

FIRST DIVISION

[G.R. No. 207249, May 14, 2021]

ZENAIDA LAYSON VDA. DE MANJARES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*^[1] filed by the petitioner Zenaida Layson Vda. de Manjares (Zenaida) assailing the Decision^[2] dated November 12, 2012 and Resolution^[3] dated May 20, 2013 of the Court of Appeals (CA) in CA-G.R. CR No. 33373, which affirmed the Judgment^[4] dated March 18, 2010 of Branch 14, Regional Trial Court of Ligao City (RTC) in Criminal Case No. 3840 convicting Zenaida for *estafa*, penalized under Article 315(l)(b) of the Revised Penal Code (RPC).

The Facts

A Information for *estafa* was filed against Zenaida, the accusatory portion of which reads:

That sometime on September 12, 1996 up to and including October 4, 1998, in the Municipality of Polangui, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, having received in trust or administration from PAULO P. BALLESTEROS JR. various appliances, furnitures, motorcycles, and other similar products with a total value of SEVEN HUNDRED THIRTY THOUSAND EIGHT HUNDRED ELEVEN PESOS and FIFTY NINE CENTAVOS (P730,811.59), for the purpose of selling the same on consignment basis, under the express obligation of turning over and/or deposit to the bank the next banking day the proceeds of the said items, if sold, or return them, if not sold, to the said Paulo P. Ballesteros Jr., but once in possession of the said items and far from complying with her obligation aforesaid, the said accused, with abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to her personal use and benefit and despite repeated demands to remit the proceeds of the sale, if any, and/or return the items, if unsold, failed, and refused and still fails and refuses to do so, to the damage and prejudice of said Paulo P. Ballesteros, Jr. in the sum of P730,811.59.

ALL ACTS CONTRARY TO LAW.^[5]

During the arraignment, Zenaida pleaded not guilty. The private prosecutor then filed a manifestation, reserving the right of the complainant Paulo P. Ballesteros, Jr.

(Ballesteros) to institute a separate civil action for damages.^[6] Pre-trial and trial thereafter ensued.

The prosecution presented as witnesses the following: (1) Rafael Roderick Pan (Pan), the auditor who audited Alson's Polangui; (2) Rodilyn Repuyan (Repuyan), secretary and cashier at Alson's Polangui; (3) Pablo H. Mendoza (Mendoza), (4) Rodrigo Valenciano (Valenciano), and (5) Antonio Nobles,^[7] former customers of Alson's Polangui; and (6) Ballesteros, the owner of Alson's Trading and Alson's Polangui. On the other hand, Zenaida was the only witness for the defense.

Based on the testimonies of both Zenaida and Ballesteros, the former was initially engaged in the business of buying-and-selling of appliances, furniture, and other products. She would buy from Ballesteros' business Alson's Trading in Iriga City - around once a month. Because she had become a regular customer, she and Ballesteros had an agreement that her store would be used to establish Alson's Polangui and that she would be its branch manager.^[8] According to Ballesteros, Zenaida had the following obligations as the branch manager: "1) receive the stocks; 2) sell and document them properly, following the standard pricing for cash or installment; 3) hire and terminate employees; 4) document and deposit collections in the bank the next banking day; and 5) be accountable for any shortages in the collection."^[9] Meanwhile, Ballesteros' obligation was to pay the monthly salaries of Zenaida and the other employees. According to Zenaida, she assumed the payment of the rent and the telephone bills, while Ballesteros shouldered the electric bills.^[10] Ballesteros claimed however that he was paying the rent for the space but that he paid it through Zenaida as she was the one who had the lease agreement with the lessor.^[11]

Ballesteros narrated in his testimony that he visited Alson's Polangui one time and he did not find any cash there. He grew suspicious, so he asked Pan to conduct a preliminary audit. The preliminary audit revealed a shortage of around P65,000.00 per month of operation. He confronted Zenaida about this, and she allegedly promised to pay the shortages back within 15 days. Meanwhile, Ballesteros asked Pan to conduct an audit of the branch's entire operation from September 12, 1996 to October 4, 1998.^[12] Based on Pan's audit, Zenaida's total accountability was allegedly P730,811.59, broken down as follows:^[13]

