

THIRD DIVISION

[G.R. No. 150900, March 14, 2008]

CYNTHIA LUCES, Petitioner, vs. CHERRY DAMOLE, HON. RAMON G. CODILLA, JR., Presiding Judge, Regional Trial Court, Branch 19, Cebu City; and COURT OF APPEALS, FIFTH DIVISION, METRO MANILA, Respondents.

DECISION

NACHURA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court of the Decision^[1] of the Court of Appeals (CA) dated August 30, 2001 and its Resolution^[2] dated November 20, 2001, in CA-G.R. CR No. 23412.

In July 1993, petitioner Cynthia Luces approached private complainant Cherry Damole at the latter's place of work at the Robinson's Department Store, located along Fuente Osmeña, Cebu City, and asked for Purchase Order (PO) Cards to be sold by her on commission basis. They agreed^[3] that petitioner would sell the PO cards to her customers and that she would get her commission therefrom in the form of marked up prices.^[4] Petitioner further agreed that she would hold the PO cards as trustee of the private complainant with the obligation to remit the proceeds of the sale thereof less the commission, and before such remittance, to hold the same in trust for the latter.^[5] Lastly, petitioner undertook to return the unsold PO cards.^[6]

As of September, 1993, petitioner received from the private complainant 870 PO cards with a total face value of P412,305.00. Initially, petitioner complied with her obligations, but later she defaulted in remitting the proceeds. Hence, the demand made by the private complainant, through her lawyer, on the petitioner, but the same was unheeded.

Private complainant thereafter instituted a civil case for collection of sum of money.^[7] She, likewise, filed a separate criminal complaint. Petitioner was thus charged with *Estafa* in an Information dated March 3, 1995, the accusatory portion of which reads:

That sometime in the month of July, 1993, and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, having received Purchase Order (PO) slips worth P412,305.00 from Cherry Damole, with the agreement that she should sell out the said PO slips for and in behalf of Cherry Damole, with the obligation on her part to immediately account for and turn over the proceeds of the sale, if said PO slips are sold, or to return the same to Cherry Damole, if she would not be able to dispose any or all of them

within the agreed date, the said accused, once in possession of said PO slips, far from complying with her obligation, with deliberate intent, with intent of gain, with unfaithfulness and grave abuse of confidence and of defrauding Cherry Damole, did then and there misappropriate, misapply and convert into her own personal use and benefit the said PO slips, or the amount of P412,305.00, which is the equivalent value thereof, and in spite of repeated demands made upon her by Cherry Damole to let her comply with her obligation, she has failed and refused and up to the present time still fails and refuses to do so, to the damage and prejudice of Cherry Damole in the amount of P412,305.00, Philippine Currency.

CONTRARY TO LAW.^[8]

The Information was filed with the Regional Trial Court (RTC) and was raffled to Branch 19, Cebu City. It was docketed as Criminal Case No. CBU-38420.

On April 27, 1995, petitioner moved for the dismissal of the criminal case and/or suspension of the proceedings in view of the pendency of the civil case for collection filed earlier by the private complainant.^[9] She contended that the resolution of the civil case is determinative of her culpability in the criminal case. The RTC initially suspended the case^[10] but on motion for reconsideration, the court reversed itself and held that the outcome of the civil case would not, in any way, affect the criminal action.^[11] The court, thus, set the case for arraignment where the petitioner pleaded “not guilty.”

During trial, the prosecution established the existence of the trust receipt agreements; the receipt by petitioner of the subject PO cards; and her failure to comply with her obligation to remit the proceeds of the sale and to return the unsold cards to the private complainant. The prosecution likewise proved that petitioner converted the PO cards to her personal use by using such cards herself and by letting the members of her family use them, contrary to their agreement.^[12] By reason of such conversion and misappropriation, private complainant suffered damage.

