



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MARGIE BALERTA,
Petitioner,

G.R. No. 205144

Present:

VELASCO, JR., J,
Chairperson,
LEONARDO-DE CASTRO,*
PERALTA,
VILLARAMA, JR., and
REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

November 26, 2014

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DECISION

REYES, J.:

The instant petition for review on *certiorari*¹ assails the Decision² rendered by the Court of Appeals (CA) on October 31, 2012 in CA-G.R. CR No. 00693 affirming, albeit with modification as to the penalty imposed, the Decision³ dated November 15, 2006 of the Regional Trial Court (RTC) of Barotac Viejo, Iloilo, Branch 66, in Criminal Case No. 99-1103, convicting Margie Balerta (petitioner) of *Estafa*.

* Additional member per Special Order No. 1887 dated November 24, 2014 in view of the inhibition of Associate Justice Francis H. Jardeleza.

¹ *Rollo*, pp. 18-36.

² Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Gabriel T. Ingles and Maria Elisa Sempio Diy, concurring; *id.* at 39-48.

³ Rendered by Judge Rogelio J. Amador; records, pp. 136-139.

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Antecedents

The Information, dated October 27, 1999, filed against the petitioner before the RTC partially reads as follows:

That on or about May 31, 1999 until June 17, 1999, in the Municipality of Balasan, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then an employee/cashier of Balasan Associated Barangays Multi-Purpose Cooperative (BABMPC)[,] was in[-]charge of collecting and keeping the collections turned over to her by the collectors of the cooperative [and of] account[ing] for and deposit[ing] the collected amount to the depository bank which is the Balasan Rural Bank, Balasan, Iloilo, but said accused, far from complying with her obligation, with unfaithfulness and/or abuse of confidence, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert to her personal use and benefit the total collection of One Hundred Eighty[-]Five Thousand Five Hundred Eighty[-]Four Pesos and 06/100 (□185,584.06) Philippine Currency and despite repeated demands, the said accused failed and still fails, to liquidate or render formal accounting of her collections or return the aforesaid amount to the Balasan Associated Barangays Multi-Purpose Cooperative, to its damage and prejudice in the aforesaid amount of □185,584.06.

CONTRARY TO LAW.⁴

During arraignment, the petitioner entered a “not guilty” plea.⁵ Pre-trial then ensued. The parties stipulated on the following: (a) the identity and existence of Balasan Associated Barangays Multi-Purpose Cooperative (BABMPC); (b) the identity of the petitioner and her position as a cashier in BABMPC; (c) the petitioner “cannot withdraw from the bank account of [BABMPC] alone;” and (d) the criminal complaint against the petitioner was filed on the basis of the findings of an internal auditor and not of an independent accountant.⁶

Version of the Prosecution

During the pre-trial, the prosecution manifested that BABMPC’s Manager, Napoleon Timonera (Timonera), and Internal Auditor, Ruben Ambros (Ambros), would take the witness stand. Timonera would testify on the function of BABMPC and the duties of the petitioner, while Ambros’ testimony would revolve on the facts and circumstances leading to the filing of the complaint. The prosecution intended to offer before the RTC no other documentary evidence except the affidavits of Timonera and Ambros.⁷

⁴ Id. at 1.

⁵ Id. at 36.

⁶ Please *see* Pre-Trial Order, *id.* at 39-40.

⁷ Id.

In the course of the trial, only Timonera appeared to testify. When the proceedings before the RTC was concluded, both the prosecution and the defense did not formally offer any documentary evidence.⁸

In Timonera's testimony, he stated that BABMPC is registered with the Cooperative Development Authority and is engaged in micro-lending, trading and equipment rental.⁹ At the time he took the witness stand, Timonera was BABMPC's Manager, and he was authorized through a board resolution to represent the cooperative in pursuing the criminal complaint against the petitioner.¹⁰

