

DOLORES G. GOMEZ, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 63202. April 09, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the respondent Court of Appeals, now Intermediate Appellate Court, affirming the decision of the Court of First Instance of Manila, Branch XXX which found petitioner Dolores Gomez guilty of the crime of ESTAFA.

The information charged the petitioner with estafa as follows:

"That on or about and during the period comprised between November 20, 1973 and December 3, 1973, both dates inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating together with Rodrigo Gomez and Wilson Gomez, brothers of Belen Espiritu, did then and there wilfully, unlawfully and feloniously defraud Belen Espiritu in the following manner, to wit: the said accused received in trust from the said Belen Espiritu on consignment basis four (4) pieces of jewelry, to wit:

"One (1) pinkish lady's ring	P45,000.00
"One (1) yellow onyx ring 4k	25,000.00
"One (1) dominic ring	4,500.00
"One (1) dangling earring	45,000.00

with a total value of P119,000.00 with the understanding and under the express obligation on the part of the said accused of selling the same on commission basis and turning over the proceeds of the sale thereof, if sold, or of returning the said four (4) pieces of jewelry to said Belen Espiritu, if unable to sell the same immediately upon demand; but the said accused, once in possession of the said four (4) pieces of jewelry far from complying with her aforesaid obligation, and despite repeated demands made upon her to return the aforesaid pieces of jewelry and/or pay the entire value of the same, failed and refused and still fails and refuses to return the aforesaid pieces of jewelry, except the Dominic ring valued at P4,500.00, and instead, with intent to defraud, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert the above-described pieces of jewelry to her own personal use and benefit, to the damage and prejudice of said Belen Espiritu in the total amount of P76,000.00, Philippine currency, that is the value of one (1) pair of dangling earring in the amount of P45,000.00 plus the amount of P31,000.00 which said Belen Espiritu paid in order to redeem the two (2) rings (the pinkish lady's ring and the yellow ring 4k) pledged by said accused to Jose Lontok and the Agencia de Empeños de Tambunting respectively.

"That Wilson and Rodrigo Gomez, being brothers of Belen Espiritu, are exempted from criminal liability for the offense under Article 332 of the Revised Penal Code."

The facts adduced by the prosecution and accepted by the respondent court as basis for the judgment of conviction

are summarized as follows:

"Dolores Gomez is the wife of Rodrigo Gomez, who has a brother, Wilson Gomez, and a sister, Belen Gomez Espiritu. Belen is the complainant, who initiated the filing of the charge of estafa against her sister-in-law, Dolores. The main thrust of the defense is that, accused should have been acquitted as Rodrigo and Wilson, both surnamed Gomez, who are the brothers of Belen, were the only ones responsible for having taken the pieces of jewelry in question.

"The evidence shows that on November 20, 1973, Rodrigo Gomez, husband of accused, went to the residence of his sister Belen, in Angeles City because there was somebody in Manila interested in buying some pieces of jewelry. Belen, together with Lourdes Balajadia and Rodrigo, went to the residence of accused at 2275 P. Roman St., Sta. Ana, Manila. (Tsn., pp. 3-4, September 25, 1975).

"At the house of Rodrigo and Dolores Gomez and in the presence of Rodrigo and Lourdes, Belen delivered to Dolores three pieces of jewelry: a 7 karat pink stone lady's ring worth P45,000.00; a 4 karat onyx stone ring worth P25,000.00; and a dominic ring worth P4,500.00. (Tsn., pp. 2-3, September 25, 1975).

"In the morning of November 21, 1973, Milagros Gomez, sister-in-law of Dolores, accompanied by Belen Tiotuico, brought to her residence a pair of dangling earrings worth P45,000.00.

"The four pieces of jewelry were left with Dolores without any acknowledgment receipt as they were relatives, under the condition that, if after two or three days, the jewelry would be sold, Milagros would give Dolores and Rodolfo Punongbayan alias Willie Bakla P2,000.00 except for the dominic ring in which she would give them P200.00; and if they could sell the jewelry for more than her price, the difference would belong them (Dolores and Rodolfo) but should they fail to sell the same, they would return the same. (Tsn., pp. 6-10, September 25, 1975).

"On November 22, 1973, Belen reminded Dolores of their promise concerning the jewels and Dolores requested more time to sell the same, to which Belen agreed.

"On November 23, 1975, Belen called up by long distance telephone, inquiring about any possible buyer. Dolores answered that the jewels were not yet sold and that they were with Rodrigo in Laguna. (Tsn., p. 12, September 25, 1975). On the same day when Belen called up again, Rodolfo told her that Dolores had followed her husband to Laguna where the latter brought the jewelry.

