

ANICIA S. LIBUNAO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 194359. September 02, 2020

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before Us is a Petition for Review on Certiorari[1] filed by Anicia S. Libunao (petitioner) assailing the Decision[2] dated August 10, 2010 of the Court of Appeals (CA) in CA-G.R. CR No. 31439 which affirmed with modification the Judgment[3] dated August 15, 2007 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 14, finding petitioner guilty beyond reasonable doubt of the crime of Estafa under Article 315, paragraph l(b) of the Revised Penal Code (RPC).

Petitioner was charged with Estafa under Article 315, paragraph l(b) of the RPC, under the following Information:

That on or about and during the period covered from April 1994 to October 1995, in the municipality of San Miguel, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being an employee has defraud (sic) the Baliuag Marketing Co., Inc., in the following manner, to wit: the said accused by taking advantage of her position as cashier, having collected and received money in form of cash and checks in the total sum of P304,040.00 from several customers in payment of the products taken from the Baliuag Marketing Co., Inc., covered by various sales invoices under the express obligation on the part of the said accused to immediately account for and deliver the collections so made by her to the Baliuag Marketing Co., Inc., and once the said amount of P304,040.00 was in the accused's possession with intent to defraud, she did then and there willfully, unlawfully and feloniously misappropriated, misapply and convert the same to her own personal use and benefit, to the damage and prejudice of the Baliuag Marketing Co., Inc., in the aforesaid amount of P304,040.00, Philippine Currency.[4]

Version of the Prosecution

Baliuag Marketing Co., Inc., (Baliuag) is a corporation engaged in the business of selling among others, agricultural and chemical products. It has several branches, one of which is in San Miguel, Bulacan.[5]

Petitioner was the over-all in charge of the store in San Miguel. She was in charge of the sales and the collections. From April 1994 to October 1995, the store incurred sales losses and missing merchandise. Thus, Baliuag conducted sales and stock inventories. It was then discovered that there were several falsified receipts, sales invoices and unreported sales.[6]

Helen Macasadia (Helen), the book keeper of Baliuag, testified that she checked the sales reports of petitioner. Helen identified the following invoices which amounts were unremitted to Baliuag:

- Sales Invoice No. 100165[7] dated October 15, 1995 in the amount of P27,960 in the name of Dr. Edwin Tecson;[8]
- Sales Invoice No. 100160 in the amount of P196,000.00 in the name of Hog Bakod Multi- Purpose Corporation;[9]

- Sales Invoice No. 4143[10] dated May 23, 1995 in the amount of P29,000.00 in the name of Eva Bachoco;[11]
- Sales Invoice No. 98801 dated August 28, 1995 in the amount of P7,800.00 in the name of Lito Alcantara;[12]
- Sales Invoice No. 98861 dated September 6, 1995, in the amount of P26, 340.00 under the name of Arnel Marcelo.[13]

Further, Virginia Samonte (Virginia) testified that they also discovered some discrepancies in the following sales invoices:

- Sales Invoice No. 95155, the real amount is P39,480.00 but petitioner failed to remit the amount of P16,740.00;[14] and
- Sales Invoice No. 95138 in the amount of P5,040.00 which petitioner failed to remit to Baliuag.[15]

When asked, Virginia testified that petitioner failed to remit a total amount of P308,880.00.[16] The prosecutor manifested that they would amend the Information to reflect the true amount but the Information was not amended.[17]

Romeo Paladin (Romeo) testified that as for Sales Invoice No. 100165[18] in the amount of P27,960.00, he was surprised when Helen asked him to pay the said amount indicated in the Sales Invoice because he already paid the same. Romeo also denied that the signature on the Sales Invoice was his.[19]

Macario Libunao, Jr. (Macario) testified that as for Sales Invoice No. 100160 in the name of Hog Bakod Multi-purpose Corporation, they paid their obligation to petitioner sometime in November 1995.[20] Macario assumed that the checks they paid were not applied to their obligation because a personnel of Baliuag came to their office asking for the payment of their obligation.[21]

Helen testified that insofar as Sales Invoice No. 4143[22] in the amount of P29,000.00 under the name of Eva Bachoco, there is a corresponding Official Receipt No. 42394 in the amount of P10,000.00 evidencing payment. However, the said amount was not remitted by petitioner.[23]

Insofar as Sales Invoice No. 98801 in the name of Lito Alcantara, when he was confronted with the same, he claimed that he already paid the amount of P7,800.00 to petitioner as evidenced by an Official Receipt, but the said payment was also not remitted to Baliuag.[24]

As for Sales Invoice No. 98861 dated September 6, 1995 in the amount of P26,340.00 under the name of Arnel Marcelo, when the latter was confronted with the said Sales Invoice, Arnel claimed that he already paid an amount of P1,929.00 as evidenced by Official Receipt No. 41517. However, when Baliuag looked for the duplicate copy of the receipt, the same is in the name of Romy Santos in the amount of P40,697.00.[25]

