

TENTH DIVISION

[CA-G.R. CR NO. 35758, February 13, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JENNY ANN LAGAHID Y BAANG, ACCUSED-APPELLANT.

D E C I S I O N

DIAMANTE, FRANCHITO N., J.:

Assailed before this Court is the February 21, 2013 Decision^[1] of Baguio City Regional Trial Court (RTC), Branch 60, in Criminal Case No. 32134-R, finding accused-appellant Jenny Ann Lagahid y Baang ("Lagahid" for brevity) guilty beyond reasonable doubt of violation of Article 315, Paragraph 1(b) of the Revised Penal Code.

An Appellant's Brief was filed on June 9, 2014 and the Appellee's Brief was subsequently filed on November 14, 2014. Accused-appellant Lagahid's "Manifestation In Lieu of Reply"^[2] averring that, for reasons therein stated, she elected not to file a reply brief to the plaintiff-appellee's brief is hereby noted. In view thereof, the instant case is deemed submitted for decision.

The facts are as follows:

An Information dated June 24, 2011^[3] for the violation of Article 315, Paragraph 1(b) of the Revised Penal Code was filed against accused-appellant Lagahid. The Information reads:

"The undersigned accuses JENNY ANN LAGAHID of the crime of ESTAFA under Article 315, 1(b) of the Revised Penal Code, committed as follows:

That sometime in the month of May, 2010 and subsequent thereto, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud and with unfaithfulness and grave abuse of confidence, did then and there willfully, unlawfully and feloniously defraud **ANDRES BALTAZAR ZAMORA, LOIDA ZAMORA BARRIENTOS and NELLIE LUCERO-AGIRRE, who are the key officers of ANDRES ZAMORA NCLEX REVIEW CENTER, herein represented by MINDA TABANGIN, Attorney-in-Fact of herein complainants,** in the following manner, to wit: the accused after receiving in trust from the private complainant Minda Tabangin cash having a total amount of Php143,000.00 for the purpose of paying the rentals of the review center to the Holy Innocents Episcopal Church Easter College, and once in possession of the said amount, misappropriated, used and converted the same to her own personal use and benefit, and that despite demands made by the private complainant upon discovery of the fraud for her to return the amount of

Php143,000.00, the accused refused, neglected and failed to do so, to the damage and prejudice of herein private complainant in the aforementioned amount of **ONE HUNDRED FORTY THREE THOUSAND (Php143,000.00) PESOS**, Philippine currency.

CONTRARY TO LAW.”

When arraigned, accused-appellant Lagahid, then assisted by her counsel, Atty. Amando Lawagan, pleaded not guilty. Trial on the merits thereafter ensued.

The evidence for the prosecution consisted of the testimonies of Minda Tabangin, William Lacbongen and Policarpio Cambod. In the Brief for the plaintiff-appellee,^[4] the Solicitor General summarized the facts as follows:

“Minda Tabangin is the cousin of the owners of the Andres Zamora NCLEX Review Center, who are Andres Zamora, Loida Zamora Barrientos and Lenni Lucero Aguirre. Although the said owners are residents of the United States of America, they established the Center for nurses who intend to take up the NCLEX examination in order to qualify them to work abroad. Andres Zamora is the majority owner of the Center.

The Center was originally conducting business at the GP Arcade, Baguio City, in 2007, until it transferred to the basement of the Holy Innocents Episcopal Church/Easter College in Guisad, Baguio City in 2009. In both places, the Center leased spaces to conduct their business. In 2007, the Center employed Rhodora Generalao as its secretary, who was tasked to oversee the operations of the Center like paying monthly rentals, utility bills, answering telephone calls, and registering nurse reviewees, among other duties. While Generalao was still under the employ of the Center, she recommended appellant to work in the Center and she was accepted.

Generalao, eventually resigned sometime in March or May 2009, and appellant was designated by the owners to take over the work of Generalao with the same duties.

The Center started to transfer to the basement of the Church building when one of the contracts of the Center with the GP Arcade expired in July 2009. The Center did renovation works in their new place while waiting for the expiration of the other contract with GP Arcade in September 2009. During that time, appellant was tasked to deliver the payments of monthly rentals to both the owners of both places. It was also appellant who was tasked to deliver the payment for the renovation of the new place.

The owners asked Tabangin to manage the Center but she demurred because she could not attend the affairs of the Center as she was then managing their family's water distribution businesss and canteen. Furthermore, she is pharmacist, not a nurse. She never had any table in the office of the Center because she would stay there only for about ten minutes. However, she acceded to the request of the owners that the money that they would be sending from the United States of America for the payment of the expenses of the Center would be deposited to

Tabangin's bank account in Baguio City. This is because appellant did not have any bank account. Tabangin, upon receiving the money for the monthly bills of the Center would deliver the money to appellant, who was tasked to pay the monthly rentals, telephone and other utility bills of the Center. Together with the money for the payment of monthly bills of the Center, appellant's salary of Php2,700.00 would also be sent by the owners.

For the entire year of 2009, the monthly rentals of the Center have been paid. For the year 2010, Tabangin had been giving to appellant the money for the payments of the monthly rentals of the Center, as evidenced by the receipts which appellant signed. Appellant was also given the money for the payment of the half-month rent for January, 2011. The total amount that appellant received for the payment of the monthly rentals amounted to Php315,000.00.

The Center had intended to end their lease contract with the Church when it would expire on December 31, 2010 and had asked a 15-day period in January, 2011 to move out of the leased area, for which period, Tabangin gave appellant the amount of Php15,000.00 to be delivered to the Administrator of the said Church.

