

JEAN D. GAMBOA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 188052. April 21, 2014

Ponente: PEREZ, J.

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PEREZ, J.:

Petitioner Jean D. Gamboa (Gamboa) beseeches us in this appeal by certiorari for reprieve from the concurring convictions by the lower courts, specifically, the Regional Trial Court (RTC), Branch 145, Makati City in Criminal Case No. 00-526,[1] and the Court of Appeals in CA G.R. CR. No. 30354,[2] finding her guilty of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code.

Gamboa was charged in an Information dated 18 February 2000, which reads:

That on or about the month of February, 1999 or prior thereto, at Makati City, Metro Manila, Philippines and within the jurisdiction of the Honorable Court, the above-named accused [Gamboa], being then employed as Liaison Officer of complainant TFS Pawnshop, Inc. represented by its Operations Manager Felicidad Samson and as such is authorized among others to secure and/or renew municipal/city licenses and permits for TFS Pawnshop branches received in trust from complainant the total amount of P78,208.[9]5 with the obligation on the part of the accused to use the said amount for the renewal of licenses and permits for all complainant's branches located in Manila, but [Gamboa], once in possession of the said amount, with intent to gain and abuse of confidence, did then and there willfully, unlawfully, and feloniously misappropriate, misapply and convert to her own personal use and benefit said amount of P78,208.95 as a consequence thereof[,] complainant paid the total amount of P85,187.00 for the renewal of the licenses and permits of its branches in Manila and that [Gamboa] refused and/or failed and still refuses and/or fails to account or return said amount despite demand from complainant, to the damage and prejudice of the latter in the total amount of P163,395.95.[3]

Upon arraignment on 28 September 2000, Gamboa pleaded not guilty.

At the trial, the prosecution presented four (4) witnesses: (1) Felicidad Samson (Samson), Operations Head of (private complainant) Tambunting Finance Services Pawnshop, Inc. (TFS); (2) Knestor Jose Y. Godino (Godino), the Human Resource Manager of TFS at the time of the incident in question subject of this criminal case; (3) Estrella Cuyno, Liaison Officer of TFS; and (4) Liberty Toledo, former Assistant City Treasurer – Chief of the License & Permit Division of the City of Manila, now the City Treasurer of Manila. The following facts were testified to:

Gamboa's job function, as the liaison officer of TFS, included the processing and securing of the necessary government permits and licenses of all branches of TFS in Metro Manila. In that regard, Gamboa received from TFS the money allotment therefor in the total amount of P247,117.25. The money allotment included the sum of P81,000.00 to cover the renewal and processing of government licenses and permits of twelve (12) of TFS' branches in the City of Manila.

Gamboa's receipt of the amount of P81,000.00 was evidenced by a Request for Payment dated 18 January 1999

signed by her and approved by TFS President, a certain Ongsiako. Witness Samson, Operations Head of TFS, likewise presented in evidence a notebook which she kept for recording purposes and which contained Gamboa's signature next to a written entry corresponding to Gamboa's receipt of the amount of P81,000.00.

TFS, through Samson, a Mrs. Tan and Godino, TFS' Human Resource and Management Development (HRMD) Manager, made several demands for Gamboa to render a proper liquidation report of the various money allotments she had received for the renewal of the government permits and licenses of the twelve (12) TFS branches. However, the demands went unheeded.

TFS' HRMD issued HRMD Memorandum No. 036 dated 25 February 1999 notifying Gamboa of her violation of company rules and regulations for failing to liquidate the sum of P249,117.27. On the same date, Gamboa had an altercation with some of TFS' officers.

In response to HRMD Memorandum No. 036, Gamboa submitted a letter dated 27 February 1999, explaining that: (1) the money allotment constituting her cash advances were distributed to her staff for the delegated assignment of renewal of the required government permits and licenses for TFS' branches all over Metro Manila; (2) she has surrendered all the necessary liquidation papers; and (3) as scheduled, all of the required licenses of TFS' branches were already fully paid on 20 January 1999 and no additional penalty was incurred therefor.

Notwithstanding her letter-explanation, Gamboa was placed under preventive suspension via Memorandum No. 037 dated 1 March 1999 which also notified Gamboa of another failure on her part to liquidate the amount of P50,809.85 as of 26 February 1999.