Baliuag confronted petitioner with the unremitted amounts but petitioner failed to explain the discrepancy and the unremitted amounts. Baliuag demanded that petitioner return the unremitted amounts. Prior to the filing of the criminal complaint, petitioner made a partial payment of P110,000.00.[26]

Version of the Defense

Petitioner claimed that the acts attributed to her are not true. It is simply an act of harassment because she earlier filed a complaint for illegal dismissal against Baliuag. Petitioner however admitted that she was not dismissed by Baliuag, she simply stopped reporting to work because she did not like the treatment of the management. The management changed the locks of the store, investigated some customers and was very inquisitive about her

personal life.[27]

Petitioner admitted that she prepared the sales invoices but she had no participation at all with respect to the delivery of the items mentioned in the sales invoices. The procedure was after preparing the invoices, she would give the same to another co-worker who would deliver or give the items to the customer. With respect to the payments, the customer can pay to whoever was present at the store at the time of payment.[28]

Insofar as Sales Invoice No. 100160, the check given by Ms. Everina Lapaz (Everina) in the amount of P141,000.00 was dishonored but was replaced by Everina with cash which was deposited in the account of Baliuag. As to Sales Invoice No. 4143,[29] only the amount of P10,000.00 was paid to her and she remitted the same to Baliuag. For Sales Invoices No. 98801 and 98861, the amount of P7,800.00 and P26,340.00, respectively, were paid to her and she deposited the same to Baliuag.[30]

On cross-examination, petitioner admitted that she was asked to explain and to account for the unremitted amounts but she did not make any explanation because the records of the store were no longer with her.[31]

Ruling of the Regional Trial Court

On August 15, 2007, the RTC issued a Judgment[32] finding petitioner guilty of Estafa under Article 315, paragraph 1(b) of the RPC. The RTC ruled that the prosecution was able to present all the elements of Estafa. While petitioner claimed that she deposited the payments of the customers to Baliuag, she failed to substantiate her claim.[33]

Due to the admission of the prosecution that petitioner made a partial payment of PI 10,000.00, the RTC ruled that the same should be deducted from the total amount of P308,880.00. Thus, her total liability is P198,880.00. As such, the dispositive portion of the RTC's ruling is as follows:

WHEREFORE, in the light of the foregoing, the court finds the accused Anicia S. Libunao, guilty beyond reasonable doubt, and is hereby sentenced to suffer the penalty of imprisonment ranging from six (6) years and one (1) day of prision mayor as minimum to twelve (12) years of prision mayor as maximum; to pay Baliuag Marketing Co., Inc., the amount of Php 198,880.00; to suffer the accessory penalties provided by law and to pay the costs.

SO ORDERED.[34]

Ruling of the Court of Appeals

On August 10, 2010, the CA affirmed with modification the ruling of the RTC, thus:

WHEREFORE, with the MODIFICATION that accused-appellant is sentenced to suffer the penalty of four (4) years and one (1) day of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum, the Decision now on appeal finding accused-appellant Anicia S. Libunao guilty beyond reasonable doubt of the crime of Estafa under Par. 1 (b), Article 315 of the Revised Penal Code, as amended, is hereby AFFIRMED in all other respects. No pronouncement as to costs.

SO ORDERED.[35]

Petitioner's Arguments

Petitioner argues that to be convicted of Estafa under Article 315, paragraph 1(b) of the RPC, she must acquire juridical possession of the money or property she allegedly converted or misappropriated. Thus, she must first acquire both material and juridical possession of the thing or money received in order to be held liable for Estafa. Petitioner being a mere employee of Baliuag, her receipt of the payments of the customers of Baliuag was by reason of her employment. As such, she did not acquire juridical possession over the sums of money she allegedly misappropriated or converted.[36]

Petitioner further argued that the prosecution failed to prove that she misappropriated or converted the money she allegedly received from the customers of Baliuag. Petitioner merely prepared the sales invoices for the customers of Baliuag. She has no participation whatsoever as to the delivery of the items listed in the sales invoices as well as to the payment of the items purchased.[37]

While petitioner admitted that a demand was made by an officer of Baliuag for her to account or return the money she allegedly misappropriated, the demand itself cannot, by any stretch, prove the existence of misappropriation.[38]

Respondent's Arguments

Respondent, through the Office of the Solicitor General (OSG), argued that the prosecution has convincingly established the existence of the elements of Estafa. First, petitioner prepared the sales invoices and thus received payments corresponding to the sales invoices; and second, the said payments were misappropriated since they were not received by Baliuag.[39]

The failure of petitioner to pay the full amount of the unremitted payments upon demand raises the presumption of misappropriation.[40] The sales invoices presented are sufficient to prove the transactions that petitioner made in behalf of Baliuag with third persons. Petitioner therefore had material and juridical possession over the money paid by the customers.[41]

Petitioner cannot deny her liability for the unremitted amounts, since she had already made a partial payment of P110,000.00. As provided by Section 2(f), Rule 131 of the Rules of Court, it is conclusively presumed that money paid by one to another was due to the latter.[42]

Issue

Whether petitioner is guilty beyond reasonable doubt of the crime of Estafa under Article 315, par. 1(b) of the RPC.

