

KO BU LIN, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 57170. November 19, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Separate Decisions of the Court of Appeals are sought to be reversed through these two appeals by Certiorari filed by petitioners Ko Bu Lin (in G.R. No. L-57170), and Lolita Bañares (in G.R. No. L-53663), involving Article 315 of the Revised Penal Code on Estafa, and the doctrine of double jeopardy.

The Petitions were initially denied by the former First Division of the Court, but, on Motions for Reconsideration filed by both petitioners, and after referral of both cases to the Court en banc due to failure to get the concurrence of five members within the Division, the Court en banc resolved to give due course.

G. R. No. L-57170

Petitioner Ko Bu Lin was charged in Criminal Case No. 6959 of the Court of First Instance of Manila, Branch XL, with Estafa under the following Information:

"That on or about the 5th day of May, 1970, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud one Go Song Hiap in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which he made to said Go Song Hiap to the effect that he (accused) has 23,000 bags of cement for sale of 94 pounds each in his bodega at 1332 Tayabas, Manila, all valued at P33,500.00; that said bags of cement are ready for delivery any-time to the buyer upon demand and that he (accused) is willing to issue Check No. BA-HO 345479A which has sufficient funds in the bank of Asia as a cover check to guaranty the quality of cement which Go Song Hiap may encash on May 25, 1970 if the cement is not of the standard quality, and by means of other deceits of similar import, induced and succeeded in inducing the said Go Song Hiap to deliver the sum of P33,500.00 as payment for the said 23,000 bags of cement, which said accused received well knowing that he has no cement and that he has no sufficient money in the bank to back up his cover check which sums of money, once in his possession, in spite of repeated demands made upon him to return the said amount of P33,500.00 or deliver the 23,000 bags of cement, he refused and failed, and still fails and refuses to do so, and instead misappropriated, misapplied and converted the said amount to his personal use and benefit, to the damage and pre-judice of the said Go Song Hiap in the aforesaid sum of P33,500.00, Philippine currency."

After trial, the lower Court convicted petitioner of Estafa under Article 315, 2(d) of the Revised Penal Code (by issuance of bouncing checks).

On appeal, respondent Court of Appeals affirmed conviction but penalized the accused instead under Article 315, 2(a) (thru false pretenses or similar deceits). Two Motions for Reconsideration having been denied, petitioner interposed the instant appeal by Certiorari.

G.R. No. L-53663

Petitioner Lolita Bañares was accused of Estafa in Criminal Case No. 1772 of the Court of First Instance, Negros Occidental, Branch III, under an Information read-ing:

"That on or about, the 2nd and 3rd week of June, 1974, in the municipality of San Enrique, province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, having received in trust from one Dolores Centeno assorted jewelries worth P92,100.00 on con-signment basis, with the condition to return the same within one (1) month from receipt thereof if unsold or the money value of the same if sold, far from complying with her said ob-ligation, with abuse of confidence and with intent to defraud, did then and there, wilfully, unlawfully and feloniously misappropriate, misapply and convert to her own personal use and benefit the proceeds thereof after said jewelries were sold and disposed of, and in order to cover up her aforesaid unlawful and felonious act, well knowing that she no longer had any deposit with the banks herein below mentioned having already closed her account with said banks issued and delivered to said Dolores Centeno the following postdated checks drawn against the banks hereinbelow mentioned:

xxx xxx xxx xxx

xxx xxx xxx xxx

which checks, when presented for pay-ment, were dishonored and not paid for the reason stated in the foregoing, to the damage and prejudice of said Dolores Centeno in the total amount of NINETY-TWO THOUSAND ONE HUNDRED PESOS (P92,100.00), Philippine currency."

The Trial Court convicted her of Estafa under Article 315 2(d) of the Revised Penal Code (by issuance of bad checks) as follows:

"IN VIEW OF ALL THE FORE-GOING, the Court finds the accused guilty, beyond reasonable doubt, of the crime of estafa as so defined and penalized under Article 315, par. 2(d) of the Revised Penal Code, as amended by Republic Act 4885 and as further amended by Presidential Decree No. 818 and sentences her to suffer an indeterminate imprisonment of Eight (8) years and One (1) day of prision mayor, as minimum, to Twenty-two (22) years and eight (8) months of reclusion perpetua, as maximum, to indemnify the offended party in the amount of Ninety Two Thousand One Hundred Pesos (P92,100.00), without subsidiary imprisonment in case of insolvency, and to pay the costs."