On 9 May 1999, Gamboa was terminated from employment.

Apparently, contrary to Gamboa's claim, payment for the permits and licenses of all of TFS' branches in Manila for the year 1999 was never made.[4]

Subsequently, TFS, through, Samson, filed the criminal complaint charging Gamboa with the crime of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code for misappropriating, misapplying or converting the following amounts: (1) P78,208.95 for the renewal of permits and licenses of the twelve (12) branches in Manila; (2) P85,187.00 representing the permits and license fees including surcharges which TFS paid because of Gamboa's failure to do so; and (3) P25,213.58 comprising of previous cash advances to Gamboa.

Gamboa denied that she misappropriated, misapplied or converted the various unliquidated amounts insisted upon by TFS. On the whole, albeit belatedly, and only at the trial stage before the RTC, Gamboa claimed that for the year 1999, upon the instruction of her superior, Estrella Cuyno (Cuyno), she transacted with a Joselito "Lito" Jacinto, a casual employee of the Office of the City Mayor of Manila, concerning the processing and renewal of TFS' branches' business permits and licenses.

As part of her transaction, Gamboa admitted receipt of the amount of P45,587.65 evidenced by Request for Payment dated 18 January 1999. Gamboa likewise admitted receipt of the amount of P24,000.00 representing a mobilization fee of P2,000.00 per TFS branch evidenced by Request for Payment also dated 18 January 1999. These Requests for Payment were duly signed and approved by TFS Vice-President Ramon Luis Carlos Tambunting, and the amounts represented therein admittedly received by Gamboa.

Gamboa claimed she turned over the monies to Lito Jacinto as instructed by Cuyno. In support of the claim, Gamboa presented as documentary evidence, a photocopy of a receipt covering the amount of P45,587.65 signed by Lito Jacinto. The original of this receipt designated during trial as Exhibit "6" was purportedly lost in an occasion when Gamboa rode a taxi cab.[5]

Gamboa further claimed that two others were present when she handed the monies as payment to Lito Jacinto: one of TFS' messengers, a certain Jayson, and Carmencita "Menchie" Cornejo, an officemate of Lito Jacinto.

As is routine, Gamboa followed up on the renewal permits with Lito Jacinto who told her that the permits were still being processed.

After Gamboa received Memorandum No. 036 dated 25 February 1999 notifying her of her supposed violation of TFS' company policies for failing to liquidate the amounts representing the renewal of TFS' branches' permits and licenses, she learned from Lito Jacinto's officemates that the latter did not remit the monies she had handed over to him as supposed payment for TFS' renewal permits and licenses.

Consistent with her story, Gamboa claimed that she filed an administrative complaint by way of a letter dated 9 March 1999 against Lito Jacinto before the Office of the City Mayor of Manila. In conjunction with the administrative complaint, Gamboa purportedly filed a criminal complaint against Lito Jacinto before the City Prosecutor's Office of Manila. However, this same criminal complaint was subsequently dismissed upon Gamboa's motion to withdraw the complaint.

To corroborate her claim that she handed the monies representing payment of TFS' renewal permits and licenses for its branches in Manila, Gamboa presented the testimony of Rey Marquez (Marquez), also a liaison officer of Tambunting Puyat Pawnshop, Inc. (TPP), a sister company of TFS. Marquez testified that in 1999, he likewise transacted with Lito Jacinto for the renewal of TPP's business permits and licenses. Specifically, on 15 January 1999, Marquez and Gamboa both transacted with Lito Jacinto on behalf of their respective companies. Marquez himself had handed the amount of P10,000.00 to Lito Jacinto for the processing of the renewal of TPP's business permits and licenses. Lito Jacinto also absconded with the money so Marquez likewise filed an administrative complaint dated 15 March 1999 before the Office of the City Mayor.

