

DULCE PAMINTUAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 172820. June 23, 2010

Ponente: BRION, J.

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BRION, J.:

We review in this Rule 45 petition the decision[1] and the resolution[2] of the Court of Appeals (CA) that totally affirmed the decision[3] of the Regional Trial Court (RTC), Branch 2, Batangas City in Criminal Case No. 11002.

The RTC found Dulce Pamintuan (petitioner) guilty beyond reasonable doubt of the crime of estafa, penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, and sentenced her to imprisonment of four (4) years and two (2) months of prision correccional, as minimum, to twenty (20) years of reclusion temporal, as maximum.

The Information charging the petitioner with estafa, as defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, reads:

That on or about February 16, 1996 at Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, after having received in trust and on commission from one Jeremias Victoria a diamond ring worth SEVEN HUNDRED SIXTY FIVE THOUSAND (P765,000.00) PESOS, Philippine Currency, with the understanding and agreement that the same shall be sold by her on cash basis at a price not less than its value and that the overprice, if any, shall be her commission and the proceeds of the sale shall be remitted to Jeremias Victoria immediately upon sale thereof, and if unsold, said diamond ring will be returned to Jeremias Victoria within a period of three (3) days from the date of receipt, but said accused, far from complying with her obligation to return the unsold diamond ring, with grave abuse of confidence, with intent to defraud, did then and there willfully, unlawfully and feloniously convert and misappropriate the same to her own personal use and benefit and despite demands made upon her to return the said jewelry, she failed and refused to do so, to the damage and prejudice of Jeremias Victoria in the aforementioned amount of P765,000.00, Philippine Currency.

CONTRARY TO LAW.[4]

The petitioner pleaded not guilty to the charge; trial on the merits followed.

The Prosecution Evidence

The prosecution presented two witnesses Ð Jeremias Victoria and Aurora C. Realon Ð to establish its case. Jeremias testified that on February 16, 1996, the petitioner received from him a diamond ring worth P765,000.00 on the condition that it would be sold on commission basis. At the time she received the ring, the petitioner signed a document entitled Katibayan,[5] authorizing the sale of the ring under the following express conditions: the petitioner was to sell the ring for cash and with an overprice as her profit, and remit the full payment to Jeremias; she would not entrust the ring to anybody; and if unsold within three days, she must return the ring, or pay for it in cash.[6]

The petitioner failed to remit payment for the diamond ring despite the lapse of the agreed period. Neither did she return the diamond ring. Subsequently, Jeremias, through his lawyer, sent two (2) formal demand letters[7] for the petitioner to comply with her obligations under the Katibayan. The demand letters went unheeded. Thus, the petitioner failed to comply with her obligations to Jeremias.[8]

As rebuttal evidence, Jeremias claimed that the petitioner failed to return the diamond ring because she pawned it. Jeremias also denied that he received any jewelry from the petitioner in exchange for the diamond ring.[9]

The Defense Evidence

The petitioner testified in her behalf and admitted that she received the diamond ring from Jeremias in exchange for seven (7) pieces of jewelry valued at P350,000.00 that she also then delivered to Jeremias for cleaning and eventual sale. The petitioner likewise stated that the delivery of the seven pieces of jewelry was evidenced by a receipt that Jeremias signed,[10] and that she subsequently tried to return the diamond ring but he refused to accept it. Although the petitioner acknowledged signing the Katibayan, she claimed that Jeremias entrusted the diamond ring to her before he left for abroad, and that she only heard from him again after the criminal case had been filed against her. The petitioner likewise claimed that she tried to return the diamond ring during the preliminary investigation of the case, but Jeremias refused to accept it.

As sur-rebuttal evidence, the petitioner presented a Deed of Real Estate Mortgage dated August 25, 2003 (mortgage deed),[11] executed by Danilo Pamintuan, the petitioner's husband. According to the terms of the mortgage deed, Danilo admitted that Jeremias had entrusted the diamond ring to him on February 16, 1996, not to the petitioner, and that the mortgage deed was constituted in consideration of Danilo's promise to return the diamond ring to Jeremias.

The RTC's Ruling

The RTC found the petitioner guilty beyond reasonable doubt of estafa.[12] It also found that the defense failed to refute the prosecution evidence establishing all the elements of the crime charged. The RTC ruled, too, that the mortgage deed only served as proof of the restitution of or reparation for the value of the diamond ring and thus addressed only the petitioner's civil liability, not her criminal liability. The dispositive portion of the RTC decision reads:

WHEREFORE, finding the accused DULCE PAMINTUAN guilty beyond reasonable doubt for the crime of estafa, defined and penalized under Article 315, par. 1 (b) of the Revised Penal Code, without modifying circumstances, she is hereby sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum.