According to Timonera, the petitioner worked as one of the three cashiers in BABMPC.¹¹ She used to receive daily remittances, deposit to the bank, withdraw and issue loans¹² specifically in connection with Care Philippines' account involving an amount of ₱1,250,000.00.¹³ Care Philippines entrusted the sum to BABMPC, which in turn can release to borrowers loans ranging from ₱500.00 to ₱50,000.00.¹⁴

The petitioner neither resigned nor was terminated from employment, but she stopped reporting for work from June 19, 1999 onwards after BABMPC discovered discrepancies and fraud in her records.¹⁵ Bank records showed that there was a variance of ₱40.00 indicated in BABMPC's passbook, on one hand, and in the deposit slip, on the other.¹⁶ This prompted BABMPC's bookkeeper, Rose De Asis (De Asis) to request the Internal Auditor, Ambros, to verify with the bank, which in turn disowned the entries and signatures in the passbook made and affixed between March 12, 1999 and June 15, 1999.¹⁷ BABMPC also found out from the bank teller that the petitioner declared the cooperative's passbook as missing since March 1999, hence, a new one was issued on May 6, 1999.¹⁸ The petitioner used the new passbook in making actual transactions with the bank, but she kept the old passbook, upon which she made falsified entries to prevent BABMPC from discovering the discrepancies.¹⁹ The court asked Timonera how he knew that the signatures in the old passbook were affixed by the petitioner herself. Timonera replied that it was the petitioner who

⁸ CA *rollo*, p. 5.

⁹ TSN, March 10, 2000, p. 2.

¹⁰ Id. at 3-4.

¹¹ Id. at 7.

¹² Id. at 3.

¹³ Id. at 7.

¹⁴ Id. at 8.

¹⁵ Id. at 3.

¹⁶ Id. at 8.

¹⁷ Id. at 8-9, 11.

¹⁸ Id. at 10-11.

¹⁹ Id.

kept the passbook,²⁰ and collected, remitted and withdrew money from the bank.²¹ BABMPC's bookkeeper, De Asis, on the other hand, merely controlled the vouchers and the records of the transactions.²² The petitioner and De Asis were the two authorized signatories of BABMPC as regards the passbook kept with the bank.²³

Upon audit, BABMPC found that "there was a discrepancy of some ₱185,000.00," ₱90,000.00 of which in the passbook, while the rest of the amount related to the records of the cooperative kept by the petitioner. When asked by the petitioner's counsel about where exactly was the discrepancy shown in the copy of the bank's ledger and pages of a passbook, which were part of BABMPC's records, Timonera answered that he is not an accountant and Ambros knew more about the matter.²⁴

Timonera also stated that BABMPC had sent the petitioners three letters, dated June 22, 1999, June 24, 1999 and August 30, 1999. The first letter requested the petitioner to report to the office to explain the discrepancies. The second letter requested the petitioner to pay BABMPC. The first two letters were brought to the petitioner's house by BABMPC's secretary, Marilyn Mombay (Mombay). Both times, the petitioner was not at home, and it was Estela Balerta, the former's sister-in-law, who received the letters. The last letter was sent by mail, but the petitioner refused to receive it as well.²⁵

Timonera also testified that without the petitioner's presence and permission, the latter's table and drawers were opened through the use of duplicate keys kept by De Asis. The use of the duplicate keys to open each other's office drawers was however a common practice between the petitioner and De Asis.²⁶

Version of the Defense

The defense, on its part, offered the testimony of the petitioner.

The petitioner testified that the last day she reported for work as a cashier in BABMPC was on June 17, 1999. Timonera got angry that day when the petitioner reminded him of his cash advances, which were already equivalent to his salaries for five months. The petitioner emphasized that

²⁰ Id. at 10.

²¹ Id. at 12.

²² Id.

²³ Id. at 16.

²⁴ Id. at 9.

²⁵ Id. at 12-13.

²⁶ Id. at 15.

