

CORAZON J. VIZCONDE, PETITIONER, VS. INTERMEDIATE APPELLATE COURT & PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 74231. April 10, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

Corazon J. Vizconde has appealed as contrary to law and the evidence, the Decision of the Court of Appeals[1] affirming her conviction of the crime of estafa by the Court of First Instance of Rizal, Quezon City Branch, in Criminal Case No. Q-5476.

Vizconde and Pilar A. Pagulayan were charged in the Trial Court with misappropriation and conversion of an 8-carat diamond ring belonging to Dr. Marylou J. Perlas in an information which avers that they:

"* * * wilfully, unlawfully and feloniously, with intent of gain and with unfaithfulness and/or abuse of confidence, defraud(ed) DRA. MARYLOU J. PERLAS in the following manner, to wit: the said accused received from the offended party one (1) 8-karat solo diamond ring, white, double cut, brilliant cut with multiple brilliantitos, valued at P85,000.00, to be sold by them on commission basis, with the obligation to turn over the proceeds of the sale to the offended party, or to return the said ring if unsold, but the said accused, once in possession thereof, contrary to their obligation, misapplied, misappropriated and converted the same to their own personal use and benefit, and in spite of repeated demands made upon them, both accused failed, omitted and refused, and still fail, omit and refuse up to the present, to comply with their aforesaid obligation, to the damage and prejudice the offended party, in the aforementioned amount of P85,000.00, Philippine currency."[2]

After trial, both accused were convicted and each sentenced to serve an indeterminate prison term of from eight (8) years, four (4) months and one (1) day to ten (10) years and two (2) months of prision mayor, with the accessory penalties provided by law, and jointly and severally to indemnify the offended party in the sum of P55,000.00 for the unaccounted balance of the value of the ring with legal interest from April 22, 1975, the further sum of P30,000.00 as and for moral damages and the sum of P10,000.00 for attorney's fees.[3]

Both accused appealed to the Court of Appeals, but as Pilar A. Pagulayan had evaded promulgation of sentence in the Trial Court and had appealed only through counsel, the Appellate Court vacated her appeal as ineffectual.[4] On Vizconde's part, the Court of Appeals affirmed the judgment of the Trial Court in all respects except the penalty of imprisonment, which it increased to a term of from ten (10) years and one (1) day of prision mayor to (12) years ten (10) months and twenty-one (21) days of reclusion temporal. A motion for reconsideration was denied. Vizconde thereafter filed the present petition for review on certiorari.[5]

Required to comment on the petition, the Solicitor General, despite having argued for affirmance of Vizconde's conviction in the Court of Appeals, now recommends that she be acquitted, but nonetheless held civilly liable to the complainant in the sum of P55,000.00 (the unaccounted balance of the value of the ring as found by the Trial

Court) "* * * or whatever portion thereof which remains unpaid. * * *"[6]

From the record and the findings of the courts below, it appears that sometime in the first week of April, 1975, the complainant, Dr. Marylou J. Perlas, called up the appellant Vizconde, a long-time friend and former high school classmate, asking her to sell Perlas' 8-carat diamond ring. Shortly afterwards, Perlas delivered the ring to Vizconde to be sold on commission for P85,000.00. Vizconde signed a receipt for the ring.[7]

About a week and a half later, Vizconde returned the ring to Perlas, who had asked for it because she needed to show it to a cousin. However, Vizconde afterwards called on Perlas at the latter's home, with another lady, Pilar A. Pagulayan, who claimed to have a "sure buyer" for the ring.[8] Perlas was initially hesitant to do so, but she eventually parted with the ring so that it could be examined privately by Pagulayan's buyer when the latter gave her a postdated check for the price (P85,000.00) and, together with Vizconde, signed a receipt prepared by Perlas. This receipt — People's Exhibit "A" — reads as follows:

"RECEIPT

Received from Dra. Marylou Javier-Perlas one (1) solo 8 karat diamond ring, white, double cut, brilliant cut with multiple brilliantitos, which I agree to sell for P85,000.00 (eighty-five thousand pesos) on commission basis and pay her in the following manner:

P85,000.00 — postdated check

PNB check 730297
dated April 26, 1975
for P85,000.00

It is understood that in the event the above postdated check is dishonored for any reason whatsoever on its due date, the total payment of the above item, shall become immediately due and demandable without awaiting further demand.

