

WILMA TABANIAG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 165411. June 18, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

For review before this Court is the February 27, 2004 Decision[1] and September 22, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 24906, which affirmed the October 16, 2000 Decision[3] of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 268, Pasig City, finding Wilma Tabaniag (petitioner) guilty of the Crime of Estafa as defined and penalized under Article 315 of the Revised Penal Code, with modification as to the penalty.

The Information[4] dated September 15, 1994, in Criminal Case No. 106995, reads as follows:

That on or about and during the month of January 1992, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding each other, received in trust from one Dennis Espiritu assorted jewelries (sic) amounting to P509,940.00 under the express obligation on the part of the accused to sell the same and thereafter to remit the proceeds of the sale and/or return said jewelries (sic) if not sold to said complainant, but the accused once in possession of said jewelries (sic), far from complying with their aforesaid obligation, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misapply, misappropriate, and convert to their own personal use and benefit and despite demands to pay the proceeds of the sale and/or to return the said jewelries (sic) in the amount of P509,940.00, they failed and refused, to the damage and prejudice of the complainant in the aforementioned amount of P509,940.00.

CONTRARY TO LAW.[5]

When arraigned, petitioner pleaded "not guilty." Co-accused Melandia Olandia (Olandia) was dropped from the Information upon the request[6] of complainant Dennis Espiritu (Dennis).[7] Thereafter, trial ensued.

The prosecution presented two witnesses, namely: Dennis and his wife Ma. Victoria (Victoria) [complainants].

On March 5, 1997, the prosecution filed a Motion[8] for the admittance of an Amended Information. The defense filed their Opposition[9] to the said motion.

On August 27, 1997, the RTC issued an Order[10] granting the motion of the prosecution. The RTC ruled that the amendments to the Information sought by the prosecution were merely amendments in form and thus allowable under the rules.

The Amended Information[11] reads as follows:

On or about and during the month of February 1992, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating

together, and mutually helping and aiding each other, received in trust from one Victoria Espiritu assorted jewelries (sic) amounting to P155,252.50 under the express obligation on the part of the accused to sell the same and thereafter to remit the proceeds of the sale and/or return said jewelries (sic) if not sold to said complainant, but the accused once in possession of said jewelries (sic), far from complying with their aforesaid obligation, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misapply, misappropriate, and convert to their own personal use and benefit and despite demands to pay the proceeds of the sale and/or to return the said jewelries (sic) in the amount of P155,252.50, they failed and refused, to the damage and prejudice of the complainant in the aforementioned amount of P155,252.50.

CONTRARY TO LAW.[12]

The defense presented two witnesses, namely: petitioner Tabaniag and Juan Tapang III (Tapang).

On October 16, 2000, the RTC found petitioner guilty of the crime of Estafa, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused WILMA TABANIAG guilty beyond reasonable doubt of the crime of Estafa as defined and penalized under Article 315 of the Revised Penal Code and hereby sentences her to suffer the penalty of imprisonment from ten (10) years and one (1) day of Prison Mayor in its maximum period to fourteen (14) years and eight (8) months of Reclusion Temporal in its minimum period and to indemnify the offended party in the amount of Sixty-Two Thousand Nine Hundred (P62,900.00). With costs.

SO ORDERED.[13]

The facts of the case as gleaned from the records are as follows:

Complainants, both doctors by profession, are engaged in part-time jewelry business.[14] Petitioner, on the other hand, is an agent who sells the pieces of jewelry of complainants on commission basis. On February 7, 1992, petitioner received from Victoria several pieces of jewelry amounting to Php106,000.00 as evidenced by a trust receipt[15] signed by petitioner. Later on February 16, 1992, petitioner again received several pieces of jewelry amounting to Php64,515.00 as evidenced by another trust receipt[16] signed by petitioner.

After weeks passed, Victoria alleged that she made several verbal demands[17] to petitioner to return the pieces of jewelry. Likewise, complainants filed a complaint[18] at Barangay Kapitolyo, Pasig City, against Tabaniag, Jane Bisquera (Bisquera) and Olandia for estafa and violations of Batas Pambansa Bilang 22 (BP 22).