Ruling of the Court

Petitioner did not acquire juridical possession of the money misappropriated.

Estafa through misappropriation or conversion is defined and penalized under Article 315, paragraph 1(b)[43] of the RPC. The elements of the said crime are: (1) 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; (2) that there is a misappropriation or conversion of such money or property by the offender or a denial of the receipt thereof; (3) that the misappropriation, conversion, or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender.[44]

To be convicted of Estafa through misappropriation or conversion, it is necessary that the offender had both material and juridical possession of the money, goods, or other personal properties he misappropriated. As held in the case of *Cristeta Chua-Burce v. Court of Appeals*,[45] when the money, goods, or any other personal property is received by the offender from the offended party (1) in trust or (2) on commission or (3) for administration, the offender acquires both material or physical possession and juridical possession of the thing received. Juridical possession means possession which gives the transferee a right over the thing which the transferee may set up even against the owner. The possession of a cash custodian over the cash belonging to a bank is akin to that of a bank teller, both being mere bank employees.[46]

As held in a more recent case of *Cherry Ann M. Benabaye v. People of the Philippines*[47] a sum of money

received by an employee on behalf of the employer is considered to be only in the material possession of the employee, thus:

It bears to stress that a sum of money received by an employee on behalf of an employer is considered to be only in the material possession of the employee. The material possession of an employee is adjunct, by reason of his employment, to a recognition of the juridical possession of the employer. So long as the juridical possession of the thing appropriated did not pass to the employee-perpetrator, the offense committed remains to be theft, qualified or otherwise. Hence, conversion of personal property in the case of an employee having mere material possession of the said property constitutes theft, whereas in the case of an agent to whom both material and juridical possession have been transferred, misappropriation of the same property constitutes Estafa.[48]

In this case, petitioner received the payments of the customers of Baliuag on behalf of the latter. In fact, as provided in the Information,[49] petitioner received the payments of the customers of Baliuag in her capacity as cashier of the latter. Thus, petitioner only had material possession over the money paid by the customers of Baliuag. Petitioner was merely a collector of the payments and she has the obligation to immediately remit the same to Baliuag. Petitioner's function as cashier of Baliuag is akin to that of a bank teller who has no juridical possession over the missing funds. Therefore, petitioner cannot be convicted of Estafa through misappropriation.

Nevertheless, petitioner can be convicted of Theft, as punished in Article 308 of the RPC.

While it is true that petitioner did not acquire juridical possession of the payments made by the customers of Baliuag, and hence, she cannot be convicted of Estafa through misappropriation, petitioner can nevertheless be convicted of Simple Theft, under Article 308 of the RPC, since the Information filed against her sufficiently alleged all the elements of Theft.[50] It is settled that what controls is not the designation of the offense but the description thereof as alleged in the Information.[51]

Petitioner is an accountable officer since she was the cashier and over-all in-charge of the San Miguel store of Baliuag, thus her taking of the payments of the customers can be characterized as taking with grave abuse of confidence. But since the said qualifying circumstance was not alleged in the Information, petitioner can only be held guilty of simple theft.

Article 308[52] of the RPC defines theft as that which is committed by any person, who with intent to gain but without violence, against or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent.

The elements of the crime of theft are: (1) there was taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was with intent to gain; and (5) the taking was done without violence or intimidation against persons, or force upon things.[53]

In this case, the prosecution has sufficiently established that petitioner, as cashier and over-all in charge of the store in San Miguel, prepared the sales invoices of the customers of Baliuag and collected payments of the customers. In fact, customers of Baliuag testified that they already paid petitioner the amount corresponding to the questioned sales invoices. Despite receipt of the said payments, petitioner failed to remit the same to Baliuag. The fact that petitioner took the payments without the consent of Baliuag was established when petitioner failed to account for the same when demanded.

Petitioner claimed that she only prepared the sales invoices and had no participation in the delivery and payment of the goods sold. She cannot argue that she is only liable for the amount of P19,720.00 since only the said

amount was supported by official receipts. As correctly stated by the CA, sales invoices are evidence of transactions with various customers of Baliuag and with the consummation of those documents arose the presumption that money was paid to petitioner for its issuance.[54] Sales invoices are proofs that a business transaction has been concluded. Be it noted that petitioner admittedly prepared those sales invoices. Further, she cannot deny any liability for the unremitted amounts evidenced by the sales invoices and official receipts after she made partial payment in the amount of P110,000.00 prior to the filing of the criminal complaint against her.

