

GINA DIAZ Y JAUD, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 171121. August 26, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure which seeks to reverse and set aside (1) the Decision[1] of the Court of Appeals in CA-G.R. CR No. 28751, dated 29 September 2005, which affirmed in toto the Decision[2] of the Regional Trial Court (RTC) of Pasay City, Branch 117, in Criminal Case No. 02-1840, dated 11 December 2003, finding herein petitioner Gina Diaz y Jaud guilty beyond reasonable doubt of the crime of Estafa under paragraph 1(b),[3] Article 315 of the Revised Penal Code; and (2) the Resolution[4] of the appellate court, dated 10 January 2006, which denied herein petitioner's Motion for Reconsideration.

On 14 August 2002, an Information[5] was filed against the petitioner before the RTC of Pasay City, Branch 117, charging her with the crime of Estafa under paragraph 1(b), Article 315 of the Revised Penal Code committed as follows:

That on or about the 13[th] day of May 2002, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named [petitioner], received in trust from complainant Erwina Sanuelle[6]-Orallo, cash amount of Two Hundred Sixty Five Thousand and Nine Hundred (Php265,900.00) Pesos under the express obligation of returning the same anytime upon demand of complainant, but the herein [petitioner], once in possession of the said amount, and far from complying with her obligation aforesaid, did then and there wilfully (sic), unlawfully and feloniously misappropriate, misapply and convert the said cash amount to her own personal use and benefit to the damage and prejudice of said complainant in the amount of Php265,900.00 Pesos. (Emphases supplied.)

Petitioner was arrested on 22 October 2002[7] but was released after she posted a bail bond for P40,000.00.[8]

Upon arraignment, the petitioner, assisted by counsel de oficio,[9] pleaded NOT GUILTY to the crime charged. During the pre-trial conference, petitioner admitted she is the same person charged in the Information and that she and Erwina Sanuele-Orallo, the private complainant, know each other. Petitioner then interposed the defense of denial. Pre-trial was terminated.[10] Thereafter, trial on the merits ensued.

The prosecution presented the private complainant as the principal and rebuttal witness. It also offered in evidence a document denominated as "Certification"[11] which was marked as Exhibit "A."

Private complainant testified that she knows the petitioner because the latter was her former neighbor in Villamor Air Base until 1991. She disclosed that the petitioner is also her friend and their friendship developed as the latter frequented her house, as well as her barber shop, which was located in her residence. They frequently talked to each other and, as a result, they were able to establish a close relationship.[12]

Sometime in the year 2001, petitioner borrowed from her various amounts of money, to wit: P3,000.00, P5,000.00 and P10,000.00. There was no consideration for lending the money to the petitioner other than their friendship. The same was not also subject to any interest. The petitioner simply promised that she would pay back the money on a day certain upon demand. The petitioner then was able to pay her back the aforesaid amounts in a span of five days, or sometimes within 15 days, or even within a period of one month.[13]

Again, on 13 May 2002, private complainant lent to petitioner the amount of P265,900.00. Their arrangement as regards the said amount was embodied in a notarized document captioned "Certification," which was then marked as Exhibit "A." The "Certification" states:

THIS IS TO CERTIFY that I received in trust TWO HUNDRED SIXTY FIVE THOUSAND NINE HUNDRED (P265,900.00) PESOS from MRS. ERWINA SANUELE-ORALLO.

This certifies further that at anytime upon demand I shall return the said amount of TWO HUNDRED SIXTY FIVE THOUSAND NINE HUNDRED PESOS (P265,900.00) for herein MRS. ERWINA SANUELE-ORALLO without any interest.

IN WITNESS WHEREOF, we hereunto affix our signatures this 13[th] day of May 2002 at Villamor Air Base, Pasay City.[14] (Emphases supplied.)

The afore-quoted document was signed by her as "trustor" and by the petitioner as "trustee."

