

ELSA MACANDOG MAGTIRA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 170964. March 07, 2012

Ponente: BRION, J.

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BRION, J.:

Petitioner Elsa Macandog Magtira seeks in this petition for review on certiorari (filed under Rule 45 of the Rules of Court) to reverse the decision[1] and the resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 27252. The CA affirmed with modification the joint decision[3] of the Regional Trial Court (RTC) of Makati City, Branch 148, that found the petitioner guilty beyond reasonable doubt of seven (7) counts of estafa penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended.

The records show that seven criminal informations for estafa were filed against the petitioner. Except for the amounts misappropriated and the private complainants[4] involved, the informations were similarly worded, as follows:

That on or about and sometime during the year of 2000, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused received in trust and for administration from complainant x x x as contribution to a Paluwagan in the amount of x x x under [the] safekeeping of accused [Elsa] Macandog Magtira, with the express and legal obligation on the part of the accused to return and/or account for the same, but the accused far from complying with her obligation with intent to gain, abuse of confidence and to defraud complainant, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to her own personal use and benefit the said contribution (Paluwagan) and/or the proceeds thereof x x x and despite repeated demands, the accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant in the aforementioned amount.[5]

The petitioner entered a plea of “not guilty” to all the charges.[6] Thereafter, the seven cases were tried jointly. The following facts were established: first, the petitioner was the custodian of the funds of the Paluwagan where the private complainants were members;[7] second, that demands were made against the petitioner by the private complainants for the return of their contributions in the Paluwagan; and third, the petitioner failed to meet the private complainants’ demand for the return of their contributions.

During trial, the petitioner denied misappropriating the contributions of the private complainants. She claimed that she was robbed of the Paluwagan funds in the early afternoon of February 28, 2000. By way of corroboration, the petitioner presented a copy of an entry in the police blotter dated February 28, 2000 and the affidavits of five individuals attesting to the robbery.[8]

From the evidence adduced, the RTC convicted the petitioner of the crime charged and declared:

[I]t is clear to the Court that the accused is not disputing in all the cases that (a) sizeable amount of money belonging to different persons were received by her in trust or for administration, involving the duty to make a

delivery thereof to the owners; (2) that there is a demand to her that same be returned but she cannot do so.[9]

The RTC explained that while the robbery of the entrusted money is a valid defense against estafa, the petitioner's evidence of the robbery was wanting. The RTC observed that the petitioner's testimony was self-serving and inconsistent on some of the material details of the robbery. The RTC also noted the petitioner's failure to account for and to deliver the contributions which were collected from the private complainants after the robbery. Finally, the RTC found that the petitioner's credibility affected by her own demeanor of indifference during trial showed no "semblance of worry or [of] being concerned" [10] about the serious charges filed against her.

Dissatisfied with the RTC's decision, the petitioner elevated her conviction to the CA which affirmed the findings of the RTC but modified the penalty of imprisonment imposed. The CA held:

(1)

In Criminal Case No. 02-1766 where the amount of the fraud is P85,000.00, the incremental penalty is six (6) years to be added to the maximum period of the penalty provided for by law, or eight (8) years of prison mayor minimum plus six (6) years of the incremental penalty. Hence, the indeterminate sentence is four (4) years and two (2) months of prison correccional medium, as the minimum penalty, to fourteen (14) years of reclusion temporal minimum, as the maximum penalty.

(2)

In Criminal Case No. 02-1767 where the amount of the fraud is P65,000.00, the incremental penalty is four (4) years to be added to the maximum period of the penalty provided for by law, or eight (8) years of prison mayor minimum plus four (4) years of the incremental penalty. Hence, the indeterminate sentence is four (4) years and two (2) months of prison correccional medium, as the minimum penalty, to twelve (12) years of prison mayor maximum, as the maximum penalty.

(3)

In Criminal Case No. 02-1768 where the amount of the fraud is P60,000.00, the incremental penalty is three (3) years to be added to the maximum period of the penalty provided for by law, or eight (8) years of prison mayor minimum plus three (3) years of the incremental penalty. Hence, the indeterminate sentence is four (4) years and two (2) months of prison correccional medium, as the minimum penalty, to eleven (11) years of prison mayor maximum, as the maximum penalty.

