use and benefit and despite several demands to return and/or account for the same, she fails and refuses to the damage and

> prejudice of the complainant therein, in the aforesaid amount of P244,000.00.
>
> CONTRARY TO LAW.[5]

On arraignment, petitioner entered a plea of not guilty. Thereafter, trial on the merits ensued.

After trial, the court a quo rendered a decision, the dispositive portion of which read:

> WHEREFORE, finding accused CRISANTA B. BONIFACIO guilty beyond reasonable doubt of the crime of ESTAFA under Par. 1 (b), Art. 315 of the Revised Penal Code, accused CRISANTA B. BONIFACIO is hereby sentenced to suffer the penalty of twenty (20) years of RECLUSION TEMPORAL, with all the accessory penalties provided by law; to indemnify private complainant, Ofelia Santos, the amount of P284,000.00, as actual damages with interest at the legal rate from the filing of the Information until fully paid, and to pay the costs of suit.
>
> SO ORDERED.[6]

Dissatisfied, petitioner appealed to the Court of Appeals. The appellate court affirmed the RTC decision but modified the penalty:

> WHEREFORE, the appealed Decision finding the accused-appellant Crisanta B. Bonifacio guilty beyond reasonable doubt of the crime of Estafa under Article 315(1) par. b of the Revised Penal Code is hereby AFFIRMED with the modification that the accused-appellant is sentenced to suffer the penalty of four (4) years and one (1) day of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum and to indemnify the private complainant, Ofelia Santos, the amount of P244,000.00 as actual damages with interest at the legal rate from the filing of the Information until fully paid, and to pay the costs of suit.
>
> SO ORDERED.[7]

Petitioner's motion for reconsideration was denied.[8]

Hence, this petition.

Petitioner contends that the Court of Appeals erred in affirming the decision of the trial court finding her guilty of estafa under article 315 (1)(b), RPC. She maintains that the element[9] of misappropriation or conversion was not proved, thus her liability should only be civil in nature. Petitioner likewise contends that the indeterminate sentence (four years and one day of prision correccional as minimum to 20 years of reclusion temporal as maximum) imposed on her by the appellate court was excessive.

There is no merit in the petition.

The essence of estafa under Article 315 (1)(b), RPC 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.[10]

In an agency for the sale of jewelry, it is the agent's duty to return the jewelry on demand of the owner. The demand for the return of the thing delivered in trust and the failure of the accused-agent to account for it are circumstantial evidence of misappropriation.[11]

Here, petitioner admitted that she received the pieces of jewelry on commission. She likewise admitted that she failed to return the items or their value on Santos' demand. On the other hand, the testimony of her lone witness, Lilia Pascual, failed to rebut the prosecution's evidence that she misappropriated the items or their corresponding

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value. She also never appeared in the trial court to refute the charge against her. Hence, the trial and appellate courts' conclusion of guilt by misappropriation was a logical consequence of the established facts.

Besides, evidentiary matters or matters of fact raised in the court below are not proper in petitions for certiorari.[12] The findings of fact of the Court of Appeals, affirming those of the trial court, are conclusive and binding on the parties and are not reviewable by the Supreme Court[13] which is not a trier of facts.[14]

We now discuss the propriety of the indeterminate sentence imposed by the appellate court.

The penalty for estafa with abuse of confidence is provided in paragraph 1, Article 315, RPC:

> 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 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.
>
> x x x

Under the Indeterminate Sentence Law,[15] 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.[16]

In this case, the penalty of prision correccional in its maximum period to prision mayor in its minimum period is the imposable penalty if the amount of the fraud is over P12,000 but not over P22,000. If the amount of the fraud exceeds P22,000, the penalty provided shall be imposed in its maximum period, adding one year for each additional P10,000. The total penalty, however, shall not exceed 20 years.

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.[17] Article 65[18] of the same code requires the division of the time included in the prescribed penalty[19] into three equal periods of time, forming one period for each of the three portions. The maximum, medium and minimum 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[20]

The amount defrauded being in excess of P22,000, the penalty imposable should be the maximum period of six years, eight months, and 21 days to eight years of prision mayor. However, Art. 315 also provides that an additional one year shall be imposed for each additional P10,000. The penalty should be termed as prision mayor or reclusion temporal, as the case may be. Here, the total amount of the fraud is P244,000 (P244,000 – P22,000 = P222,000). Hence, an additional penalty of 22 years should be imposed. However, the total penalty should not in any case exceed 20 years imprisonment. Thus, the correct imposable maximum penalty is 20 years of reclusion temporal.

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 Article 315 (1)(b), RPC for the crime committed.[21] The penalty next lower to prision correccional maximum to prision mayor minimum is prision correccional minimum (six months, one day

to two years, four months) to prision correccional medium (two years, four months and one day to four years and two months).[22]

The Court of Appeals, therefore, computed correctly the minimum and maximum period of petitioner's sentence when it fixed the minimum sentence within the range of the penalty next lower in degree, four years and one day of prision correccional, and the maximum at 20 years of reclusion temporal.

WHEREFORE, the petition is hereby DENIED. The assailed decision and resolution of the Court of Appeals are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2]Dated February 21, 2002 and penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Candido V. Rivera and Juan Q. Enriquez, Jr. of the Seventh Division of the Court of Appeals; rollo, pp. 18-26.

[3] Dated April 25, 2002; id., p. 27.

[4] Art. 315 (1)(b), RPC: 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.

[5] Rollo, p. 19.

[6] Penned by Judge Raul E. De Leon; issued on June 19, 2000; id., pp. 28-34.

[7] See note 2; Petitioner's civil liability, in the form of actual damages, was fixed by the Court of Appeals at P244,000 since this was the amount charged in the information and proved during trial. The issue of the amount of civil liability was not raised in this petition for review.

[8] See note 3.

[9] The elements of estafa under Article 315, par. 1(b), RPC are: (1) the money, goods, or other personal property be 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) there be misappropriation or conversion of such money or property by the offender; or denial on his part of such receipt; (3) such misappropriation or conversion or denial is to the prejudice of another; and (4) there be demand for the return of the property made by the offended party to the offender. (Reyes, The Revised Penal Code, Book Two, 15th Edition (2001), p. 736)

[10] Serona v. Court of Appeals, 440 Phil. 508 (2002).

[11] Filadams Pharma, Inc. v. Court of Appeals, G.R. No. 132422, 30 March 2004, 426 SCRA 460.

[12] Republic v. Express Telecommunication Co., Inc., 424 Phil. 372 (2002).

[13] Philippine Lawin Bus Co. v. Court of Appeals, 425 Phil. 146 (2002).

[14] Montecillo v. Reynes, 434 Phil. 456 (2002).

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

[16] Section 1, id.; People v. Lapis, 439 Phil. 729 (2002).

[17] Estrada v. People, G.R. No. 162371, 25 August 2005.

[18] Rule in cases in which the penalty is not composed of three periods.

[19] Prision correccional maximum – 4 years, 2 months and 1 day to 6 years to prision mayor minimum – 6 years and 1 day to 8 years.

[20] People v. Billaber, G.R. Nos. 114967-68, 26 January 2004, 421 SCRA 27.

[21] Supra at 18.

[22] Id.

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