On appeal, respondent Court modified the lower Court judgment and convicted her instead of Estafa under Article 315, 1(b) (by misappropriation or con-version). The decretal portion of that Decision reads:

"WHEREFORE, this Court finds the appellant Lolita Bañares GUILTY beyond reasonable doubt for the crime of ESTAFA as defined and pe-nalized under Article 315, para-graph 1 (b) of the Revised Penal Code and she is hereby sentenced to suffer the indeterminate penalty of imprisonment of, from FOUR (4) YEARS and TWO (2) MONTHS of prision correccional as minimum, to FIFTEEN (15) YEARS of reclusion temporal as maximum, and to indemnify the offended party in the sum of P92,100.00 but without subsidiary imprisonment in case of insolvency, and to pay the costs."

After denial of her Motions for Reconsideration, the accused filed this Petition for Review on Certiorari.

Petitioner Ko Bu Lin argues that when he pleaded not guilty upon arraignment, he was exposed to the jeopardy of conviction of Estafa by means of false pretenses [Art. 315, parag. 2(a)], or by issuing a check with no funds [ibid., parag. 2(d)], or both; that the Trial Court's findings appearing in the body of the judgment that "he cannot be said to have falsely pretended or fraudulently acted in selling the 23,000 bags of cement to Go Song Hiap" and that "Article 315, No. 2(a) of the Revised Penal Code does not apply to this case" exonerated him from the charge of Estafa thru false pretenses [Art. 315, 2(a)] and was as good as an acquittal although omitted from the dispositive portion of the Decision; that said acquittal is final and the Appellate Court cannot therefore be justified in reopening his acquittal; that because he never disputed said findings of the Trial Court and concentrated his

appeal on his conviction under Art. 315, 2(d), nor did the prosecution appeal from said findings, the Court of Appeals went beyond the limits of the assigned errors and the facts upon which conviction was based, thus depriving him of his day in Court and denying him his right to due process in his appeal.

Petitioner Lolita Bañares contends that the Information charged her with two separate and distinct offenses of Estafa: that defined and penalized under Art. 315, 1(b), Revised Penal Code, or Estafa through misappropriation, and that defined and penalized under Art. 315, 2(d), Revised Penal Code, or Estafa through issuance of bouncing checks, thereby, she was already placed in jeopardy of being convicted of both offenses; that when the trial Court chose to convict her of only the Estafa defined and penalized under Art. 315, 2(d), it necessarily "impliedly acquitted" her of Estafa under Art. 315, 1(b), Revised Penal Code; that her said "implied acquittal" of Estafa through misappropriation was immediately final; that she appealed only from the judgment convicting her of Estafa through issuance of bouncing checks, so, what was opened up for review was only the case concerning Estafa through issuance of bouncing checks; that the Court of Appeals went beyond the limits of its power contrary to the constitutional guarantee against double jeopardy.

The decisive issue is whether or not respondent Appellate Court erred in convicting petitioner Ko Bu Lin of Estafa by means of false pretenses [Art. 315, parag. 2(a)], and petitioner Lolita Bañares of Estafa by misappropriation or conversion [Art. 315, parag. 1(b)], when the Trial Courts had allegedly "impliedly acquitted" them of the said offenses when they were respectively found guilty of Estafa through the issuance of bouncing checks [Art. 315, parag. 2(d)].

It must be conceded that the elements of Estafa committed by means of the issuance of bouncing checks /Art. 315, 2(d)/, of which petitioners were convicted by the Trial Court, are different from the elements constituting Estafa by means of false pretenses /Art. 315, 2(a)/, of which Ko Bu Lin was convicted by the Court of Appeals, and from the elements constituting Estafa by means of misappropriation or conversion under Article 315, 1(b), of which Lolita Bañares was convicted by the same Appellate Court.

What is of vital importance to determine is whether or not petitioners were convicted of crimes charged in the Informations as embraced within the allegations contained therein. A reading of the Informations yields an affirmative answer. The Information filed against Ko Bu Lin sufficiently charges Estafa through false pretenses. So does the Information filed against Lolita Bañares sufficiently charge Estafa through misappropriation or conversion. There was no ambiguity in the Informations, and the accused could adequately prepare for their defense. Petitioners having been adequately informed of the nature and cause of the accusation against them, petitioners could be convicted of the said offenses, the same having been proved. Petitioners have not been deprived of any constitutional right.