"Sensing something was wrong after she again talked with Rodolfo in the evening of the same day, Belen reported the matter to the Philippine Constabulary in San Fernando, Pampanga, and asked them to look for Dolores, Rodrigo, and Wilson.

"A week after the filing of the complaint, Rodrigo and Wilson were apprehended, both of whom promised to return the jewelry to Belen. Wilson made a promise in writing, Exhibit A, while Rodrigo made a verbal promise. (Tsn., pp. 15-16, September 16, 1975).

"Three days after, the dominic ring valued at P4,500.00 was returned to Belen by Wilson.

"In December 1973, Dolores told Belen that Rodrigo had two of the remaining unreturned pieces of jewelry. And when Belen met her brother Wilson in Angeles City, he told her that he would tell her where the jewels were pledged if she would not include him in the case. Wilson even gave her (Belen) a copy of the receipt for P25,000.00 signed by Jose Lontok to whom the 7-karat pink stone ring had been pledged.

"When Belen tried to get the 7-karat pink stone ring from Jose Lontok in Ermita, Manila, he declined to give her the jewelry pledged because, according to him, it was not the original receipt that was presented to him. Belen told Jose that the jewelry pledged to him belonged to her. (Tsn., pp. 18-19, September 25, 1975).

"The next day, Belen returned to Jose to redeem the jewelry and told him she had merely asked Dolores to sell

it for her. Jose promised to give her the jewelry if Willie would come with her and bring the original receipt. The next day when Willie and Belen came, she was able to recover the ring after paying Jose the amount of P25,000.00. (Tsn., pp. 20-21, September 25, 1975).

"After Wilson had given Belen the receipt of Antonio Tambunting's Pawnshop, as to the jewelry Dolores pledged to guarantee payment of P6,000.00, and after she (Belen) executed an affidavit that she was the real owner of the jewelry pledged, Belen was able to redeem it after paying the amount of P6,000.00. (tsn., pp. 22-23, September 25, 1975).

"As to the pair of dangling earrings, Belen was not able to recover the same and so she had to pay on installments, the value thereof to Belen Tiotuico from whom she had received the jewelry. (Tsn., pp. 26-27, September 25, 1975)."

Dolores Gomez on the other hand denied any liability and pointed to Rodrigo Gomez, her husband as the only person liable. The defense evidence is summarized as follows:

"On December 3, 1973, at about noontime, Dolores Gomez and her husband Rodrigo Gomez were at their residence at 2275 Paco Roman St., Sta. Ana, Manila, when her sister-in-law, Belen Gomez Espiritu, arrived from Angeles City, Pampanga. On the verge of tears Belen told Dolores that she was in dire need of money. As a sister-in-law, Dolores cannot help but ask her what help she can do for her. Belen then brought out a ring, a jewelry, and ask her and her husband Rodrigo if they can help her out to pawn the ring because she had a postdated check she issued to somebody in Angeles City, and to cover up with the amount she wanted the ring to be pawned. Belen talked over the matter with Rodrigo, Dolores' husband, who was then present. (Tsn., October 21, pp. 2-3).

"Belen suggested to pawn the ring at Monte de Piedad Pawnshop because that is where some of the Angeles City people who are engaged in jewelry business usually pawn their jewelry. (Id., p. 4). x x x .

"At the Monte de Piedad, Dolores presented the ring. Monte de Piedad offered only P2,000 for the ring, but the amount was not sufficient because Belen needed P5,000. So Dolores returned to the car and told Belen about the offer. Belen then told Dolores that they look for another pawnshop which could give the amount needed by Belen. (Id., p. 4). Belen suggested the Tambunting Pawnshop. Dolores and her husband then went to the Tambunting Pawnshop at Raon Street, Quiapo, Manila, again leaving Belen in the car. The Tambunting Pawnshop offered P6,000 for the ring, but deducted the interest for four months and service fees. Inasmuch as her sister-in-law needed only P5,000, Dolores agreed to pawn the ring. (Id., pp. 4-5). Dolores received P6,000 from the pawnshop. The pawnshop ticket was issued to her. (Id., p. 6). Dolores and Rodrigo returned to their car. Dolores handed the amount of P6,000 to Belen and the pawnshop ticket. They then drove Belen to the Philippine Rabbit bus terminal in Rizal Avenue, Manila because Belen has the money with her. (Id., p. 8).

