

CARMINA G. BROKMANN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 199150. February 06, 2012

Ponente: BRION, J.

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BRION, J.:

We review, pursuant to Rule 45 of the Rules of Court, the decision[1] and the resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 31887 which denied the appeal of Carmina G. Brokmann (petitioner). The CA affirmed the judgment[3] of the Regional Trial Court (RTC), Branch 132, Makati City, convicting the petitioner of the crime of estafa, defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended.

As borne by the records, the criminal charge stemmed from the failure of the petitioner to return or remit the proceeds of jewelries amounting to P1,861,000.00. The prosecution anchored its case on the testimony of Anna de Dios (private complainant), and the Memorandum of Agreement (MOA) executed between the private complainant and the petitioner. The gist of the MOA provides: (1) the petitioner's acknowledgment and receipt, on various dates, of jewelries from the private complainant amounting to P1,861,000.00; (2) the petitioner failed to remit the proceeds of the sale of the subject jewelries; and (3) the private complainant filed the estafa case against the petitioner for the non-remittance of the proceeds of the sale of the jewelries.

The petitioner asserted in defense her lack of bad faith and intention to deceive the private complainant. She narrated that she and the private complainant had been engaged in the buy and sell of jewelries for 15 years. She admitted receiving the subject jewelries on a consignment basis but she averred that not all the jewelries were sold. The petitioner emphasized that she made partial payments of her obligation and had no intention of absconding. With respect to the MOA, she insisted that there was no period in the agreed terms as to when the remittance of the proceeds for the sale of the jewelries or the return of the unsold jewelries should be made.

The RTC found the petitioner liable for estafa, and sentenced the petitioner to imprisonment of six (6) years and six (6) months of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum.[4] The RTC also ordered the petitioner to restitute the private complainant P1,047,720.00 as actual damages.

The petitioner appealed the judgment of the RTC to the CA which affirmed the petitioner's conviction. The CA held:

As to the first element, without a doubt[,] appellant acquired material possession of the jewelry. She admitted that she received the subject pieces of jewelry from De Dios.

x x x x

Additionally, by the terms and conditions of the memorandum of agreement, Brokmann agreed to hold in trust the said pieces of jewelry for the purpose of selling them to the customers and with the obligation to remit the proceeds of those sold and return the items unsold. What was created was an agency for the sale of jewelry, in

which Brokmann as an agent has the duty to return upon demand of its owner, herein appellee.

On the second element, misappropriation was clearly evident. Appellee sent a demand letter to appellant, reminding the latter of her subsisting obligation, however, it was simply ignored. x x x. The demand for the return of the thing delivered in trust and the failure of the accused-agent to account for it are circumstantial evidence of misappropriation. x x x.

x x x x

The third element, it is apparent that appellee was prejudiced when appellant did not return the pieces of jewelry upon her demand. x x x. Damage as an element of estafa may consist in – 1) the offended party being deprived of his money or property as a result of the defraudation; 2) disturbance in property right; or 3) temporary prejudice. x x x.

Lastly, the fourth element, it has duly been established that appellee demanded for the payment and return of the pieces of jewelry, however, the same was unheeded.[5] (Emphases supplied.)

The petitioner elevated her judgment of conviction to the Court under Rule 45 of the Rules of Court.

The Issue

The petitioner raises the sole issue of whether the CA committed a reversible error in affirming the judgment of the RTC finding her guilty of estafa beyond reasonable doubt.

The petitioner prays for her acquittal for the prosecution's failure to prove the element of deceit. She argues that her actions prior to, during and after the filing of the estafa case against her negated deceit, ill-motive and/or bad faith to abscond with her obligation to the private complainant. She cites the cases of *People v. Singson*[6] and *People v. Ojeda*[7] where the Court acquitted the accused for the failure of the prosecution to prove the element of deceit.

The Court's Ruling

Except for the penalty imposed, we find no reversible error in the CA's decision.

First, the offense of estafa, in general, is committed either by (a) abuse of confidence or (b) means of deceit.[8] The acts constituting estafa committed with abuse of confidence are enumerated in item (1) of Article 315 of the Revised Penal Code, as amended; item (2) of Article 315 enumerates estafa committed by means of deceit. Deceit is not an essential requisite of estafa by abuse of confidence; the breach of confidence takes the place of fraud or deceit, which is a usual element in the other estafas.[9] In this case, the charge against the petitioner and her subsequent conviction was for estafa committed by abuse of confidence. Thus, it was not necessary for the prosecution to prove deceit as this was not an element of the estafa that the petitioner was charged with.

Second, the cases cited by the petitioner are inapplicable. Our pronouncements in *Singson* and *Ojeda* apply to estafa under Article 315, paragraph 2(d) where the element of deceit was necessary to be proven.

Nevertheless, we find the modification of the penalty imposed to be in order to conform to the prevailing jurisprudence. The second paragraph of Article 315 provides the appropriate penalty if the value of the thing, or the amount defrauded, exceeds P22,000.00:

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years.

The minimum term of imprisonment imposed by the CA and the RTC does not conform with the Court's ruling in *People v. Temporada*,^[10] where we held that the minimum indeterminate penalty in the above provision shall be one degree lower from the prescribed penalty for estafa which is anywhere within the range of prison correccional, in its minimum and medium periods, or six (6) months and one (1) day to four (4) years and two (2) months. In this case, the minimum term imposed by the CA and the RTC of six (6) years and six (6) months of prison mayor is modified to four (4) years and two (2) months of prison correccional, consistent with the prevailing jurisprudence.

ACCORDINGLY, premises considered, we AFFIRM with MODIFICATION the decision dated May 4, 2011 and the resolution dated October 26, 2011 of the Court of Appeals in CA-G.R. CR No. 31887. We find petitioner Carmina G. Brokmann GUILTY beyond reasonable doubt of estafa defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended. We MODIFY the penalty imposed and sentence her to suffer the penalty of imprisonment of four (4) years and two (2) months of prison correccional, as minimum term, to twenty (20) years of reclusion temporal, as maximum term.

SO ORDERED.

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

[1] Dated May 4, 2011; penned by Associate Justice Priscilla J. Baltazar-Padilla, and concurred in by Associate Justices Stephen C. Cruz and Agnes Reyes-Carpio. Rollo, pp. 27-41.

[2] Dated October 26, 2011; id. at 42-43.

[3] Dated February 13, 2008; penned by Judge Rommel O. Baybay. Id. at 63-69.

[4] Supra note 3, at 69.

[5] Supra note 1, at 37-39.

[6] G.R. No. 75920, November 12, 1992, 215 SCRA 534.

[7] G.R. Nos. 104238-58, June 3, 2004, 430 SCRA 436.

[8] *Sy v. People*, G.R. No. 183879, April 14, 2010, 618 SCRA 264, 270.

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

[10] G.R. No. 173473, December 17, 2008, 574 SCRA 258, 302.

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