I guarantee that the above check will be sufficiently funded on the respective due date.

Quezon City, Philippines

22 April 1975

(SGD.) PILAR A. PAGULAYAN
PILAR A. PAGULAYAN
16 Rd. 8 Project 6

I guarantee jointly and severally —

(SGD.) CORAZON J. VIZCONDE
CORAZON J. VIZCONDE"[9]

After Pagulayan's postdated check matured, Perlas deposited it to her account at Manila Bank. It was dishonored for the reason, "No arrangement", stated in the debit advice. Perlas then called up Vizconde to inform her about the dishonor of the check. The latter suggested that Perlas re-deposit the check while she (Vizconde) followed up the sale of the ring. Perlas re-deposited the check, but again it was dishonored because drawn against insufficient funds.[10] So Perlas took the matter to counsel, who sent separate letters of demand to Vizconde and Pagulayan for return of the ring or payment of P85,000.00.[11]

After nine days, Vizconde and Pagulayan called on Perlas. Pagulayan paid Perlas P5,000.00 against the value of the ring. She also gave into Perlas' keeping three certificates of title to real estate to guarantee delivery of the

balance of such value. A receipt for the money and the titles was typed and signed by Perlas, which she also made the two sign.[12] The receipt — Exhibit "D" of the prosecution — reads:

"Received from Mrs. Pilar Pagulayan, the sum of FIVE THOUSAND PESOS ONLY (P5,000.00) representing part of the proceeds of the sale of one (1) solo 8 carat diamond ring, white, double cut, brilliant cut w/ multiple brilliantitos, given to Mrs. Pilar Pagulayan and Mrs. Corazon de Jesus Vizconde on 22 April 1975, to be sold on commission basis for eighty-five thousand pesos (P85,000.00).

Received also owner's duplicate copies of TCT Nos. 434907, 434909, 434910, which will be returned upon delivery of the remaining balance of the proceeds of the sale of said diamond ring for eighty five thousand pesos (P85,000.00).

This receipt is being issued without prejudice to legal action.

Quezon City, Philippines

7 May 1975

(Sgd.) Marylou J. Perlas

Dra. Marylou J. Perlas

Conforme:

(Sgd.) Pilar A. Pagulayan

Pilar Pagulayan

(Sgd.) Corazon J. Vizconde

Corazon Vizconde"[13]

Vizconde and Pagulayan having allegedly reneged on a promise to complete payment for the ring on the very next day, Perlas filed with the Quezon City Fiscal's office a complaint against them for estafa. This notwithstanding, Pagulayan still paid Perlas various sums totalling P25,000.00 which, together with the P5,000.00 earlier paid, left a balance of P55,000.00 still owing.[14]

Both the Trial Court and the Court of Appeals found in these facts sufficient showing that Vizconde and Pagulayan had assumed a joint agency in favor of Perlas for the sale of the latter's ring, which rendered them criminally liable, upon failure to return the ring or deliver its agreed value, under Art. 315, par. 1(b), of the Revised Penal Code, for fraud committed " * * * with unfaithfulness or abused of confidence * * * by misappropriating or converting, to the prejudice of another, * * * personal property received in trust or on commission, or under any other obligation involving the duty to make delivery of or to return the same, * * * ." The Solicitor General, falling back, as already stated, from an earlier stance, disagrees and submits in his Comment that the appellant cannot be convicted of estafa under a correct interpretation of the two principal exhibits of the prosecution, the receipts Exhibits "A" and "D".[15] He is correct.

Nothing in the language of the receipt, Exhibit "A", or in the proven circumstances attending its execution can logically be considered as evidencing the creation of an agency between Perlas, as principal, and Vizconde, as agent, for the sale of the former's ring. True, reference to what may be taken for an agency agreement appears in the clause " * * * which I agree to sell * * * on commission basis" in the main text of that document. But it is clear that if any agency was established, it was one between Perlas and Pagulayan only, this being the only logical conclusion from the use of the singular "I" in said clause, in conjunction with the fact that the part of the receipt in

which the clause appears bears only the signature of Pagulayan. To warrant anything more than a mere conjecture that the receipt also constituted Vizconde the agent of Perlas for the same purpose of selling the ring, the cited clause should at least have used the plural "we", or the text of the receipt containing that clause should also have carried Vizconde's signature.