Petitioner, in her defense, alleged that she entrusted the pieces of jewelry to Bisquera who issued Security Bank Checks[19] as payment. Petitioner claimed that Victoria knew that she was planning to sell the pieces of jewelry to Bisquera.[20] Moreover, petitioner contends that she and Olandia delivered the said Security Bank checks to Victoria, who then deposited the same to her account. The checks issued by Bisquera bounced as the accounts were closed and thus Victoria asked petitioner to do something about it. Petitioner claimed that she filed cases for estafa and violation of BP 22 against Bisquera. Likewise, petitioner asked the court for the issuance of an alias warrant of arrest and a hold departure order against Bisquera.[21]

On cross-examination, however, petitioner admitted that the cases she filed against Bisquera did not involve the same checks which are the subject matter of the case at bar.[22]

On February 27, 2004, the CA affirmed with modification the RTC decision, the dispositive portion of which reads as follows:

WHEREFORE, the Decision finding accused-appellant Wilma Tabaniag guilty beyond reasonable doubt of the

crime of estafa is AFFIRMED with the indeterminate penalty modified to four (4) years and two (2) months of prision correccional, as minimum, to twelve (12) years of prision mayor, as the maximum, and with the award of indemnity in the amount of Php62,900.00, deleted.

SO ORDERED.[23]

The pertinent portions of the CA decision are hereunder reproduced, to wit:

Tabaniag entered into an agreement with Victoria Espiritu for the sale of jewelry. She obligated herself, among others, to deliver and account for the proceeds of all jewelry sold and to return all other items she could not sell. The jewelry could not be sold on installment. She abused the confidence reposed upon her by misrepresenting herself to have sold the jewelry to a certain Bisquera and failing to remit the profit after demand to do so by Espiritu. Due to her failure to forward the returns from the sale of the jewelry, Espiritu suffered loss of income and profit.

The receipts issued to and signed by Tabaniag corroborate the prosecution's testimonial proof that she personally received the jewelry. Tabaniag's uncorroborated claim that Victoria Espiritu directly transferred the jewelry to a certain Jane Bisquera cannot stand along against this factual finding. The checks issued by Bisquera do not conclusively prove a direct transaction between her and Espiritu. x x x[24]

On March 26, 2004, petitioner filed a Motion for Reconsideration[25] assailing the CA decision.

On August 2, 2004, Dennis filed a Motion to Dismiss,[26] attaching thereto an Affidavit of Desistance,[27] to the effect that he was withdrawing the criminal complaint because he and petitioner had already reached an amicable settlement, the latter obligating herself to pay the civil aspect of the case.

On September 22, 2004, the CA issued a Resolution[28] denying petitioner's Motion for Reconsideration, as well as the Motion to Dismiss filed by Dennis.

Hence, herein appeal with the following assignment of errors:

First Assignment of Error

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN CONCLUDING THAT THERE WAS ABUSE OF CONFIDENCE ON THE PART OF ACCUSED/PETITIONER TABANIAG IN ENTRUSTING THE SUBJECT JEWELRIES (SIC) TO BISQUERA FOR SALE ON COMMISSION TO PROSPECTIVE BUYERS.

Second Assignment of Error

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RULING ON THE VALIDITY OF THE AMENDMENT OF INFORMATION DESPITE ITS VIOLATION OF SUBSTANTIAL RIGHT OF ACCUSED TABANIAG.

Third Assignment of Error

THE HONORABLE COURT OF APPEALS SERIOUSLY ABUSED ITS DISCRETION IN RULING THAT THE LETTER COMPLAINT SENT TO THE BGY. CAPTAIN OF BGY. KAPITOLYO WHICH WAS NEVER RECEIVED BY ACCUSED A DEMAND IN CONTEMPLATION OF SECTION 1(b) OF ARTICLE 315 OF THE REVISED PENAL CODE.

Fourth Assignment of Error

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT THE MOTION TO DISMISS/AFFIDAVIT OF DESISTANCE OF ESPIRITU WILL NOT EXONERATE ACCUSED TABANIAG DESPITE IT BEING THE SAME PERSON WHO EXECUTED THE SAME

AFFIDAVIT TO DISMISS CASE VERSUS ACCUSED MELANIA OLANDIA.

Fifth Assignment of Error

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT FAILED TO RENDER A JUDGMENT OF ACQUITTAL OF THE ACCUSED ON GROUND OF REASONABLE DOUBT.[29]

The petition is impressed with merit.

The elements of estafa under Article 315, par. 1 (b) of the Revised Penal Code are the following: (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; and (d) there is demand by the offended party to the offender.[30]

Anent the first error raised by petitioner, this Court finds that, given the facts of the case and the evidence on record, the evidence is wanting to prove that petitioner had misappropriated or converted the pieces of jewelry entrusted to her by Victoria.