Considering that there is already a settlement as to the payment of the civil liability, as embodied in the Real Estate Mortgage executed by the parties, this Court hereby refrains to pronounce the corresponding civil indemnity.

SO ORDERED.

The petitioner appealed to the CA.

The CA Ruling

The CA agreed with the RTC that the petitioner was guilty beyond reasonable doubt of estafa and thus dismissed the petitioner's appeal.[13] The CA ruled that the prosecution evidence showed that Jeremias entrusted possession of the diamond ring to the petitioner, not to her husband. The CA observed that the prosecution duly

proved the petitioner's misappropriation by showing that she failed to return the diamond ring upon demand. That misappropriation took place was strengthened when the petitioner failed to refute Jeremias' allegation that she pawned the diamond ring – an act that ran counter to the terms of her agency under the Katibayan.

The petitioner moved to reconsider the CA decision, arguing that the CA disregarded the legal significance of the mortgage deed, and filed the present petition after the CA denied her motion.

The Issues

The petitioner raises the following issues:

- whether the CA correctly disregarded the effect of the mortgage deed on her criminal liability; and
- whether the elements of the crime of estafa under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, were duly proven beyond reasonable doubt.

The petitioner asserts that the terms of the mortgage deed negated the element of misappropriation, and the RTC and the CA did not at all consider these when they convicted her. At the same time, she disputes the terms of the Katibayan, as its stipulations, written in fine print, did not truly disclose the real nature of the transaction between her and Jeremias. She also claims that she became the owner of the diamond ring after it was turned over to her. The petitioner further insists that she signed the Katibayan without taking heed of its terms because she trusted Jeremias.

The Court's Ruling

We find the petition unmeritorious.

The issues raised by the petitioner are essentially encapsulated by the second issue outlined above – i.e., whether the crime of estafa has been sufficiently established; the first issue relating to the mortgage deed is a matter of defense that should be considered in resolving the second issue.

Article 315, paragraph 1(b) of the Revised Penal Code, as amended, under which the petitioner was charged and prosecuted, states:

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

1st. The penalty of 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. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be[.]

x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property[.]

The elements of estafa under this provision are: (1)the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2)misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (3)the misappropriation, conversion or denial is to the prejudice of another; and (4)demand by the offended party that the offender return the money or property received.[14]

The essence of this kind of estafa is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made.[15] The words "convert" and "misappropriate" connote the 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] 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.[17] In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.[18]

In this case, the petitioner asserts that the prosecution failed to sufficiently prove the first and second elements of the crime. The petitioner also asserts that these elements were negated by her testimony and by the mortgage deed that showed she received the diamond ring as owner, and not as an agent. The petitioner argues that she could not have misappropriated or converted the diamond ring precisely because she was its owner.

The First Element: Receipt of Goods in Trust

The prosecution proved the first element of the crime through the testimony of Jeremias who related that he gave the petitioner the diamond ring for sale on commission basis. The unequivocal terms of the Katibayan corroborated Jeremias' testimony and showed the fiduciary relationship between the two parties as principal and agent, where the petitioner was entrusted with the diamond ring under the specific authority to sell it within three days from its receipt and to return it if it remains unsold within that period.

Significantly, the petitioner admitted the fiduciary relationship between herself and Jeremias - an aspect of the case that the RTC and the CA duly noted through the finding that the petitioner admitted receiving the diamond ring from Jeremias to be sold on commission basis.[19]

Against the prosecution's case, the defense submitted its own evidence and varying theories that unfortunately suffered from serious contradictions.

First, at the earliest stages of the trial proper, the petitioner categorically admitted on the witness stand that she received the diamond ring in order to sell it on commission basis. Immediately after, she testified that she gave several pieces of jewelry (evidenced by a receipt) to Jeremias in exchange for the diamond ring. As the RTC noted, however, the written receipt of the pieces of jewelry did not support the theory that they had been given by way of exchange for the diamond ring. The RTC observed:

[T]here is nothing in the document to show that it was received, nor it was given to the private complainant in exchange of the latter's ring. There is not even, in the said list, any valuation or costing of each [jewelry] x x x What is contained in the list are the words "for cleaning" which purports no other meaning that would favor the cause of the accused.[20]

Second, the defense next attacked the identity of the recipient of the diamond ring. As sur-rebuttal, the petitioner presented the mortgage deed to show that the diamond ring was entrusted to her husband, Danilo, and not to her. This mortgage deed, however, was executed only on August 25, 2003, or long after the ring was delivered on

February 16, 1996, together with the Katibayan that the petitioner duly signed. It likewise contradicted the petitioner's earlier admission that she took delivery of the diamond ring. Not surprisingly, the lower courts did not give the submitted deed any evidentiary value.