Tabangin had all along thought that Lagahid had delivered the payments for the monthly rentals. However, when the owner's representative was about to haul the office equipment and furniture from the leased premises, the Church building administrator prevented him from doing so. It was then that Tabangin found out that Lagahid had not paid a total amount of Php140,000.00 for the Center's rent, based on the Statement of account given by the Church to its Accountant, William Lacbongen, who, in turn delivered the said Statement of Account to Tabangin.

Lacbongen told Tabangin that he had confronted appellant about the non-payment of the monthly rentals. Appellant cried and was trembling as she confessed to Lacbongen that she had indeed spent the amount for her own personal use. Lagahid also returned to Lacbongen the amount of Php12,000.00 out of the Php15,000.00 which was supposed to be delivered to the Church in payment of the rental for January 1 to 15, 2011. Tabangin's lawyer-husband then wrote a demand letter to appellant for the return of the amounts that she failed to deliver to the Church.

Lacbongen, upon the request of appellant, accompanied the latter to the residence of Tabangin so she could apologize and appeal to Tabangin for a solution to her problem. At the meeting at the residence of Tabangin between appellant and Tabangin and witnessed by Lacbongen, Tabangin told appellant that she should talk to the Administrator and representatives of the Church.

Lacbongen arranged a meeting between appellant and the representatives of the Church. Lacbongen then accompanied appellant and her mother to the meeting with the Manager of the Church building and two members of the board of trustees of the Church. At the meeting,

the Church representatives proposed to appellant that they would allow the release of the office equipment and furniture of the Center provided that appellant shall pay the unpaid rentals over a period of time and as security for the compliance of her obligation, a real property must be provided by appellant, as collateral. The mother of appellant refused the proposal and walked out of the meeting. No settlement was, therefore, reached and so the owners of the Center decided to file a complaint against appellant.

The said owners executed a power of attorney in favor of Tabangin for the purpose of authorizing Tabangin to file a complaint against Appellant. Tabangin and Lacbongen then executed their respective affidavits which Tabangin used in support of the complaint against appellant.

Policarpio Cambod, the Building Administrator of the Church issued a Statement of Account showing that as of November 30, 2010 the unpaid rentals of the Center was Php140,000.00. However, as of July 23, 2012, the outstanding balance was Php110,000.00, after the Church deducted the Php30,000.00 deposit that the Center paid at the start of their contract.”^[5]

After the prosecution presented its witness and its Formal Offer of Evidence⁶ to which the defense filed a Comment and Objection thereto dated February 13, 2012, ^[7], the defense was directed to adduce its evidence.

The evidence for the defense consisted of the testimony of accused-appellant herself. The defense’ version of the events, as stated in its Brief, ^[8] is as follows:

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12. JENNY ANN LAGAHID was informed by a former employee, Rodora Generalao, of a job vacancy in the review center. She subsequently applied for it and was hired by the latter. She met the owners only after two to three months. Rodora was separated from the review center in 2009 because of misappropriation of funds.

13. Upon Rodora's dismissal, she met Minda. She was tasked to recruit reviewees for the center and was never authorized to handle money matters of the review center. There were times, however, that she received rental payments from Minda which she paid to the church.

14. She admitted receiving Sixty Thousand Pesos (60,000.00) in October 2010: Thirty Thousand Pesos (P 30,000.00) in November and FifteenThousand (P15,000.00) in December. She did not apply it for rental payments and from the Fifteen Thousand Pesos (P15,000.00) she had received in December, she returned the Twelve Thousand Pesos (P12,000.00) to William. She denied incurring liability in the amount of One Hundred Forty Three Thousand Pesos (P143,000.00) but only for Ninety Three Thousand Pesos (P 93,000.00).”^[9]

On February 21, 2013, the court *a quo* promulgated its Decision^[10] convicting accused-appellant Lagahid of the crime charged, the dispositive portion of which

reads:

"WHEREFORE, premises considered, the Court finds the accused, JENNY ANN LAGAHID, GUILTY beyond reasonable doubt of the crime charged against her. There being no aggravating and mitigating circumstances, and applying the Indeterminate Sentence Law, the Court hereby sentences the said accused to suffer the penalty of 4 years and 2 months of prision correccional, as the minimum, up to 20 years of reclusion temporal as the maximum. She is, furthermore, ordered to pay unto the private complainants, ANDRES BALTAZAR ZAMORA, LOIDA ZAMORA BARRIENTOS and MELLIE LUCERO-AGIRRE, the sum of Php143,000.00 with interest at 12 percent per annum, from the date of the filing of the Information until the full amount is paid.

SO ORDERED."^[11]

Accused-appellant Lagahid filed a Notice of Appeal as Pauper Litigant dated March 12, 2013^[12] which was given due course by the court *a quo* in an Order dated March 14, 2013.^[13] In her Brief, accused-appellant Lagahid submitted a lone assigned error that:

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HER GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT."^[14]

We partly grant the appeal.

The elements of the crime of Estafa under Article 315, paragraph 1 (b) of the Revised Penal Code sought to be established by the prosecution are as follows:

1. That money, goods or other personal properties are 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 is a 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."^[15]

The court *a quo*, in convicting accused-appellant Lagahid guilty of the crime charged, found that all the elements of estafa under Article 315 1(b) were present in the case at bench, to wit: *first*, evidence would show that accused-appellant Lagahid received sums of money from Tabangin as indicated in the receipts; *second*, accused-appellant Lagahid likewise admitted that she did not deliver the sums of money she received and instead she used it for her personal use; *third*, the misappropriation committed by the accused-appellant worked to the prejudice of the