It is inaccurate for petitioners to contend that the Informations filed against them exposed them to conviction for two offenses. The Informations are not duplicitous ones. The fact is that the different means of commission have been specifically spelled out. As held in the case of *Jurado vs. Suy Yan*[1], per Makasiar, J., with almost identical facts as in the Ko Bu Lin case:

"The allegations in the information are clear and do not charge the accused with two offenses. As contended by the City Fiscal of Iligan City, the information accuses the defendant of only one estafa committed by false pretenses under paragraph 2 of Article 315 of the Revised Penal Code, but specifically describes the false pretenses or deceitful acts employed by the accused in perpetrating the offense, namely, his falsely pretending to possess property, credit or business under sub-paragraph (a) of the aforesaid paragraph 2 of Article 315 and by post-dating a check or issuing such check in payment of an obligation knowing that he had no sufficient funds in the bank to cover the amount of the check, without informing the payee of such circumstances, under sub-paragraph (d) of the same paragraph 2 of Article 315. It is emphasized herein that

sub-paragraphs (a) and (d) of Article 315 of the Revised Penal Code are two of the five false pretenses or fraudulent acts that can be employed and were actually employed in this case by the accused to commit the one crime of estafa charged against him in the information."

By parity of reasoning, the same can be said in Lolita Bañares' case although separate sections, Article 315, 2(d) and Article 315, 1(b) are involved.

"We reiterate the earlier jurisprudence that where an offense may be committed in any of the different modes and the offense is alleged to have been committed in two or more modes specified, the indictment is sufficient, notwithstanding the fact that the different means of committing the same offense are prohibited by separate sections of the statute. The allegation in the information of the various ways of committing the offense should be regarded as a description of only one offense and the information is not thereby rendered defective on the ground of multifariousness." (ibid.)

One of the earlier jurisprudence referred to is U.S. vs. Tolentino^[2], which held:

"It is a well-settled rule in considering indictments that where an offense may be committed in any of several modes, and the offense, in any particular instance, is alleged to have been committed in two or more modes specified, it is sufficient to prove the offense committed in any one of them, provided that it be such as to constitute the substantive offense."

Besides, the appellants having gone to trial, without objection, on Informations they allege as charging duplicitous offenses, they may be deemed as having waived the right secured to them under Section 12, Rule 110 of the Rules of Court.^[3]

Invocation of the constitutional immunity from double jeopardy is misplaced. When the petitioners appealed from the sentence of the Trial Court, they waived the constitutional safeguard against double jeopardy and threw the whole case open to the review of the Appellate Court, which is then called upon to render such judgment as the law and justice dictate, whether favorable or unfavorable to them,^[4] and whether they are made the subject of assignments or error or not.^[5] Petitioners' appeal conferred upon the Appellate Court full jurisdiction and rendered it competent to examine the records, revise the judgment appealed from, increase the penalty and cite the proper provision of the penal law.^[6] Also explicit in this regard is Section 11, Rule 124 of the Rules of Court:

"Power of appellate Court on appeal. - Upon appeal from a judgment of the Court of First Instance, the appellate court may reverse, affirm, or modify the judgment and increase or reduce the penalty imposed by the trial court, remand the case to the Court of First Instance for new trial or re-trial, or dismiss the case." (Emphasis supplied)

A case in point is that of Lontoc vs. People,^[7] aptly cited by the Solicitor General. In that suit, the accused was charged with having committed the complex crime of Estafa thru Falsification of a Public Document. The Court of First Instance found him guilty only of Falsification thru Reckless Imprudence and sentenced him to suffer 4 months and 1 day of arresto mayor. The accused appealed to the Court of Appeals which, after reviewing the evidence, found him guilty of the original charge of Estafa thru Falsification of a Public Document and sentenced him to an indeterminate penalty of from 8 years and 1 day to 10 years, 8 months, and 1 day of prision mayor, and to pay a fine of P200.00 and costs. When the case was elevated to this Tribunal on Petition for Review on Certiorari, the main question of law involved was: "could the Court of Appeals legally find the appellant guilty of Estafa thru Falsification of a Public Document as originally charged against him after the lower Court had found him guilty only of Falsification through Reckless Imprudence, thereby acquitting him of Estafa?" This Court affirmed the finding of the Court of Appeals and held:

"We find that the decision of the Court of Appeals convicting the petitioner of the higher offense with which

he was charged in the Court of First Instance is in accordance with the ruling laid down by this Court in a long line of decisions, from U.S. vs. Abijan, 1 Phil. 83, to People vs. Ofindo, 47 Phil. 1, which has been embodied in statutory form in section 11 of Rule 120 above quoted. The reason behind this rule is that when an accused appeals from the sentence of the trial court, he waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate, whether favorable or unfavorable to the appellant. This rule is too well known for any lawyer to ignore. But if the numerous cases wherein this Court has convicted the appellants of a higher offense or has increased the penalty imposed on them by the trial court, have not been seen by some lawyers for accused-appellants as a red light indicative of danger or risk, let the bitter experience of the herein petitioner serve as a perpetual reminder to others to heed the moral lesson of the proverbs with which this opinion is prefaced."^[8]

but modified the penalty imposed by the Court of Appeals for being erroneous.