"The next day, Belen came back to the residence of the Gomez spouses. She was trying to deal with her brother Rodrigo Gomez, Dolores' husband, concerning some jewelries. They had a full-day transaction. (Id., p. 9). Dolores saw Belen gave (sic) four (4) pieces of jewelry to her husband Rodrigo, Belen's brother. (Id., p. 8). Petitioner had nothing to do with her husband's transaction with her (sic) sister Belen. (Id., pp. 7-8).

"Once Rodrigo was with the jewelry, he had been with his brother Wilson. Belen knew this. (p. 11). Apprehensive, Belen called up Dolores by phone asking where her husband could be found. Dolores informed Belen that he went to Laguna in his kumpadre's place. (Id., p. 9). Belen told her that if Rodrigo would not be home that night, Dolores should better follow him up to Laguna. (Id., p. 9). The next day, Dolores and her niece proceeded to Laguna, but her husband's kumpadre told her that he (Rodrigo) did not go there. (Id., p. 10). Dolores then returned to Manila. Arriving at her residence, Belen was calling her at the phone from Angeles. She told Belen that she had just come from Laguna but her husband was not there. She asked Belen why she was looking for her husband, and Belen answered it was because of the jewels which she gave to Rodrigo and Rodrigo was with their brother Wilson in Angeles City.

"Dolores then proceeded to her mother-in-law's place in Angeles City to find out whether her husband was really with his brother Wilson. Belen was also there. Belen informed their mother that Wilson was under the custody of the police in Angeles City. (Id., p. 11). So Dolores and Belen, with some policemen, went to the police department in Angeles City. Wilson Gomez was brought out from the cell and was forced to make a statement by the policemen and he was asked to bring out her husband and he made a promise to bring out the jewels.

"After Wilson Gomez signed the written promise (Exh. 2), he was released. (Id., p. 13). Dolores and Wilson went to Manila. It turned out, however, that Rodrigo was in Saigon. There was no communication between Rodrigo and Dolores (Id., p. 14), although Rodrigo wrote his sister Belen while he was in Saigon regarding their transaction. x x x"

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"Dolores saw her husband only when he returned to Manila from Saigon and while he was detained at the NBI upon a charge of falsification of passports. Dolores talked personally to her husband and inquired about the jewelry. He said that he brought the jewelries to Saigon and sold them there, and he don't know what happened with the money. (Id., p. 16)."

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On February 24, 1977, the Court of First Instance of Manila convicted Dolores Gomez of the crime of estafa and directed the City Fiscal of Manila to file the appropriate information charging Rodrigo and Wilson Gomez with estafa after conducting the required preliminary investigation. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds the accused Dolores Gomez, guilty beyond reasonable doubt of the offense of estafa, defined and penalized in Article 315, paragraph 1(b), of the Revised Penal Code, as charged in the information, and absent any attendant modifying circumstance, hereby sentences her to suffer indeterminate prison term of from six (6) years, eight (8) months and twenty (20) days of prision mayor, as minimum, to seventeen (17) years of reclusion temporal, as maximum, the necessary penalties thereof, to indemnify the offended party Belen Gomez Espiritu in the amount of P45,000, the value of the unrecovered pair of dangling earrings, and P31,000, the amount spent to redeem the pink stone ring and onyx ring from Jose Lontok and Agencia de Empeños de Antonio Tambunting, or a total of P73,000, without subsidiary imprisonment, in case of insolvency and to pay the costs.

"Upon the facts relative to the participation of Rodrigo and Wilson Gomez, the Court hereby directs the City Fiscal of Manila to file the information charging them with the same offense of estafa charged against the herein accused, after conducting the required preliminary investigation, if one has not been actually conducted when the instant case was filed against the accused. Dolores Gomez, otherwise to proceed against them without any further delay."

On July 31, 1980, the respondent Court of Appeals affirmed the judgment of the lower court. The dispositive portion of the decision reads:

"WHEREFORE, finding that the decision holding the accused-appellant guilty beyond reasonable doubt of the offense of estafa under Article 315, par. 1(b) of the Revised Penal Code, (sic) and the same being in accordance with law and evidence, the same is hereby AFFIRMED with costs against appellant."

A motion for reconsideration filed by Dolores Gomez was denied by the respondent court in a resolution dated October 19, 1982.

