

ROBERT CRISANTO D. LEE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND ATOZ TRADING CORPORATION, RESPONDENTS.

G.R. NO. 157781. April 11, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review under Rule 45 of the Revised Rules of Court of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 19947 dismissing the appeal of petitioner Robert Crisanto D. Lee and the Resolution[2] denying his motion for reconsideration.

At the instance of Atoz Trading Corporation (ATC), 10 separate Informations were filed, on September 27, 1994, in the Regional Trial Court of Pasig City, Branch 159, against petitioner in his capacity as marketing manager of ATC. The cases were docketed as Criminal Case Nos. 107020 to 107029. Except for the dates and the amounts involved, the Informations contained common allegations for the crimes allegedly committed, as follows:

1. CRIM. CASE No. 107020:

That on or about the 10[th] day of January, 1992, in the Municipality of San Juan, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the Marketing Manager of Atoz Trading Corporation represented by Johnny M. Jaotegan was authorized to [receive] payments for the company; Thus received from Ocean Feed Mills Company's Client, the amount of P47,940.00 through telegraphic transfer, with the corresponding obligation to remit/account the same to Atoz Trading Corporation; but accused, far from complying with his obligation to remit the same despite notices and demands made upon him, with intent [to] gain, unfaithfulness and grave abuse of confidence and to defraud Atoz Trading Corporation represented by Johnny M. Jaotegan once in possession of the money received from Ocean Feed Mills, did then and there willfully, unlawfully, and feloniously misapplied, misappropriated and converted to his own personal use and benefit the amount of P47,940.00 to the damage and prejudice of the complainant in the aforementioned amount of P47,940.00.

CONTRARY TO LAW.[3]

Other than Criminal Case No. 107023 which was ordered dismissed on motion of the prosecution, joint trial on the merits of the remaining nine cases eventuated, following the arraignment of petitioner on February 20, 1995 during which he pleaded "Not Guilty."

The proceedings before the trial court and the evidence adduced by the parties were summarized by the CA as follows:

During the joint trial of the remaining cases, the prosecution presented the following witnesses: (1) Johnny Jaotegan, the President and Chief Operating Officer of Atoz Trading Corporation; (2) Jeffrey Corneby, the general teller of UCPB, Greenhills, San Juan; (3) Maria Concepcion dela Cruz, the corporate secretary of Ocean Feed Mills; and (4) Ellen Gusar, the accounting clerk-computer encoder of Atoz Trading Corporation. Their testimonies tend to establish the following factual backdrop:

Atoz Trading Corporation, hereinafter referred to as Atoz, is a stock corporation engaged in the trading of animal feeds, feeds supplements, raw materials and ingredients for feed mills, with herein [petitioner] Robert Crisanto Lee as the corporation's sales manager from early 90's to 1994. In the course of Lee's employment therewith, he was able to bring in Ocean Feed Mills, a Bacolod-based company engaged in the manufacture of pelletized feeds for prawn and fish, as one of Atoz's clients. Having "personally found" Ocean Feed Mills, [petitioner] handled said account.

Transactions between the two companies were then coursed through [petitioner], so that it was upon the latter's instructions that Ocean Feed Mills addressed its payments through telegraphic transfers to either "Atoz Trading and/or Robert Lee" or "Robert Lee" since [petitioner] explained that it was difficult for him to claim the check at UCPB Greenhills.

When [petitioner] ceased reporting for work in 1994, Atoz audited some of the accounts handled by him. It was then that Atoz discovered Ocean Feed Mills' unpaid account in the amount of P318,672.00. Atoz thus notified Ocean Feed Mills that [petitioner] was no longer connected with the corporation, and advised it to verify its accounts. Promptly preparing a certification and summary of payments, Ocean Feed Mills informed Atoz that they have already fully settled their accounts and even made overpayments.

Bank documents prepared and submitted by UCPB Greenhills, San Juan, later showed that [petitioner] maintained therewith Savings Account No. 117-105532-0, to which account the payments made by Ocean Feed Mills to Atoz through telegraphic transfers, have either been credited or deposited. Jeffrey Corneby, UCPB Greenhills' general teller, testified that upon receipt of telegraphic transfers coursed through UCPB, it is customary for said bank to either credit the amount to payee's account if payee has an account with the bank, or just issue a manager's check for the amount transmitted if the payee has no account.

Meanwhile, Ellen Gusar, whose duty was to prepare statement of accounts to be sent to Atoz's clients, attested that [petitioner] took the duly-prepared statement of accounts of Ocean Feed Mills and never returned the same, on the pretext that he had already sent them to the Ocean Feed Mills. She also confirmed that, as of September 30, 1992, the subsidiary ledger of Atoz showed that Ocean Feed Mills had an outstanding balance of P318,672.00.