The proposition submitted by petitioner, Lolita Bañares, that the appeal to the Court of Appeals is "limited only to the judgment or sentence of conviction and does not affect the implied acquittal, which was immediately final", is unavailing. The power of the Appellate Court on appeal cannot be thus constricted. Petitioner's appeal was unqualified.

"x x the rule is well-settled that when an accused unqualifiedly appeals from a sentence of the trial court; as did the accused in this case – he waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate, whether favorable to the appellant or not."^[9]

There was no implied acquittal to speak of, only one offense of Estafa having been sufficiently charged in each Information. The Information in the Ko Bu Lin case merely speaks of a "willingness" to issue "a cover check to guaranty the quality of the cement". While the Information in the Bañares case alleges that the checks were issued "to cover up a felonious and unlawful act." Absent is an essential element in Estafa through the issuance of bouncing checks that the check be issued in payment of an obligation. But even if there were implied acquittal, following the Lontoc case, the pertinent excerpt from which has been quoted herein-above, there is no impediment to conviction by the Court of Appeals even for a higher offense with which an accused has been charged.

For the same reason neither can petitioner, Ko Bu Lin, successfully claim that he was "denied due process of law in his appeal because the Court of Appeals went beyond the limits of his assigned errors and the facts upon which his conviction under sub-section (d), paragraph 2 of Article 315 of the Revised Penal Code, as amended, is predicated." As earlier stressed, whether raised in the assignments of error or not, the entire case is open for full review.^[10]

In sum, respondent Court of Appeals did not err in modifying the respective judgments of the Trial Courts by finding Ko Bu Lin guilty of Estafa under Article 315 (2)(a), and Lolita Bañares under Article 315 (1)(b), both of the Revised Penal Code.

WHEREFORE, denying petitioners' Motions for Reconsideration, both Petitions are hereby dismissed, and the sentences of conviction respectively affirmed, without pronouncement as to costs.

SO ORDERED.

Fernando, C.J., Teehankee, Concepcion, Jr., Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Makasiar and Guerrero, JJ., joins J. De Castro in his dissenting opinion.

Abad Santos, J., the petition as are based on frivolous grounds and should have been summarily dismissed. They raised questions similar to how many angels can stand on the point of a needle.

Aquino, J., no part.

[1] 38 SCRA 663 (1971).

[2] 5 Phil. 682 (1906).

[3] Sec. 12. Duplicity of offense. - A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offense.

[4] People vs. Carreon, 115 Phil. 245 (1962).

[5] U.S. vs. Abijan, 1 Phil. 83 (1902); People vs. Ofindo, 47 Phil. 1 (1924); Suy Sui vs. People, 92 Phil. 685 (1953).

[6] U.S. vs. Abijan, supra.

[7] 74 Phil. 513 (1943).

[8] 74 Phil. 519-520.

[9] People vs. Carreon, 115 Phil. 242, 245 (1962).

[10] Suy Sui vs. People, supra.

DISSENTING OPINION

DE CASTRO, J.:

I beg to dissent.

To my mind, the information[*] is a duplicitous one because it charges two different offenses, namely: (1) estafa by abuse of confidence, particularly estafa through misappropriation or conversion under Article 315, paragraph 1 (b) of the Revised Penal Code; and (2) estafa by means of false pretenses or fraudulent acts, specifically estafa through issuance of bouncing checks under Article 315, paragraph 2 (d) of the said Code.

There seems to be no question that the trial court convicted the accused (petitioner herein) only of the second charge. As such, having been charged and tried of estafa on two counts and convicted only under the second charge, the accused is thereby necessarily, albeit impliedly, acquitted of the first. When the accused appealed from the judgment, it could only be from the judgment of conviction, not from that of acquittal. No one in his right mind would appeal from a decision of acquittal. Moreover, legally speaking, a decision of acquittal is immediately final, inappealable and executory. There is nothing more to be done therewith. If no appeal was taken with respect thereto, then the Court of Appeals had no jurisdiction to convict and impose the penalty for the said charge.