Timonera had exceeded the allowable cash advance amount of one month salary.²⁷

On June 18, 1999, the petitioner suffered from migraine and was advised by her doctor to rest for two weeks. The day after, Timonera visited the petitioner's house, instructed her to rest, and informed her that she will be notified in case a necessity for her to report for work arises. On June 25, 1999, the petitioner received a letter requiring her to go to BABMPC's office. She complied with the directive on the same day. Timonera then presented to the petitioner the result of Ambros' audit showing that she incurred a shortage of ₱80,000.00. She was not however furnished a copy thereof. The petitioner also protested that the audit was conducted in her absence, but Timonera informed her that they would just thresh the matter up in court.²⁸

The petitioner likewise stated that she can no longer find the receipts, vouchers and books in her drawers showing the cash advances of Timonera. Her plea for the conduct of an independent audit also fell on deaf ears.²⁹

On July 7, 1999, the petitioner proceeded to the Balasan Police Station to report about the forced opening of her table and drawers which occurred on June 25, 1999. She also informed the police that the amount of ₱5,000.00 kept in the drawers was missing. She confronted BABMPC about the missing cash. Ambros admitted that he and De Asis opened the drawers, but made no mention of any cash found thereon.³⁰

The petitioner alleged that Timonera was ill motivated when he initiated the filing of the criminal complaint against her. Timonera intended to evade his financial liabilities from BABMPC relative to his cash advances and the money which he had diverted to other projects in violation of the rules of the cooperative. The petitioner also suspected that Timonera must have speculated that the former had money as she then had plans to go abroad.³¹

Prior to the petitioner's reminder to Timonera about the latter's cash advances, there was no untoward incident whatsoever between them. She admitted though that she did not report Timonera's cash advances to BABMPC's board.³²

²⁷ TSN, April 18, 2005, p. 4.

²⁸ Id. at 5-6.

²⁹ Id. at 6.

³⁰ Id. at 7, 9.

³¹ Id. at 10.

³² Id. at 12.

The petitioner testified that the only shortage she was aware of involved the amount of ₱1,896.00, which was reflected in a past monthly audit. To date, the amount remains unsettled.³³

Ruling of the RTC

On November 15, 2006, the RTC rendered a Decision,³⁴ the dispositive portion of which reads:

WHEREFORE, the Court hereby finds the [petitioner] guilty beyond reasonable doubt of the crime of Estafa by misappropriation and hereby sentences [the petitioner to] five (5) years, five (5) months and eleven (11) days of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum, together with the accessory penalty provided by law, to pay [BABMPC] P185,584.06 without subsidiary imprisonment in case of insolvency and to pay the costs.

SO ORDERED.³⁵

The RTC's reasons are quoted below:

According to the [petitioner], the internal audit wherein she has a shortage of P185,584.06 was false. However, she failed to prove and explain to the Court the exact figure or amount of money she is accountable of. She failed to cause an audit of her own to show that no shortage was incurred by her. Her testimony was not corroborated by any witness or other documentary evidence. What she did was simply to deny her shortage and pointed to [Timonera] as one responsible for the filing of charges against her. But the [petitioner] alone, being the one keeping the passbook of the cooperative, was able to misrepresent with the Rural Bank of Balasan that the passbook was lost and thereafter, she secured a new passbook. After she secured a new passbook, she used both the old passbook and new passbook and falsified the entries in the old passbook making it appear that the old passbook was presented and transactions were made using the old passbook with the bank. With this scheme, it is clear that the accused has all the intention to defraud. For what is the purpose of using the old passbook when it was already cancelled and of no legal use? Worst is that, by means of falsification, she made false entries in the old passbook to mislead the officers of [BABMPC] to believe that the money entrusted to her is safely kept, when in truth[,] there were already shortages.

The Court believes that the evidence of the prosecution is overwhelming to point out the [petitioner's] criminal liability to the offense charged.³⁶

³³ Id. at 11, 13.

³⁴ Records, pp. 136-139.

³⁵ Id. at 139.

³⁶ Id.