On 18 May 2006, the RTC convicted Gamboa of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code for misapplying and/or converting the amount of P81,000.00 which she had received in trust for the specific purpose of the renewal of TFS' branches' business permits and licenses. The trial court found credible the testimony of Samson as to Gamboa's receipt of the amount of P81,000.00. On the other hand, the trial court found Gamboa's defense, that as instructed, she handed the monies, P45,587.65 and P24,000.00, respectively, to Lito Jacinto to facilitate the renewal of TFS' business permits and licenses, as an afterthought, and this defense directly contradicted her categorical statement that the licenses and business permits of TFS had already been paid as of 20 January 1999. The trial court extrapolated, thus:

Anent to her defense that she merely acted as messenger upon the instruction of her supervisor Ms. Cuyno to give the amount of P45,587.65 to Lito Jacinto, thus, she should not be accountable for the same, this contention is unavailing, given the oral as well as documentary evidence of the prosecution.

For one thing, this defense appears to be contrived as it was never raised in her reply to the memorandum [of] TFS x x x asking her to liquidate her cash advances. On the contrary, she pithily claimed that all municipal licenses for all branches were completely paid as of January 20, 1999 as per schedule, thereby making it appear to her employer TFS that she has nothing to account for.

For another, this actuation is palpably contrary to logic and common sense since if she already knew that Lito Jacinto had converted to his benefit the sum of P45,587.65, then she should not have incessantly asserted that the licenses and permits of all the branches of TFS in the City of Manila had already been paid for as of 20 January 1999.

This inconsistency is also evident in the Counter-Affidavit and Supplemental Counter-Affidavit, which she submitted to the Office of the City Prosecutor of Makati City during the preliminary investigation, when she

egregiously failed to aver any transaction she had with Lito Jacinto and that the latter should be solely responsible for the loss of the aforementioned amount. Verily, and as observed earlier, this defense is clearly an afterthought and does not deserve faith and credit.

Additionally, on the assumption that she indeed turned over the amount of P45,587.65 to Jacinto, she failed to establish the fact that she is authorized to do so by private complainant TFS. This notwithstanding however, insofar as the civil liability of the accused is concerned, she is only to be held accountable of P81,000.00 proven to be received by her. The amount of P74,690.00 subsequently paid by TFS to the City Government of Manila for its licenses and permits cannot be charged to the accused as she did not benefit from this and it is the obligation of TFS to pay its licenses and permits fees in order to legally operate its business.

x x x x

PREMISES CONSIDERED, judgment is rendered finding the accused GUILTY beyond reasonable doubt of the offense of Estafa under paragraph 1(b) of Article 315 of the Revised Penal Code, sentencing her to suffer the penalty of imprisonment under an indeterminate sentence of four (4) years[,] two (2) months and one (1) day of prision correccional as minimum to twelve (12) years of prision mayor as maximum with all the accessory penalties provided by law. She is further ordered to pay the private complainant TFS Pawnshop Incorporated the sum of P81,000.00 representing the amount misappropriated by her plus interest at the rate of six (6%) to be reckoned from the rendition of the judgment until fully paid (Article 2211, NCC). Costs against [Gamboa].[6]

At the appeal stage before the Court of Appeals, the Office of the Solicitor General (OSG) joined Gamboa's stance of innocence and prayed for the reversal and setting aside of the trial court's judgment of conviction. The OSG filed a Manifestation in Lieu of Appellee's Brief arguing the absence of the element of misappropriation because Gamboa simply followed instructions when she gave the monies to Lito Jacinto for the renewal of TFS' branches' business permits and licenses. Ultimately for the OSG, the fact that the business licenses and permits were apparently not paid does not establish misappropriation or conversion by Gamboa of the monies allotted therefor.

The Court of Appeals agreed with the findings of the RTC. Extensively delving on Gamboa's defense that there was no misappropriation since she turned over the amount of P45,587.65 and P24,000.00 to Lito Jacinto as instructed by her superior, the Court of Appeals reviewed the case, thus:

It likewise bears stressing that prior to the filing of the instant estafa case, [Gamboa] was requested in several instances by TFS, oral and written, to liquidate the cash advances made by her, but, she failed to do so.