I am of the opinion that it is not correct to say that the appeal throws the whole case open for review, to the extent of giving the Court of Appeals jurisdiction to convict and impose the proper penalty for the first charge of estafa. This would be a clear violation of the right against double jeopardy. There is no waiver either of this right since the appeal is limited only to the charge of which petitioner was convicted, as explained above.

What justifies the rule that an appeal in a criminal case throws open the whole case for review is that the appeal constitute a waiver of the right of double jeopardy. However, an appeal from a judgment of conviction as to one offense would not re-open the judgment of acquittal for another offense charged in the same information. If in the case cited,[1] for the complex crime of estafa through falsification, the judgment convicted the accused only of falsification, but on appeal, the accused was found guilty of the complex crime of estafa through falsification, this was legally feasible because only one offense was charged, so the judgment was on that one complex crime, which may legally be modified, because the judgment, as modified, will still be the same judgment on the single charge of a complex crime. It will at once be noted in the case just cited, that the accused therein was convicted of a lesser offense included within the higher offense of which the accused was originally charged. In other words, the appellate jurisdiction of the Court of Appeals to review the case when the right to appeal is exercised by the accused is limited only to the offense of which he was convicted and from which judgment he has appealed, excluding the other offense of which the accused has been acquitted though charged in the same information, the latter not having been appealed, nor is it included in the former; it is entirely separable therefrom.

Moreover, the falsification in the case cited in the main opinion, may be only considered as the means of committing the estafa, and is not separable as a simple felony in itself but is always an integral part of the complex crime of estafa through falsification. It could be equated to a mere aggravating circumstance, which even if not found to be existent by the trial court, may be found existent by the appellate court if the evidence warrants such finding. Thus when it comes to mere aggravating circumstances, even if the trial court failed to consider any, the appellate court may do so, even if as a result the penalty would be raised by the appellate court. This is not violative of the principle against double jeopardy, and the appellate court may increase the penalty, there being a waiver of the right by the appeal taken by the accused, and the case is thrown open for a complete review without violating the double jeopardy rule.

But if by way of illustration, A is charged with double murder for the killing of X and Y, and the judgment of the trial court is to convict A only for the death of X, nothing having been said of the killing of Y, and the indemnities awarded are only for the heirs of X, the judgment is if not express at least implied, one of acquittal insofar as the killing of Y is concerned. If the judgment is appealed, then the appellate court may not convict A for the killing of Y, although it may convict or acquit A for the killing of X.

As between the two sets of cases illustrated above, it is the last one to which the instant case is similar in all material aspects. The same rule as intimated to be applicable thereto should therefore, apply to the case at bar. This means that the Court of Appeals could not legally and validly convict petitioner for the first charge of estafa (abuse of confidence) after she had been already acquitted thereof by the trial court.

What should also be given proper significance is the fact that petitioner's conviction for the charge of estafa for having issued bouncing checks in payment of the obligation to complainant, as to the price of the jewelries, is so erroneous on its face, in the light of the established jurisprudence on the matter that petitioner is compelled to appeal the judgment of conviction. In a manner of speaking, the accused is forced to appeal not as a voluntary act, as to constitute waiver of the right against double jeopardy. Accordingly, as already intimated, it would not be accurate to say that the appeal threw the whole case open for review, including the fact that petitioner had been acquitted of the first charge of estafa (abuse of confidence). It was only with the second charge of estafa (issuing bouncing checks) that the Court of Appeals acquired jurisdiction and may affirm, modify or reverse the judgment with respect only to said offense, which in the light of existing jurisprudence,[2] should be to reverse the conviction, and the Court of Appeals did. The result would be for the petitioner to stand acquitted of both charges by the trial court of estafa through misappropriation or conversion, and by the Court of Appeals, of estafa through issuance of bouncing checks in payment of a pre-existing objection.

Accordingly, I vote to grant the petition and to set aside the decision of the Court of Appeals in so far as it convicts the petitioner of the first charge of estafa committed by abuse of confidence.

[*] For simplicity and convenience, this dissent focused on the case of petitioner Lolita Bañares although, by reason of similarity on the essential facts of the two (2) cases, whatever is said with respect to the case of petitioner Bañares may likewise be applicable to the case of petitioner Ko Bu Lin.

[1] Lontoc v. People, 74 Phil 513.

[2] People v. Sabio, Jr., 86 SCRA 568 and cases cited therein.

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