

ROSIEN OSENTAL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 225697. September 05, 2018

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 29 October 2015 Decision[2] of the Court of Appeals (CA) in CA-G.R. CEB CR. No. 02151. The CA affirmed the 5 December 2012 Decision[3] of the Regional Trial Court (RTC) of Roxas City, Branch 15, in Criminal Case No. C-208-10, convicting petitioner Rosien Osental (Osental) of estafa, as defined and penalized under Article 315, paragraph 1(b)[4] of the Revised Penal Code, in relation to Presidential Decree No. 115 (PD 115).

The Facts

Osental was charged with estafa under Article 315, paragraph 1(b) of the Revised Penal Code. The Information reads:

That on or about the 21[st] day of August 2008 in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the said accused, having received in trust from Maria Em[i]lyn Te, the amount of Two Hundred Sixty Two Thousand Two Hundred Twenty Five (P262,225.00) Pesos under Trust Receipt Agreement dated August 21, 2008, with an express obligation on the part of said accused to purchase dry good[s] RTW to be sold on commission basis and deliver the proceeds of the sale or to return the goods unsold to Maria Em[i]lyn Te, on or before 21 October 2008 far from complying with her obligation, did then and there willfully, unlawfully and feloniously fail to remit the proceeds of the sale or return the goods and misappropriate, misapply and convert the aforementioned amount with unfaithfulness or abuse of trust and confidence to her own personal use and benefit, despite verbal and written demands to the damage and prejudice of Maria Em[i]lyn Te in the aforesaid sum of P262,225.00, Philippine Currency.[5]

Upon arraignment on 17 November 2010, Osental, assisted by her counsel, entered a plea of not guilty. Trial thereafter ensued.

Sometime during the first week of August 2008, Osental approached Maria Emilyn Te (Te) and convinced her to sell ready-to-wear (RTW) goods in Roxas City. Osental claimed she had contacts in Manila and Iloilo City from whom she could acquire the RTW goods. On 21 August 2008, Te agreed and delivered P262,225.00 to Osental for the purchase of the RTW goods. On the same date, Te entered into a trust receipt agreement with Osental in which the latter agreed to deliver the proceeds of the sale on 21 October 2008. The trust receipt agreement between Te and Osental, which was also signed by Edna Escobar (Escobar) as witness, states:

RECEIPT AND UNDERTAKING

RECEIVED from MRS. MARIA EMILYN R. TE the amount of (P262.225.00) for the purpose of buying dry

goods/RTW with the duty and obligation on my part to sell items/merchandise on cash basis only and at an overprice, the overprice being my commission and I also hereby undertake and bind myself to deliver to her the proceeds of my sales, minus my commission, and/or return the goods unsold on or before Oct. 21, 2008 without need of any notice or demand. Should I fail to perform my aforementioned duties and obligations (more particularly on the delivery of the proceeds of my sales and/or the return of the unsold items) I will be liable for the crime of Estafa under Article 315 of the Revised Penal Code.[6]

On the trust receipt agreement's due date on 21 October 2008, Osenal failed to present the RTW goods, deliver the proceeds of the sale of the RTW goods sold, or return the money that was given to her by Te. Te alleged that Osenal made promises to return the money but did not do so. On 23 April 2009, Te sent a demand letter[7] to Osenal requiring the return of the P262,225.00 delivered by her. Osenal did not return the money despite repeated demands. On 15 June 2010, Te filed a Complaint[8] against Osenal. The complaint included an Affidavit,[9] which was attested and signed by Escobar, stating that she witnessed the execution of the trust receipt agreement between Osenal and Te.

On 9 July 2010, Osenal submitted her Counter-Affidavit[10] in which she denied the genuineness and due execution of the trust receipt agreement. Osenal denied being involved in the business of buying RTW goods. She likewise denied receiving P262,225.00 from Te. Instead, Osenal claimed she purchased gift checks from Te in the amount of P10,000.00 and has already paid Te P24,500.00. Osenal claimed she was never given a receipt by Te as evidence of her payment of the P24,500.00.