After the prosecution rested its case, the [petitioner] filed a Demurrer to Evidence, therein alleging that the evidence thus far presented by the prosecution in each of the cases were insufficient inasmuch as "[I]t is bereft of any evidence of formal demand upon the accused to remit the amounts allegedly misappropriated, before the filing of the subject cases." In an Order dated January 23, 1996, the trial court denied the demurrer for lack of factual and legal basis (Records, p. 200).

In his defense, [petitioner] maintained that he had informed Lu Hsui Nan, the man whom he alleged to be the "real" president of Atoz, of the manner in which Ocean Feed Mills transmitted its payments and that Nan said "it is okay although unusual, as long as I [petitioner] maintain the customer and the relationships and as long as they pay us" (TSN, March 26, 1996, p. 14). He also asserted that as soon as the bank credited the remittances to his account, he would withdraw the same either in cash or in the form of manager's checks and remitted the same to Beth Ligo, Atoz's cashier. He insisted, however, that Beth Ligo, instead of issuing acknowledgment receipts of the aforesaid remittances, merely recorded the same and furnished copies thereof to the credit and collections and the accounting departments of Atoz.

On rebuttal, the prosecution recalled Johnny Jaotegan to the witness stand, and presented additional witnesses, namely: (1) Lu Hsui Nan, whom the prosecution presented as Atoz's vice president and director; and (2) Elizabeth Ligo, Atoz's cashier from 1985 to 1994.

Nan denied having knowledge that Ocean Feed Mills made payments through telegraphic transfers addressed to "Atoz Trading Corporation and/or Robert Lee" as payee, saying that he only learned of the same when [petitioner] ceased working for the corporation.

Ligo, on the other hand, testified that she did not receive any payment from Ocean Feed Mills, hence she did not issue provisional receipts for the same. She added that it was only on April 7, 1992 when she issued Provisional Receipt No. 502 for Ocean Feed Mills' payment of P25,500.00 collected by [petitioner].

Jaotegan claimed that on August 12, 1994, between 10 p.m. to 1 a.m., he went to Parañaque, accompanied by his counsel and some policemen, and tried to locate [petitioner], and that upon finding him, "we asked him [petitioner] to remit the payments made by Ocean Feed Mills to Atoz Trading Corporation." (TSN, 14 May 1996, p. 19).

On sur-rebuttal, [petitioner] declared that Jaotegan did not demand the payments made by Ocean Feed Mills [Company] but only demanded from him the return of the service car and the cellular phone assigned to him.[4]

On July 23, 1996, the trial court rendered judgment convicting the petitioner of the crimes charged. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the Court finds accused ROBERT CRISANTO LEE guilty beyond reasonable doubt of nine (9) counts of the crime of Estafa, defined and penalized under Art. 315, par. 1(b) of the Revised Penal Code and there being no mitigating nor aggravating circumstances present in the commission of the crime hereby sentences said accused to suffer the following:

1) In Crim. Case No. 107020 - An indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of prision correccional in its medium period as minimum to eight (8) years and one (1) day of prision mayor in its medium period as maximum and to pay Atoz Trading Corporation the amount of P47,940.00 as actual damages plus costs.

2) In Crim. Case No. 107021 - An indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of prision correccional in its medium period as minimum to eight (8) years and one (1) day of prision mayor in its medium period as maximum and to pay Atoz Trading Corporation the amount of P47,940.00 as actual damages plus costs.

3) In Crim. Case No. 107022 - An indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of prision correccional in its medium period as minimum to five (5) years and six (6) months of prision correccional in its maximum period as maximum and to pay Atoz Trading Corporation the amount of P17,000.00 as actual damages plus costs.

4) In Crim. Case No. 107024 - An indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of prision correccional in its medium period as minimum to eight (8) years and one (1) day of prision mayor in its medium period as maximum and to pay Atoz Trading Corporation the amount of P47,000.00 as actual damages plus costs.

5) In Crim. Case No. 107025 - An indeterminate penalty of three (3) years, six (6) months and twenty (20) days of prision correccional in its medium period as minimum to nine (9) years and one (1) day of prision mayor in its medium period as maximum and to pay Atoz Trading Corporation the amount of P54,000.00 as actual damages plus costs.

6) In Crim. Case No. 107026 - An indeterminate penalty of one (1) year and nine (9) months of prision correccional in its minimum period as minimum to six (6) years and one (1) day of prision mayor in its minimum period as maximum and to pay Atoz Trading Corporation the amount of P15,000.00 as actual damages plus costs.

