

**ROSEMARIE M. LEE, PETITIONER, VS. HON. JOSEFINA CRUZ RODIL,
JUDGE OF REGIONAL TRIAL COURT, BRANCH X, MANILA AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

G.R. No. 80544. July 05, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this petition we are asked to reconsider the liability for estafa of an entrustee in a trust receipt agreement who disposes of the goods covered by it but fails to deliver the proceeds of the sale to the bank.

Petitioner Rosemarie M. Lee was charged with estafa in an information which alleged:

"That on or about July 26, 1982 in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously defraud the Philippine Bank of Communications, a banking institution duly organized and existing under the laws of the Republic of the Philippines, in the following manner, to wit: the said accused, being then the duly authorized representative of C.S. Lee Enterprises, Inc., after opening letter of credit with the said bank under L/C No. 63251 dated July 26, 1982, for the amount of P154,711.97, covering the purchase price of a certain merchandise consisting of 23 ctms. Lab. Culture Media in favor of said bank, received from the latter the necessary document and thereafter the said merchandise and forthwith, executed trust receipt for the aforesaid merchandise dated July 26, 1982, by virtue of which, the said accused obligated herself to hold said merchandise in trust with liberty to sell the same in cash for the account of the said bank and to account for the proceeds of the sale thereof, if sold or of returning the said merchandise to said bank in case of failure to sell the same, on or before October 24, 1982, but the said accused, once in possession of the said merchandise, far from complying with her aforesaid obligation and despite the lapse of a long period of time and repeated demands made upon her to that effect, did then and there wilfully, unlawfully and feloniously, with intent to defraud, misappropriate, misapply and convert the said merchandise or the value thereof, to her own personal use and benefit, to the damage and prejudice of the said Philippine Bank of Communications in the amount of P154,711.97, Philippine currency." (Rollo, p.19)

The accused moved to quash this information on the ground that the facts charged do not constitute an offense. She alleges that the violation of a trust receipt agreement does not constitute estafa notwithstanding an express provision in the "Trust Receipts Law" (P.D. 115) characterizing such violation as estafa. She attacks P.D. 115 for being unconstitutional.

The trial court, in its order dated August 21, 1987 denied the motion to quash the information and upheld the constitutionality of P.D. No.115.

The subsequent Motion for Reconsideration was also denied for lack of merit in an order dated October 12, 1987.

Hence, this petition.

The issue posed in this case is whether or not the violation of a trust receipt agreement constitutes the crime of estafa.

We answer in the affirmative in the light of a specific provision in P.D. No. 115.

Sec. 13 of P.D. No. 115 provides:

"x x x 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." (Underscoring supplied).

The petitioner cites the cases of *People v. Cuevo*, (104 SCRA 312 [1981]) and *Sia v. People*, (121 SCRA 655 1983]) to support her stand that the violation of a trust receipt does not constitute estafa.

The petitioner's citation of *People v. Cuevo*, supra does not strengthen her case at all. Of the eleven (11) members of the Court, a majority of six (6) were clearly of the view that the violation of a trust receipt constitutes estafa. The Chief Justice concurred with them on the issue of absence of double jeopardy. Two Justices inhibited themselves. Only two (2) out of the eleven members strongly adhered to the view now presented by the petitioner. However, for want of one vote needed to reverse the dismissal order of the lower court, the view of the dissenting Justices prevailed as the result in that case. Excerpts from the majority opinion show as follows:

"x x x (I)t is a well-entrenched rule in our jurisprudence that the conversion by the importer of the goods covered by a trust receipt constitutes estafa through misappropriation under article 315(1) (b) of the Revised Penal Code. (*People vs. Yu Chai Ho*, 53 Phil. 874 and *Samo vs. People*, 115 Phil. 346. As to civil cases, see *National Bank vs. Viuda e Hijos de Angel Jose*, 63 Phil. 814; *Philippine National Bank vs. Catipon*, 98 Phil. 286 and *Philippine National Bank vs. Arrozal*, 103 Phil. 213).

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"As noted by Justice Street in *People vs. Yu Chai Ho*, supra, the conversion by the trustee in a trust receipt of the proceeds of the sale falls 'most literally and directly under' the provisions of article 315(1) (b).

Thus, it was held that where, notwithstanding repeated oral and written demands by the bank, the petitioner had failed either to turn over to the said bank the proceeds of the sale of the goods, or to return said goods if they were not sold, the petitioner is guilty of estafa under article 315 (1) (b) (*Samo vs. People*, 115 Phil. 346).

"In this connection, it is relevant to state that Presidential Decree No. 115, the Trust Receipts Law, regulating trust receipt transactions, was issued on January 29, 1973.

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"The enactment of the said penal provision is confirmatory of existing jurisprudence and should not be construed as meaning that, heretofore, the misappropriation of the proceeds of a sale made under a trust receipt was not punishable under article 315. That penal provision removed any doubt as to the criminal liability of the holder of a trust receipt who misappropriated the proceeds of the sale."

It was the lower court in the *Cuevo* case which ruled that violation of a trust receipt gives rise to a civil action only. This was not the ruling in the Supreme Court's decision.

It was made quite clear in the majority opinion that the lower court erred in holding that the accused did not

commit estafa under article 315 (1) (b). (104 SCRA 312, 316).

The petitioner quotes the dissenting opinion of Justice De Castro in this case that:

"The parties, therefore, are deemed to have consciously entered into a purely commercial transaction that could give rise only to civil liability, never to subject the 'entrustee' to criminal prosecution. Unlike, for instance, when several pieces of jewelry are received by a person from the owner for sale on commission, and the former misappropriates for his personal use and benefit, either the jewelries or the proceeds of the sale, instead of returning them to the owner as is his obligation, the bank is not in the same concept as the jewelry owner with full power of disposition of the goods, which the bank does not have, for the bank has previously extended a loan which the L/C represents to the importer, and by that loan, the importer should be the real owner of the goods. If under the trust receipt, the bank is made to appear as the owner, it was but an artificial expedient, more of a legal fiction than fact, for it were really so, it could dispose of the goods in any manner it wants, which it cannot do, just to give consistency with the purpose of the trust receipt by giving a stronger security for the loan obtained by the importer. To consider the bank as the true owner from the inception of the transaction would be to disregard the loan feature thereof, a feature totally absent in the case of the transaction between the jewel?owner and his agent."

Equally emphatic is the dissent of then Senior Associate Justice Claudio Teehankee that:

"I concur with the dissent of Mr. Justice De Castro insofar as it upholds the more liberal interpretation to the trust receipt transaction which would give rise only to civil liability on the part of the offender. The very definition of trust receipt as given in the main opinion (at pp. 4-5), '(A) trust receipt is considered as a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased' (53 Am. Jr. 961, cited in *Samo v. People*, 115 Phil. 346, 349),' sustains the lower court's rationale in dismissing the information that the contract covered by a trust receipt is merely a secured loan. The goods imported by the small importer and retail dealer through the bank's financing remain of their own property and risk and the old capitalist orientation of putting them in jail for estafa for non-payment of the secured loan (granted after they had been fully investigated by the bank as good credit risks) through the fiction of the trust receipt device should no longer be permitted in this day and age."

It should, however, be noted that even as Justice de Castro filed a dissent, he also made the following observations:

"The question is whether the violation of the terms of a trust receipt would constitute estafa. There is no more doubt that under P.D. 115, the violation is defined as estafa, but before the promulgation of said decree, I have entertained grave doubts to such extent that I would acquit a person accused of the crime allegedly committed before said decree, the promulgation of which serves to confirm my doubts. For if there had been no such doubt, especially as some decisions had already been rendered by this Court holding that estafa is committed where there is a violation of a trust receipt, there would have been no need for P.D. 115." (Emphasis supplied)

The dissenting opinions later became the Court's ruling on the matter when the *Sia* decision penned by Justice De Castro was promulgated.

In the *Sia* case, *supra*, it was held that:

"Consequently, if only from the fact that the trust receipt transaction is susceptible to two reasonable interpretation(s), one as giving rise only to civil liability for the violation of the condition thereof, and the other, as generating also criminal liability, the former should be adopted as more favorable to the supposed offender.x x x"

A closer look at the two decisions cited by the petitioner shows attendant facts that are different from those in the instant case.

As noted by the Solicitor General, in the Cuevo and Sia, cases, both violations of the trust receipt agreements happened in the 1960's, way before the promulgation of P.D. 115 in 1973. (Rollo, p. 55) In the present case, the accused was charged in 1985 for an act committed in 1982.

While the Cuevo and Sia cases were decided when P.D. 115 had already been promulgated, the decree was not applied in either of the cases because the questioned acts were committed before its effectivity.

Thus, the view held by the Court in the Sia case that violation of a trust receipt only gives rise to civil liability did not take into consideration P.D. 115, as it ruled:

"We consider the view that the trust receipt arrangement gives rise only to civil liability as the more feasible, before the promulgation of P.D. 115." (121 SCRA 655, 664) (Emphasis supplied).

Acts involving the violation of trust receipt agreements occurring after 29 January 1973 would make the accused criminally liable for estafa under paragraph 1 (b), Article 315 of the Revised Penal Code, pursuant to the explicit provision in Sec. 13 of P.D. 115. (Sia v. Court of Appeals, G.R. No. 40324, October 5, 1988).

The petitioner questions the constitutionality of Sec. 13 of P.D. 115. She contends that it is violative of the constitutional right that "No person shall be imprisoned for debt or non-payment of a poll tax".

The petitioner has failed to make out a strong case that P.D. 115 conflicts with the constitutional prohibition against imprisonment for non-payment of debt. A convincing showing is needed to overcome the presumption of the validity of an existing statute.

The criminal liability springs from the violation of the trust receipt.

We bear in mind the nature of a trust receipt agreement. This Court pronounced in the Vintola cases, 150 SCRA 578 (1987); G.R. No. 78671, March 25, 1988 that:

"xxx A letter of credit-trust receipt arrangement is endorsed with its own distinctive features and characteristics. Under the set-up, a bank extends a loan covered by the letter of credit, with the trust receipt as a security for the loan. In other words, the transaction involves a loan feature represented the letter of credit, and a security feature which is in the covering trust receipt." (Emphasis supplied)

Therefore, the loan feature is separate and distinct from the trust receipt. The violation of a trust receipt committed by disposing of the goods covered thereby and failing to deliver the proceeds of such sale has been squarely made to fall under Art. 315 (i) (b) of the Revised Penal Code which provides:

"xxx Swindling (estafa). - Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

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"a. With unfaithfulness or abuse of confidence, namely:

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"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 fact that the bank does not become the factual owner of the goods does not make the law unconstitutional (See the Vintola cases, supra) The language of the above-mentioned penal provision has been clarified by P.D. 115. The person who is prejudiced through the misappropriation or conversion of the goods need not be the owner, thereof; if such had been the intention of the authors of the Code, the phrase "to the prejudice of another" would have read "to the prejudice of the owner." (People v. Yu Chai Ho, 53 Phil. 874, 877-878).

Moreover, we agree with the Solicitor General who expressed the policy behind the law:

"Verily, P.D. 115 is a declaration by the legislative authority that, as a matter of public policy, the failure of a person to turn over the proceeds of the sale of goods covered by a trust receipt or to return said goods if not sold is a public nuisance to be abated by the imposition of penal sanctions. As held in *Lozano vs. Martinez*. (146 SCRA 323, 338):

" 'x x x certainly it is within the authority of the lawmaking body to prescribe certain acts deemed pernicious and inimical to public welfare. Acts mala in se are not the only acts that the law can punish. An act may not be considered by society as inherently wrong, hence, not malum in se, but because of the harm that it inflicts on the community, it can be outlawed and criminally punished as malum prohibitum. The State can do this in the exercise of its police power.'

"In fine, P.D. 115 is a valid exercise of police power and is not repugnant to the constitutional provision on non-imprisonment for non-payment of debt."

The undersigned ponente concurred in the *Sia* decision in 1983 because the allegedly criminal act was committed before the pointedly deliberate expression of legislative intent was manifested in a statute. There were then doubts as to the susceptibility of a trust receipt transaction to two different interpretations, one which limits the effects of a violation to civil liability and the other to include criminal responsibility. Certain factual considerations in the *Sia* case strengthened the arguments for acquittal of the accused. There have been two legislatures since then - the Batasang Pambansa and the present Congress of the Philippines - but no repeal of P.D. 115 has been made. To declare this law unconstitutional is an entirely different proposition from merely choosing one of two reasonable alternatives.

An examination of P.D. 115 shows the growing importance of trust receipts in Philippine business, the need to provide for the rights and obligations of parties to a trust receipt transaction, the study of the problems involved and the action by monetary authorities, and the necessity of regulating the enforcement of rights arising from default or violations of trust receipt agreements. The legislative intent to meet a pressing need is clearly expressed. We see no unconstitutionality in the means deliberately employed to enforce the integrity of trust receipts.

WHEREFORE, the trial court's orders are AFFIRMED and the case is remanded to the trial court for further proceedings.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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