ERLINDA ASEJO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 157433. July 24, 2007

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

The present petition[1] seeks to reverse and set aside the November 27, 2002 Decision[2] and February 28, 2003 Resolution[3] of the Court of Appeals (CA), which affirmed with modification the February 27, 2001 Decision[4] of the Quezon City Regional Trial Court, Branch 104, convicting petitioner of estafa as defined in Article 315 1(b) of the Revised Penal Code.

The Facts

Petitioner and her husband, Eliseo Asejo, were charged with estafa on July 6, 1999 alleged to have been committed as follows:

> That on or about the 6th day of May 1998, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, with unfaithfulness or abuse of confidence, did then and there willfully, unlawfully, and feloniously defrauded Vilma F. Castro in the manner as follows: on the date and place aforementioned, said accused received the amount of P100,000.00, Philippine Currency, from complainant as they will deposit the said amount in a bank for two months to serve as "show money" to the concerned people that they are liquid in their business and return said amount on or before July 18, 1998, but said accused, once in possession of said amount, far from complying with their aforesaid obligation, misapplied, misappropriated and converted the same to their own personal use and benefit, and despite repeated demands made upon them by said complainant to return the amount of P100,000.00, they failed and refused and still fails (sic) and refuses (sic) to do so, to the damage and prejudice of said offended party in the amount aforementioned.
>
> CONTRARY TO LAW.[5]

During the arraignment on September 21, 1999, Erlinda Asejo pleaded not guilty. Eliseo Asejo, on the other hand, was still at large and had not yet been tried. At the trial, the prosecution presented private complainant, Vilma Castro, who testified that on April 30, 1998, the Asejo spouses went to her house to borrow PhP 100,000. The money was supposed to be shown to the bank (ï¿½show money") to make it appear that the Asejos were financially liquid. On May 6, 1998, petitioner went back to Castro's house where she received the amount and signed a Trust Undertaking[6] which reads:

> For and in consideration of the trust conveyed upon us, the undersigned hereby acknowledged the receipt of the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS, Philippine currency, from MRS. VILMA F. CASTRO said amount being extended and received by us not as loan or credit and without interest, nevertheless, we hereby undertake and commit to return the same amount to said MRS. VILMA F. CASTRO on or before July 18, 1998 without need of prior demand.

> In view of the foregoing, and as a token of gratitude for the trust and confidence reposed upon us, we, the undersigned, solidarily promise and warrant faithful compliance of the terms and conditions herein-above committed.[7]

When the obligation became due, Castro went to the spouses to demand payment but Castro failed to collect the money.[8]

A corroborating witness, Alberto Bato, testified that he saw the petitioner on May 6, 1998 in Castro's house. Petitioner and Castro were then discussing about money when Bato was called to sign as a witness to the Trust Undertaking.[9]

Petitioner admitted that she received PhP 100,000 but claimed that the amount was Castro's down payment for petitioner's lot. She testified that in April 1998, she offered her lot for sale to Castro because she needed money to pay a loan with the bank. They allegedly agreed to the price of PhP 250,000 with a down payment of PhP 100,000 and the balance payable upon the return of Castro's husband from abroad. Castro, however, decided to withdraw from the sale and demanded the return of the PhP 100,000. Petitioner was able to return only PhP 15,000 and six (6) pigs allegedly valued at PhP 17,498. In 1999, petitioner claims that she was called to the house of Castro's in-laws and was harassed to sign an antedated document entitled "Trust Undertaking" by Alberto Bato, a policeman.[10] She further alleged that since she could not return the PhP 100,000, she was compelled by Castro to push through with the sale at the lower amount of PhP 150,000.

The agreement, however, did not materialize due to the foreclosure of the property. Petitioner claims that Castro filed the complaint for estafa for petitioner's failure to return the full amount she received as down payment.[11]

On February 27, 2001, the trial court rendered the following judgment:

> WHEREFORE, the Court finds accused Erlinda Asejo guilty beyond reasonable doubt as principal of the crime of ESTAFA defined and penalized in Article 315, subdivision no. 1, paragraph b, of the Revised Penal Code, and sentences her to an indeterminate penalty of four years and two months of prision correccional as minimum to nine years and six months of prision mayor as maximum, as well as orders her to pay to complainant the amount of P100,000.00 representing the amount of the fraud.
>
> SO ORDERED.[12]

The Ruling of the Court of Appeals

On appeal, the CA affirmed the petitioner's conviction but modified the penalty:

> WHEREFORE, the decision appealed from is AFFIRMED with the modification that accused-appellant is sentenced to suffer an indeterminate penalty of four (4) years and two (2) months of prision correccional as MINIMUM, to thirteen (13) years and one (1) day of reclusion temporal as MAXIMUM.
>
> SO ORDERED.[13]

Hence, petitioner is asking this Court to reverse the judgment of conviction in view of the prosecution's alleged failure to present a formal demand letter as a requisite for a conviction of estafa. Petitioner further asserts that the transaction was actually a loan because the Trust Undertaking did not specifically enjoin her to return the very same thing that she received, but merely the same amount.[14]

The Issues

> WHETHER FORMAL DEMAND IS REQUIRED TO HOLD PETITIONER LIABLE FOR ESTAFA UNDER ART. 315 1(B)

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> WHETHER THE AMOUNT RECEIVED WAS PURSUANT TO A LOAN AND NOT A TRUST AGREEMENT

The Court's Ruling

The petition has no merit.

