



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CHERRY ANN M. BENABAYE,
Petitioner,

G.R. No. 203466

- versus -

Present:

PEOPLE OF THE
PHILIPPINES,
Respondent.

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

FEB 25 2015

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated August 31, 2011 and the Resolution³ dated September 6, 2012 rendered by the Court of Appeals (CA) in CA-G.R. CR No. 00722-MIN which sustained the conviction of petitioner for the crime of *Estafa* under Article 315, paragraph 1 (b) of the Revised Penal Code, as amended.

The Facts

Petitioner Cherry Ann Benabaye (Benabaye) was the Loans Bookkeeper of Siam Bank Inc., Iligan City Branch (Siam Bank). As such, she was authorized to collect and/or accept loan payments of Siam Bank's clients and issue provisional receipts therefor,⁴ accomplish a cash transfer

¹ *Rollo*, pp. 13-34.

² Id. at 39-57. Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles concurring.

³ Id. at 69-70. Penned by Associate Justice Renato C. Francisco with Associate Justices Edgardo A. Camello and Marilyn B. Lagura-Yap concurring.

⁴ Records, Vol. 1, p. 6.

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slip at the end of each banking day detailing the amounts of money that she has received, and remit such payments to Jenkin U. Tupag (Tupag), her supervisor.⁵

Sometime in 2001, Siam Bank conducted an audit investigation of its loan transactions for the period December 1, 2000 to June 15, 2001, and thereby found out that fraud and certain irregularities attended the same. Specifically, it discovered the *non-remittance* of some loan payments received from its clients based on the provisional receipts issued by its account officers, as well as the daily collection reports corresponding to the said provisional receipts.⁶ Based on the audit, 853 provisional receipts in the aggregate amount of ₱470,768.00 were issued by Benabaye but were unreported, and, more significantly, the corresponding payments were unremitted based on the daily collection reports on file.⁷

Thus, in a memorandum⁸ dated July 13, 2001, Siam Bank directed Benabaye to explain, among others, the discrepancies between the provisional receipts she had issued and the unremitted money involved. Likewise, Siam Bank made a final demand upon her to return the amount of the money involved. In her written explanation⁹ dated July 18, 2001, Benabaye claimed, among others, that the discrepancies could be clarified by her supervisor, Tupag, to whom she had submitted her daily cash transfer slips together with the corresponding provisional receipts.

Meanwhile, Siam Bank also sent a memorandum¹⁰ dated July 13, 2001 to Tupag requiring him to explain, among others, the same discrepancies between the provisional receipts and daily collection reports that were submitted to him; it further demanded the return of the amount involved. In his written explanation¹¹ dated July 16, 2001, Tupag admitted his accountability and, while claiming that some of his co-employees were privy to the acts which resulted in the discrepancies, he did not disclose their identities.

Apparently dissatisfied with their explanations, Siam Bank terminated¹² the employment of both Benabaye and Tupag and subsequently filed a criminal case for *Estafa* before the Regional Trial Court of Iligan City, Branch 4 (RTC), docketed as Crim. Case No. 9344, against them. On March 5, 2002, they were charged in an Information¹³ which reads:

⁵ TSN, March 9, 2005, pp. 8-9.

⁶ Records, Vol. 1, p. 6.

⁷ Id. at 6-7.

⁸ Records, Vol. 3, p. 472.

⁹ Id. at 285-286.

¹⁰ Id. at 473.

¹¹ Id. at 448-451.

¹² See Letter of Termination dated July 30, 2001; id. at 474-477.

¹³ Records, Vol. 1, pp. 1-2.