7) In Crim. Case No. 107027 - An indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of prision correccional in its medium period as minimum to eight (8) years and one (1) day of prision mayor in its medium period as maximum and to pay complainant the amount of P23,256.00 as actual damages

plus costs.

8) In Crim. Case No. 107028 - An indeterminate penalty of three (3) years, six (6) months and twenty (20) days of prision correccional in its medium period as minimum to fifteen (15) years, eight (8) months and one (1) day of reclusion temporal in its medium period as maximum and to pay private complainant the amount of P93,000.00 as actual damages plus costs.

9) In Crim. Case No. 107029 - An indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of prision correccional in its medium period as minimum to eight (8) years and one (1) day of prision mayor in its medium period as maximum and to pay private complainant Atoz Trading Corporation the amount of P44,696.00 as actual damages plus costs.

SO ORDERED.[5]

The petitioner appealed the decision to the CA contending that:

A)

THE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF ESTAFA THRU CONVERSION OR MISAPPROPRIATION EVEN WITHOUT ANY EVIDENCE OF PRIOR DEMAND; AND

B)

THE LOWER COURT GRAVELY ERRED IN FINDING THAT THERE IS EVIDENCE OF CONVERSION OR MISAPPROPRIATION SINCE THERE IS LACK OF IT. (Appellant's Brief, p. 4; Rollo, pp. 32-40, 35).[6]

In a Decision on September 13, 2002, the CA dismissed the appeal and affirmed the assailed decision. The appellate court, likewise, dismissed the petitioner's motion for the reconsideration of its decision.

Aggrieved by the aforementioned rulings, the petitioner filed the instant petition for review and raised the following:

A)

WHETHER OR NOT PETITIONER CAN BE CONVICTED FOR THE CRIME OF ESTAFA THRU CONVERSION (ART. 315, PAR. 1-[b] OF THE REVISED PENAL CODE), LACKING THE ELEMENT OF FORMAL DEMAND BEFORE THE FILING OF THE CASES AGAINST HIM; AND

B)

WHETHER THE QUESTIONED DECISION AND RESOLUTION WERE ISSUED WITH GRAVE ABUSE OF DISCRETION OR NOT.[7]

The petitioner contends that demand is a condition sine qua non to the filing of a criminal complaint for estafa. He posits that demand must be made formally. The petitioner cites the commentary of Justice Ramon C. Aquino, based on the rulings of the CA in *People v. Pendon*[8] and *People v. Bastiana*.[9] The petitioner, likewise, echoes the commentary of Justice Aquino that even in *Tubb v. People*,[10] the Court ruled that there must be demand for funds or property held in trust. The petitioner asserts that the respondents failed to prove the element of demand on its evidence-in-chief and attempted to prove the same only on its rebuttal evidence. In any event, the petitioner asserts that the evidence adduced by the respondents to prove the petitioner's misappropriation is doubtful.

The respondents refute the contention of the petitioner, thus:

The fourth element of estafa under Article 315, par. 1(b) of the Revised Penal Code, i.e., that demand was made by the offended party, was adequately and clearly proven by the prosecution. It must be stressed that prior to the filing of the subject criminal cases against petitioner, private complainant's president, Johnny Jaotegan, had demanded from petitioner to turn over to him the subject sums of money. Thus, in the evening of August 12, 1994, Johnny Jaotegan, along with his counsel Atty. Fernando Flor and some Parañaque policemen, went to petitioner's house in Parañaque and there he asked petitioner to remit said sums of money and to return the company car and a cellular phone (TSN, May 14, 1996, pp. 16-19). It also appears that earlier, private complainant's officers had encountered difficulty in locating petitioner after his continued failure to report for work in August 1994, prompting said officers to seek the assistance of the Parañaque police for that purpose (Ibid., p. 17). Evidently, as petitioner admitted, there was a demand made on him to account for the money he had collected from private complainant's customer.

Contrary to petitioner's proposition, prior demand need not be made formally (See *People vs. Valeriano*, CA, 61 O.G. 282, 284 [1965], citing *Tubb vs. People*, 101 Phil. 114 [1957]). This Honorable Court has suggested in the *Tubb* case that previous demand may be made in whatever form. There, the complainant, after having failed to locate the whereabouts of the accused to whom he had entrusted P6,000.00 for the purchase of rattan and who neither delivered the rattan nor returned the money, met the accused by chance at the Manila Hotel one year later and asked him about the money. Charged with estafa, the accused claimed that no demand had been made upon him. The Honorable Court declared:

"It is urged that there can be no estafa without a previous demand, which allegedly has not been made upon herein petitioner, but the aforementioned query made to him by Quasha, in the Manila Hotel, was tantamount to a demand. Besides, the 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 [may], however, be established in the case at bar."