The appellate and trial courts found the version of the prosecution consistent with the evidence. According to the trial court:

> First, the money, which she received from complainant on May 6, 1998, could not have been given as down payment for the property, which was mortgaged with the bank and sold at public auction on May 8, 1998. Second, the trust undertaking could not have been signed in 1999 because it was already attached to the affidavit-complaint dated September 29, 1998 as Annex A and the memorandum for preliminary investigation (Exhibit B) shows that the affidavit-complaint was filed with the Office of the City Prosecutor on September 29, 1998. Third, it is contrary to human experience for one not to require a document or receipt for the down payment of P100,000.00 for the sale of a property. Fourth, the mortgaged obligation of the accused as of March 1998 was more than the price allegedly offered to complainant for the property to be sold.[15]

The foregoing findings clearly support private complainant's claim regarding the purpose of the money, that is, that petitioner received the money in trust to be used as proof of her financial liquidity. The Trust Undertaking, which was regularly executed, shows that the agreement was not a loan. This places the transaction within the purview of Art. 315, the relevant paragraphs of which read:

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

> 1st. The penalty of prisióon correccional in its maximum period to prison 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 reclusión temporal, as the case may be;
>
> x x x provided that in the x x x cases mentioned, the fraud be committed by any of the following means:
>
> - With unfaithfulness or abuse of confidence, namely:
>
> x x x x
>
> (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

The elements of estafa with abuse of confidence under Art. 315 1(b) are:

- That 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;

- That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;

- That such misappropriation or conversion or denial is to the prejudice of another; and

- That there is a demand made by the offended party to the offender.

All these elements are present in the case at bar. Petitioner admitted having received in trust the amount of PhP 100,000 from Castro; the amount was misappropriated or converted; such misappropriation or conversion was to the prejudice of Castro; and Castro demanded payment from petitioner.

Petitioner asserts that upon receipt of the amount, it was transferred to her and she was not prohibited to use or spend the same.[16] The very same money cannot be returned but only the same amount. This makes the transaction a loan and not a trust agreement; thus, her liability is merely civil and not criminal.

Petitioner's arguments are not meritorious. Art. 315 1(b) explicitly includes money in its scope. The nature of money, that is, the exact bills and coins received in trust cannot be returned, was already considered by the law. As long as the money was received in trust, on commission, for administration, or under an obligation to return, failure to account for it upon demand is punishable under Art. 315 1(b). The Solicitor General added:

> In a trust agreement, the transfer of the property to the trustee is mere physical possession and not juridical possession. Unlike in a contract of loan where the debtor acquires juridical possession and is technically the owner of the amount, in a trust, the obligation of the trustee is fiduciary in nature, i.e. to take care of the thing strictly for the benefit of the trustee in accordance with the purpose of the express trust.[17]

In the case at bar, the amount was received by the petitioner for the sole purpose of using it as "show money" to the bank. The money was entrusted to her for a particular purpose. Hence, she did not acquire the right to dispose or spend the amount as she sees fit; she had the obligation to account for said amount.

Furthermore, the Trust Undertaking expressly states that the amount was received by the petitioner not as a loan or credit. Under the parol evidence rule,[18] petitioner cannot vary the terms of the written agreement by claiming that the amount was received pursuant to a contract of sale of their lot.

With regard to the necessity of demand, we agree with the CA that demand under this kind of estafa need not be formal or written. The appellate court observed that the law is silent with regard to the form of demand in estafa under Art. 315 1(b), thus:

> When the law does not qualify, We should not qualify. Should a written demand be necessary, the law would have stated so. Otherwise, the word "demand" should be interpreted in its general meaning as to include both written and oral demand. Thus, the failure of the prosecution to present a written demand as evidence is not fatal.[19]

In Tubb v. People, where the complainant merely verbally inquired about the money entrusted to the accused, we held that the query was tantamount to a demand, thus:

> [T]he law does not require a demand as a condition precedent to the existence of the crime of embezzlement. It so happens only that failure to account, upon demand for funds or property held in trust, is circumstantial evidence of misappropriation. The same way, however, be established by other proof, such as that introduced in the case at bar.[20]

Similarly in this case, there was a demand for petitioner to pay private complainant. This was admitted by petitioner and the private complainant in their testimonies. Castro stated that she went to the house of petitioner in Pangasinan to demand the return of the money, while petitioner stated that Castro demanded the return of the "down payment" because allegedly, the sale did not materialize. In both versions, the fact remains that demand was made upon petitioner.

WHEREFORE, the November 27, 2002 Decision of the CA in CA-G.R. CR No. 25128 is AFFIRMED. Petitioner

Erlinda Asejo is found GUILTY of the crime of estafa under Article 315 1(b) of the Revised Penal Code. She is SENTENCED to suffer an indeterminate penalty of imprisonment from four (4) years and two (2) months of prisión correcciónal as MINIMUM to thirteen (13) years and one (1) day of reclusión temporal as MAXIMUM. She is ORDERED to pay complainant PhP 100,000 representing the amount of the fraud.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Tinga, JJ., concur.

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[1] Rollo, pp. 3-11.

[2] Id. at 12-18. The Decision was penned by Associate Justice Romeo A. Brawner and concurred in by Associate Justices Bienvenido L. Reyes and Danilo B. Pine.

[3] Id. at 31.

[4] Id. at 19-27.

[5] Id. at 13 & 19.

[6] Id. at 14 & 20.

[7] Id. at 14.

[8] Id.

[9] Id. at 22-23.

[10] Id. at 23-24.

[11] Id. at 15.

[12] Supra note 4, at 27.

[13] Supra note 2, at 17.

[14] Rollo, p. 98.

[15] Supra note 4, at 25.

[16] Rollo, pp. 97-98.

[17] Id. at 59.

[18] REVISED RULES ON EVIDENCE, Rule 130, Sec. 9.

[19] Rollo, p. 17.

[20] 101 Phil. 114, 119 (1957).

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