(4)

In Criminal Case No. 02-1769 where the amount of the fraud is P34,000.00, the incremental penalty is one (1) year to be added to the maximum period of the penalty provided for by law, or eight (8) years of prison mayor minimum plus one (1) year of the incremental penalty. Hence, the indeterminate penalty should be four (4) years and two (2) months of prison correccional medium, as the minimum penalty, to nine (9) years of prison mayor medium, as the maximum penalty.

(5)

In Criminal Case No. 02-1770 where the amount of the fraud is P85,400.00, the incremental penalty is six (6) years to be added to the maximum period of the penalty provided for by law, or eight (8) years of prison mayor minimum plus six (6) years of the incremental penalty. Hence, the indeterminate sentence is four (4) years and two (2) months of prison correccional medium, as the minimum penalty, to fourteen (14) years of reclusion temporal minimum, as the maximum penalty.

(6)

In Criminal Case No. 02-1771 where the amount of the fraud is P100,000.00, the incremental penalty of seven (7) years is to be added to the maximum period of the penalty provided for by law, or eight (8) years of prision mayor minimum plus seven (7) years of the incremental penalty. Hence, the indeterminate sentence is four (4) years and two (2) months of prision correccional medium, as the minimum penalty, to fifteen (15) years of reclusion temporal medium, as the maximum penalty.

(7)

In Criminal Case No. 02-1772 where the amount of the fraud is P153,000.00, the incremental penalty is thirteen (13) years to be added to the maximum period of the penalty provided by the law. The penalty cannot go beyond twenty (20) years as the law provides that in no case shall the penalty be higher than reclusion temporal regardless of the amount of the fraud. Hence, the indeterminate sentence is four (4) years and two (2) months of prision correccional medium, as the minimum penalty, to twenty (20) years of reclusion temporal maximum, as the maximum penalty.[11] (*italics supplied*)

The CA denied the petitioner's motion for reconsideration;[12] hence, the present petition.

The Issue

The ultimate issue for consideration is whether the petitioner should be held liable for the crimes of estafa. The petitioner argues that the CA and the RTC erred in rejecting her argument that no misappropriation of the Paluwagan funds was clearly established in the record.

In its comment, the Office of the Solicitor General (OSG) prays for the dismissal of the petition. The OSG maintains that the elements constituting the crime of estafa with abuse of confidence had been fully established by the prosecution's evidence. The OSG insists that the petitioner failed to clearly prove by competent evidence her affirmative defense of robbery. The OSG also insists that the petitioner's conduct in failing to inform all the members of the alleged robbery bolsters the circumstance of her misappropriation of the Paluwagan funds. Lastly, the petitioner's misappropriation of the Paluwagan funds was substantiated by her failure to deliver the Paluwagan funds out of the contributions made by the private complainants after the robbery.

The petitioner subsequently filed a reply, reiterating the arguments in her petition.

The Court's Ruling

We deny the petition for lack of merit.

Preliminary consideration

A preliminary matter we have to contend with in this case is the propriety of resolving one of the issues raised by the petitioner who has appealed her judgment of conviction by way of a Rule 45 review. A reading of the petition shows that the petitioner raises both errors of law and of fact allegedly committed by the CA and the RTC in their decisions. First, we are called to determine whether a proper application of law and jurisprudence has been made in the case. Second, we are also called to examine whether the CA and the RTC correctly appreciated the evidence to which the two courts anchor their conclusions.

As a rule, a Rule 45 review is confined to the resolution of errors of law committed by the lower courts. Further, in a Rule 45 review, the factual findings of the RTC, especially when affirmed by the CA, are generally held binding and conclusive on the Court.[13] We emphasize that while jurisprudence has provided exceptions[14] to this rule, the petitioner carries the burden of proving that one or more exceptional circumstances are present in the case. The petitioner must additionally show that the cited exceptional circumstances will have a bearing on the results of the case.

The petitioner cites in this regard the alleged misappreciation of the evidence committed by the CA and the RTC. The petitioner contends that both courts disregarded her evidence, namely: the affidavits of five individuals and the police blotter. She argues that she should not be faulted for the non-presentation in court of the five individuals who executed the affidavits which attested to the robbery since she was then represented by a counsel de oficio. She also argues that both courts disregarded the evidence of her reputation of being a kind person of good moral character. She asserts that she delivered to the private complainants their respective shares in the Paluwagan funds prior to the robbery.