As the Solicitor General correctly puts it, the joint and several undertaking assumed by Vizconde in a separate writing below the main body of the receipt, Exhibit "A", merely guaranteed the civil obligation of Pagulayan to pay Perlas the value of the ring in the event of her (Pagulayan's) failure to return said article. It cannot, in any sense, be construed as assuming any criminal responsibility consequent upon the failure of Pagulayan to return the ring or deliver its value. It is fundamental that criminal responsibility is personal and that in the absence of conspiracy, one cannot be held criminally liable for the act or default of another.

"A person to be guilty of crime, must commit the crime himself or he must, in some manner, participate in its commission or in the fruits thereof. * * *"[16]

Thus, the theory that by standing as surety for Pagulayan, Vizconde assumed an obligation more than merely civil in character, and staked her very liberty on Pagulayan's fidelity to her trust is utterly unacceptable; it strikes at the very essence of guaranty (or suretyship) as creating purely civil obligations on the part of the guarantor or surety. To render Vizconde criminally liable for the misappropriation of the ring, more than her mere guarantee written on Exhibit "A" is necessary. At the least, she must be shown to have acted in concert and conspiracy with Pagulayan, either in obtaining possession of the ring, or in undertaking to return the same or deliver its value, or in the misappropriation or conversion of the same.

Now, the information charges conspiracy between Vizconde and Pagulayan, but no adequate proof thereof has been presented. It is of course true that direct proof of conspiracy is not essential to convict an alleged conspirator, and that conspiracy may be established by evidence of acts done in pursuance of a common unlawful purpose.[17] Here, however, the circumstances from which a reasonable inference of conspiracy might arise, such as the fact that Vizconde and the complainant were friends of long standing and former classmates, that it was Vizconde who introduced Pagulayan to Perlas, that Vizconde was present on the two occasions when the ring was entrusted to Pagulayan and when part payment of P5,000.00 was made, and that she signed the receipts, Exhibits "A" and "D", on those occasions are, at best, inconclusive. They are not inconsistent with what Vizconde has asserted to be an innocent desire to help her friend dispose of the ring; nor do they exclude every reasonable hypothesis other than complicity in a premeditated swindle.[18]

The foregoing conclusion in nowise suffers from the fact that the second receipt, Exhibit "D", appears to confirm that the ring " * * * was given to Mrs. Pilar Pagulayan and Mrs. Corazon de Jesus Vizconde on 22 April 1975, to be sold on commission basis for eighty five thousand pesos (P85,000.00)."[19] The implications and probative value of this writing must be considered in the context of what had already transpired at the time of its making. The ring had already been given to Pagulayan, and the check that she had issued in payment therefor (or to secure payment, as the complainant would have it) had already been dishonored twice. That the complainant then already entertained serious apprehensions about the fate of the ring is evident in her having had her lawyers send Vizconde and Pagulayan demands for restitution or payment, with threat of legal action. Given that situation, Exhibit "D", insofar as it purports to confirm that Vizconde had also received the ring in trust, cannot be considered as anything other than an attempt to "cure" the lack of mention of such an entrustment in the first receipt, Exhibit "A", and thereby bind Vizconde to a commitment far stronger and more compelling than a mere civil guarantee for the value of the ring. There is otherwise no explanation for requiring Vizconde and Pagulayan to sign the receipt, which needed only the signature of Perlas as an acknowledgment of the P5,000.00 given in part payment, and the delivery of the land titles to secure the balance.

The conflict in the recitals of the two receipts insofar as concerns Vizconde's part in the transaction involving Perlas' ring is obvious and cannot be ignored. Neither, as the Court sees it, should these writings be read together in an attempt to reconcile what they contain, since, as already pointed out, the later receipt was made under circumstances which leave no little doubt of its truth and integrity. What is clear from Exhibit "A" is that the ring was entrusted to Pilar A. Pagulayan to be sold on commission; there is no mention therein that it was simultaneously delivered to and received by Vizconde for the same purpose or, therefore, that Vizconde was constituted, or agreed to act as, agent jointly with Pagulayan for the sale of the ring. What Vizconde solely undertook was to guarantee the obligation of Pagulayan to return the ring or deliver its value; and that guarantee created only a civil obligation, without more, upon default of the principal. Exhibit "D", on the other hand, would make out Vizconde an agent for the sale of the ring. The undisputed fact that Exhibit "A" was executed simultaneously with the delivery of the ring to Pagulayan compellingly argues for accepting it as a more trustworthy memorial of the real agreement and transaction of the parties than Exhibit "D" which was executed at a later date and after the supervention of events rendering it expedient or desirable to vary the terms of that agreement or transaction.