As provided for under Article 309(3) of the RPC, as amended by-Republic Act No. 10951,[55] when the value of the property stolen exceeds P20,000.00 but does not exceed P600,000.00, the penalty prescribed is prision correccional in its minimum and medium periods. Considering that there is no mitigating or aggravating circumstance, the penalty should be imposed in its medium period, or one (1) year, eight (8) months and twenty-one (21) days to two (2) years, eleven (11) months and ten (10) days. Applying the Indeterminate Sentence Law, the minimum of the period should be taken within the range of the penalty next lower to that prescribed by law, or within the range of arresto mayor medium to maximum, or two (2) months and one (1) day to six (6) months.

While the prosecution claimed that the total unremitted amount is P308,880.00, the prosecution did not amend the Information stating that the total unremitted amount is P304,040.00. Since petitioner and Baliuag admitted that petitioner made a partial payment of P10,000.00, the said amount should be deducted from the total unremitted amount as charged in the Information. Therefore, petitioner is liable to return to Baliuag the amount of P194,040.00, representing the balance of the unremitted amount as charged in the Information.

WHEREFORE, the petition is DENIED. The Decision dated August 10, 2010 of the Court of Appeals in CA-G.R. CR No. 31439 finding petitioner Anicia S. Libunao GUILTY beyond reasonable doubt of the crime of Estafa under Article 315 of the Revised Penal Code is MODIFIED. Petitioner Anicia S. Libunao is found GUILTY of Theft under Article 308, in relation to Article 309(3) of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of six (6) months of arresto mayor as minimum to two (2) years of prision correccional as maximum. Further, petitioner Anicia S. Libunao is ORDERED to pay Baliuag Marketing Co., Inc. the amount of P194,040.00 plus six percent (6%) legal interest counted from the finality of this Decision until full payment thereof.

SO ORDERED.

Leonen, Gesmundo, Zalameda, and Gaerlan, JJ., concur.

[1]Rollo, pp. 23-39.

[2]Penned by Associate Justice Elihu A. Ybanez, with the concurrence of Associate Justices Bienvenido L. Reyes and Estela M. Perlas-Bernabe (now a Member of this Court); id. at 44-69.

[3]Penned by Judge Petrita Braga Dime; id. at 75-82.

[4]Id. at 73-74.

[5]Id. at 76.

[6]Id.

[7]Testified as "Sales Invoice No. 100165" in TSN Volume III dated August 4, 1998, p. 7; cited as "Sales Invoice No. 00165" in the Judgement dated August 15, 2007 of the RTC and the Decision dated August 10, 2010 of the C

A.

[8]Rollo, p. 76.

[9]Id.

[10]Testified as "Sales Invoice No. 4143" in TSN Volume III August 4, 1998, p. 14; cited as "Sales Invoice No. 4142" in the Judgement dated August 15, 2007 of the RTC and the Decision dated August 10, 2010 of the C A.

[11]Rollo, p. 76.

[12]Id.

[13]Id.

[14]Id. at 78.

[15]Id.

[16]Id.

[17]Id. at 79.

[18]Supra note 7.

[19]Rollo, p. 120.

[20]TSN dated November 18, 1999, pp. 13-16.

[21]Rollo, p. 119.

[22]Supra note 10.

[23]Rollo, p. 114.

[24]Id.

[25]Id. at 115-116.

[26]Id. at 78-80.

[27]Id. at 80-81.

[28]Id. at 80.

[29]Supra note 10.

[30]Rollo, p. 81.

[31]Id.

[32]Supra note 3.

[33]Rollo, p. 82.

[34]Id.

[35]Id .at 68.

[36]Id. at 33-35.

[37]Id. at 37.

[38]Id. at 38.

[39]Id. at 145-146.

[40]Id. at 154.

[41]Id. at 158.

[42]Id. at 160-161.

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

xxxx

1. With unfaithfulness or abuse of confidence, namely:

xxxx

(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.

[44]Gamaro v. People, 806 Phil. 483,497 (2017).

[45]387 Phil. 15 (2000).

[46]Id. at 26.

[47]755 Phil. 145(2015).

[48]Id. at 154-155.

[49]Rollo, pp. 73-74.

[50]Ringor v. People, 723 Phil. 685 (2013).

[51]Santos v. People, 260 Phil. 519, 525 (1990).

[52]Art. 308. Who are liable for theft. - Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

- Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

- Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and

- Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.

[53]People v. Mirto, 675 Phil. 895, 905-906 (2011).

[54]Rollo, p. 65.

[55]An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, otherwise known as "The Revised Penal Code," as Amended.

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