She further argues that the conclusions of the CA and the RTC were contrary to the Court's ruling in *Lim v. Court of Appeals*[15] where it held that estafa cannot be committed through negligence or, as in this case, where the explanation by the accused raises reasonable doubt on whether the amount in question was misappropriated.

After a careful study of the records, we find that the petitioner's cited exceptional circumstances are more imagined than real. We find no compelling reason to deviate from the factual findings of the CA and the RTC in this regard.

Misappropriation as an element of the offense of estafa connotes 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.[16] We have previously held that the failure to account upon demand for funds or property held in trust without offering any satisfactory explanation for the inability to account is circumstantial evidence of misappropriation.[17] We have also held that the demand for the return of the thing delivered in trust and the failure of the accused to account are similarly circumstantial evidence that the courts can appreciate.[18]

As the CA and the RTC did, we find no clear evidence establishing that the petitioner was actually robbed of the Paluwagan funds. In the first place, the five individuals who executed the affidavits were not presented in court. While the petitioner faults the counsel de oficio for their non-presentation in court, we find no proof that her counsel had been negligent in performing his legal duties. Incidentally, we also reject this line of argument for two other reasons: first, it was raised only for the first time in the present appeal; and second, it involves a factual determination of negligence which is inappropriate under a Rule 45 review.

We additionally note from a facial examination of the affidavits that the affiants were not even eyewitnesses to the robbery; hence, their statements do not sufficiently prove the actual occurrence of the robbery. More importantly, the affidavits do not also establish with reasonable certainty that the petitioner was actually robbed of the Paluwagan funds.

Moreover, we cannot give much credence to the police blotter whose contents were mainly based on the statements made by the petitioner to the police. If at all, it is evidence of what was entered, not of the truth or falsity of the entry made. We give due respect to the evaluation made by the RTC in this regard:

Thus, there seems to be a discrepancy as to the time and number of persons (robbers) who entered the residence of the accused. Further, the accused claims that there was a policeman who went to her house who was called by her lessee (or lessor) but the accused cannot remember his name.

But then, the accused never testified as to whether the policeman investigated the scene of the crime and some people in the vicinity. Surely at that hour, near such market, where there are people in the vicinity, people will notice strangers or other persons who enter the house of another or who leave the same whether in a hurry or not.

The accused even admitted that she was hesitant to report the matter to the police[.] Why was the accused hesitant? She claims that the robber warned her that he will harm her if she reports the incident. But immediately after the incident, the accused reported the incident, but nothing happened to her up to the

present.[19] (underscoring supplied)

Besides, the petitioner failed to explain her failure to account and to deliver the Paluwagan funds arising from contributions made by the private complainants after the alleged robbery incident. On record are the positive and unrefuted testimonies of the private complainants that they remitted contributions to the petitioner even after the robbery. In other words, if the petitioner had in fact been robbed of Paluwagan funds, the robbery would not have affected the accounting and the delivery of the Paluwagan funds arising from the contributions made by the private complainants after the alleged robbery. As the records show, despite the continued receipt of contributions from the private complainants, the petitioner failed to account for, and to deliver, the Paluwagan funds.

The Petitioner's Conviction

We now go to the crux of the present appeal and determine whether the evidence adduced warrants the petitioner's conviction of the crime charged.

The offense of estafa committed with abuse of confidence has the following elements under Article 315, paragraph 1(b) of the Revised Penal Code, as amended:

(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.[20]

We find that all the above elements are present in the present case, having been established by the prosecution's evidence and by the petitioner's own admissions. The first element was established by the evidence showing that the petitioner received various sums of money from the private complainants to be held in trust for them under the Paluwagan operation. The petitioner admitted that she was under obligation, at a fixed date, to account for and to deliver the Paluwagan funds to the private complainants in the sequential order agreed upon among them. The second element was established by the evidence that the petitioner failed to account for and to deliver the Paluwagan funds to the private complainants on the agreed time of delivery. The third and fourth elements of the offense were proven by evidence showing that the petitioner failed to account for and to deliver the Paluwagan funds to the private complainants despite several demands made upon her by the private complainants. Each of the private complainants testified as to how they were prejudiced when they failed to receive their allotted Paluwagan funds.