Ruling of the CA

The petitioner challenged the above ruling before the CA raising the factual issues of whether or not, as claimed by BABMPC, she had (a) falsified the entries in the passbook, (b) received collections for remittance to the bank, (c) misappropriated BABMPC's money, and (d) committed *estafa*.³⁷

On October 31, 2012, the CA rendered the herein assailed Decision, the decretal portion of which states:

WHEREFORE, the Court **AFFIRMS** the Decision dated November 15, 2006 of the Regional Trial Court, Branch 66, Barotac Viejo, Iloilo in Criminal Case No. 99-1103 with modifications with respect to the indeterminate penalties imposed. The [petitioner] is hereby sentenced to four (4) years and one (1) day of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum and to pay [BABMPC] the amount of Php185,584.06.

SO ORDERED.³⁸

The CA based its disposition on the following:

The elements of *estafa* through conversion or misappropriation under subsection 1 (b) of Art. 315 of the Revised Penal Code are as follows:

- I. That money, goods, or other personal property be 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 the obligation is guaranteed by a bond;
- II. That there be misappropriation or conversion of such money or property by the person who received it, or a denial on his part that he received it;
- III. That such misappropriation or conversion or denial is to the prejudice of another; and
- IV. That there be demand for the return of the property.

The essence of this kind of *estafa* is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words "*convert*" and "*misappropriate*" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use

³⁷ *Rollo*, p. 43.

³⁸ *Id.* at 47.

includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.³⁹

All the elements are present in the instant case. Firstly, it was sufficiently proven from the testimonies of both the prosecution and defense witnesses that the [petitioner] was employed as one of the three cashiers of the cooperative. From the testimonies, it was established that as a cashier, she was responsible in handling the specific account of the money loaned by Care Philippines to the cooperative. The money from Care Philippines was used by the cooperative for micro-lending, that is, lending a small amount of money to small entrepreneurs from P500.00 to P50,000.00. Being such a cashier, [the petitioner's] duties include receiving daily remittances, making deposits to and withdrawals from the bank, as well as issuing loans. By receiving the money of the cooperative, [the petitioner] also had the obligation to make delivery of or to return the same to the cooperative.

Secondly, on the matter of misappropriation, [the petitioner] deplored the conduct of an internal audit in her absence but she merely denied the shortage of money as shown by the result of the internal audit. [The petitioner] did not cause an audit of her own to rebut the evidence against her. She did not show any documentary evidence nor present any witness to support her claims. It is axiomatic that denial is the weakest form of defense. As held in *People v. Magbanua*, “[i]t is elementary that denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which has far less evidentiary value than the testimony of credible witnesses who testify on affirmative matters.

Through the use of the two (2) passbooks, [the petitioner] was able to dispose of the funds of the cooperative to the latter's disadvantage. Moreover, [the petitioner] did not refute the evidence of the private offended party that she maintained two (2) passbooks. The certification issued by the Assistant Manager of the rural bank showing that [the petitioner] had declared as lost the old passbook was not contradicted by the defense at all. In like manner, there was no evidence presented by the defense to controvert the claim that the [petitioner] falsified the initials of the bank employees every time she records an entry in the old passbook, either withdrawal or deposit.

Thirdly, it is needless to say that the cooperative was greatly prejudiced by the misappropriation of its funds and by the denial of [the petitioner] of the shortfall. Considering that the amount loaned by Care Philippines to the cooperative for its micro-lending project was Php1,250,000.00 and considering further that most of its clients only borrow from Php500.00 to Php50, 000.00, [the petitioner's] shortage of P185, 584.06 is already a substantial amount that could have been lent to a number of borrowers of the cooperative.

³⁹*Pamintuan v. People*, G.R. No. 172820, June 23, 2010, 621 SCRA 538, 547.

As to the last element pertaining to the demand by the offended party, it has been held that, “[i]n a prosecution for estafa, demand is not necessary where there is evidence of misappropriation or conversion. However, failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation”. Moreover, a query as to the whereabouts of the money, such as the one proven in the present case, is tantamount to a demand. The prosecution in the case at bar, was able to show that the offended party inquired as to the whereabouts of the shortage amounting to Php185, 584.06. The General Manager of the cooperative sent letters to the [petitioner] asking her to report to the offices of the cooperative in order to explain a number of questionable transactions that they have discovered.