(*Tubb vs. People*, supra, at 119)

Indeed, in *Barrameda vs. Court of Appeals*, 313 SCRA 477, 485 [1999], this Honorable Court, citing *Tubb vs. People*, supra, held that the specific word "demand" need not be used to show that demand had, indeed, been made upon the person charged with the offense. A query as to the whereabouts of the money is tantamount to a demand.

Notably, in his cited book, former Chief Justice Aquino does not, in anyway, purport to subscribe to the view that a demand must be made formally. What he merely says is that while this Honorable Court ruled in *Tubb* that, under the law, a demand is not a condition precedent to the existence of the crime of embezzlement and that the failure to account, upon demand, for funds or property held in trust is circumstantial evidence of misappropriation, the same ruling states that there must still be some demand, regardless of its form. In the same manner, while he cited in his book the Court of Appeals' ruling in *People vs. Pendon* (supra) and *People vs. Bastiana* (supra) that such demand must be made formally and before the action is filed and that in the absence of demand, an accused cannot be convicted of estafa, it is apparent therefrom that Justice Aquino made use of the citation only to set forth the diverging opinions of the Court of Appeals on the matter, namely, (1) one view holding that the demand must be made formally (*People vs. Pendon*, supra); (2) another one holding that such demand is not required if there is a specified time for delivery (*People vs. Librea*, CA, 48 O.G. 5304); and (3) still another one holding that a report to the police was considered a demand (*People vs. Baquir*, CA-G.R. No. 5349-R, January 26, 1951).[11]

We agree with the respondents.

Article 315, paragraph 1(b) of the Revised Penal Code reads:

ART. 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned herein

below shall be punished by:

...

1. With unfaithfulness or abuse of confidence, namely:

...

(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 are as follows: a) 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; b) that there be misappropriation or conversion of such money or property by the offender; or denial on his part of such receipt; c) that such misappropriation or conversion or denial is to the prejudice of another.[12]

The words "convert" and "misappropriate" as used in the aforequoted law 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" a thing of value for one's own use or benefit, not only the conversion to one's personal advantage but also every attempt to dispose of the property of another without a right.[13] Misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence.

Demand is not an element of the felony or a condition precedent to the filing of a criminal complaint for estafa. Indeed, the accused may be convicted of the felony under Article 315, paragraph 1(b) of the Revised Penal Code if the prosecution proved misappropriation or conversion by the accused of the money or property subject of the Information.[14] In a prosecution for estafa, demand is not necessary where there is evidence of misappropriation or conversion.[15] However, failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation.[16]

Demand need not be formal. It may be verbal. In *Barrameda v. Court of Appeals*,[17] the Court ruled that even a query as to the whereabouts of the money is tantamount to a demand:

It must be noted that the specific word "demand" need not be used to show that demand had, indeed, been made upon the person charged of the offense. A query as to the whereabouts of the money, such as the one proven in the case at bench, is tantamount to a demand.[18]

In the present case, the prosecution adduced proof upon cross-examination of the petitioner that he failed to return the funds held in trust before the complaint for estafa was filed against him:

Anent the second element of Estafa under Article 315, par. 1(b), there was a strong and positive evidence that in all the criminal cases filed before this Court, the accused had, indeed, converted the proceeds of the telegraphic transfers (remitted by Ocean Feed Mills [Company] in favor of Atoz Trading Corporation) to his own benefit. A perusal of the Transcript of Stenographic Notes dated March 26, 1996, page 30, reads:

Cross-Examination of Robert
Lee conducted by
Atty. Flor:

Q -

According to you, Mr. Witness, the Ocean Feed Mills whenever they remit their payment, they do it through

telegraphic transfer?

A -

Yes, Sir.

Q -

And according to you, the telegraphic transfer is paid to or the payee is Atoz Trading and/or Robert Crisanto Lee?

A -

Just Robert Lee only.

Q -

That Robert Lee refers to you?

A -

Yes, Sir.

In the foregoing cross-examination, accused admitted that he received the telegraphic transfers sent by Ocean Feed Mills. In the same Transcript of Stenographic Notes, pp. 34-36, accused tried to defend himself by alleging that the proceeds of the remitted amount were given to Ms. Beth Ligo, cashier of Atoz Trading Corporation.

Cross-Examination

conducted by

Atty. Flor:

Q -

This Beth Ligo, Mr. Witness, according to you, she is the cashier of what company?

A -

Both of Atoz and Chiu-Nichi Agro Resources.