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That sometime between the period from December 1, 2000 up to June 15, 2001, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with unfaithfulness and abuse of confidence, conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously defraud Siam Bank, Inc. in the following manner, to wit: the said accused being then employed as Micro Finance Unit Supervisor and Loans Bookkeeper, respectively of Siam Bank, Inc.-Iligan Branch and authorized to collect and receive payments of loans, did collect and receive payments from the bank's borrowers or clients in the total amount of ₱688,833.00, under the express obligation on the part of said accused to remit the amount collected to the bank, but once in possession of said amount and far from complying with their obligation, said accused converted, misapplied said amount to their own use and benefit, and despite repeated demands, they failed and refused and still fails and refuses to pay the said amount of ₱688,833.00, to the damage and prejudice of the said Siam Bank, Inc. in the aforesaid amount of ₱688,833.00, Philippine currency.

Contrary to and in violation of Article 315 of the Revised Penal Code.¹⁴

In her defense, Benabaye reiterated¹⁵ the contents of her written explanation dated July 18, 2001 that she remitted the provisional receipts together with the corresponding amounts collected, as well as the daily cash transfer slips, to her supervisor, Tupag, at the end of each banking day. Unfortunately, she was required to make only one (1) copy of the daily cash transfer slips, which were all remitted to and remained in the possession of Tupag.¹⁶ She asseverated, however, that when she was allowed to inspect the files of the bank after the audit, she learned that Tupag had reissued several provisional receipts, for which she had previously issued provisional receipts, which were unremitted to the bank.¹⁷ At the dorsal portion of the reissued provisional receipts, Tupag had annotated the numbers of the unremitted ones that she had issued.¹⁸ She also claimed that other Siam Bank employees were authorized to issue provisional receipts, *e.g.* their janitor, the bank manager, and even on-the-job trainees (OJTs), asserting that it was the bank's standard operating procedure.¹⁹

As for Tupag, he was unable to testify, hence, the trial was concluded *sans* his testimony.²⁰

¹⁴ Id. at 1.

¹⁵ TSN, March 9, 2005, p. 12.

¹⁶ Id. at 9.

¹⁷ Id. at 15.

¹⁸ TSN, March 9, 2005, pp. 15-16; TSN, August 19, 2005, pp. 9-10.

¹⁹ TSN, March 9, 2005, p. 8.

²⁰ See Order dated August 14, 2008 issued by Acting Presiding Judge Albert B. Abragan; records, Vol. 2, pp. 872-873.

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The RTC Ruling

In a Decision²¹ dated July 31, 2000, the RTC found both Benabaye and Tupag guilty beyond reasonable doubt of *Estafa* under Article 315, paragraph 1 (b), and sentenced each of them to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. They were likewise ordered to indemnify Siam Bank the total amount of ₱688,833.00 as actual damages.²²

In so ruling, the RTC found that all the elements of the crime charged have been established, to wit: (a) that any goods or other personal property is received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return the same; (b) that there be misappropriation or conversion of such money or property to the offender or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) that there is a demand made by the offended party on the offender.²³ From the evidence presented, the RTC found that both Benabaye and Tupag held the loan payments of Siam Bank's clients in trust for the latter, with the obligation to remit it to the Bank, in the total amount of ₱688,833.00 insofar as Benabaye is concerned and ₱25,955.00 on the part of Tupag.²⁴ However, they misappropriated the same to the damage and prejudice of Siam Bank, and despite demand, failed to account for the money. As for Benabaye, while she claimed that she remitted the loan payments to Tupag, she failed to offer evidence that Tupag had actually received the said amount.²⁵

Dissatisfied, Benabaye appealed²⁶ her conviction to the CA, maintaining her innocence on the grounds that: (a) her possession of the money comprising the loan payments of Siam Bank's clients was merely material, not juridical, hence, she cannot be validly indicted for *Estafa*; (b) the RTC erred in holding that the acts described in the Information constituted only one (1) single offense; and (c) there was no conspiracy between her and Tupag.²⁷

On the other hand, Tupag likewise appealed²⁸ his conviction, but was however denied by the RTC in an Order²⁹ dated October 9, 2009. The RTC held that Tupag lost his remedy to appeal under Section 6, Paragraph 5, Rule

²¹ *Rollo*, pp. 76-80. Penned by Acting Presiding Judge Albert B. Abragan.

²² *Id.* at 80.