Undeposited Net Collection for the Day	P143,100.63
Net Short Deposit of Collection for the Day	32,853.26
Disallowed Payment of Salesman Commission	12,967.10
Unreplaced Bounced Check Used for Liquidation of Stocks	9,963.50
Unreceipted/Undeposited C.O.D. Sales	5,829.00
Customers with Remaining Balance but has (sic) Fully Paid	15,526.01
Current Cost of Unaccounted Stocks	466,108.25
Price Difference/Excess Payments for Unaccounted Stocks Confirmed to be Delivered to Customers	4,778.00
Charges for Unaccounted Repossessed Unit	13,172.84
Confirmed Short Remittance of C.O.D. Sales	23,474.50

Price Difference/Excess Payments for Confirmed Installment Sales but are Reported as C.O.D. Sales	61,362.00
TOTAL	P730,811.59 ^[14]

"Undeposited Net Collection for the Day" refers to the total amount of the daily net collections of Alson's Polangui which were not deposited in the bank at all.^[15] "Net Short Deposit of Collections" represents "short deposits," meaning the amounts deposited to the bank account were less than the total collections for a given period.^[16] Pan arrived at this by comparing the columnar logbooks - which contained the details of the sales made in Alson's Polangui - prepared by Repuyan, the cashier/secretary, *vis-a-vis* the bank statements containing the amounts that Zenaida deposited.^[17]

"Disallowed Payments of Salesman Commission" refers to amounts paid to supposed agents who solicited customers of Alson's Polangui, but it was later on discovered that either the agents were fictitious, or the agents did not in fact receive said amounts.^[18] "Unreplaced Bounced Check Used for Liquidation of Stocks" refers to the amount representing the payment of four customers who paid in cash, but instead of depositing the cash, Zenaida deposited a personal check covering the amount which was subsequently dishonored for insufficient funds.^[19]

"Unreceipted/Undeposited C.O.D. Sales" refers to amounts representing items delivered to customers, proven through delivery receipts issued to them, but which were not recorded in the columnar logbook prepared by Repuyan.^[20] "Customers with Remaining Balance but has (*sic*) Fully Paid" refers to installment payments by customers which were not recorded and also unremitted to Ballesteros' bank account.^[21] "Current Cost of Unaccounted Stocks" refers to the value of stocks delivered to Alson's Polangui which can no longer be found or accounted for during the audit.^[22] "Unaccounted Stocks Delivered to Customers" refers to the value of stocks delivered to customers which were not reported as sales.^[23] "Charges for Unaccounted Repossessed Units" refers to the value of stocks repossessed by Alson's Polangui for failure of the buyer to pay the installment payments, which stocks were unaccounted for during the audit.^[24]

"Short Remittances for C.O.D. Sales" refers to the amounts representing the difference between the amount in the delivery receipts given to the customers, and the amount reflected in the office copy of such receipts. The office copies of the receipts, which were the bases of the remittances to Ballesteros' bank account, reflected smaller amounts compared to the ones given to the customers.^[25] Finally, "Price Difference/Excess Payments for Confirmed Installment Sales but are Reported as C.O.D. Sales" refers to installment sales which were reported as C.O.D. or cash-an-delivery sales. Reporting them as C.O.D. sales deprived Alson's Polangui of the mark-up since the prices of stocks were higher when paid on installment instead of cash.^[26]

The above audit conducted by Pan became the basis of Zenaida's accountabilities, and subsequently, of the criminal charge against her.

Meanwhile, Repuyan, the cashier/secretary of Alson's Polangui, testified that her

main duties are: "issuance of receipts to customers; preparation of documents for delivery of stocks; and collection of remittances from customers."^[27] She claimed that she religiously remitted the collections to Zenaida who, in turn, issued her acknowledgment receipts.^[28] It would then be Zenaida's duty to deposit the collections to Ballesteros' bank account. When asked about the acknowledgment receipts that Zenaida supposedly executed, as well as the columnar logbook she prepared for Alson's Polangui, Repuyan testified:

x x x She explained though, that she failed to produce the acknowledgment receipts during the audit because the original copies were borrowed by the daughter of [Zenaida], Swisa Manjares King sometime in September but who, upon demand, refused to return them until now. The photocopies of said acknowledgment receipts kept in the drawer of her table were also lost, hence, she had the incident recorded (Exhibit TT) in the police blotter. [Zenaida] had all the original keys in the office, while she had the duplicate. At the time of said loss, [Zenaida] was still reporting in the office. Only [Zenaida] deposits the collections in the bank, the Philippine National Bank, Polangui Branch, or Legazpi Savings Bank, [Polangui] Branch.