In his Complaint-Affidavit,[31] Dennis alleged that petitioner gave the pieces of jewelry to her sub-agent Bisquera for the latter to sell the same. Furthermore, Dennis alleged that the checks issued as payment were dishonored, the reason being that the accounts were closed.

Petitioner does not deny entrusting the pieces of jewelry to Bisquera. The records of the case reveal that petitioner had in fact entrusted the pieces of jewelry to Bisquera as evidenced by two receipts[32] dated February 16, 1992. The same is bolstered by the testimony of Tapang, who testified that he witnessed petitioner give the pieces of jewelry to Bisquera.[33] Thus, since the pieces of jewelry were transferred to Bisquera, petitioner argues that she could not be guilty of misappropriation or conversion as contemplated by Article 315, par. 1(b) of the Revised Penal Code.

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 right.[34]

The factual milieu of the case at bar is similar to *Serona v. Court of Appeals*[35](*Serona*) where pieces of jewelry were also transferred to a sub-agent. The Solicitor General, however, contends that the doctrine laid down in *Serona* is inapplicable as the agreement between complainants and petitioner provide a clear prohibition against sub-agency.[36]

The conditions set forth in the two trust receipts signed by petitioner read:

x x x in good condition, to be sold in CASH ONLY within _____, days from date of signing this receipt. If I could not sell, I shall return all the jewelry within the period mentioned above. If I would be able to sell, I shall immediately deliver and account the whole proceeds of the sale thereof to the owner of the jewelries (sic) at his/her residence: my compensation or commission shall be the over-price on the value of each jewelry quoted above. I am prohibited to sell any jewelry on credits or by installment, deposit, give for safekeeping, lend pledge or give as security or guarantee under any circumstances or manner, any jewelry to other person or persons, and that I received the above jewelry in the capacity of agent.[37]

Contrary to the claim of the Solicitor General, the aforementioned conditions do not, in any way, categorically state that petitioner cannot employ a sub-agent. A plain reading of the conditions clearly shows that the restrictions only pertain to the manner in which petitioner may dispose of the property: (1) to sell the jewelry on credit; (2) to sell the jewelry by installment; (3) to give the jewelry for safekeeping; (4) to lend the jewelry; (5) to pledge the jewelry; (6) to give the jewelry as security; and (7) to give the jewelry as guarantee. To this Court's mind, to maintain the position that the said conditions also prohibit the employment of a sub-agent would be stretching the plain meaning of the words too thinly.

Petitioner is thus correct in citing *Serona*, which is instructive and may be applied by analogy, to wit:

Petitioner did not ipso facto commit the crime of estafa through conversion or misappropriation by delivering the jewelry to a sub-agent for sale on commission basis. x x x

It must be pointed out that the law on agency in our jurisdiction allows the appointment by an agent of a substitute or sub-agent in the absence of an express agreement to the contrary between the agent and the principal. In the case at bar, the appointment of Labrador as petitioner's sub-agent was not expressly prohibited by Quilatan, as the acknowledgment receipt, Exhibit B, does not contain any such limitation. Neither does it appear that petitioner was verbally forbidden by Quilatan from passing on the jewelry to another person before the acknowledgment receipt was executed or at any other time. Thus, it cannot be said that petitioner's act of entrusting the jewelry to Labrador is characterized by abuse of confidence because such an act was not proscribed and is, in fact, legally sanctioned.

x x x x

In the case at bar, it was established that the inability of petitioner as agent to comply with her duty to return either the pieces of jewelry or the proceeds of its sale to her principal Quilatan was due, in turn, to the failure of Labrador to abide by her agreement with petitioner. Notably, Labrador testified that she obligated herself to sell the jewelry in behalf of petitioner also on commission basis or to return the same if not sold. In other words, the pieces of jewelry were given by petitioner to Labrador to achieve the very same end for which they were delivered to her in the first place. Consequently, there is no conversion since the pieces of jewelry were not devoted to a purpose or use different from that agreed upon.

Similarly, it cannot be said that petitioner misappropriated the jewelry or delivered them to Labrador "without right." Aside from the fact that no condition or limitation was imposed on the mode or manner by which petitioner was to effect the sale, it is also consistent with usual practice for the seller to necessarily part with the valuables in order to find a buyer and allow inspection of the items for sale.