²³ *Id.* at 78-79.

²⁴ *Id.* at 79.

²⁵ *Id.*

²⁶ See Notice of Appeal filed on September 24, 2009; records, Vol. 2, p. 909.

²⁷ See Brief for Accused-Appellant Cherry Ann Benabaye filed on August 16, 2010; CA *rollo*, pp. 17-35.

²⁸ See records, Vol. 2, pp. 921-922.

²⁹ *Id.* at 923.

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120³⁰ of the Revised Rules on Criminal Procedure. Records of this case were then elevated to the CA.³¹

The CA Ruling

In a Decision³² dated August 31, 2011, the CA affirmed Benabaye's conviction *in toto*, similarly finding that all the elements of *Estafa* through misappropriation have been established. It ruled that Benabaye, together with Tupag, held the money collected *in trust* for Siam Bank.³³ Likewise, the CA found that while there were 853 unremitted provisional receipts involved in this case, Benabaye's "continuing intention to commit *Estafa* constituted a single intention although committed on different dates."³⁴ Thus, her crime was a "continuing offense" as all the acts of misappropriation were part of a "single criminal design."³⁵ Finally, the CA ruled that conspiracy between Benabaye and Tupag was sufficiently established, considering that both had access and facility to determine if payments made by Siam Bank's clients were properly remitted.³⁶ As such, if there were unremitted payments, both of them would likewise be aware thereof. Moreover, while Benabaye claimed that she remitted the provisional receipts and corresponding payments to Tupag, she however failed to show, through sufficient evidence, that Tupag actually received the same.³⁷

Benabaye moved for reconsideration,³⁸ which the CA denied in a Resolution³⁹ dated September 6, 2012, hence, this petition.

The Issue Before the Court

The sole issue to be resolved by the Court is whether or not the CA erred in sustaining Benabaye's conviction for the crime of *Estafa* through misappropriation.

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Rule 120
JUDGMENT

Sec. 6. *Promulgation of judgment.* – x x x.

x x x x

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in the Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.

³¹ It appears from the records of this case that, in the CA proceedings, only Benabaye filed a responsive pleading.

³² *Rollo*, pp. 39-57.

³³ *Id.* at 50.

³⁴ *Id.* at 51.

³⁵ *Id.*

³⁶ *Id.* at 52-53.

³⁷ *Id.* at 52.

³⁸ See Motion for Reconsideration dated September 23, 2011; *id.* at 58-67.

³⁹ *Id.* at 69-70.

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The Court's Ruling

The petition is meritorious.

Article 315, paragraph 1 (b) of the RPC, as amended, under which Benabaye was charged and prosecuted, states:

Art. 315. *Swindling (estafa)*. - Any person who shall defraud another by any 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 and for the purpose of the other 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: (a) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (b) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the prejudice of another; and (d) demand by the offended party that the offender return the money or property received.⁴⁰

Under the first element, 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

⁴⁰ See *Serona v. CA*, 440 Phil. 508, 517 (2002).

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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.**⁴¹

It bears to stress that **a sum of money received by an employee on behalf of an employer is considered to be only in the material possession of the employee.**⁴² The material possession of an employee is adjunct, by reason of his employment, to a recognition of the juridical possession of the employer. So long as the juridical possession of the thing appropriated did not pass to the employee-perpetrator, the offense committed remains to be theft, qualified or otherwise.⁴³ Hence, **conversion of personal property in the case of an employee having mere material possession of the said property constitutes theft, whereas in the case of an agent to whom both material and juridical possession have been transferred, misappropriation of the same property constitutes Estafa.**⁴⁴

In this case, Benabaye maintains that the first element of *Estafa* through misappropriation has not been established, insisting that her possession of the collected loan payments was merely material and not juridical; therefore, she cannot be convicted of the said crime.⁴⁵

The Court agrees.