In [Gamboa's] effort to exculpate herself from criminal liability, she belatedly claimed during her direct examination in court that she gave the amount of P45,587.65 as payment for the renewal of the business permits and licenses and P24,000.00 as mobilization fee to one Lito Jacinto, allegedly an employee of the Office of the City Mayor of Manila who was assigned at the Mayor's Permits and License Division, in order to expedite the processing thereof. This was allegedly upon the express instruction of her superior, Estrella Cuyno, that she deal directly with Lito Jacinto, TFS' contact person in Manila City Hall. To prove the actual receipt of the said amount by Lito Jacinto, she presented a document marked as Exhibit "6." The said document was prepared by [Gamboa] herself, which is just a reproduction of Exhibit "5" or the Request of Payment dated January 18, 1999 in the sum of P45,587.65 signed and approved by TFS VP Tambunting, except that the signatory in Exhibit "6" was one Lito Jacinto.

We agree with the court a quo in not giving probative value to Exhibit "6" of the defense.

A perusal of Exhibit "6" shows that the same is merely a photocopy of the original. This was pointed out by private prosecutor Atty. Marcelo and was admitted by defense counsel Atty. Matula during the cross-examination of [Gamboa]. x x x.

x x x x

Notably, [Gamboa] testified that she herself prepared Exhibit “6,” which allegedly contained the signature of Lito Jacinto as having received the amount of P45,587.65. However, she lost the original copy thereof in a taxi on May 17, 2001 as evidenced by a Certification of even date issued by Chief Inspector Vicente Dizon Flores of the PNP Makati Police Station indicating therein that she left her folder containing documents vital to the instant estafa case. Such being the case, [Gamboa] failed to clearly establish as to how she got hold of the photocopy of the original thereof.

A perusal of Exhibit “6” further shows that it is a “certified xerox copy (from the original)” and the same was signed by one Othelo V. Salvacion, Administrative Officer IV of the City of Manila with O.R. No. 1101860 dated February 11, 2002. Considering that Exhibit “6” is a private document, it was not shown how the original thereof came under the custody of Mr. Salvacion. Neither was Mr. Salvacion also presented on the witness stand to testify as to his alleged signature appearing on the purportedly certified true copy of the original of Exhibit “6.”

Neither did the defense present the original or xerox copy of Exhibit “6” before the court a quo for marking during the pre-trial held on November 14, 2000. In addition, it was only during the direct examination of [Gamboa] on July 30, 2002 that she raised for the first time Exhibit “6” as a defense by passing the blame to one Lito Jacinto. She never raised the said defense at the earliest opportune time when she made a liquidation report of her cash advances. Further, she again failed to raise the said defense before the Office of the Prosecutor of Makati City during the preliminary investigation. If indeed she was innocent of the crime charged, ordinary human behavior dictates that she should have divulged the said information to her superiors or the investigating public prosecutor of such fact. Her failure to do so casts serious doubt on her credibility.

As to [Gamboa’s] administrative complaint filed before the Office of the City Mayor against Lito Jacinto, [Gamboa] did not make any follow-up on the status of the case nor take any further action in connection therewith. And, as to [Gamboa’s] criminal complaint for estafa against Lito Jacinto which was filed before the City Prosecutor of Manila, the same was dismissed upon [Gamboa’s] motion to withdraw the same without prejudice. No further action was likewise taken by [Gamboa] to pursue her claim against Lito Jacinto.

Thus, the asseveration of the OSG that [Gamboa] should be acquitted because she was able to prove the fact of receipt of the money by Lito Jacinto, must necessarily fail.

x x x x

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Decision dated May 18, 2006 of the Regional Trial Court, Branch 145, Makati City in Criminal Case No. 00-526 is AFFIRMED with modification in that [Gamboa] is sentenced to suffer imprisonment of four (4) years and two (2) months of prision correccional, as minimum, to thirteen (13) years of reclusion temporal, as maximum.[7] (Emphasis supplied).

Hence, this appeal by certiorari assigning the following errors in the appellate court’s ruling:

I.

THE [HONORABLE] COURT OF APPEALS SUSTAINED [GAMBOA’S] CONVICTION BY FOCUSING ON THE WEAKNESSES OF THE DEFENSE RATHER THAN BASING IT ON THE STRENGTH OF PROSECUTION EVIDENCE[.]

II.