For the prosecution, both Te and Escobar testified and confirmed the existence and due execution of the trust receipt agreement between Te and Osenal. Te testified that she was a close friend of Osenal. Te claimed Osenal approached her and convinced her to purchase RTW goods that would be sold by Osenal in Roxas City. Te claimed that because she trusted Osenal, she agreed to Osenal's proposal that they become business partners. Te agreed to shell out the capital for the RTW business. Te testified that when they executed the trust receipt agreement, Te delivered the P262,225.00 and Osenal agreed that upon the maturity of the trust receipt agreement on 21 October 2008 she would deliver the proceeds of the sale of the RTW goods or return the P262,225.00 to Te. Meanwhile, Escobar testified that she knew both Te and Osenal. Escobar confirmed the existence and due execution of the trust receipt agreement for the purchase of the RTW goods and claimed she was present when the trust receipt agreement was executed on 21 August 2008 and when Te delivered the amount of P262,225.00 to Osenal.

For her defense, Osenal testified and denied the allegations of the complaint. Osenal also denied the existence and due execution of the trust receipt agreement between her and Te. Osenal claimed that she came to know Te through Escobar since the latter worked in the same office. Osenal claimed that Te was a businesswoman selling gift checks and that she loaned the gift checks from Te and the loan was payable in two months with five-percent interest. Osenal also claimed that her signature in the trust receipt agreement was forged. To prove that her signature was forged, Osenal submitted identification cards and a copy of her daily time record containing her signature.

The Ruling of the RTC

In a Decision[11] dated 5 December 2012, the RTC found Osenal guilty of estafa under Article 315, paragraph 1(b) of the Revised Penal Code. The RTC ruled that the elements of estafa under Article 315, paragraph 1(b) were proven by the prosecution. The RTC gave credence to the straightforward and positive testimonies of Te and Escobar. The RTC ruled that Osenal's defense of denial was negative, self-serving, and unsubstantiated.

The RTC ruled that Osenal failed to prove that her signature in the trust receipt agreement was forged. The RTC

ruled that Osental's signature in the trust receipt undertaking, when compared with the signature in the records of the RTC including the Motion to Reduce Bailbond, Notice of Hearing, Notification, Return Slip and Explanation, had a stark and marked similarity. The RTC ruled that forgery cannot be presumed and must be proved through clear and convincing evidence. The dispositive portion of the Decision reads:

WHEREFORE, foregoing premises considered, this Court finds accused, ROSIEN OSENTAL, GUILTY beyond reasonable doubt of the crime of ESTAFA defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code and hereby sentences her to suffer the indeterminate penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of Pris[i]on Correc[c]ional as Minimum to TWENTY (20) YEARS [of] Reclusion Temporal as Maximum, and to indemnify the private offended party the amount of P241,255.00.

The bailbond posted for accused Rosien Osental's temporary liberty is cancelled and declared without force and effect and its release to the bondsman/bondswoman ordered.

SO ORDERED.[12]

On 28 August 2014, Osental and Te entered into a Compromise Agreement[13] to settle the civil aspect of the case.

The Ruling of the CA

In a Decision[14] dated 29 October 2015, the CA affirmed with modification the decision of the RTC. The CA acknowledged the execution of the compromise agreement and thus deleted the monetary award against Osental. The CA also lowered the minimum penalty, applying the Indeterminate Sentence Law. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is DISMISSED, the judgment dated 5 December 2012 of the Regional Trial Court, 6[th] Judicial Region, Branch 15 of Roxas City in Crim. Case No. C-208-10 is AFFIRMED with modification, to read, as follows:

(1)

The accused-appellant is found Guilty of violation of par. 1(b), Article 315 of the Revised Penal Code in relation to the pertinent provisions of PD 115.

(2)

The accused-appellant shall suffer the penalty of six (6) months and one (1) day, as minimum, to twenty (20) years as maximum.

(3)

The judgment ordering the accused-appellant to indemnify the private complainant is hereby DELETED.

SO ORDERED.[15]

Hence, this petition for review.

The Issue

Whether petitioner Rosien Osental is guilty of estafa under paragraph 1(b) of Article 315 of the Revised Penal Code, in relation to PD 115.

The Ruling of this Court

This Court affirms the decision of the CA. However, the penalty is modified in view of Republic Act No. 10951.