Private complainant confirmed that she gave the amount of P265,900.00 to the petitioner because she trusted her and she was a good payer before. In other words, she lent to petitioner that big amount of money because of their friendship. She likewise affirmed that the petitioner had the freedom on how to spend, use or dispose of the money the latter borrowed from her.[15]

On 30 May 2002, she demanded payment[16] of the aforesaid amount from the petitioner. The petitioner, however, failed to pay without giving any reason for her failure to do so. She then brought the matter before the barangay for conciliation,[17] but the petitioner ignored the same.[18] Consequently, she instituted a criminal complaint for Estafa under paragraph 1(b), Article 315 of the Revised Penal Code against the petitioner.

For its part, the defense presented the petitioner to refute the allegations of the private complainant. It also presented several pieces of documentary evidence which were marked as Exhibits "1" to "14." [19]

During her testimony, petitioner admitted that she entered into a transaction with the private complainant wherein she borrowed money from her in the amount of P100,000.00 subject to interest payment.[20] Together with the agreed interest, her total obligation to the private complainant amounted to P264,000.00. She claimed that out of the said amount, she had already paid the private complainant a total of P209,000.00. And as proof of payment, she presented lists of payment[21] made by different people.[22]

Petitioner revealed that the private complainant was involved in a money-lending business. The borrowers made payments to the petitioner every day. The P100,000.00 borrowed by her from the private complainant was distributed to different people, and the private complainant did not interfere on how she used the said money. The only thing she had to do was to pay back the amount to the private complainant.[23]

Petitioner further explained that the aforesaid business was hers and that of the private complainant. The money would come from the private complainant and she would be the one in-charge of looking for clients to whom she would distribute the money that she obtained from the private complainant in the nature of a loan. Thereafter, she would collect from the borrowers and she would remit to the private complainant the payments on a daily basis. The private complainant acknowledged the receipts of payment every day by her signature affixing thereto. This

was the reason why the lists of payment shown by her before the court a quo were made by different people and why the receipts were named after different persons.[24]

On her cross-examination, petitioner admitted having signed a document captioned "Certification," wherein she acknowledged that she received the amount of P265,900.00 from the private complainant on 13 May 2002.[25]

Petitioner further alleged that the P100,000.00 obtained by her from the private complainant was not given to her in full but in staggered sums. She affirmed that every time someone wanted to borrow money from her, the private complainant would give her the amount. Private complainant never met any of the borrowers because it was only her who had contact with them. She was the one who would guarantee the payments of the borrowers. Petitioner stated that the private complainant simply gave her the money without any knowledge to whom she would lend the same because the former trusted her.[26]

Petitioner affirmed that the names in the receipts, which were marked as Exhibits "1" to "14," represented the names of the people to whom she lent the money. The money she got from the private complainant was the very same money she distributed to other people. She admitted that she was collecting the debts of the borrowers on behalf of the private complainant. She also revealed that she was acting as an agent of the private complainant in lending money to the borrowers. The money that private complainant gave her was not loaned to her but was loaned to other people. Thus, she only held the money in trust to be lent to other people.[27] Her money-lending transaction with the private complainant lasted only for nine (9) months.[28]

To refute the testimony of the petitioner that most of the P265,900.00, which she received in trust from the private complainant had been paid as shown by the receipts marked as Exhibits "1" to "14," the prosecution again called the private complainant to the witness stand.

On rebuttal, private complainant clarified that the receipts presented by the petitioner before the court a quo as proofs of payment were receipts of the money which had already been paid. These receipts, however, did not include the amount mentioned in a document captioned "Certification," which both of them signed on 13 May 2002. Private complainant stated that the listings, which had been marked as Exhibits "1" to "14," were indeed proofs of payment. These, however, were proofs of payment of the previous amounts given to the petitioner. The said listings did not include the amount received by the petitioner as reflected in the "Certification." Thus, the amount of P265,900.00 remained unpaid.[29]

Finally, private complainant emphasized that the first phase of her transaction with the petitioner wherein the amount involved was P100,000.00 happened between July or August, 2001 and November 2001; the second phase involving the amount of P265,900.00 started on 13 May 2002.[30] Private complainant affirmed that the amount of P265,900.00 she gave to the petitioner was not a loan. The same was given to the petitioner in trust, to be loaned by the petitioner to other people. She considered it a loan when the petitioner failed to return the money to her. Likewise, it was the petitioner alone who released the money to the borrowers and collected their payments.[31]