On December 29, 1982, the petitioner filed her second motion for reconsideration. Petitioner also filed a supplemental second motion for reconsideration and/or new trial for the reception of newly discovered evidence. The evidence consists of an affidavit of Belen Gomez Espiritu dated January 7, 1983 declaring under oath that it

was her brother who took the pieces of jewelry but had already paid the full amount representing the value thereof. The affidavit states in part:

"That I have been the complainant in a criminal case now on appeal to the Court of Appeals and docketed as CA-G.R. No. 20886-CR, entitled 'People of the Philippines v. Dolores Gomez';

"That after revieweing the facts of this case, I have come to realize that it was really my brother, Rodrigo Gomez, who converted to his personal use the pieces of jewelry subject of this case and that my sister-in-law, Dolores Gomez, had nothing to do whatsoever with said jewels;

"That this is evidenced by the letter which any brother Rodrigo Gomez sent to me from Saigon dated January 8, 1974, quoted verbatim on page 3 of the second motion for reconsideration, x x x.

"That it is clear from the tenor of the aforequoted letter of my brother Rodrigo Gomez, husband of Dolores Gomez, the defendant-appellant in the appealed case CA-G.R. No. 20886-CR; that he has been in possession of the jewels;

"That in my complaint filed with the City Fiscal's Office, I included both my brothers Rodrigo and Wilson together with my sister-in-law Dolores; however, my brothers were excluded and dropped from the charges by reason of the provision of Art. 332 of the Revised Penal Code; while my sister-in-law was left and charged;

"That my aforementioned brother, Rodrigo Gomez, has already made full restitution to me of the value of the said pieces of jewels showing that it was not my sister-in-law who is to blame;

"That for the above reasons, I have no more interest in the further prosecution of the case because clearly, it was not my sister-in-law who committed the acts complained of but my brother Rodrigo who was dropped from the charges."

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These motions however were denied by the respondent court in its resolution dated February 8, 1983.

The petitioner bases her petition on the following arguments found in her memorandum:

I

THE RESPONDENT COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF ESTAFA DESPITE THE FACT THAT AN AFFIDAVIT OF DESISTANCE WAS EXECUTED BY THE OFFENDED PARTY EVEN AFTER JUDGMENT WHICH IS EQUIVALENT TO AN EXEMPTING CIRCUMSTANCE.

II

THE RESPONDENT COURT ERRED IN NOT HOLDING THAT THE RECANTATION OF COMPLAINANT BASED ON THE AFFIDAVIT OF DESISTANCE AS A NEWLY DISCOVERED EVIDENCE WHICH IS A GROUND FOR NEW TRIAL.

III

THE RESPONDENT COURT ERRED IN NOT APPRAISING MATERIAL AND CONCRETE EVIDENCE WHICH TEND TO SHOW THAT THE ACCUSED HAD NOT INDEED ABSCONDED WITH THE JEWELRIES IN QUESTION SINCE IN TRUTH AND IN FACT SHE HAS NOT IN ANY WAY TAKEN PART NOR BENEFITED FROM THE CRIME OR TRANSACTION, AND THAT CONSPIRACY WAS NOT PROVEN - WHICH CONSTITUTE GRAVE MISAPPREHENSION OF LAW AND FACT WARRANTING THE EXERCISE BY THIS HONORABLE COURT OF ITS INHERENT SUPERVISORY AND EQUITY JURISDICTION TO PREVENT A MANIFEST AND PALPABLE MISCARRIAGE OF JUSTICE.

IV

THE RESPONDENT COURT ERRED IN NOT HOLDING THAT THE LOWER COURT HAD NO JURISDICTION TO TRY AND DECIDE THE CRIMINAL CASE AS THE SAME INVOLVES MEMBERS OF THE SAME FAMILY.

V

THE RESPONDENT COURT ERRED IN NOT ACQUITTING THE ACCUSED-PETITIONER OF THE CRIME CHARGED, HER GUILT NOT HAVING BEEN PROVED BEYOND A REASONABLE DOUBT.

Relative to the first alleged error, the petitioner submits that the affidavit of desistance shows that she did not participate directly or indirectly in the commission of the crime charged, and that it was her estranged husband who is solely criminally liable. Dolores Gomez also submits that the affidavit of desistance casts a shadow of doubt as to the veracity and credibility of the prosecution's evidence linking her to the crime charged.

The Solicitor General on the other hand contends that the affidavit of desistance of Dolores Gomez and the fact that Rodrigo Gomez had already paid the amount swindled do not preclude the prosecution of the petitioner because estafa is a public offense which may be prosecuted independently of the will of the offended party.