In *People v. Nepomuceno*, the accused-appellant was acquitted of estafa on facts similar to the instant case. Accused-appellant therein undertook to sell two diamond rings in behalf of the complainant on commission basis, with the obligation to return the same in a few days if not sold. However, by reason of the fact that the rings were delivered also for sale on commission to sub-agents who failed to account for the rings or the proceeds of its sale, accused-appellant likewise failed to make good his obligation to the complainant thereby giving rise to the charge of estafa. In absolving the accused-appellant of the crime charged, we held:

Where, as in the present case, the agents to whom personal property was entrusted for sale, conclusively proves the inability to return the same is solely due to malfeasance of a sub-agent to whom the first agent had actually entrusted the property in good faith, and for the same purpose for which it was received; there being no prohibition to do so and the chattel being delivered to the sub-agent before the owner demands its return or before such return becomes due, we hold that the first agent cannot be held guilty of estafa by either misappropriation or conversion. The abuse of confidence that is characteristic of this offense is missing under the circumstances.

Furthermore, in *Lim v. Court of Appeals*, the Court, citing *Nepomuceno* and the case of *People v. Trinidad*, held

that:

In cases of estafa, the profit or gain must be obtained by the accused personally, through his own acts, and his mere negligence in permitting another to take advantage or benefit from the entrusted chattel cannot constitute estafa under Article 315, paragraph 1-b, of the Revised Penal Code; unless of course the evidence should disclose that the agent acted in conspiracy or connivance with the one who carried out the actual misappropriation, then the accused would be answerable for the acts of his co-conspirators. If there is no such evidence, direct or circumstantial, and if the proof is clear that the accused herself was the innocent victim of her sub-agent's faithlessness, her acquittal is in order.[38]

Petitioner thus cannot be criminally held liable for estafa. Although it cannot be denied that she received the pieces of jewelry from complainants, evidence is wanting in proving that she misappropriated or converted the amount of the pieces of jewelry for her own personal use. Likewise, the prosecution failed to present evidence to show that petitioner had conspired or connived with Bisquera. The mere fact that petitioner failed to return the pieces of jewelry upon demand is not proof of conspiracy, nor is it proof of misappropriation or conversion.

In addition, this Court takes notice of the findings of fact by the RTC in the separate civil action instituted by complainants, the same docketed as Civil Case No. 63131, dealing with the civil aspect of the case at bar:

x x x x

Jane Bisquera cannot interpose the defense that she is not privy to the transaction. Her admission that she has indeed received the pieces of jewelry which is the subject matter of the controversy and her offer to extinguish the obligation by payment or dacion en pago is contradictory to her defense. Therefore, she is estopped from interposing such a defense.

Furthermore, earlier in her transaction with Wilma Tabaniag, the principals, Sps. Espiritu, were not alien to her but were in fact disclosed to her, hence, she has knowledge that the spouses are the principals of Tabaniag.

Bisquera, being a sub-agent to Tabaniag, is in fact privy to the agreement. x x x[39]

Based on the foregoing, it is clear that petitioner had in fact transferred the pieces of jewelry to Bisquera. Thus, contrary to the finding of the CA, petitioner could not have converted the same for her own benefit, especially since the pieces of jewelry were not with her, and there was no evidence of conspiracy or connivance between petitioner and Bisquera.

Moreover, even Victoria cannot deny knowing that petitioner had given the pieces of jewelry to Bisquera, as Victoria herself was the one who deposited the checks issued by Bisquera to her account, to wit:

Q.

Now, madam witness, there is a (sic) mentioned here an amount of P300,000.00 regarding the violation of bouncing check, am I correct?

A.

Yes, sir.

Q.

And according to you, these were payments made by Wilma Tabaniag, am I correct?

A.

Yes, sir.

Q.

Who is the drawer of these checks with a P300,000.00 that you mentioned in this particular document, not less than P300,000.00?

A.

The total check P300,000.00 was under my name.

Q.

No, I mean, who is the drawer?

A.

Mrs. Tabaniag issued and the other pieces of jewelry were issued by a certain Jane Bisquera.

Q.

No, not jewelries, checks.

A.

I'm sorry, checks.

Q.

How much was issued by Jane Bisquera?

A.

The total is P320,872.00

Q.

That was by Jane Bisquera alone?

A.