On 11 December 2003, the RTC rendered a Decision finding the petitioner guilty beyond reasonable doubt of the crime of Estafa under paragraph 1(b), Article 315 of the Revised Penal Code. The dispositive portion of the said Decision reads:

WHEREFORE, [herein petitioner] GINA DIAZ Y JAUD is hereby found GUILTY beyond reasonable doubt of the crime of ESTAFA under paragraph 1(b), Article 315 of the Revised Penal Code.

Accordingly, she is hereby sentenced to suffer an indeterminate penalty of SIX (6) YEARS of prison correccional as minimum, to TWENTY (20) YEARS of reclusion temporal as maximum.

Moreover, said [petitioner] is ordered to indemnify ERWINA SANUELE-ORALLO the sum of P265,900.00 as actual damages.[32] (Emphases supplied.)

Aggrieved, the petitioner seasonably appealed[33] the aforesaid Decision of the RTC to the appellate court assigning the following error:

THE TRIAL COURT ERRED IN CONVICTING THE [PETITIONER] DESPITE THE FACT THAT HER GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[34]

In a Decision dated 29 September 2005, the Court of Appeals affirmed the trial court's Decision in toto. Petitioner's Motion for Reconsideration was likewise denied in a Resolution dated 10 January 2006.

Hence, this Petition.

Petitioner now comes before this Court with a sole assignment of error:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT THE PETITIONER IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ESTAFA.[35]

In her Memorandum,[36] petitioner argues that the true nature of the agreement between her and the private complainant was that of a simple loan. This was evident from the fact that she had the freedom to dispose of the money given to her by the private complainant. Moreover, the notarized document captioned "Certification," which was signed by her and by the private complainant, appears to be a simple receipt evidencing a simple loan of money. This proves beyond cavil that the element of "trust" was not present in their transaction. Absent such element of trust, petitioner maintains she cannot be held guilty of the crime of Estafa under paragraph 1(b), Article 315 of the Revised Penal Code.

Lastly, petitioner asserts that the prosecution failed to sufficiently establish the fact that she misappropriated or converted the amount of P265,900.00 to her own personal use or benefit. What was only proven by the prosecution, she claims, was the existence of a lending business between her and the private complainant; and the aforesaid amount, which was the money subject of the document captioned "Certification," was used in the said business. Without proof that she collected the total amount of P265,900.00 and that she failed to remit the same, the fact of her non-payment of the said amount cannot constitute the crime of Estafa under paragraph 1(b), Article 315 of the Revised Penal Code. As the prosecution failed to prove beyond reasonable doubt the existence of deceit or abuse of confidence, she should not be allowed to suffer imprisonment for non-payment of a purely civil obligation.

The present Petition is without merit.

Primarily, the petitioner insists that the nature of her transaction with the private complainant was just a simple loan.

It bears emphasis that the agreement of the petitioner and the private complainant was embodied in a document captioned "Certification." It was expressly stated therein that the amount of P265,900.00 was received by the petitioner in trust for the private complainant, and that the said amount must be returned to the latter anytime upon demand. Indeed, the said "Certification" did not state that the money given in trust to the petitioner should be lent to other people. From the following testimonies of both the petitioner and the private complainant before the court a quo, it can be clearly inferred that their transaction was not really a simple loan, as the money placed in trust with the petitioner was intended to be loaned to other people. Petitioner testified as follows:

Q:

And whose business is this money lending venture that you engaged in?

A:

It's [private complainant's] money lending business.

Q:

How it become (sic) the business of [private complainant] when the money is yours to dispose it freely without the interference of [private complainant]?

A:

No, your Honor, she told me this money lending business and I will be the one in-charge looking for customers or clients to distribute the money that I got from her and I will remit to her the payment everyday.[37]

Cross-examination:

Q:

Ms. Witness, you stated during the last hearing that the money you got from the private complainant were the money you distributed to the other people, is that correct?