In the present case, Osental was charged with and convicted of estafa under paragraph 1(b) of Article 315 of the Revised Penal Code, in relation to PD 115. Section 4 of PD 115 defines a trust receipt transaction, to wit:

Section 4. What constitutes a trust receipt transaction. A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as trustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the trustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the trustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any of the following:

1. In the case of goods or documents, (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the trustee has complied fully with his obligation under the trust receipt; or (c) to load, unload, ship or tranship or otherwise deal with them in a manner preliminary or necessary to their sale; or
2. In the case of instruments,
 - a) to sell or procure their sale or exchange; or
 - b) to deliver them to a principal; or
 - c) to effect the consummation of some transactions involving delivery to a depository or register; or
 - d) to effect their presentation, collection or renewal.

The sale of goods, documents or instruments by a person in the business of selling goods, documents or instruments for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, documents or instruments, or who sells the same to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of this Decree.

In *Colinares v. Court of Appeals*,^[16] this Court held that there are two duties in a trust receipt agreement, to wit:

There are two possible situations in a trust receipt transaction. The first is covered by the provision which refers to money received under the obligation involving the duty to deliver it (*entregarla*) to the owner of the merchandise sold. The second is covered by the provision which refers to merchandise received under the obligation to return it (*devolvera*) to the owner.

Failure of the trustee to turn over the proceeds of the sale of the goods, covered by the trust receipt to the entruster or to return said goods if they were not disposed of in accordance with the terms of the trust receipt shall be punishable as estafa under Article 315 (1) of the Revised Penal Code, without need of proving intent to defraud.^[17] (Emphasis supplied)

Section 13 of PD 115 states that the penalty for estafa shall be imposed on a person who violates the enumerated undertakings under Section 4, to wit:

Section 13. Penalty clause. The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

Paragraph 1(b), Article 315 of the Revised Penal Code provides:

Article 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned herein below 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 under the 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 four elements of estafa under paragraph 1(b), Article 315 of the Revised Penal Code are:

- (1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return it;
- (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
- (3) that such misappropriation or conversion or denial is to the prejudice of another; and
- (4) there is demand by the offended party to the offender.[18]

The four elements of estafa under paragraph 1 (b), Article 315 of the Revised Penal Code, in relation to Section 4 of PD 115, were established beyond reasonable doubt in the present case. First, Osental received money in the amount of P262,225.00 from Te in trust for the purchase of RTW goods. Likewise, Osental promised Te that she would deliver the proceeds of the sale and/or the unsold goods on 21 October 2008 as evidenced by the trust receipt agreement duly executed and signed in the presence of Escobar who testified to attest to the validity and due execution of the trust receipt agreement. Second, there was denial on the part of Osental that she received P262,225.00 from Te. In her testimony, Osental specifically denied the existence and due execution of the trust receipt agreement with Te. Osental also denied receiving P262,225.00 from Te for the purchase of the RTW goods.[19] Third, Te testified that she suffered actual damages in the amount of P262,225.00, moral damages, and litigation expenses.[20] Moreover, the fact of prejudice was also established by the duly executed compromise

agreement dated 28 August 2014 wherein Osental admitted that she owed Te P345,000.00 representing the principal amount as well as attorney's fees and litigation expenses. Fourth, as testified, a demand letter dated 23 April 2009 was sent by Te to Osental requiring the latter to return the P262,225.00 within 15 days which the latter did not comply with.

For her defense, Osental specifically denied the existence and due execution of the trust receipt agreement with Te. Osental insisted that she never signed any trust receipt agreement and that the signature affixed above her printed name is not hers. To prove her innocence, she presented her Pag-IBIG identification card and daily time record which contained her signature. Osental claimed there is a stark difference between her genuine signature against the one contained in the trust receipt agreement.

This Court disagrees.

