



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SOLEDAD TRIA,

Petitioner,

G.R. No. 204755

Present:

VELASCO, JR.,

Chairperson,

PERALTA,

BERSAMIN,*

VILLARAMA, JR., and

REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

September 17, 2014

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DECISION

REYES, J.:

This is an appeal from the Decision¹ dated April 20, 2012 and Resolution² dated September 18, 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 33529 which affirmed the Decision³ dated July 16, 2010 of the Regional Trial Court (RTC) of Valenzuela City, Branch 172, in Criminal Case No. 970-V-01, finding Soledad Tria (petitioner) guilty beyond reasonable doubt of *estafa* and sentencing her to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum.

* Additional member per Raffle dated September 15, 2014 in view of the inhibition of Associate Justice Francis H. Jardeleza.

¹ Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Isaias P. Dican and Danton Q. Bueser, concurring; *rollo*, pp. 24-31.

² Id. at 33-34.

³ Issued by Judge Nancy Rivas-Palmones; id. at 47-49.

The Facts

The criminal information to which the petitioner pleaded “Not Guilty” reads:

That on or [about] March 8, 2000 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously defraud and deceive SEVEN SPHERE ENTERPRISES represented by one GERTRUDES MENESES in the following manner to wit: the said accused received assorted jewelry from SEVEN SPHERE ENTERPRISES worth **P23,375.50** under the express obligation on the part of the said accused to sell the same and to account for and deliver the proceeds of the sale or to return the merchandise, if unsold, to SEVEN SPHERE ENTERPRISES, within six (6) days from receipt thereof, but said accused once in possession of the pieces of jewelry, with abuse of trust and confidence, misappropriate, misapply and convert to her own personal use and benefit the said amount of **P23,375.50** and despite repeated demands to her to immediately account for and remit the proceeds of the sale of [sic] to return the goods, refused and failed and still refuses and fails to do so, to the damage and prejudice of SEVEN SPHERE ENTERPRISES in the aforementioned amount of **P23,375.50**.

CONTRARY TO LAW.⁴

In support of the foregoing accusation, the prosecution presented the testimony of its lone witness, Gertrudes Meneses (Meneses), as well as several pieces of documentary evidence. Taken together, the evidence for the prosecution showed that:

Meneses is a Cash Custodian of Seven Sphere Enterprises (Seven Sphere) while the petitioner was one of the consignees. On March 8, 2000, the petitioner received on consignment from Seven Sphere twenty two (22) pieces of jewelry valued at ₱47,440.00 subject to the condition that she will remit the proceeds of the sale thereof and return any unsold pieces within six (6) days.⁵ The petitioner returned eight (8) unsold pieces of the jewelry valued at ₱16,380.00 leaving a balance of ₱31,060.00. To cover the balance, the petitioner issued four (4) Banco Filipino post-dated checks all with the equal face value of ₱7,765.00 to wit: No. 0089027 dated March 30, 2000; No. 0089028 dated April 15, 2000; No. 0089029 dated April 30, 2000, and No. 0089030 dated May 15, 2000. When presented for payment, however, the checks were dishonored by the issuing bank for the reason: “account closed.” Upon being informed by Seven Sphere that the checks were dishonored for payment, the petitioner returned three (3) pieces of

⁴ Records, p. 1.

⁵ Exhibit “B,” Index of Exhibits & Index of Minutes.

jewelry valued at ₱7,684.50 thus leaving the unpaid balance of ₱23,375.50.⁶

Seven Sphere then sent a demand letter to the petitioner for the payment of the unpaid balance. Despite receipt of the letter, however, the petitioner failed to pay.⁷

The defense failed to present evidence despite several opportunities given by the trial court. Hence, on April 19, 2010, the petitioner was declared to have waived her right to present evidence and the case was submitted for decision.⁸

Ruling of the RTC

In its Decision⁹ dated July 16, 2010, the RTC found the petitioner guilty of *estafa*, as defined and penalized under Article 315 (1)(b) of the Revised Penal Code (RPC), for misappropriating the proceeds of the sale of the jewelry consigned to her by Seven Sphere. The RTC found that the unremitted balance was actually ₱23,370.00 because the petitioner remitted cash and jewelry worth ₱7,690.00.¹⁰ Accordingly, the RTC judgment disposed as follows:

WHEREFORE, premises considered, the Court finds the accused SOLEDAD TRIA guilty beyond reasonable doubt as principal of the crime of *estafa* under Art. 315 subdivision No. 1 paragraph (b) of the Revised Penal Code. She is hereby sentenced to suffer the indeterminate penalty of four (4) years two (2) months of prision correccional as minimum to eight (8) years of prision mayor as maximum. The accused is ordered to indemnify the private complainant of the unremitted amount of P23,370.00.