Records show that Benabaye was merely a *collector* of loan payments from Siam Bank's clients. At the end of every banking day, she was required to remit all cash payments received together with the corresponding cash transfer slips to her supervisor, Tupag.⁴⁶ As such, the money merely passes into her hands and she takes custody thereof only for the duration of the banking day. Hence, **as an employee of Siam Bank, specifically, its temporary cash custodian whose tasks are akin to a bank teller,**⁴⁷ **she had no juridical possession over the missing funds** but only their physical or material possession.

In *Chua-Burce v. CA*,⁴⁸ the Court acquitted therein petitioner Cristeta Chua-Burce (Chua-Burce) of *Estafa* on the ground that the element of juridical possession was absent. As a bank cash custodian, the Court ruled that she had no juridical possession over the missing funds. Relative thereto, in *Guzman v. CA*,⁴⁹ where a travelling sales agent was convicted of the crime

⁴¹ *Chua-Burce v. CA*, 387 Phil. 15, 26 (2000).

⁴² *Matrido v. People*, 610 Phil. 203, 214 (2009).

⁴³ *Id.*

⁴⁴ *Id.* at 213.

⁴⁵ See *rollo*, p. 27.

⁴⁶ See *id.* at 285-286. See also TSN, March 9, 2005, p. 12.

⁴⁷ See *Chua-Burce v. CA*, *supra* note 41, at 26.

⁴⁸ *Id.* at 27-28.

⁴⁹ 99 Phil. 703 (1956).

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of *Estafa* for his failure to return to his principal the proceeds of the goods he was commissioned to sell, the Court had occasion to explain the distinction between the possession of a bank teller and an agent for purposes of determining criminal liability for *Estafa*, viz.:

There is an essential distinction between the possession of 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 the 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.⁵⁰ (Emphasis supplied; citations omitted)

Thus, being a mere custodian of the missing funds and not, in any manner, an agent who could have asserted a right against Siam Bank over the same, Benabaye had only acquired material and not juridical possession of such funds and consequently, cannot be convicted of the crime of *Estafa* as charged. In fine, the dismissal of the *Estafa* charge against Benabaye should come as a matter of course, without prejudice, however, to the filing of the appropriate criminal charge against her as may be warranted under the circumstances of this case.

Separately, in light of the foregoing, Benabaye's supervisor and co-accused in this case, Tupag, who likewise was not appointed as an agent of Siam Bank and thus had no juridical possession of the subject sums, must also be discharged of the same *Estafa* charge in view of Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure, as amended, which states:

SEC. 11. *Effect of appeal by any of several accused.*—

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

While it is true that only Benabaye was able to successfully perfect her appeal, the rule is that an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties.⁵¹ Considering that under Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure as above-quoted, a favorable judgment, as in this case, shall benefit the co-accused who did not appeal or those who appealed from their judgments of conviction but for one reason or another,


⁵⁰ Id. at 707.

⁵¹ *Lim v. CA*, 524 Phil. 692 (2006); *Constantino v. Sandiganbayan*, G.R. No. 140656, 559 Phil. 622 (2007).

the conviction became final and executory,⁵² Benabaye's discharge for the crime of *Estafa* is likewise applicable to Tupag. Note that the dismissal of the *Estafa* charge against Tupag is similarly without prejudice to the filing of the appropriate criminal charge against him as may be warranted under the circumstances pertinent to him.


WHEREFORE, the petition is **GRANTED**. The Decision dated August 31, 2011 and the Resolution dated September 6, 2012 of the Court of Appeals in CA-G.R. CR No. 00722-MIN are hereby **REVERSED** and **SET ASIDE**. The criminal charges against petitioner Cherry Ann M. Benabaye and her co-accused, Jenkin U. Tupag, in Crim. Case No. 9344, are **DISMISSED** without prejudice.

SO ORDERED.



ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

⁵² See *People v. Artellero*, 395 Phil. 876, 889 (2000); *People v. Arondain*, 418 Phil. 354, 373-374 (2001); *People v. De Lara*, 389 Phil. 756, 781 (2000); and *People v. Usana*, 402 Phil. 730, 732-733 (2001).

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