Yes, sir.[40]

Lastly, although petitioner may have admitted that the cases she filed against Bisquera do not involve the same checks, which are the subject matter of the case at bar, the same does not necessarily manifest a criminal intent on her part. On the contrary, what it shows is that petitioner too may be an unwilling victim of this day-to-day malady of bouncing checks, common in our business field. Certainly, petitioner may have been negligent in entrusting the pieces of jewelry to Bisquera, but in no way can such constitute estafa as defined in the RPC.

As a final note, a reading of the records and transcript of the case seemingly shows an unintentional reference by the parties in describing the transaction as one of sale.[41] The foregoing notwithstanding, if this Court were to consider the transaction as one of sale and not one of sub-agency, the same conclusion would nevertheless be reached, as the critical elements of misappropriation or conversion, as previously discussed, are absent in the case at bar.

It is the primordial duty of the prosecution to present its side with clarity and persuasion so that conviction becomes the only logical and inevitable conclusion.[42] What is required of it is to justify the conviction of the accused with moral certainty.[43] In the case at bar, the prosecution has failed to discharge its burden. Based on the foregoing, it would then be unnecessary to discuss the other assigned errors.

Notwithstanding the above, however, petitioner is not entirely free from any liability towards complainants. The rule is that an accused acquitted of estafa may nevertheless be held civilly liable where the facts established by the evidence so warrant.^[44] However, since there is a separate civil action instituted by complainants, this Court deems it proper for the civil aspect of the case at bar to be resolved therein.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CR No. 24906, dated February 27, 2004, and its Resolution dated September 22, 2004 are REVERSED and SET ASIDE. Petitioner Wilma Tabaniag is ACQUITTED of the crime charged, without prejudice, however, to the recovery of civil liability in Civil Case No. 63131, before the Regional Trial Court, National Capital Judicial Region, Branch 268, Pasig City.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Rodrigo V. Cosico and Vicente Q. Roxas, concurring; rollo, pp. 36-46.

[2] Id. at 61-62.

[3] CA rollo, pp. 22-28.

[4] Id. at 8-9.

[5] Id. at 8.

[6] Affidavit dated July 27, 1995; records, p. 98.

[7] TSN, May 23, 1996, pp. 11-12; records, p. 104.

[8] Records, pp. 186-188.

[9] Id. at 193-195.

[10] Id. at 206-207.

[11] CA rollo, pp. 10-11.

[12] Id. at 10.

[13] Id. at 28.

[14] TSN, October 10, 1996, p. 5.

[15] Exhibit "B," folder of exhibits, p. 2.

[16] Exhibit "C," folder of exhibits, p. 3.

[17] TSN, October 16, 1997, p. 14.

[18] Exhibit "D," folder of exhibits, p. 4.

[19] Exhibit "4," folder of exhibits, pp. 2-4.

[20] CA rollo, pp. 51-53.

- [21] TSN, August 12, 1999, p. 8.
- [22] Id. at 19.
- [23] CA rollo, p. 154.
- [24] Rollo, p. 43.
- [25] CA rollo, pp. 160-172.
- [26] Id. at 185-186.
- [27] Id. at 187.
- [28] Id. at 194-195.
- [29] Rollo, p. 16.
- [30] Salazar v. People of the Philippines, G.R. No. 149472, August 18, 2004, 437 SCRA 41, 46.
- [31] Records, p. 6.
- [32] Exhibits "11" and "12" for the defense, folder of exhibits, pp. 19-20.
- [33] TSN, January 20, 2000, p. 6.
- [34] Amorsolo v. People, G.R. No. L-76647, September 30, 1987, 154 SCRA 556, 563, citing U.S. v. Ramirez, 9 Phil. 67 (1907) and U.S. v. Panes, 37 Phil. 116 (1917).
- [35] G.R. No. 130423, November 18, 2002, 392 SCRA 35.
- [36] Rollo, p. 131.
- [37] Exhibit "B" and "C," folder of exhibits, pp. 2-3. (Emphasis and underscoring supplied.)
- [38] Serona v. Court of Appeals, supra note 35, at 41-44. (Emphasis and underscoring supplied.)
- [39] Rollo, pp. 105-106. (Emphasis supplied.)
- [40] TSN, October 16, 1997, pp. 24-25.
- [41] See TSN, October 17, 1997, p. 12; TSN, October 10, 1996, pp. 6-7.
- [42] People v. Fernandez, G.R. Nos. 139341-45, July 25, 2002, 385 SCRA 224, 232.
- [43] Rules of Court, Rule 133, Section 2.
- [44] Serona v. Court of Appeals, supra note 35.

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