In fine, the evidence of the prosecution was able to establish beyond any reasonable doubt that [the petitioner] committed estafa by misappropriation under Art. 315 (1) (b) of the Revised Penal Code. With the evidence on record, We find no convincing reason to disturb the findings of the trial court.⁴⁰ (Some citations omitted, underscoring ours and italics in the original)

Issues

Undaunted, the petitioner assails the above ruling. Restated, the issues she presents for our resolution are whether or not: (a) she is entitled to an acquittal considering that a cashier possesses no juridical possession over the funds he or she holds; (b) demand, as an element of the crime of *estafa*, had been proven in the instant case; and (c) her guilt had been proven beyond reasonable doubt.⁴¹

The petitioner claims that in *Chua-Burce v. Court of Appeals*,⁴² the Court ruled that a cashier cannot be convicted of *estafa* if he or she has no juridical possession over the funds held.⁴³

Further, the element of demand was not established. There was no proof conclusively showing that the three letters were sent to the petitioner by BABMPC. Assuming they were sent, no ample evidence exists to prove that they were in fact received by the petitioner.⁴⁴

More importantly, the prosecution had not discharged the burden of proof required to convict in criminal cases. *First*. Timonera admitted that he did not have any personal knowledge about how the petitioner committed the acts of misappropriation.⁴⁵ *Second*. The statements of the Internal Auditor, Ambros, were vital, but he never appeared in court to testify or to

⁴⁰ *Rollo*, pp. 44-47.

⁴¹ *Id.* at 23.

⁴² 387 Phil. 15 (2000).

⁴³ *Id.* at 27; *rollo*, pp. 32-33.

⁴⁴ *Rollo*, pp. 33-34.

⁴⁵ *Id.* at 25.

shed light on any documents purportedly pointing to the petitioner's liability.⁴⁶ *Third*. No representatives of the bank testified on the alleged inconsistencies found in the passbooks.⁴⁷ *Fourth*. Even the amount of money claimed to have been misappropriated was not determined with certainty.⁴⁸ *Fifth*. In convicting the petitioner, the RTC and the CA primarily relied on the falsified entries made on the passbooks, but they were not formally offered as evidence, and the prosecution failed to establish that the petitioner was solely in control of the said passbooks.⁴⁹

In its Comment,⁵⁰ the Office of the Solicitor General (OSG) argues that the petitioner had juridical possession over the funds, which were lent by Care Philippines to BABMPC. The petitioner received daily remittances, deposited to and withdrew money from the bank, and issued loans in connection with the said account. Moreover, while denying having incurred the shortage, she offered no explanation as to how much money she was accountable for. No other witness corroborated the petitioner's claims as well. The petitioner also failed to refute the existence of the two passbooks. Anent the prejudice caused to BABMPC, the amount of ₱185,584.06 was substantial and could have been loaned to a number of borrowers.

Ruling of the Court

There is merit in the instant petition.

The petitioner had no juridical possession over the allegedly misappropriated funds.

Chua-Burce is instructive anent what constitutes mere material possession, on one hand, and juridical possession, on the other, for the purpose of determining whether the first element of *estafa* is present in a particular case, *viz*:

Have the foregoing elements been met in the case at bar? We find the first element absent. When the money, goods, or any other personal property *is received* by the offender from the offended party (1) in *trust* or (2) on *commission* or (3) for *administration*, the offender acquires both material or physical possession and *juridical possession* of the thing received. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner. In this case, petitioner was a cash custodian who was

⁴⁶ Id. at 26.

⁴⁷ Id. at 27.

⁴⁸ Id.

⁴⁹ Id. at 28-29.

⁵⁰ Id. at 95-105.

primarily responsible for the cash-in-vault. Her possession of the cash belonging to the bank is akin to that of a bank teller, both being mere bank employees.

