

CRISTETA BARQUEROS, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 77571. November 27, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

Petitioner was accused of estafa under Article 315 par. 1[b] of the Revised Penal Code. She allegedly received in trust from Victoria T. Ong Oh one diamond triangle dangling set of ring and earring valued at P20,000.00 and one diamond curicut creola set of ring and earring worth P14,500.00 for the purpose of sell-ing them on condition that she could keep for herself as commission whatever overprice she would make from the transaction. After the 10-day period for sell-ing the jewelry had elapsed and petitioner had failed to remit the proceeds of the sale or to return the jewelry, Victoria T. Ong Oh filed a complaint against her.

On arraignment, petitioner entered a plea of not guilty. The prosecution presented the complainant as witness while the defense presented petitioner and one Florencia Manlulu as witnesses. Thereafter, the Court of First Instance of Rizal, Branch XII at Caloocan City, rendered a decision finding petitioner guilty beyond reasonable doubt of the crime charged and sentenced her to imprisonment of 3 years, 4 months and 8 days of prision correccional as minimum to 8 years, 1 month and 25 days of prision mayor as maximum "in view of the imposition of the additional penalty of one year for every P10,000 in excess of P22,000" and to indemnify the offended party in the amount of P36,500.[1] Petitioner appealed to the then Intermediate Appellate Court.

Before she filed her brief, petitioner filed a motion for new trial on the ground of newly dis-covered evidence in the form of an affidavit of de-sistance executed by complainant Victoria T. Ong Oh which states:

"I, VICTORIA TIANGCO ONG OH, Filipino, of legal age, married and residing at Navotas, Metro Manila, after being duly sworn, depose and say:

1. That I am the complainant in Criminal Case No. C-8670 for estafa entitled 'People of the Philippines vs. Cristeta Barqueros' filed with the then Branch XII of the Court of First Instance at Caloocan City;
2. That after hearing the testimony of the said accused and after listening to her explana-tion made to me later, I became convinced that the said accused is not totally to blame in the premises;
3. That in any event, I have lost interest in the further prosecution of the said case;
4. That if further testimony would be needed on my part, I would no longer be willing to testify against her;
5. That, as a matter of fact, if possible, I would like to have said case dismissed;
6. That I am executing this affidavit to attest to the foregoing facts and to express my desire that said case be dismissed.

IN WITNESS WHEREOF, I have signed this affidavit on this 24th day of July, 1984 at Caloocan, Metro Manila.

(Sgd.) VICTORIA TIANGCO ONG OH

Affiant".[2]

Action on said motion was deferred. The parties filed their respective briefs and on January 29, 1986, the Intermediate Appellate Court affirmed the lower court's decision. Petitioner's motion for reconsideration having been denied, she filed the instant petition for review on certiorari alleging that the appellate court erred in disre-garding the affidavit of desistance which she considers as having negated her culpability.

The petition lacks merit. The Court stands by its ruling in *People vs. Manigbas, et al.*, 109 Phil. 469 which states:

"Affidavits of recantation made by the accused after conviction are very unreliable, especially since they usually involve a confession of perjury. It is indeed a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions calculated to discourage and forestall falsehood simply because the witnesses who had given them later on changed their minds. Such a rule constitutes a mockery of solemn trials and places the investigation of truth at the mercy of the unscrupulous. Unless there be special circumstances, which, coupled with the retraction of the witness, really raise a doubt as to the truth of the testimony given by him at the 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 a criminal litigation."[3]

The "special circumstances" presented by the petitioner consist of: [a] her "claim" that she sold the jewelry to Linda de Jesus and Cre-sencia Tabrilla who allegedly issued a check in payment thereof and which check was supposedly delivered to Victoria T. Ong Oh; [b] her testi-mony that she allowed Victoria T. Ong Oh to re-deem petitioner's own jewelry worth P45,000.00 in exchange for the pieces of jewelry which are the subject of the estafa case; [c] her testimony that she delivered to Victoria T. Ong Oh two land titles which said complainant later returned; [d] her affidavit of merit dated September 24, 1984 stating that the value of the jewelry delivered to her had been fully paid, and [e] the affidavit of desistance executed by Victoria T. Ong Oh which is allegedly a declaration against complainant's interest.[4]

We hold that said "special circumstances" are not circumscribed by the *Manigbas* ruling. They are petitioner's own testimonies which, being un-corroborated, are no more than self-serving state-ments. Both the lower court and the Intermediate Appellate Court found them to be insufficient to overcome the prosecution evidence. There being no reason to overrule both courts, We consider Our-selves bound by their findings.

We also note petitioner's inaccuracies in presenting said "special circumstances". For instance, she mentions "Exh. T" in relation to the check she allegedly delivered to the com-plainant but the records show that no such Exh. T exists. There is an Exh. "1" in the record but it is a receipt signed by Linda de Jesus and Cresencia Tabrilla.[5] In her reply to respondents' comment on her petition, she mentions Exh. "A" as if it is the check delivered by Tabrilla to her.[6] Exh. "A" is actually a "recibo" signed by petitioner acknowledging her receipt from Victoria T. Ong Oh of the jewelry involved.[7]

The absence of valid "special circumstances" in this case distinguishes it from *Gomez vs. Inter-mediate Appellate Court*, G.R. No. 63202, April 9, 1985, 135 SCRA 620, wherein We gave due weight to an affidavit of desistance. Moreover, unlike in the *Gomez* case where the complainant categorically exonerated the accused, in this case, complainant merely states that "accused is not totally to blame in the premises". A reading of the affidavit of desistance reveals that Victoria T. Ong Oh's inten-tion in executing it was to terminate the estafa case rather than to exonerate petitioner from lia-bility. Thus, she states therein that she has "lost interest in the further prosecution" of the case; that she "would no longer be willing to tes-tify"; that she "would like to have said case

ter-minated", and that she executed the affidavit to express her "desire" that the case be dismissed.

A thorough consideration of the evidence on record, the affidavit of desistance itself and the absence of special circumstances to justify a re-versal of the judgment of conviction, not to mention the fact that the affidavit of desistance was executed more than seven years after the filing of the complaint and more than two years after the promulgation of the trial court's decision which periods of time are too long even if complainant's alleged frequent trips abroad should be taken into account, convince Us that the appellate court did not err in affirming the trial court's decision.

WHEREFORE, the instant petition for review on certiorari is hereby DENIED. Costs against the petitioner.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 24

[2] Rollo, p. 28

[3] pp. 477-478

[4] Petition, pp. 6-7

[5] Record, p. 206

[6] Reply, p. 2

[7] Record, p. 99

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