A:

Yes, Ma'am.

Q:

You also stated that you were only collecting the amount in behalf of [private complainant]?

x x x x

A:

Yes, Ma'am.

Q:

What you actually did was you lent the money, Ms. Witness. That these amount which were lent to these people x x x represent the amount that [private complainant] gave you to lend these people, is that correct?

A:

Yes, Ma'am.

Q:

In effect Ms. Witness, you are acting as an agent of [private complainant], is that correct?

A:

Yes, Ma'am.

Q:

So, you are actually stating that this money that [private complainant] had given to you to be lent x x x but to these people like Suay, Mayet, Jurado, etc?

A:

Yes, Ma'am.

Q:

In effect these were only given to you or entrusted to you to give them to the people.

A:

Yes, Ma'am.[38]

The aforesaid testimony of the petitioner was affirmed by the private complainant, thus:

Q:

Ms. Witness, during the testimony of the [petitioner] Gina Diaz, she stated that the amount of P265,000.00[39] was not actually given to her by you but was given in trust by you to her, can you comment on that statement of the [petitioner]?

x x x x

A:

That amount was really given in trust to her not as a loan but to be loan by others.

Q:

Could you explain that for what purpose when you said gave in trust to her to be loan to others what does that mean?

ATTY. MANGABAT:

I think that was already answered, there is nothing to explain, your Honor.

COURT:

Witness may answer.

A:

What I mean is that she will be the one responsible in the releasing of the money and the only person to collect the same.

x x x x

Q:

How can you say that the amount of P265,000.00 which was given was not a loan to the [petitioner]?

x x x x

A:

It was really not a loan for her because I gave the money to her for her to loan to others, it became her loan when I asked her to return the money and she was not able to return it.[40]

Given the foregoing, it is beyond doubt that the transaction between the petitioner and the private complainant was not a simple loan. The money given to the petitioner and held in trust by her was to be loaned by her to other people. Further, both lower courts held that because private complainant trusted the petitioner, the former entrusted the aforesaid amount of money to the latter and the latter had the authority to freely dispose of the same.

The private complainant never had the opportunity of meeting the borrowers to whom the petitioner lent out the money, because it was only the latter who had contact with the borrowers. In turn, the petitioner had the responsibility to collect the money loaned to other people and thereafter to remit the same to the private complainant. With that kind of setup, the transaction between the petitioner and the private complainant cannot be mistaken to be a simple loan.

In general, the elements of estafa are: (1) that the accused defrauded another (a) by abuse of confidence or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused the offended party or third person. Deceit is not an essential requisite of estafa with abuse of confidence, since the breach of confidence takes the place of the fraud or deceit, which is a usual element in the other estafas.[41]

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; and (d) that there is a demand made by the offended party on the offender.[42]

All the aforesaid elements were amply and clearly established in the case at bar.

It is well-settled that when the money, goods, or any other personal property is received by the offender from the offended party in trust or on commission or for administration, the offender acquires both material or physical possession and juridical possession of the thing received. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner.[43]

As stated by the petitioner and by the private complainant in their testimonies before the court a quo, the amount of P265,900.00 was received in trust by the former from the latter in order to be lent to other people. The moment the petitioner received the aforesaid amount from the private complainant, the petitioner acquired not just material or physical possession but also juridical possession. The petitioner was given the freedom to dispose of the said money, i.e., to loan it to people who borrowed money from her. The private complainant did not interfere as to whom she would lend the money. The private complainant herself never met any of the borrowers, because it was only the petitioner who had contact with them. Petitioner, though, had the corresponding obligation of returning the aforesaid amount anytime upon demand.