In *People v. Locson*, the receiving teller of a bank misappropriated the money received by him for the bank. He was found liable for qualified theft on the theory that the possession of the teller is the possession of the bank. We explained in *Locson* that –

“The money was in the possession of the defendant as receiving teller of the bank, and the possession of the defendant was the possession of the bank. When the defendant, with grave abuse of confidence, removed the money and appropriated it to his own use without the consent of the bank, there was the taking or *apoderamiento* contemplated in the definition of the crime of theft.”

In the subsequent case of *Guzman v. Court of Appeals*, a travelling sales agent misappropriated or failed to return to his principal the proceeds of things or goods he was commissioned or authorized to sell. He was, however, found liable for *estafa* under Article 315 (1) (b) of the Revised Penal Code, and not qualified theft. In the *Guzman* case, we explained the distinction between *possession* of a bank teller and an agent for purposes of determining criminal liability –

“The case cited by the Court of Appeals (*People vs. Locson*, 57 Phil. 325), in support of its theory that appellant only had the material possession of the merchandise he was selling for his principal, or their proceeds, is not in point. In said case, the receiving teller of a bank who misappropriated money received by him for the bank, was held guilty of qualified theft on the theory that the possession of the teller is the possession of the bank. There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his principal. In the former case, payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous, right to retain money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault (Article 1915, [N]ew Civil Code; Article 1730, old).”⁵¹ (Citations omitted, underscoring ours and italics in the original)

⁵¹

Chua-Burce v. Court of Appeals, supra note 42, at 26-27.

In the case at bench, there is no question that the petitioner was handling the funds lent by Care Philippines to BABMPC. However, she held the funds in behalf of BABMPC. Over the funds, she had mere physical or material possession, but she held no independent right or title, which she can set up against BABMPC. The petitioner was nothing more than a mere cash custodian. Hence, the Court finds that juridical possession of the funds as an element of the crime of *estafa* by misappropriation is absent in the instant case.

In the prosecution of the crime of *estafa*, demand need not be formal if there exists evidence of misappropriation. However, in the instant case, conclusive proofs of both misappropriation and demand are wanting.

“Fundamental is the precept in all criminal prosecutions, that the constitutive acts of the offense must be established with unwavering exactitude and moral certainty because this is the critical and only requisite to a finding of guilt.”⁵²

At the outset, it is significant to point out that neither the prosecution nor the defense had made any formal offer of documentary evidence.⁵³ The two passbooks, ledger, and three demand letters, while mentioned by Timonera in his testimony, were not formally offered as evidence.

The Court notes too that the contending parties each had only one witness, namely, Timonera, for the prosecution, and the petitioner, for the defense. Both of their testimonies were therefore without any corroboration. Considering the absence of formal offers of documentary evidence, the judgments rendered by the RTC and the CA solely hinged on who was more credible between the two witnesses.

While this Court does not find Timonera’s testimony as incredible, by itself alone, it is insufficient to discharge the burden of proof required for conviction in criminal cases. The petitioner was indicted for allegedly misappropriating the amount of ₱185,584.06. However, Timonera failed to state with certainty where in the records held by the petitioner were the discrepancies shown. Timonera evaded answering the question by emphasizing that he is not an accountant and that Ambros knew more about the matter.⁵⁴ Note too that Timonera admitted it was the petitioner and De

⁵² *BSB Group, Inc. v. Go*, G.R. No. 168644, February 16, 2010, 612 SCRA 596, 606.

⁵³ TSN, March 10, 2000, p. 2, *CA rollo*, p. 5.

⁵⁴ TSN, March 10, 2000, p. 9.

Asis who were the two authorized signatories relative to the funds lent to BABMPC by Care Philippines.⁵⁵ Hence, the petitioner did not have sole access over the records and funds. Consequently, the authorship of the falsified entries in the passbook cannot be attributed with certainty to the petitioner alone. It was thus fatal for the prosecution's cause that Ambros, De Asis, Mombay and the bank personnel did not take the witness stand especially since documentary evidence were never formally offered as well.