There being no showing on record that the private complainant paid the legal fees on the civil liability arising from the crime as there was no notice to pay sent to the private complainant, the legal fees shall be considered a lien on the judgment in satisfaction of said lien.

Costs against the accused.

SO ORDERED.¹¹

⁶ *Rollo*, pp. 47-48.

⁷ *Id.* at 48.

⁸ *Id.*

⁹ *Id.* at 47-49.

¹⁰ *Id.* at 49.

¹¹ *Id.*

Ruling of the CA

In its Decision¹² dated April 20, 2012, the CA sustained the conviction meted upon the petitioner upon finding that all the elements of *estafa* were established beyond reasonable doubt by the prosecution. The CA ruling disposed thus:

WHEREFORE, the appealed Decision in Criminal Case No. 970-V-01 is hereby **AFFIRMED** and the instant appeal is **DISMISSED** for lack of merit.

SO ORDERED.¹³

The petitioner sought reconsideration¹⁴ but her motion was denied in the CA Resolution¹⁵ dated September 18, 2012. Hence, this petition.

The Arguments of the Petitioner

In lobbying for her acquittal, the petitioner asserts that the element of fraud in *estafa* is absent in view of Meneses' admission that the petitioner returned the unsold pieces of jewelry and remitted part of the sale proceeds of the sold pieces. The petitioner also claims that during the pendency of the case, she has been paying her balance to Seven Sphere upon the latter's declaration that she will be eventually absolved from liability once she settles the full amount. The petitioner avers that if it was her intention to defraud Seven Sphere, then she could have evaded paying the balance or even denied receipt of the jewelry entrusted to her.¹⁶

The petitioner further argues that the penalty imposed by the courts *a quo* was incorrect because "the fact that the amount involved exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty and instead, the matter should be taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence." She proffers that the minimum of her indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years while the maximum term should be at least six (6) years and one (1) day, plus an additional one (1) year for each additional ₱10,000.00 in excess of ₱22,000.00.¹⁷

¹² Id. at 24-31.

¹³ Id. at 31.

¹⁴ Id. at 66-70.

¹⁵ Id. at 33-34.

¹⁶ Id. at 12-22.

¹⁷ Id. at 19-20.

In its Comment,¹⁸ filed through the Office of the Solicitor General (OSG), the respondent prays that the petition be denied and the conviction meted by the courts *a quo* upon the petitioner be sustained for lack of reversible error.

In her Reply,¹⁹ the petitioner explains that her failure to present any evidence during trial was due to her verbal agreement with Seven Sphere, through Meneses. Apparently, the petitioner agreed to render services to Seven Sphere in order to settle her unpaid accountabilities by deducting portions thereof from her monthly salary. The petitioner claims that she relied in good faith on the representation of Seven Sphere that such arrangement will cause the dismissal of the case filed against her. Attached to her Reply are copies of the front pages of her pay envelopes showing that she started working for Seven Sphere in September 2006 and from then on until February 2008, payments for her unpaid balance to Seven Sphere were deducted from her monthly salary.²⁰

Lastly, the petitioner contends that she failed to account for the jewelries or their equivalent value because “[they] were, in truth and in fact, sold on credit, to different customers, who, however, failed and/or refused to return the jewelries or pay the value thereof.”²¹

Ruling of the Court

The appeal is devoid of merit.

Preliminarily, it bears emphasizing that factual findings of the trial court, especially when affirmed by the appellate court, are binding on and accorded great respect by this Court.²² There are instances when this rule is not applicable such as: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the CA is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the CA went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the CA overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the CA are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the

¹⁸ Id. at 77-81.

¹⁹ Id. at 90-95.

²⁰ Id. at 96-114.

²¹ Id. at 93.

²² *Milla v. People*, G.R. No. 188726, January 25, 2012, 664 SCRA 309, 320.

respondent; and (10) when the findings of the CA are premised on the absence of evidence and are contradicted by the evidence on record.²³

None of these situations are, however, attendant in the present case. Instead, a re-examination of the evidence proffered by the prosecution and all records in the trial proceedings confirm the moral certainty of the petitioner's guilt for the crime imputed to her.