We sustain the finding of the RTC and CA that the evidence adduced by Osental is insufficient to sustain her allegation of forgery. Forgery cannot be presumed and must be proved by clear and convincing evidence. The RTC and CA correctly ruled that there is a marked similarity between Osental's signature in the trust receipt agreement with Osental's sample signatures in her Pag-IBIG identification card and daily time record. Moreover, the RTC found Osental's signature in the RTC records including the Motion to Reduce Bailbond, Affidavit of Undertaking, Notice of Hearing, Notification, Return Slip and Explanation also had a marked similarity with her signature in the trust receipt agreement.[21] In the present case, the CA did not err in upholding the finding of the RTC that the forgery of Osental's signature in the trust receipt agreement was not conclusively proved by Osental. Consequently, the testimonies of both Te and Escobar with regard to the validity and due execution of the trust receipt agreement must prevail over the negative and self-serving testimony of Osental.

Lastly, in Osental's petition for review, she alleged that the execution of the compromise agreement and her payment of the amount of P345,000.00 representing the principal amount and litigation expenses extinguished her civil as well as criminal liability.

This is clearly erroneous. It is a fundamental rule that criminal liability is not subject to compromise. A criminal case is committed against the People and parties cannot waive or agree on the extinguishment of criminal liability. The Revised Penal Code does not include compromise as a mode of extinguishing criminal liability. In *Trinidad v. Office of the Ombudsman*,[22] this Court held:

It is a firmly recognized rule, however, that criminal liability cannot be the subject of a compromise. For a criminal case is committed against the People, and the offended party may not waive or extinguish the criminal liability that the law imposes for its commission. And that explains why a compromise is not one of the grounds prescribed by the Revised Penal Code for the [extinguishment] of criminal liability.[23] (Emphasis supplied)

In view of Republic Act No. 10951,[24] which amended Article 315 of the Revised Penal Code, this Court modifies the penalty. Section 85 of Republic Act No. 10951 states:

SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

x x x x

3[rd]. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

The penalty prescribed under Section 85 of Republic Act No. 10951 is arresto mayor in its maximum period to

prision correccional in its minimum period, that is, four (4) months and one (1) day to two (2) years and four (4) months. Applying the Indeterminate Sentence Law,[25] the penalty imposable should be an indeterminate penalty whose minimum term should be within the range of the penalty next lower in degree, which is arresto menor in its maximum period to arresto mayor in its medium period or thirty (30) days to two (2) months and one (1) day. In view of the attending circumstances and applying the Indeterminate Sentence Law, this Court rules that the minimum penalty be modified to arresto menor in its maximum period or thirty (30) days and the maximum penalty to prision correccional in its minimum period or two (2) years and four (4) months.

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 29 October 2015 of the Court of Appeals in CA-G.R. CEB CR. No. 02151 finding petitioner Rosien Osental guilty of violation of paragraph 1 (b), Article 315 of the Revised Penal Code, in relation to the pertinent provisions of Presidential Decree No. 115 with MODIFICATION that petitioner shall suffer the indeterminate penalty of arresto menor or thirty (30) days, as minimum, to prision correccional or two (2) years and four (4) months, as maximum.

SO ORDERED.

Perlas-Bernabe, Caguioa, A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.

[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

[1] Rollo, pp. 3-15.

[2] Id. at 84-102. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Marilyn B. Lagura-Yap and Marie Christine Azcarraga-Jacob concurring.

[3] Id. at 40-57. Penned by Judge Juliana C. Azarraga.

[4] Article 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

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.

[5] Rollo, p. 40.

[6] Id. at 20.

[7] Id. at 21.

[8] Id. at 16-17.

[9] Id. at 18-19.

[10] Id. at 23-25.

[11] Id. at 40-57.

[12] Id. at 57.

[13] Id. at 75-76.

[14] Id. at 84-102.

[15] Id. at 101-102.

[16] 394 Phil. 106 (2000).

[17] Id. at 119-120.

[18] Salazar v. People, 480 Phil. 444, 452 (2004).

[19] Rollo, p. 23.

[20] Id. at 99.

[21] In Pontaoe v. Pontaoe, 575 Phil. 283, 291 (2008), this Court held that a finding of forgery does not entirely depend on the testimonies of handwriting experts because the judge must conduct an examination of the questioned signature in order to arrive at a reasonable conclusion as to the signature's authenticity.

[22] 564 Phil. 382 (2007).

[23] Id. at 391.

[24] 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.

[25] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

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