The RTC and the CA faulted the petitioner for not offering countervailing evidence, including an audit conducted in her own behalf. Still, it does not justify a conviction to be handed on that ground because the "[c]ourts cannot magnify the weakness of the defense and overlook the prosecution's failure to discharge the *onus probandi*."⁵⁶

"Concededly, the evidence of the defense is weak and uncorroborated. This, however, cannot be used to advance the cause of the prosecution as the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense. Moreover, when the circumstances are capable of two or more inferences, as in this case, such that one of which is consistent with the presumption of innocence and the other is compatible with guilt, the presumption of innocence must prevail and the court must acquit."⁵⁷

"In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."⁵⁸

In the case at bar, however, the paltry evidence for the prosecution, consisting merely of Timonera's testimony, casts doubts anent the guilt of the petitioner, and does not amply rebut her right to be presumed innocent of the crime charged.

The acquittal of the accused from the crime charged does not necessarily negate the existence of civil liability. However, in the instant case, the prosecution had failed as well to present preponderant evidence from which

⁵⁵ Id. at 16.

⁵⁶ *People v. Gatlabayan*, G.R. No. 186467, July 13, 2011, 653 SCRA 803, 824.

⁵⁷ *People v. Santos, Jr.*, 562 Phil. 458, 473 (2007).

⁵⁸ *People v. Bansil*, 364 Phil. 22, 34 (1999).

the Court can determinately conclude that the petitioner should pay BABMPC the amount of ₱185,584.06.

*Eusebio-Calderon v. People*⁵⁹ is instructive anent the effects of the two kinds of acquittal on the civil liability of the accused, viz:

In the case of *Manantan v. Court of Appeals*, we elucidated on the two kinds of acquittal recognized by our law as well as its different effects on the civil liability of the accused. Thus:

x x x. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no *delict*, civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the *delict* complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. This is the situation contemplated in Article 29 of the Civil Code, x x x.⁶⁰ (Citation omitted and underscoring ours)

In the case now under consideration, the Court acquits the petitioner *not* because she is found absolutely innocent of the crime charged. The Court acquits merely because reasonable doubt exists anent her guilt. Hence, the petitioner can still be held civilly liable to BABMPC if preponderant evidence exist to prove the same.

Rule 133, Section 1 of the Rules of Court indicates how preponderance of evidence shall be determined, viz:

Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or

⁵⁹ 484 Phil. 87 (2004).

⁶⁰ Id. at 99.

want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (Underscoring ours)

In the instant petition, the prosecution manifested during the pre-trial that Timonera's testimony would touch on the functions of the BABMPC and the duties of the petitioner.⁶¹ During the trial, Timonera made references to the alleged falsifications and misappropriations committed by the petitioner. However, he denied specific knowledge of where exactly the falsifications and misappropriations were shown and recorded.⁶² This, plus the fact that the prosecution made no formal offer of documentary evidence, leaves the Court in the dark as to how the petitioner's civil liability, if any, shall be determined.

In précis, the Court finds that Timonera's testimony does not qualify as preponderant evidence from which the Court can conclude that the petitioner is civilly liable to pay BABMPC the amount of ₱185,584.06.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Decision of the Court of Appeals dated October 31, 2012 in CA-G.R. CR No. 00693 is **REVERSED**. The petitioner, **MARGIE BALERTA**, is **ACQUITTED** of the crime of *Estafa* under Article 315(1)(b) of the Revised Penal Code. The directive of the Court of Appeals for Margie Balerta to **PAY** Balasan Associated Barangays Multi-Purpose Cooperative the amount of ₱185,584.06 as **CIVIL LIABILITY** is likewise **SET ASIDE** for lack of basis.


SO ORDERED.



BIENVENIDO L. REYES
Associate Justice

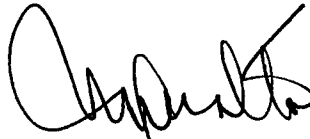
⁶¹ Records, pp. 39-40.


⁶² TSN, March 10, 2000, p. 9.

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

ATTESTATION

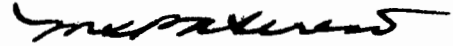
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice