

CARMELITA SARAO, PETITIONER, VS. COURT OF APPEALS, PEOPLE OF THE PHILIPPINES AND KIM DEL PILAR, RESPONDENTS.

G.R. Nos. 116602-03. August 21, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

On 10 September 1987 petitioner Carmelita Sarao was charged before the Regional Trial Court of Imus, Cavite, with violation of B.P. 22 allegedly committed on 15 June 1986 when a check she issued to private respondent Kim del Pilar was dishonored for having been drawn against insufficient funds, and that despite receipt of notice of such dishonor she failed to settle her obligation.[1]

On 27 October 1987 petitioner was also charged before the same trial court with estafa under par. 1 (b), Art. 315, of the Revised Penal Code allegedly committed on 12 May 1986 when she allegedly received from private respondent Kim del Pilar pieces of jewelry to be sold on commission basis; if unsold, she was bound to return them to private respondent on or before 19 May 1986. However, instead of complying with her undertaking, she misappropriated the pieces of jewelry or the proceeds thereof.[2]

The evidence for the prosecution established that sometime in the early part of April 1986 petitioner met respondent Kim del Pilar in the jewelry shop of a certain Natividad Ramos. In that meeting petitioner and respondent Kim del Pilar agreed to enter into transactions involving the sale of jewelry. Before the month ended, they have entered into two (2) of such transactions.

On 12 May 1986 petitioner and respondent Kim del Pilar entered into a third transaction wherein Kim del Pilar entrusted to petitioner eight (8) pieces of jewelry owned by a certain Azucena Enriquez valued at P301,500.00 to be sold on commission basis, otherwise, petitioner would return them on or before 19 May 1986. In exchange, petitioner entrusted to respondent del Pilar TCT No. 90915 covering a parcel of land situated in Las Piñas. Thereafter the items were sold to Victoria Vallarta who issued for the purpose two (2) checks for P214,000.00. However, when presented for payment the checks were dishonored for insufficiency of funds, prompting petitioner to file two (2) criminal cases charges against Vallarta. Consequently, petitioner failed to pay either respondent del Pilar or Enriquez for the value of the jewelry.

Thereafter petitioner issued to respondent del Pilar Philbanking Check No. 148526, undated, in the amount of P214,000.00 as partial payment of her obligation and handed the check over to Enriquez. On 15 June 1986, Enriquez with petitioner's consent, dated the check. However, when presented for payment, it was dishonored for insufficiency of funds and notwithstanding receipt of notice of such dishonor petitioner failed to settle her obligation. Thus respondent del Pilar was left with no other recourse but to pay Enriquez in an amount equivalent to what appeared in the check.

After the prosecution had rested its case, petitioner moved to dismiss on the ground that, among other things, there was no showing that she was authorized to sell subject pieces of jewelry on commission basis, rather, she bought them from respondent del Pilar. In other words, she was not guilty of misappropriation.

On 22 January 1990 the trial court granted the motion[3] based on the findings that -

x x x x Carmelita Sarao cannot be criminally held liable for Estafa. Although it cannot be denied that she received the jewelries from the complainant, yet evidence is wanting to prove that she misappropriated or converted the amount of the jewelries for her own personal use. It is undeniably true that Carmelita Sarao was also a victim of circumstances as borne out by the records of Criminal Cases Nos. 741-87 and 752-87.[4]

Evidence unequivocally shows that said articles were sold to third persons and Carmelita Sarao became an unwilling victim of this day to day malady of bouncing checks, common in our business field. In short, to secure conviction, there must be proof of misappropriation or conversion (Concepcion vs. People, 74 Phil. 63).

Likewise, accused Carmelita Sarao did not incur criminal liability under Batas Pambansa Blg. 22 for issuing Philbanking Check No. 148526. The mere fact that the check was issued undated and accepted by complainant will readily show that Carmelita Sarao has no sufficient funds in the bank at the time of its issuance. The Court is constrained to agree with accused's contention that there was an agreement between her and the complainant that this undated check would not be encashed until payment is received from the buyers of the jewelries.[5]

In the same order however the trial court adjudged petitioner liable for the amount paid by respondent del Pilar to Enriquez with legal interest from 10 September 1987 until fully paid rationalizing that -

x x x x it being unquestionably proven that complainant Kim del Pilar paid the owner of the jewelries the amount of P214,000.00 from the loan she obtained from Noveleta Rural Bank, Noveleta, Cavite, it stands to reason that Carmelita Sarao should be civilly liable.[6]

Petitioner moved for reconsideration on the ground that her obligation to pay respondent del Pilar, as found by the trial court, would be due only upon collection from the buyer and that actually she had made advance payments on different dates.