Estafa through misappropriation or conversion is defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code (RPC), which states:

Art. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

X X X X

1. With unfaithfulness or abuse of confidence, namely:

X X X X

(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 elements of *estafa* under this provision are: (1) that the money, good or other personal property is 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; (2) that there be misappropriation or conversion of such money or property by the offender or

²³ *Pagsibigan v. People, et al.*, 606 Phil. 233, 241-242 (2009).

denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender.²⁴

The first, third and fourth elements are immediately discernible from the prosecution's evidence. Exhibit "B" which is the 'Receipt of Goods on Consignment' shows that on March 8, 2000, the petitioner received pieces of jewelry on consignment from Seven Sphere with the obligation to return the unsold pieces or remit the sale proceeds of the sold items. This documentary evidence was corroborated by the testimony of Meneses, who signed the document in behalf of the consignor at the time of its execution. She identified the petitioner's signature on the document and she confirmed the contents of the agreement as being a consignment contract, as well as the petitioner's consequent duties thereunder to remit sale proceeds or return the unsold pieces of jewelry.

It is also indubitable from Meneses' un rebutted testimony that Seven Sphere was prejudiced in the amount of ₱23,370.00 after the petitioner failed to return the remaining eleven (11) pieces of jewelry consigned to her or their value. Demand for payment was made upon the petitioner in a letter dated August 21, 2001 but despite receipt thereof, she was unable to return the remaining pieces of jewelry or remit their sale proceeds.

Meanwhile, the second element of misappropriation or conversion has been defined in this wise:

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 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.²⁵

Indeed, misappropriation or conversion is deducible from the petitioner's failure to return the last eleven (11) pieces of jewelry entrusted to her. She never endeavoured to refute this fact during trial and even until the herein appellate proceedings. Instead, the petitioner anchors her plea for acquittal on the claim that intent to defraud is negated by the established fact that out of the twenty two (22) jewelry items entrusted to her, she was able to return eleven (11) pieces.

²⁴ *Pamintuan v. People*, G.R. No. 172820, June 23, 2010, 621 SCRA 538, 546-547.

²⁵ Supra note 22, at 319-320.

The argument fails to convince. The petitioner's asseveration bolsters rather than weakens the case for the prosecution, as it implies an admission of her receipt of twenty two (22) jewelry items from Seven Sphere and her failure to account for all of them.

The return of eleven (11) pieces of the jewelry items is inconsequential because she received twenty two (22) items on consignment and bound herself to return ALL of them if unsold. The petitioner breached her legal duty under the consignment contract to return or remit the sale proceeds of ALL of such items when she was able to return only half of them while the other eleven (11) pieces remained unreturned and unaccounted for, to the damage and prejudice of the consignor.

Neither can we lend credence to the petitioner's claim that her failure to account for the jewelry subject of this indictment was because she sold the same on credit. Such act directly contravenes the explicit terms of the authority granted to her because the consignment transaction with Seven Sphere prohibited her from selling the jewelry on credit, *viz.*:

And which pieces of Jewelry I received in TRUST ONLY shall remain the property of the consignor until and unless fully paid and for me to sell within a period of six (6) days under the condition that should any or all said pieces of jewelry be sold by me. I am under obligation to remit to _____ the proceeds of the said sale and if the same are not sold, for me to return the remaining unsold goods to the consignor all within six (6) days as previously adverted to.

That finally, **the consignee shall have no right or privilege to sell the goods on credit** nor to name, appoint, or employ sub-agent(s) without the written authority of the consignor MARICHU REYES. Partial remittance of proceeds and acceptance thereof after the lapse of the period herein mentioned will not alter, modify nor constitute a novation of this receipt/agreement. In case of suit or Litigation, the venue shall be brought before the proper courts of Valenzuela.

I likewise certify that I have read and understood the contents and consequences of this receipt/agreement before I affix my signature.²⁶
(Emphasis supplied)

Misappropriation and conversion is again palpable from these circumstances. By selling the jewelry on credit, the petitioner used the property for a purpose other than that agreed upon. The words "convert" and "misappropriate" connote an act of using or disposing of another's

²⁶ Exhibit "B," Index of Exhibits & Index of Minutes.

property as if it were one's own or devoting it to a purpose or use different from that agreed upon.²⁷

Further, her alleged verbal agreement with Seven Sphere that she can render services in exchange for the dismissal of the case, casts no significant bearing to the herein proceedings. "Only the State may validly waive the criminal action against an accused."²⁸ The consequences of such agreement with Seven Sphere can affect only her civil liability to the former for the value of the misappropriated jewelry items. Such matter can be more properly threshed out during the execution stage of the civil aspect of this case before the trial court where the evidence of such verbal agreement as well as the deductions made on the petitioner's salary can be received.