THE HONORABLE COURT OF APPEALS DELIBERATELY IGNORED THE MANIFESTATION IN LIEU OF APPELLANT’S BRIEF OF THE PEOPLE’S COUNSEL, THE OSG, WHICH PRAYED FOR [GAMBOA’S] ACQUITTAL[.][8]

In essence, Gamboa asks for her acquittal since the prosecution did not prove her guilt beyond reasonable doubt. Gamboa, backed by the OSG, maintains that the element of misappropriation or conversion in the crime of Estafa under paragraph 1(b), Article 315 of the Revised Penal Code was not met: she turned over the monies for the processing of the renewal of TFS' business permits and licenses to Lito Jacinto as has been the practice in the Tambunting Group of Companies.

While the Manifestation in Lieu of Appellee's Brief of the OSG did call for attention, we remain unconvinced.

The pass on arguments of the OSG follows:

The critical issue in the instant case, therefore, is whether [Gamboa] misappropriated the cash she received from TFS intended for payment of the latter's business permits.

As previously mentioned, [Gamboa] does not deny receiving such amount. She contends, however, that she delivered it to Lito Jacinto, the TFS contact person in the City Hall of Manila who absconded with the money instead of paying it in behalf of TFS.

It must be noted that delivery to a third person by an agent of the thing entrusted to her, by itself, does not constitute misappropriation. In the following case, the High Court extensively discussed the rationale behind such principle:

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. We are unable to agree with the lower courts' conclusion that this fact alone is sufficient ground for holding that petitioner disposed of the jewelry "as if it were hers, thereby committing conversion and clear breach of trust."

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 acknowledgement 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 acknowledgement 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

Thus, the next question that must be settled is whether the evidence upholds [Gamboa's] claim of delivery by her to Lito Jacinto of the money intended to be paid to secure permits and licenses from the City of Manila, or at least create a reasonable doubt that she misappropriated the money given to her by TFS.

Notably, in the instant case, [Gamboa] is claiming that not only is she not prohibited from delivering the amount to Lito Jacinto, but under TFS practice and as well as by direct orders of her superiors, she is actually mandated to give such amount to him for the release of TFS business permits. x x x. Thus, she should not be held liable for Lito Jacinto's failure to remit such amount to the City Government of Manila.

Apart from her testimony, [Gamboa] presented various documentary evidences. Exhibit "5" x x x, for instance, is a TFS voucher denominated as Request for Payment, dated January 18, 1999, wherein the company vice president, Ramon Louis Carlos Tambunting, signed his approval for the release of P45,587.65 to [Gamboa] for payment of business permits for TFS branches in Manila. Exhibit "5" contains detailed information as to the original assessment, the amount compromised and the resulting amount to be paid for each branch in Manila.

[Gamboa] likewise presented Exhibit "6" x x x, the same Request for Payment Form as in Exhibit "5" but

without the signature of Ramon Louis Carlos Tambunting. Instead the purported signature of Lito Jacinto appears therein acknowledging the receipt of P45,526.65 [sic] to be paid for the release of business permits of TFS.

There seems to be no doubt that TFS deals with contact persons within the City Government of Manila such as Lito Jacinto to facilitate the release of its business permits for some consideration which TFS terms as "Mobilization Fee." Exhibit "27" x x x is a request for payment form dated January 18, 1999 signed by Ramon Louis Carlos Tambunting authorizing the release to [Gamboa] of the amount of P24,000.00 or P2,000.00 per TFS branch in Manila as "Mobilization Fee."

The prosecution never challenged the authenticity of Exhibits "5," "6" or "27," thereby giving plausibility to [Gamboa's] claim that she paid such amounts to Lito Jacinto as sanctioned by TFS officials. There is no doubt that Lito Jacinto exists and that TFS has dealings with him.[9]

In sum, the OSG ascribes great weight to Gamboa's belated testimony that she turned over the monies, P45,587.65 and P24,000.00, respectively, to Lito Jacinto to process and facilitate the renewal of TFS branches' business permits and licenses such that the prosecution failed to discharge the requisite burden of proof in criminal cases, i.e., beyond reasonable doubt.

Rule 133, Section 2 of the Rules of Court reciting constitutional mandate, exacts acquittal absent proof beyond reasonable doubt. The universal test is moral certainty in ascertaining the guilt of the accused, obtained only by proof which produces conviction in an unprejudiced mind.