Lastly, the defense propounded the theory that the petitioner and her husband jointly owned the diamond ring, citing the mortgage deed as proof and basis of this claim. Both the RTC and the CA recognized the theory as unmeritorious given the clear terms of the mortgage deed. These terms did not speak of the petitioner or Danilo's ownership of the ring, merely of Danilo's intended return of the ring. The mortgage deed reads:

[T]he MORTGAGOR [DANILO PAMINTUAN], for and in consideration of my promise to return within thirty (30) days from today to JERRY VICTORIA, Filipino citizen, of legal age, married and a resident of San Isidro Village, Batangas City, hereinafter referred to as the MORTGAGEE, the jewelry subject matter of Criminal Case No. 11002, in the same order and condition when it was entrusted to me by the MORTGAGEE on February 16, 1996, hereby convey by way of first mortgage unto the said MORTGAGEE x x x [.] [21]

The Second Element: The Misappropriation

The second element - the misappropriation of the diamond ring ₱ was proven by Jeremias' testimony that the petitioner failed to return the diamond ring after the lapse of the agreed period or afterwards, despite the clear terms of the Katibayan. He further testified that the petitioner could not return the ring because she had pawned it. She strangely did not respond to this allegation. This silence, coupled with her undeniable failure to return the diamond ring, immeasurably strengthened the element of misappropriation. Her silence assumes great significance since the pawning of the diamond ring was a clear violation of the Katibayan which only gave her the authority to sell on commission or to return the ring. Acting beyond the mandate of this agency is the conversion or misappropriation that the crime of estafa punishes.

Third and Fourth Elements: Prejudice and Demand

The prosecution proved the third and fourth elements through evidence of demands and the continued failure to return the ring or its value for seven years (1996 to 2003) despite demand. Based on the records, the return of the value of the ring came only in 2003 after the execution of the mortgage deed that, strangely, while marked as Exh. "4," was never offered in evidence and is thus technically not an evidence we can appreciate.[22] The demand letters, on the other hand, were never disputed and thus clearly showed the failure to return the ring or its value. In fact, even if the mortgage deed were to be given evidentiary value, it can only stand as evidence of the return of the value of the ring in 2003, not of anything else.

The basis of the estafa charge is the failure to return the ring or to pay for its value in cash within the period stipulated in the Katibayan. We do not find it disputed that the ring was never returned despite demands. The value of the ring was not also made available to Jeremias until seven years after its delivery to the petitioner. When she failed at the first instance (and in fact she continuously failed), despite demands, to return at least the value of the ring, the crime of estafa was consummated. The return after seven years of its value only addressed the civil liability that the consummated crime of estafa carried with it, as the RTC and the CA correctly stated in their decisions.

If only to address the petitioner's issue regarding the legal significance of the un-offered mortgage deed, we observe that it could not have raised any reasonable doubt about the nature of the transaction between the parties. Under the circumstances, the best evidence to ascertain the nature of the parties' diamond ring transaction is the Katibayan which is the written evidence of their agreement that should be deemed to contain all the terms they agreed upon.[23] Under the parole evidence rule, no additional or contradictory terms to this written agreement can be admitted to show that, at or before the signing of the document, other or different terms were orally agreed

upon by the parties.[24] Thus, the terms of the Katibayan should be the prevailing terms of the transaction between the parties, not any oral or side agreement the petitioner alleged. We consider, too, in this regard that the post-Katibayan acts of the parties strengthened, rather than negated, the Katibayan terms, particularly the petitioner's obligation to return the diamond ring; otherwise, she would not have attempted to return the value of the ring when the criminal complaint was filed against her, nor secured the execution of the mortgage deed, had no such obligation existed.

Viewed in their totality, we hold that the prosecution presented proof beyond reasonable doubt of the petitioner's guilt, and both the RTC and the CA did not err in their conclusions. The prosecution evidence was clear and categorical, and systematically established every element of the crime; the defense evidence, on the other hand, glaringly suffered from contradictions, changes of theories, and deficiencies that placed its merit in great doubt.