On 10 July 1990 the motion was denied.[7] The trial court was of the view that petitioner's obligation to respondent del Pilar was direct and not dependent upon her collection of the proceeds of the sale from Vallarta and that the alleged payments in advance referred to other transactions.

On 24 February 1994 respondent Court of Appeals affirmed the ruling of the trial court.[8] On 26 April 1994 the motion for reconsideration was denied.[9]

The core issue is whether the obligation of petitioner to turn over the proceeds of the sale to respondent del Pilar was already due and demandable?

Petitioner argues that respondent court overlooked the finding of the trial court in its first order that the agreement between her and respondent del Pilar was that the check would not be encashed until payment was received from Vallarta, or that her obligation to turn over the proceeds of the sale to respondent del Pilar would be due only upon collection from Vallarta.

There is no valid reason to overturn the rulings of both courts. Petitioner Sarao and respondent del Pilar may have so agreed, but the important consideration now is the following testimony of Enriquez which petitioner failed to rebut:

Q

What happened afterwards, Madam Witness?

A

Kim del Pilar gave me a check worth P214,000.00 as partial payment for the jewelry, sir.

Q

Will you tell us Madam Witness who was the drawer of that check of P214,000.00?

A

The drawer was Carmelita Sarao as appearing in the check, sir.

Q

Tell us when was that check given to you by Mrs. del Pilar?

A

First week of June, 1986, sir.

Q

When the check was given to you during the first week of June 1986 was that dated already, Mrs. Witness?

A

Not yet, open date(d), sir.

Q

What did you do with the check if you did anything?

A

I called up Mrs. Sarao on June 15 and told her that I will (sic) deposit the check. She told me to put the date June 15 on the check, sir.

Q

According to you Mrs. Sarao told you to date the check June 15, 1986. Would you tell us Madam Witness why Mrs. Sarao requested you to date the check June 15, 1986?

A

According to her she has (sic) fund in the bank but when I encashed the check, she has no fund, sir.

[10]

Apparently, Enriquez also gave petitioner some time within which to pay. However, when petitioner told Enriquez to date the check June 15, 1986, because she had no funds in the bank, it could be assumed that she had received payment from her buyer. She could no longer insist on the agreement because based on the same circumstance, when she told Enriquez that she had no funds in the bank on 15 June 1986, she thereby acknowledged that her obligation was already due and demandable. And since respondent del Pilar had paid P214,000.00 to Enriquez, petitioner should in turn pay the same amount to respondent del Pilar, with legal interest from 10 September 1987 until fully paid.

Petitioner's assigned error is evidently a factual issue which has been thoroughly passed upon and settled both by the trial court and respondent Court of Appeals, and the jurisdiction of this Court is limited only to reviewing errors of law unless there is a showing that the findings complained of are totally devoid of support in the record or that they are so glaringly erroneous as to constitute serious abuse of discretion.[11] There is no such showing in

this case.

WHEREFORE, the petition is DENIED. The decision and resolution of the Court of Appeals finding petitioner Carmelita Sarao liable to respondent Kim del Pilar in the amount of Two Hundred Fourteen Thousand Pesos (P214,000.00) with legal interest thereon from 10 September 1987 until fully paid are AFFIRMED. Costs against petitioner.

SO ORDERED.

Padilla, (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Information, 14 August 1987; CA Rollo, p. 12.

[2] Information, 1 October 1987; Id., p. 13.

[3] Order issued by Judge Proceso P. Silangcruz, RTC-Br. 20, Imus, Cavite; CA Rollo, p. 53.

[4] Referring to those filed against Victoria Vallarta.

[5] CA Rollo, pp. 52-53.

[6] Id., p. 53.

[7] Order issued by Judge Lucenito N. Tagle, RTC-Br. 20, Imus, Cavite; CA Rollo, p. 55.

[8] Decision penned by Justice Cancio C. Garcia, concurred in by Justices Antonio M. Martinez and Ramon U. Mabutas Jr.; Rollo, p. 114.

[9] CA Rollo, p. 123.

[10] TSN, 21 June 1988, pp. 15-16.

[11] *Meneses v. Court of Appeals*, G.R. No. 82220, 14 July 1995, 246 SCRA 162.

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