In this case, the elements of the crime of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code sought to be established by the prosecution are as follows:

- That money, goods or other personal properties are 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;
- That there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt;
- That such misappropriation or conversion or denial is to the prejudice of another; and
- That there is a demand made by the offended party on the offender.[10]

The first and fourth elements were readily admitted by Gamboa while she categorically disputed the second and third elements by declaring in her letter-explanation to TFS dated 27 February 1999, and at the stage of preliminary investigation, that:

- her cash advances were distributed to her staff for purposes of processing the renewal of the required permits and licenses;
- she [had] surrendered all the necessary liquidation papers; and
- all of TFS branches' licenses were already completely paid on 20 January 1999 as per schedule, hence, no additional penalty was incurred therefor.[11]

It was only during trial, specifically at her direct examination, that Gamboa raised the defense of her handing over the monies to Lito Jacinto, as instructed by her superior, Cuyno.

It is well-settled that the credibility of witnesses is best determined by the trial judge, who has the direct opportunity and unique advantage to observe at close range their conduct and deportment on the witness stand. The general rule is that findings of fact of the trial court, its assessment of the credibility of witnesses and their

testimonies, and the probative weight thereof, as well as its conclusions based on said finding, are accorded by the appellate court utmost respect, if not conclusive effect, and can only be set aside upon a clear showing that it overlooked, ignored, misconstrued and misinterpreted cogent facts and circumstances which, if considered, would alter the outcome of the case.[12]

We do not find the testimony of Gamboa credible because it is riddled with inconsistencies and consists of documentary evidence which cannot be authenticated.

We quote with favor the disquisition thereon of the appellate court:

Notably, [Gamboa] testified that she herself prepared Exhibit “6[,]” which allegedly contained the signature of Lito Jacinto as having received the amount of P45,587.65. However, she lost the original copy thereof in a taxi on May 17, 2001 as evidenced by a Certification of even date issued by Chief Inspector Vicente Dizon Flores of the PNP Makati Police Station indicating therein that she left her folder containing documents vital to the instant estafa case. Such being the case, [petitioner] failed to clearly establish as to how she got hold of the photocopy of the original thereof.

A perusal of Exhibit “6” further shows that it is a “certified xerox copy (from the original)” and the same was signed by one Othelo V. Salvacion, Administrative Officer IV of the City of Manila with O.R. No. 1101860 dated February 11, 2002. Considering that Exhibit “6” is a private document, it was not shown how the original thereof came under the custody of Mr. Salvacion. Neither was Mr. Salvacion also presented on the witness stand to testify as to his alleged signature appearing on the purportedly certified true copy of the original of Exhibit “6[.]”

Neither did the defense present the original or xerox copy of Exhibit “6” before the court a quo for marking during the pre-trial held on November 14, 2000. In addition, it was only during the direct examination of [Gamboa] on July 30, 2002 that she raised for the first time Exhibit “6” as a defense by passing the blame to one Lito Jacinto. She never raised the said defense at the earliest opportune time when she made a liquidation report of her cash advances. Further, she again failed to raise the said defense before the Office of the Prosecutor of Makati City during the preliminary investigation. If indeed she was innocent of the crime charged, ordinary human behavior dictates that she should have divulged the said information to her superiors or the investigating public prosecutor of such fact. Her failure to do so casts serious doubt on her credibility.[13]

Moreover, we scoured the OSG’s Manifestation in Lieu of Appellee’s Brief and Gamboa’s petition and these do not offer any plausible reason that will explain the significantly long delay in raising such a plausibly turning point of his defense considering that the alleged turnover of funds was routine part of her work.

The OSG simply makes a throw-away assertion:

x x x The record shows, however, that [Gamboa] only knew of Lito Jacinto’s failure to deliver the payment sometime in March 9, 1999, while her memorandum to the TFS was given on February 27, 1999. It is also possible that [Gamboa] did not mention Lito Jacinto in her counter and supplemental affidavits because the complaint affidavit of Felicidad Samson was vague, as [Gamboa] was being made to account for various amounts of money. In fact, the investigating prosecutor initially agreed with [Gamboa] that there was no certainty as to the amount demanded from her and he even recommended the dismissal of the complaint against [Gamboa] x x x.[14]

We cannot subscribe to the OSG’s reasoning.