Further, during the private complainant's testimony before the court a quo, she never failed to state that the only consideration for lending the subject money to the petitioner was their friendship. The private complainant bestowed her trust on the petitioner because of the said friendship. Indeed, the money was given to the petitioner by the private complainant without any interest at all. Thus, there exists a fiduciary relationship between the petitioner and the private complainant which is an essential element of estafa by misappropriation or conversion.[44]

Misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence.[45] The failure to account upon demand for funds or property held in trust is circumstantial evidence of misappropriation.[46]

The private complainant sent a letter to the petitioner wherein she demanded payment of the amount of P265,900.00 from the petitioner. The latter, however, failed to pay the same without giving any reason for her failure to do so. When the private complainant brought the matter before the barangay for conciliation, the petitioner deliberately ignored the same. Such failure of the petitioner to account upon demand for the money she

held in trust is already evidence that she misappropriated or converted the money to her own personal use, and that the same caused damage or prejudice to the private complainant.

Thus, this Court affirms the findings of both lower courts that all the elements of estafa by abuse of confidence through misappropriation or conversion had been satisfactorily complied with and proven by the prosecution.

In addition, it is well-settled that factual findings and conclusions of the trial court and the Court of Appeals are entitled to great weight and respect, and will not be disturbed on review by us, in the absence of any clear showing that the lower courts overlooked certain facts or circumstances which would substantially affect the disposition of the case. The jurisdiction of this Court over cases elevated from the Court of Appeals is limited to reviewing or revising errors of law ascribed to the Court of Appeals. The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the record or that they are so glaringly erroneous as to constitute grave abuse of discretion.[47] In this case, we find no cogent reason to reverse the aforesaid findings.

Petitioner's defense that she had already paid the money given to her by the private complainant cannot even hold water. The proofs of payment presented by the petitioner before the court *a quo* were evidence of payment of her previous transaction with the private complainant involving the amount of P100,00.00. The said proofs of payment were all made during the year 2001, while their transaction involving the amount of P265,900.00, as embodied in a document captioned "Certification," was only entered into in the year 2002, absolutely negating that the said amount had already been paid by the petitioner.

As to penalty. Article 315, paragraph 1 of the Revised Penal Code provides for the penalty in estafa cases, where the amount defrauded exceeds P22,000.00, as in the present case, to wit:

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

1[st]. 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 but does not exceed 22,000.00 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; but the total penalty which may be imposed shall not exceed twenty years. In such case, 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 to reclusion temporal, as the case may be.

The penalty prescribed in the afore-quoted provision is composed of two, not three, periods, in which case, Article 65[48] of the same code requires the division of the time included in the penalty into three equal portions of time included in the penalty imposed, forming one period of each of the three portions.[49] Applying the latter provisions, the minimum, medium and maximum periods of the penalty given are:

Minimum - 4 years, 2 months, 1 day to 5 years, 5 months, 10 days

Medium - 5 years, 5 months, 11 days to 6 years, 8 months, 20 days

Maximum - 6 years, 8 months, 21 days to 8 years

In this case, since the amount involved is P265,900.00, which amount exceeds P22,000.00, the penalty imposable should be within the maximum period of 6 years, 8 months and 21 days to 8 years of prision mayor. Article 315 further states that a period of one year shall be added to the penalty for every additional P10,000.00 defrauded in excess of P22,000.00, but in no case shall the total penalty which may be imposed exceed 20 years.[50]

We now apply the Indeterminate Sentence Law in computing the proper penalty imposable in the case at bar.

Since the penalty prescribed by law for the estafa charge against petitioner is prision correccional maximum to prision mayor minimum, the penalty next lower would then be prision correccional in its minimum to medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months, while the maximum term of the indeterminate sentence should not exceed 20 years of reclusion temporal.[51]

In the case at bar, the RTC imposed on petitioner an indeterminate sentence of 6 years of prision correccional as minimum to 20 years of reclusion temporal as maximum. The maximum term imposed is correct because it does not exceed the 20-year maximum period allowed by law. However, the minimum term thereof is wrong. The minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months.[52] We therefore impose on petitioner the indeterminate sentence of 4 years and 2 months of prision correccional as minimum to 20 years of reclusion temporal as maximum.

The trial court is correct in ordering the petitioner to indemnify the private complainant in the sum of P265,900.00 as actual damages because the said amount represents the money that was not yet paid by the petitioner in favor of the private complainant.