In fine, we find no reversible error in the CA decision affirming the findings of the RTC on the petitioner's criminal liability for *estafa*. However, the penalty imposed upon her must be corrected.

Under Article 315 (1)(b) of the RPC, the penalty of *estafa* shall be "*prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos. If such amount exceeds 22,000.00 pesos, the penalty so provided shall be imposed in its maximum period, adding one year for each additional 10,000 pesos provided that the total penalty which may be imposed shall not exceed twenty years.

Applying the Indeterminate Sentence Law (ISL), the minimum term of the impossible penalty shall be "within the range of the penalty next lower to that prescribed" for the offense, without first considering any modifying circumstance attendant to the commission of the crime.²⁹

The penalty prescribed by law for the crime of *estafa* is *prision correccional* maximum to *prision mayor* minimum; hence, the penalty next lower would then be *prision correccional* minimum to medium. The minimum term of the indeterminate sentence should thus be anywhere within six (6) months and one (1) day to four (4) years and two (2) months.³⁰

Meanwhile, the maximum term shall be taken from the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum in its maximum period, adding 1 year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00. To compute the maximum period of the prescribed

²⁷ Supra note 22, at 319.

²⁸ *Degaños v. People*, G.R. No. 162826, October 14, 2013, 707 SCRA 438, 453.

²⁹ Supra note 24, at 552-553.

³⁰ Id. at 553.

penalty, *prision correccional* maximum to *prision mayor* minimum should be divided into three equal portions of time each of which portion shall be deemed to form one period in accordance with Article 65 of the RPC,³¹ viz:

Minimum: 4 years, 2 months and 1 day to 5 years, 5 months and 10 days

Medium: 5 years, 5 months and 11 days to 6 years, 8 months and 20 days

Maximum: 6 years, 8 months and 21 days to 8 years³²

Thus, the maximum period of the impossible penalty shall be anywhere within six (6) years, eight (8) months and twenty-one (21) days to eight (8) years.³³

Considering however that the amount in excess of ₱22,000.00 is only ₱1,370.00 or short of the ₱10,000.00 set by law to justify the imposition of incremental penalty, it is not appropriate to add an additional one (1) year to the maximum term of the penalty impossible upon the petitioner because the excess amount of ₱1,370.00 should be disregarded. This is pursuant to the rule that in computing the incremental penalty, the amount defrauded shall be subtracted by ₱22,000.00, and the difference shall be divided by ₱10,000.00, and any fraction of ₱10,000.00 shall be discarded.”³⁴

Observing the foregoing guidelines, the Court deems it proper to impose upon the petitioner the indeterminate sentence of six (6) months and one (1) day of *prision correccional* as minimum to six (6) years, eight (8) months and twenty-one (21) days of *prision mayor* as maximum.

WHEREFORE, foregoing considered, the Decision dated April 20, 2012 and Resolution dated September 18, 2012 of the Court of Appeals in CA-G.R. CR No. 33529 which affirmed the Decision dated July 16, 2010 of the Regional Trial Court of Valenzuela City, Branch 172, in Criminal Case No. 970-V-01, finding petitioner Soledad Tria, GUILTY beyond reasonable doubt of the crime of *Estafa* under Article 315, paragraph (1), sub-paragraph (b) of the Revised Penal Code, are hereby **AFFIRMED** with the **MODIFICATION** that she shall suffer the indeterminate sentence of six (6) months and one (1) day of *prision correccional*, as minimum to six (6) years, eight (8) months and twenty-one (21) days of *prision mayor*, as maximum.

³¹ *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 301-304.

³² *Lito Corpuz v. People of the Philippines*, G.R. No. 180016, April 29, 2014 citing *Cosme, Jr. v. People*, 538 Phil. 52, 71-72 (2006).


³³ *Id.*

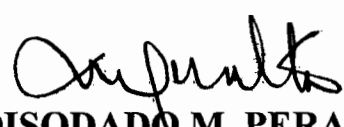
³⁴ *Sy v. People*, G.R. No. 183879, April 14, 2010, 618 SCRA 264, 273-274.

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

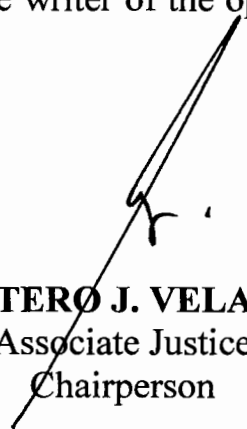

DISODADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

A T T E S T A T I O N

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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