During the preliminary investigation stage Gamboa stated under oath that:

It is not true that I was not able to pay for the Mayor’s permit for different branches and the documents are

with me. The truth of the matter is that all payments have already been made as of January 20, 1999 and some permits are awaiting release.[15]

Contrary to the OSG's assertion, Gamboa was not confused on what she was being made to account for, as she categorically denied that: (1) she failed to pay the Mayor's permit for different branches; (2) the documents attesting to the fact that its payment are in her possession; and (3) some of the permits are only yet to be released.

Again, we refer to the appellate court's solid reasoning:

Neither did the defense present the original or xerox copy of Exhibit "6" before the court a quo for marking during the pre-trial held on November 14, 2000. In addition, it was only during the direct examination of [Gamboa] on July 30, 2002 that she raised for the first time Exhibit "6" as a defense by passing the blame to one Lito Jacinto. She never raised the said defense at the earliest opportune time when she made a liquidation report of her cash advances. Further, she again failed to raise the said defense before the Office of the Prosecutor of Makati City during the preliminary investigation. If indeed she was innocent of the crime charged, ordinary human behavior dictates that she should have divulged the said information to her superiors or the investigating public prosecutor of such fact. Her failure to do so casts serious doubt on her credibility.[16]

The lack of certainty in the amount demanded by TFS merely puts into question the actual amount that was misappropriated and the damage on TFS, but not the fact of Gamboa's misappropriation. However, we still find, as the lower courts did, that the amount of ₱81,000.00 was sufficiently established by the prosecution through the positive testimony of Samson backed by documentary evidence:

ATTY. MARCELO

x x x x

A.

All the cash that have to be disbursed comes from me [sic].

Q.

And the Petty Cash?

A.

All the expenses in the office like the transportation of the messenger and all the needs in the office I was the one who prepared the payments.

Q.

In all these works, do you use records?

A.

Yes, Ma'am.

Q.

How?

A.

I have my own notebook for the Petty Cash.

Q.

Do you know x x x Jean Gamboa?

A.

Yes, Ma'am.

x x x x

A.

For every transaction that she has[,] she will consult me.

x x x x

A.

If ever she needs money to pay the permits and licenses[,] she has to go to me to get for the cash advances.

x x x x

Q.

I am showing to you Mrs. Witness a document entitled Request for Payment Form, will you please examine this and tell the Court what is the relation of that to the Request for Payment Form which Jean Gamboa usually handed to you when she asked for cash disbursement?

A.

This is a Request for Payment form.

x x x x

A.

This refers to her cash advances intended for the permits and licenses for the Manila branches.

Q.

This Request for Payment Form has been approved by the authorized signatory, were you able to give that amount to her as requested?

A.

Yes, Ma'am.

Q.

What proof do you have that you were able to give Jean Gamboa this amount?

A.

She has a signature in my Petty Cash notebook.

Q.

Where is that notebook?

INTERPRETER

Witness is handling a notebook with a caption school notes.

ATTY. MARCELO

Q.

You have handed to me a notebook, where in particular is this entry for P81,000.00?

A.

This is the one, Ma'am.

INTERPRETER

Witness is pointing to the entry P81,000.00 after which the name Jean Gamboa, her signature and the date January 19, 1999.

ATTY. MARCELO

Q.

In this entry, whose handwriting is this[?]

A.

Jean Gamboa's handwriting.

Q.

How about this signature?

A.

This is her signature.

Q.

Why do you say so?

A.

Because I am familiar with her handwritings and signatures. Everyday we are together in the office.

x x x x

Q.

x x x how did you enter the transaction in this notebook?

A.

I entered the transaction in pencil. After receiving the amount[,] she will place her name, the date, her signature or her initial.

x x x x

Q.

What happened to this amount of P81,000.00, was she able to liquidate?

A.

No, Ma'am.

Q.

Why did you say so?

A.

No, Ma'am, because when we checked at the City Treasurers Office, we were able to verify that the licenses and permits within the City of Manila were not able to pay (sic).

Q.

Mrs. Witness, in the answer of the accused in her Counter-Affidavit she stated that she already liquidated that. In fact, that appears also in your notebook this liquidation, what can you say about that?

A.