We agree with the petitioner. It is conceded that the State has the sovereign right to prosecute criminal offenses under the full control of the fiscal and that the dismissal of criminal cases by the execution of an affidavit of desistance by the complainant is not looked upon with favor. However, it is also true that an affidavit of desistance may create serious doubts as to the liability of the accused. At the very least, it calls for a second hard look at the records of the case and the basis for the judgment of conviction. Jurisprudence on the effect of desistance notwithstanding, the affidavit should not be peremptorily dismissed as a useless scrap of paper. In *People v. Pimentel* (118 SCRA 695), we held that:

"Undeniably, affidavits of desistance are generally frowned upon by our courts for they make a mockery of our judicial system. Thus, in *People versus Manigbas* (109 Phil. 469), where a new trial was sought on the basis of a retraction, We ruled that —

""Unless there be special circumstances, which, coupled with a retraction of the witness, really raise doubts as to the truth of the testimony given by him at trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction, so much so that its elimination would lead the trial judge to a different conclusion, a new trial based on such retraction would not be justified. Otherwise, there would never be an end to criminal litigation."

"Such special circumstances exist in the case at bar. And, as already discussed, they engender serious doubts as to the appellant's guilt. Accordingly, due consideration must be afforded the complainant's affidavit of desistance."

There are such special circumstances in the case at bar which raise reasonable doubts as to the culpability of Dolores Gomez. The letter of Rodrigo Gomez (Exhs. F and F-1) addressed to the complainant Belen Gomez Espiritu indicates that there may be some truth to the contention of the petitioner about her sister-in-law picking on her because she could not rum after the guilty parties, her own brothers. Doubts are engendered regarding the testimonies taken at the trial court. The letter was mentioned by complainant Belen Gomez Espiritu in her testimony regarding the pair of dangling earrings. It shows that it was Rodrigo Gomez, husband of Dolores, who was in possession of some of the pieces of jewelry and who appropriated the proceeds thereof. The full text of the letter states that:

Jan. 8, 1974

"Saigon, Vietnam

"Dear Ateng Belen,

"Try to understand my letter. You know I do not like to commit this but I lack time. You know I have plenty of compromise and I do not like this to happen but time asks for it.

"Anytime it happened. I like to return one I promised for the two. Anyway, it happened already and I'm in another country we share it 50%-50%.

"I have to know your answer at the earliest, time for I'll be leaving for Iran on the 26th of January and I'll be waiting for your go signal. I want to give the one and how can you get this one.

"If you do not like I'll pay you \$200 dollars a month once I work in Iran.

"Write me before the 26th of January and my address 22/10 Cuxia Lugia, Phutho. The other one Asia Hotel Bangkok because the visa is Thailand going to Iran. Do not tell Loleng that I'll be going to Iran and work there. And your decision is that only the two of us will know. Write me at once in Bangkok. Have patience in me and waiting for your reply.

"Your brother"

This letter of Rodrigo Gomez is a declaration against his own interests under Rule 130, Sec. 32 of the Revised Rules of Court of the Philippines and should have been given weight.

The records likewise show that some of the pieces of jewelry were in the possession of Wilson Gomez, another brother of the complainant, Belen Gomez Espiritu.

The factual findings of the Court of Appeals based on the prosecution evidence indicate:

- (1) It was Rodrigo Gomez, petitioner's husband who went to Angeles City to inform his complainant sister, Belen, that there was a buyer of jewelries in Manila.
- (2) Complainant Belen claims she turned over the jewelries to petitioner Dolores. Yet, her brother Rodrigo was there allegedly merely looking on.
- (3) When Belen inquired over the phone about the jewelries, she was told that Rodrigo had them with him in Laguna.
- (4) The two brothers — Rodrigo and Wilson, after being apprehended, promised to return the jewelry.
- (5) It was Wilson who returned the dominic ring to Belen.
- (6) In December, 1973, Dolores told Belen that Rodrigo had two of the unreturned jewelries with him.
- (7) When Belen met her brother Wilson in Angeles City, he gave her a copy of a receipt for P25,000.00 signed by Jose Lontok to whom the 7-karat pink stone ring had been pledged.
- (8) When Belen redeemed the ring from Lontok, she was in the company of her brother Wilson who pledged the ring and secured the original receipt.
- (9) Wilson was the one in possession of the pawnshop receipt. Wilson was the one who gave the receipt to Belen.

There are other circumstances in the records strongly suggesting that the transactions were between Belen and her two brothers and that the petitioner came into the picture only because she was the wife of one of the brothers.