In defense, petitioner claimed that her liability to private complainant is purely civil, considering that the trust receipt agreements were in fact contracts of sale which transferred to petitioner the ownership of the questioned PO cards, and that, therefore, there was no misappropriation to speak of. Petitioner, likewise, testified that she was authorized to sell the PO cards on installment which she did by selling them to a certain Evelyn Tamara who, however, failed to pay. Petitioner further claimed that no damage was ever caused to the private complainant as she continuously paid monthly amortizations. She also insisted that the civil case filed against her by the same complainant is a prejudicial question; hence, the criminal case should have been dismissed.^[13]

On August 25, 1997, the RTC rendered a Decision convicting petitioner of the crime of estafa.^[14] On appeal, the CA affirmed petitioner’s conviction, but modified the penalty imposed by the lower court. The appellate court found that all the elements of estafa, with abuse of confidence through misappropriation, were established, and stressed that the civil case for collection of sum of money would not, in any way, be

determinative of the guilt or innocence of petitioner.^[15] The CA, however, imposed the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, instead of that imposed by the RTC.^[16]

Hence, the instant petition raising the following issues:

I.

RESPONDENT COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THIS HONORABLE SUPREME COURT, OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT AND THE CONCLUSIONS ARE FOUNDED ON MERE SPECULATION, SURMISE AND CONJECTURE.

II.

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN AFFIRMING WITH MODIFICATION THE DECISION OF THE HONORABLE REGIONAL TRIAL COURT AND DENYING DUE COURSE THE PETITIONER'S MOTION FOR RECONSIDERATION OF THE JUDGMENT.

III.

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT GIVING WEIGHT THE ISSUE OF PREJUDICIAL QUESTION RAISED BY PETITIONER.

IV.

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT GIVING WEIGHT THE POSITIVE ASSERTION OF THE PETITIONER THAT SHE IS NOT CRIMINALLY LIABLE BUT ONLY CIVIL.^[17]

The petition lacks merit.

Also known as "swindling," *estafa* is committed by any person who shall defraud another by any of the means mentioned in the Revised Penal Code (RPC).^[18] Petitioner was tried and convicted for violation of Article 315(1)(b) which states that, among others, fraud may be committed with unfaithfulness or abuse of confidence in the following manner:

(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.^[19]

Specifically, the elements of *estafa* through misappropriation or conversion are: 1) that the money, goods 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 deliver or return the same; 2) that there be misappropriation or conversion of such money or property by the offender or 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.^[20]

In the instant case, it was established that petitioner received from the private complainant the subject PO cards to be sold by the former on commission, as evidenced by their Trust Receipt Agreements (TRAs).^[21] The Agreements contain identical terms and conditions as follows:

2. That the TRUSTEE intends to give P.O. to different cardholders and received (sic) commission in a form of mark-up price but TRUSTEE assumes the responsibility of paying the amount due including penalty, if any, on due dates;
3. That the TRUSTEE holds P.O. in storage as the property of TRUSTOR, with the right to sell the same for each for TRUSTOR'S account and to hand the proceeds thereof to the trustor less the commission mentioned above;
4. That TRUSTEE agrees that before remittance to TRUSTOR, she/he shall hold the sum in trust for the TRUSTOR;
5. That the TRUSTEE is aware that her failure to remit the proceeds or return the P.O. when demanded by the TRUSTOR give rise to CRIMINAL LIABILITY and CIVIL LIABILITY.^[22]

By such terms and conditions, petitioner agreed to hold in trust the following: the PO cards, for the purpose of selling them to different cardholders and returning to private complainant the cards unsold; and the proceeds of the sale, if any, for remittance to the private complainant.

And so, we ask the questions: Were the PO cards disposed of in accordance with their agreements? If so, did petitioner remit the proceeds to the private complainant?

The evidence shows that petitioner sold most of the PO cards to Ms. Tamara. The transaction was testified to by petitioner; confirmed by Ms. Tamara; and was, in fact, admitted by the private complainant during cross-examination.^[23] Private complainant clearly stated in open court that she was aware of the sale of the PO cards to Ms. Tamara, and that she personally received payment made by the latter through the petitioner.^[24]

To repeat, the PO cards were entrusted to petitioner for the purpose of selling them to cardholders. Petitioner was at liberty to sell them either in cash or on installment. In fact, the private complainant agreed that the proceeds of the sale may be turned over to her in four installments. When she sold the cards to Ms. Tamara, petitioner did so pursuant to their TRA. It appears, however, that the proceeds of that sale could not be turned over to the private complainant, because Ms. Tamara failed to pay the purchase price of the subject PO cards. Technically, then, there was no conversion since the PO cards sold to Ms. Tamara were not devoted to a purpose or