Q -

According to you a while ago, whenever the Ocean Feed Mills remit their payment, it goes to your account at UCPB and then you withdraw that money from UCPB, Greenhills, sometimes in cash and sometimes in the form of manager's check payable to Atoz Trading. A while ago, Mr. Witness, you testified that you withdraw the cash from your bank account, is it not?

A -

Since it was credited in my account, I have to withdraw it from my account.

Q -

You withdraw the payments remitted from Bacolod to Greenhills UCPB, from your bank account?

A -

Because it was credited.

Q -

My question is, did you withdraw the remittances from your bank account?

A -

Yes, Sir.

Q -

After you withdraw that money from your bank account, you immediately go and see Miss Beth Ligo and surrender that cash to her, is that what you want to tell us?

A -

What do you mean by immediate.

Q -

According to you, a while ago, Mr. Witness, UCPB Greenhills is just in front of your office at Greenhills, is it not?

A -

Correct, Sir.

Q -

When you learned that there is a remittance from Bacolod from their payment of Atoz product, you go to your bank and withdraw that remittance in cash and immediately with this cash, you just cross the street and surrender it to the cashier Ms. Beth Ligo, is it not correct?

A -

If what you mean upon crediting of payment from Ocean Feed Mills to my account and I withdraw it immediately, sometimes it was credited and before I know about it a day or two after. That is the situation.

Q -

Yes, my question is when you learned that telegraphic transfer was made by Ocean Feed Mills to Atoz Trading and/or Robert Lee and incidentally it ended up in your account, what you normally do is you go and withdraw that amount in cash and considering that your office is just across the street, with the cash you go and see the cashier Miss Beth Ligo and right there and then give her the cash?

A -

Yes, because all remittances are handed to the cashier.

From the foregoing testimony of the accused, it is clear that Mr. Robert Crisanto Lee had, indeed, misappropriated or converted to his personal use the payments of Ocean Feed Mills which were remitted thru telegraphic transfers in nine (9) instances since the account of Ocean with Atoz remains outstanding up to the present (Exh. "I," "I-1" and "J") as corroborated by Ms. Beth Ligo (cashier of Atoz) where she stated on rebuttal that the accused did not remit these payments of Ocean. It is evident that the accused assumed the right to dispose of the remittances as if it were his own, thus, committing conversion with unfaithfulness and a clear breach of trust.

It is quite obvious that the misappropriation or conversion committed by the accused resulted to the prejudice of both Atoz Trading Corporation and Ocean Feed Mills particularly the latter, which had a belief all along that its payments were credited to its outstanding balance. Since records reveal that up to this even date, Ocean has an outstanding balance of P318,672.00, sufficient to constitute injury within the meaning of Article 315 a(b) of

the Revised Penal Code. Thus, the third element of this kind of Estafa is satisfied.[19]

The respondents, likewise, adduced evidence on rebuttal testimony of Johnny M. Jaotegan, the president of ATC, that he, in the company of policemen, demanded the production of the funds from the petitioner but that the latter failed to account for and return the same.[20]

The bare fact that the respondents adduced proof of demand only when they presented Johnny M. Jaotegan as rebuttal witness and not as a witness on their evidence-in-chief does not enfeeble the case of the respondents. It bears stressing that in resolving a case, the trial court must consider all the evidence adduced by the parties on their evidence-in-chief, rebuttal evidence and sur-rebuttal evidence. Moreover, the petitioner testified on sur-rebuttal evidence and denied the testimony of Jaotegan on rebuttal, hence, cannot feign prejudice.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Cancio C. Garcia (now an Associate Justice of the Supreme Court), with Associate Justices Bernardo P. Abesamis (retired) and Rebecca De Guia-Salvador, concurring.

[2] Rollo, p. 59.

[3] Id. at 72.

[4] Id. at 45-48.

[5] Id. at 69-71.

[6] Id. at 50.

[7] Id. at 35-36.

[8] 53 O.G. 174.

[9] 54 O.G. 4300.

[10] 101 Phil. 114 (1957).

[11] Rollo, pp. 140-143.

[12] Salazar v. People, 439 Phil. 762 (2002).

[13] Ibid., Sy v. People, G.R. No. 85785, 24 April 1989, 172 SCRA 685.

[14] Salazar v. People, supra, citing United States v. Ramirez, 9 Phil. 67 (1907).

[15] Sy v. People, supra.

[16] People v. Sullano, G.R. No. L-18209, 30 June 1966, 17 SCRA 488.

[17] 372 Phil. 352 (1999).

[18] Id. at 362.

[19] Rollo, pp. 67-69.

[20] TSN, 4 May 1996, pp. 16-19.

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