These circumstances coupled with the affidavit of desistance of the complainant which explicitly states that it was her brother Rodrigo Gomez who was in possession of the pieces of jewelry; that he converted to his personal use

the said pieces of jewelry but had already made full restitution of their value to the complainant; that Dolores Gomez had nothing to do whatsoever with said pieces of jewelry; and that it was not Dolores Gomez who committed the acts complained of but Rodrigo Gomez, create doubts as to the petitioner's liability. It is to be noted that the veracity and authenticity of the affidavit of desistance and the letter of Rodrigo Gomez dated January 8, 1974 have never been questioned.

Therefore, the petitioner should have been acquitted.

The respondent Court of Appeals and the trial court convicted the petitioner solely on the finding that there was a conspiracy between her and Rodrigo and Wilson.

The rule that the findings of fact of the trial court and the Court of Appeals are binding upon this Court is subject to certain exceptions (*Republic of the Philippines v. Court of Appeals, et al.*, G.R. No. 61647, October 12, 1984). In *Carolina Industries, Inc. v. CMS Stock Brokerage, Inc.* (97 SCRA 734), we held that this Court retains the power to review and rectify the findings of fact of said courts when - (1) the conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; and (5) when the court, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both the appellant and the appellee.

In the case at bar, the trial court and the respondent Court of Appeals failed to consider some circumstances which negate the presence of conspiracy.

In *People v. Palon* (127 SCRA 529), states the proof needed to establish a conspiracy —

"x x x that conspiracy must be established by positive and conclusive evidence. It cannot be based on mere conjectures but must be established as a fact. The same degree of proof required to establish the crime is necessary to support a finding of the presence of conspiracy, that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself (*People v. Custodio*, 47 SCRA 289)."

In the case at bar, the evidence presented by the people to establish the presence of conspiracy is even murkier than the proof on the commission of the crime itself. The factual findings of the respondent Court of Appeals and the trial court do not show the participation of the petitioner in the events that followed after the pieces of jewelry were delivered to her and her husband, Rodrigo. The records show that the only participation of the petitioner in the transaction was when she and her husband received the pieces of jewelry from Belen Gomez Espiritu on November 10 and 21, 1973 at their residence. After the same were received, Rodrigo and Wilson Gomez took possession of the said pieces of jewelry and disposed of them without the knowledge of the petitioner. Rodrigo and Wilson Gomez alone absconded with the pieces of jewelry. As a matter of fact, the petitioner did not even know the whereabouts of Rodrigo and Wilson who were then in possession of the said pieces of jewelry. The participation of petitioner Dolores in the attempts to locate the missing brothers and to compel them to return the jewelry to their sister is not proof of conspiracy in a crime. It was understandable why she was involved in looking for her own husband at the behest of her sister-in-law.

To establish conspiracy, there must be evidence of intentional participation in the transaction with a view to the furtherance of the common design and purpose (*People v. Agda*, 111 SCRA 330). There is no evidence of such kind of participation.

Furthermore, in *People v. Drilon* (123 SCRA 72), we held that:

"The mere presence of appellant at the scene when the crime was perpetrated by Drilon is not by itself indicative of the existence of conspiracy between them. As this Court said in *People v. Ybañez*, (77 Phil. 664)

'x x x the accused must be shown to have had guilty participation in the criminal design entertained by the slayer, and this presupposes knowledge on his part of such criminal design. It is not enough that there be a relation between the acts done by the principal or accomplice, it is, furthermore, necessary that the latter, with knowledge of the former's criminal intent, should cooperate with moral or material aid in the consummation of the crime."

The evidence of the prosecution fails to show that the petitioner knew the criminal intent of her husband Rodrigo and brother-in-law Wilson Gomez. She was not even aware that Rodrigo went to Vietnam and that he brought with him some of the pieces of jewelry. Dolores saw her husband Rodrigo and learned from the latter that he sold some of the pieces of jewelry in Vietnam only when he returned to Manila.

All these circumstances coupled with the letter of Rodrigo dated January 8, 1974 addressed to the complainant Belen Gomez Espiritu and the latter's affidavit of desistance dated January 7, 1983 negate the existence of conspiracy involving the petitioner.

Without conspiracy, the petitioner cannot be held liable as she had no direct participation in the commission of the crime charged. The presumption of innocence in favor of the petitioner has not been successfully overcome by evidence beyond reasonable doubt.

WHEREFORE, the judgment appealed from is hereby SET ASIDE, and the petitioner is ACQUITTED of the crime charged on grounds of reasonable doubt.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, De La Fuente, and Alampay, JJ., concur.

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