In view of the conclusions already reached, consideration of the Solicitor General's argument — also quite persuasive — that Exhibit "D" in fact evidences a consummated sale of the ring for an agreed price not fully paid for, which yields the same result, is no longer necessary. It is, however, at least another factor reinforcing the hypothesis of Vizconde's innocence.

Upon the evidence, appellant Corazon J. Vizconde was a mere guarantor, a solidary one to be sure, of the obligation assumed by Pilar A. Pagulayan to complainant Marylou J. Perlas for the return of the latter's ring or the delivery of its value. Whatever liability was incurred by Pagulayan for defaulting on such obligation — and this is not inquired into — that of Vizconde consequent upon such default was merely civil, not criminal. It was, therefore, error to convict her of estafa.

As already stated, the Solicitor General however maintains, on the authority of *People vs. Padilla*,^[20] that the appellant should be held liable to pay the complainant the amount of P55,000.00, or whatever part of such amount remains unpaid, for the value of the ring. Again, this is a correct proposition, there being no question — as in fact admitted by her — that the appellant executed the guarantee already referred to.

WHEREFORE, except insofar as it affirms the judgment of the Trial Court ordering appellant Corazon J. Vizconde, solidarily with Pilar A. Pagulayan, to indemnify the complainant Marylou J. Perlas in the amount of P55,000.00 for the unaccounted balance of the value of the latter's ring, the appealed Decision of the Court of Appeals is reversed and set aside, and said appellant is acquitted, with costs de oficio. As the record indicates that levies on preliminary attachment and on execution pending appeal have been made on behalf of the complainant,^[21] which may have resulted in further reducing the above-stated balance, the appellant may, upon remand of this case to the Trial Court, prove any reductions, by the operation of said levies or otherwise, to which the amount of the indemnity adjudged may be justly subject.

SO ORDERED.

Melencio-Herrera, Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.
Yap, J., (Chairman), on leave.

[1] in CA-G.R. No. 23774-CR; Mendoza, ponente, Alampay and Borromeo, JJ.

[2] Record, pp. 1-2

- [3] Record, pp. 620-629
- [4] Roll (CA-G.R. No. 23774-CR), pp. 62-63
- [5] Roll (CA-G.R. No. 23774-CR), pp. 61-73
- [6] Rollo, pp. 96-103
- [7] Roll (CA-G.R. No. 23774-CR), p. 63
- [8] Roll (CA-G.R. No. 23774-CR), p. 621
- [9] Roll, pp. 64-65; Record, pp. 141-142
- [10] Roll, id.; Exhibits "B", "B-1" and "B-2"; Record, pp. 143-145
- [11] Exhibit "C-1"; Record, pp. 148-149
- [12] Roll, p. 65
- [13] Record, p. 146
- [14] Exhibits "E", "F", "G" and "H"; Record, pp. 147, 150-152
- [15] Comment; Rollo, p. 96
- [16] U.S. vs. Acebedo, 18 Phil. 428
- [17] People vs. Cadag, 2 SCRA 388; People vs. Cruz, 4 SCRA 1114; People vs. Belen, 9 SCRA 39; People vs. Capito, 22 SCRA 1130; People vs. Alcantara, 33 SCRA 812
- [18] People vs. Macatanaw, 62 SCRA 516, 527; People vs. Aniel, 96 SCRA 199, 208-209; People vs. Sosing, 111 SCRA 368, 377; see also Duran vs. CA, 71 SCRA 68, 84 and Borromeo vs. CA, 131 SCRA 318, 326
- [19] Italics supplied
- [20] 129 SCRA 558; see also People vs. Jalandoni, 131 SCRA 454; People vs. Maniego, G.R. No. L-30910, February 27, 1987
- [21] Record, pp. 53, 181, 809, 814, 822

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