Given the totality of evidence, we uphold the conviction of the petitioner of the crime charged.

The Penalty

The decisive factor in determining the criminal and civil liability for the crime of estafa depends on the value of the thing or the amount defrauded.[21] With respect to the civil aspect of the case, the petitioner filed a

manifestation[22] which showed the satisfaction of her civil monetary liability with six (6) out of the seven (7) private complainants.

Anent her criminal liability, the evidence shows that the amount of money remitted by the private complainants to the petitioner all exceeded the amount of P22,000.00. In this regard, the first paragraph of Article 315 of the Revised Penal Code, as amended, provides the appropriate penalty if the value of the thing or the amount defrauded exceeds P22,000.00:

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.
[italics ours]

As provided by law, the maximum indeterminate penalty when the amount defrauded exceeds P22,000.00 is pegged at prision mayor in its minimum period or anywhere within the range of six (6) years and one (1) day to eight (8) years, plus one year for every P10,000.00 in excess of P22,000.00 of the amount defrauded but not to exceed twenty years. In turn, the minimum indeterminate penalty shall be one degree lower from the prescribed penalty for estafa, which in this case is anywhere within the range of prision correccional in its minimum and medium periods or six (6) months and one (1) day to four (4) years and two (2) months.[23] Applying this formula, we affirm the penalty imposed by the CA as it is fully in accordance with the law.

WHEREFORE, premises considered, we DENY the petition for lack of merit. We AFFIRM the decision dated November 10, 2005 and the resolution dated January 10, 2006 of the Court of Appeals in CA-G.R. CR No. 27252, finding petitioner Elsa Macandog Magtira GUILTY beyond reasonable doubt of seven (7) counts of estafa penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

[1] Dated November 10, 2005. Penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga; rollo, pp. 39-55.

[2] Dated January 10, 2006; id. at 57.

[3] Dated February 7, 2003 in Criminal Case Nos. 02-1766 - 02-1772. The Joint Decision was penned by Judge Oscar B. Pimentel; id. at 67-103.

[4] They are: (1) Alfredo Martinez, (2) Cherry Bondocoy, (3) Rebecca Zoleta, (4) Maria Ester Binaday, (5) Saturnina Zaraspe Perez, (6) Emerita Velasco, and (7) Domingo Venturina.

[5] Rollo, pp. 58-64.

[6] Id. at 71.

[7] Id. at 65-66.

[8] First, the affidavits of Felipe Macandog and Segundo Macariola stated that they found the petitioner bound and gagged inside her house on February 28, 2000. Second, the joint affidavit of spouses Reynaldo and Marina Ainza attested that together with the petitioner's lessor, Nilo Lopez, they went to the house of the petitioner and

saw her lying on the floor and untied; while the room was in disarray. Upon the lessor's instruction, the spouses sought police assistance. Lastly, Nilo Lopez averred in his affidavit that he immediately went to the house of the petitioner after being informed of the robbery. That upon his instruction, the police was called.

[9] Rollo, p. 89.

[10] Id. at 93.

[11] Id. at 52-54.

[12] Supra note 2.

[13] *Iron Bulk Shipping Phil., Co., Ltd. v. Remington Industrial Sales Corp.*, 462 Phil. 694, 703-704 (2003).

[14] They are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (*Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 20-21.)

[15] G.R. No. 102784, April 7, 1997, 271 SCRA 12, 22.

[16] *Aw v. People*, G.R. No. 182276, March 29, 2010, 617 SCRA 64, 77.

[17] Id. at 77-78.

[18] Id. at 78, citing *Filadams Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, March 30, 2004, 426 SCRA 460, 468.

[19] Supra note 3, at 92.

[20] *Aw v. People*, supra note 15, at 75.

[21] *Pamintuan v. People*, G.R. No. 172820, June 23, 2010, 621 SCRA 538, 552.

[22] Rollo, pp. 194-198 and 225. The Acknowledgment Receipts were issued by (1) Alfredo Martinez, (2) Cherry Bondocoy (received by Cielo Anduque), (3) Rebecca Zoleta, (4) Maria Ester Binaday, (5) Saturnina Zaraspe Perez (wife of Aniceto Perez); and (6) Emerita Velasco. The petitioner is still paying Maria Venturina on installment basis.

[23] *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 302.

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