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. In this case, the established evidence showed that the value of the diamond ring is P765,000.00. The first paragraph of Article 315 provides the appropriate penalty if the value of the thing or the amount defrauded exceeds P22,000.00, as follows:

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.

With the given penalty range pegged at the maximum of prision mayor in its minimum period and an additional one year for every P10,000.00 in excess of P22,000.00, the maximum imposable penalty shall exceed twenty years when computed, twenty years of imprisonment should be imposed as maximum.

The minimum of the imposable penalty depends on the application of the Indeterminate Sentence Law pursuant to which the maximum term is "that which, in view of the attending circumstances, could be properly imposed" under the Revised Penal Code, and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

Since the penalty prescribed by law for the crime of estafa is prision correccional maximum to prision mayor minimum, the penalty next lower would then be prision correccional minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months, while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded P22,000.00, plus an additional one (1) year for each additional P10,000.00.[25]

Under these norms, the penalty of four (4) years and two (2) months of prision correccional, as minimum term, to twenty (20) years of reclusion temporal, as maximum term, is correct. The RTC and the CA were correct in not awarding civil liability since the execution of the mortgage deed satisfied the value of the unreturned diamond ring.

WHEREFORE, we hereby DENY the petition for lack of merit, and consequently AFFIRM the decision dated January 12, 2006 and the resolution dated May 19, 2006 of the Court of Appeals in CA-G.R. CR No. 28785, finding petitioner Dulce Pamintuan guilty beyond reasonable doubt of the crime of estafa, defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended. No costs.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, [*]Abad, and Villarama, Jr., JJ., concur.

[*] Designated additional Member of the Third Division, in view of the retirement of former Chief justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

[1] Dated January 12, 2006; penned by CA Presiding Justice Conrado M. Vasquez, Jr., and concurred in by CA Associate Justice (now Supreme Court Associate Justice) Mariano C. del Castillo and CA Associate Justice Magdangal M. de Leon; rollo, pp. 33-39.

[2] Dated May 19, 2006; id. at 43-44.

[3] Dated July 21, 2004; id. at 60-66. Penned by Judge (now CA Associate Justice) Mario V. Lopez.

[4] Id. at 60.

[5] Exhibit "A"; id. at 76.

[6] Exhibit "A-2"; id. at 76; The pertinent portion of the Katibayan provides: "KABUUANG HALAGA P765,000.00 (Seven Hundred Sixty Five Thousand Pesos Only) nasa mabuting kalagayan upang ipagbili ng KALIWAAN lamang sa loob ng 3 araw mula ng aking pagkalagda; kung hindi ko maipagbili ay isasauli ko ang lahat ng alahas sa loob ng taning na panahong nakatala sa itaas; kung maipagbili ko naman ay dagli [kong] isusulit at ibibigay ang buong pinagbilhan sa may-ari ng mga alahas. Ang aking gantimpala ay ang mapapahigit na halaga sa nakatakdang halaga sa itaas ng bawat alahas; HINDI AKO pinahihintulutang ipa-utang o ibigay na hulugan ang alin mang alahas; ilalagak, ipagkakatiwala, ipahihiram, isasangla o ipananagot kahit sa anong paraan ang alin mang alahas sa ibang tao o tao."

[7] Supra note 3, at 61.

[8] Ibid.

[9] Id. at 62.

[10] Exhibit "1"; Records, p. 163; II Folder of Exhibits, p. 3.

[11] Rollo, pp. 77-78.

[12] Supra note 3.

[13] Supra note 1, at 7.

[14] Perez v. People, G.R. No. 150443, January 20, 2006, 479 SCRA 209, 218-219.

[15] Serona v. Court of Appeals, 440 Phil. 508, 518 (2002).

[16] Ibid.

[17] Ibid.

[18] U.S. v. Rosario de Guzman, 1 Phil. 138, 139 (1902).

[19] Supra note 3, at 63; supra note 1, at 37.

[20] Supra note 3, at 64.

[21] Id. at 65.

[22] Supra note 2, at 44.

[23] Rules of Court, Rule 130, Section 9.

[24] Sps. Agbada v. Inter-Urban Developers, Inc., 438 Phil. 168, 192 (2002).

[25] See People v. Temporada, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 301-304; and the seminal case of People v. Gabres, 335 Phil. 242, 256-257 (1997).

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