Because the receipts which she submitted according to the City Treasurers of Manila were not valid, these are assessment only.[17]

On the impossible penalty, the appellate court modified the penalty imposed by the trial court from “four (4) years[,] two (2) months and one (1) day of prision correccional[,] as minimum[,] to twelve (12) years of prision mayor[,] as maximum,”[18] to “four (4) years and two (2) months of prision correccional, as minimum, to thirteen (13) years of reclusion temporal, as maximum.”[19]

We again quote with favor the computation of the appellate court on the impossible penalty, applying therein the Indeterminate Sentence Law and the corresponding award of civil indemnity:

Under Article 315 of the RPC, the penalty for estafa is prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over P12,000.00 but does not exceed P22,000.00; 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 P10,000.00; but the total penalty which may be imposed shall not exceed twenty years. Applying the Indeterminate Sentence Law, the minimum impossible penalty should range from six (6) months and one (1) day to four (4) years and two (2) months of prision correccional in its minimum and medium periods. On the other hand, the maximum impossible penalty is the maximum range of prision correccional in its maximum period to prision mayor in its medium period, which is six (6) years, one (1) month and twenty-one (21) days to eight (8) years plus one (1) year for each additional P10,000.00, since the amount involved in the instant case is more than P22,000.00 or P81,000.00 to be exact.

Accordingly, this Court finds it proper to impose the penalty of four (4) years and two (2) months of prision correccional, as minimum, to thirteen (13) years of reclusion temporal, as maximum.

The court a quo likewise correctly awarded by way of civil indemnity the sum of P81,000.00 plus interest at the rate of six percent (6%) to be reckoned from the rendition of the judgment until fully paid in view of existing jurisprudence in that the quantification of the amount misappropriated was only reasonably ascertained during the trial of the instant case.[20]

The minimum penalty imposed by the appellate court is within the maximum term of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of prision mayor and the maximum penalty imposed resulted in a total of five (5) years, an additional one (1) year for each additional P10,000.00 in excess of the P22,000.00, for a total of thirteen (13) years of reclusion temporal.

We note that the appellate court's award of civil indemnity plus interest at the rate of six percent (6%) reckoned from the rendition of judgment until fully paid remains correct with the advent of Bangko Sentral ng Pilipinas Circular No. 799[21] pegging the rate of interest allowed in judgments back to six percent (6%).

WHEREFORE, the appeal is DENIED. The Decision of the Court of Appeals in CA G.R. CR. No. 30354 dated 30 January 2009 is AFFIRMED. Petitioner Jean D. Gamboa is sentenced to suffer an indeterminate penalty of imprisonment of four (4) years and two (2) months of prision correccional, as minimum, to thirteen (13) years of reclusion temporal, as maximum.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, Perez, and Mendoza,[*] JJ., concur.

[*] Per Raffle dated 7 April 2014.

[1] Penned by Presiding Judge Cesar D. Santamaria. Rollo, pp. 82-88.

[2] Penned by Associate Justice Ramon R. Garcia with Associate Justices Edgardo P. Cruz and Estela M. Perlas-Bernabe (now a Member of this Court), concurring. Id. at 59-81.

[3] Id. at 60.

[4] Certification dated 17 March 1999 issued by the City Treasurer of Manila. Id. at 63.

[5] Certification dated 17 May 2001 issued by Chief Inspector Vicente Dizon Glores of the Philippine National Police-Makati Police Station. Id. at 64.

[6] Id. at 86-88.

[7] Id. at 72-81.

[8] Id. at 19-20.

[9] Id. at 383-389.

[10] D'Aigle v. People, G.R. No. 174181, 27 June 2012, 675 SCRA 206, 215.

[11] Rollo, pp. 84-85.

[12] People v. Cawaling, 603 Phil. 749 (2009).

[13] Rollo, pp. 74-75.

[14] Id. at 394.

[15] Id. at 84.

[16] Id. at 75.

[17] Id. at 77-78.

[18] Id. at 87-88.

[19] Id. at 81.

[20] Id. at 80-81.

[21] Subject: Rate of interest in the absence of stipulation

The monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905,

Series of 1982:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

<http://www.bsp.gov.ph/downloads/regulations/attachments/2013/c799.pdf> last visited 21 March 2014.

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