WHEREFORE, premises considered, the instant Petition is hereby DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 28751, dated 29 September 2005 and 10 January 2006, respectively finding herein petitioner guilty beyond reasonable doubt of the crime of Estafa under paragraph 1(b), Article 315 of the Revised Penal Code are hereby AFFIRMED with the modification that the minimum term of the indeterminate sentence to be imposed upon the petitioner should be 4 years and 2 months of prision correccional. Costs against appellant.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio, and Austria-Martinez, JJ., concur.

Reyes, J., dissent on the penalty in view of my stand in *People v. Temporada* pending en Banc.

* Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 21 January 2008.

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; rollo, pp. 59-65.

[2] Penned by Judge Henrick F. Gingoyon; rollo, pp. 43-48.

[3] ART. 315. Swindling (estafa). - x x x.

1. With unfaithfulness or abuse of confidence, namely:

(a) 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.

[4]Rollo, pp. 71-72.

[5] Records, p. 1.

[6] The correct spelling of the surname of the private complainant is "Sanuele" and not "Sanuelle."

[7] As evidenced by the Arrest Report, dated 22 October 2002; records, p. 12.

[8] Records, pp. 19-24.

[9] While the present case was still pending before this Court and before it was submitted for Decision, the petitioner engaged the services of another counsel to represent her. Thus, her counsel de oficio, through the Public Attorney's Office, filed before this Court a Motion to Withdraw Appearance as Counsel for the Petitioner, dated 16 August 2007. (See Rollo, pp. 105-106.) The petitioner is now being represented by Fornier, Fornier and Lagumbay Law Office, as evidenced by a Formal Entry of Appearance, dated 22 August 2007. (See rollo, pp. 108-109.)

[10] As evidenced by the Order penned by Judge Henrick F. Gingoyon; records, p. 51.

[11] Id. at 7.

[12] TSN, 7 February 2003, pp. 3-5.

[13] Id. at 6-8.

[14] Records, p. 7.

[15] TSN, 7 February 2003, pp. 11-12.

[16] Records, p. 5.

[17] Id. at 6.

[18] TSN, 7 February 2003, p. 13.

[19] Records, p. 111.

[20] The petitioner never mentioned the rate of interest imposed by the private complainant.

[21] The lists of payment were later marked as Exhibits "1 to 14."

[22] TSN, 5 September 2003, pp. 3-5.

[23] Id. at 7.

[24] Id. at 8.

[25] Id. at 9-10.

[26] Id. at 10-13.

[27] TSN, 18 September 2003, p. 3.

[28] TSN, 5 September 2003, pp. 9-10.

[29] TSN, 7 November 2003, p. 6-7.

[30] Id. at 12-13.

[31] Id. at 15-18.

[32] Rollo, p. 32.

[33] CA rollo, pp. 19-20.

[34] Appellant's Brief filed before the Court of Appeals, rollo, p. 39.

[35] Rollo, p. 16.

[36] Id. at 120-136.

[37] TSN, 5 September 2003, p. 8.

[38] TSN, 18 September 2003, p. 3.

[39] Based on the document signed by both parties captioned "Certification," the amount received in trust by the petitioner from the private complainant was P265,900.00.

[40] TSN, 7 November 2003, pp. 15-17.

[41] Chua-Burce v. Court of Appeals, 387 Phil. 15, 25 (2000).

[42] Pangilinan v. Court of Appeals, 378 Phil. 670, 675 (1999).

[43] Chua-Burce v. Court of Appeals, *supra* note 41 at 13.

[44] Murao v. People, G.R. No. 141485, 30 June 2005, 462 SCRA 366, 378.

[45] Lee v. People, G.R. No. 157781, 11 April 2005, 455 SCRA 256, 267.

[46] Id.

[47] Libuit v. People, G.R. No. 154363, 13 September 2005, 469 SCRA 610, 618.

[48] ART. 65. Rule in cases in which the penalty is not composed of three periods. - In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions.

[49] People v. Gabres, 335 Phil. 242, 257 (1997); Dela Cruz v. Court of Appeals, 333 Phil. 126, 141 (1996).

[50] Id.

[51] Id.

[52] Id.

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