Cross-examined, witness explained that she reported the loss of the acknowledgment receipts only on October 12, 1998, despite their loss on September 26, 1998, because she thought Swisa Manjares King would still return them. She did not, however, require Swisa to sign any document to prove that she borrowed them nor was anybody present in the office when she lent them to her. She only made a verbal demand for the return of the acknowledgment receipts. Neither did she have Swisa summoned by the Barangay Captain or the police. She admitted that when the audit started in July, 1998, [Zenaida] was no longer "active" in the office.

On redirect, witness clarified that although [Zenaida] ceased to be branch manager from July, 1998, she was still reported (*sic*) to the office because she resigned only on October 19, 1998. Despite the loss of the [acknowledgment] receipts, the columnar books for the year 1997 (Exhibit D-52 up to D-70) and 1998 (Exhibit D-71 up to D-72) reflected the amounts of her remittances to [Zenaida] on a day-to-day basis. She started recording the amounts of her remittances [Zenaida] from December 18, 1996 (Exhibit D-18) up to July 21, 1998 (Exhibit D-73).

On re-cross examination, witness reiterated that [Zenaida] still reported to the office every day from July to October, 1998. She confirmed the signature of Marilou Manjares, daughter of [Zenaida] appearing in one entry (Exhibit D-45) in the columnar book. She admitted that the amounts for deposit as stated in the columnar books was no proof that they were received by [Zenaida]. She explained though, that [Zenaida] does not need to sign the columnar book because she instead issued [acknowledgment] receipts.

Clarified by the court, witness revealed that it was Mr. Ballesteros who required the audit when he suspected some irregularities committed by [Zenaida] in the management of the branch. She further explained that

[Zenaida] owned the office table where the acknowledgment receipts were kept, hence, the latter has duplicate keys to the drawers. She admitted her mistake in having lent the original receipts to the daughter of [Zenaida] and keeping the photocopies in the drawer to which the [Zenaida] had a key. In the morning of September 25, Swisa borrowed the receipts upon request of [Zenaida], promising to return them the following morning. However, Swisa no longer returned them despite her demands. She agreed that without the receipts, she cannot prove that she remitted all the money that came to her. She informed the auditor of the loss of the photocopies on September 27, 1998. She added that per company procedure, a copy of the deposit slip is given to her (witness) for checking if the amount therein corresponded to the amount in the acknowledgment receipt. The deposit slips covering December 18, 1996 up to July, 1998 were already submitted to the main office in Iriga City. She was not promoted after that "fiasco" in 1998.^[29]

As to the other witnesses from the prosecution, their testimonies were summarized by the RTC as follows:

PABLO H. MENDOZA x x x - He is one of the customers who bought a *Sharp karaoke*. He identified and affirmed the veracity of his Certification issued on September 16, 1998. His Certification was about the karaoke he bought which was not repaired and remained in his possession until now. [Zenaida] transacted the purchase of said item to him. Upon its delivery, he paid Php1,000.00 to [Zenaida] and in June, Php1,400.00. All in all, Php2,400.00 but [Zenaida] did not issue receipts to him. Alson's was able to locate this karaoke because of the signature of his wife in the blank Delivery Receipt (Exhibit DD-2). He also signed blank documents, such as the Warranty Card, Delivery Receipt, Sales Invoice, Credit Application Sheet, Promissory Note, Chattel Mortgage, Application for Credit (Exhibit DD-1 up to DD-7).

When clarified by the court, he claimed to have given [Php1,000.00] to a certain Amor, an agent of Alson's Trading, who delivered the karaoke in his house but [Zenaida] was not present during the delivery. He later gave an additional [Php1,400.00] to Amor. He made the purchase only through brochures shown by Amor, without going to Alson's Polangui. He recalled signing the Promissory Note and Delivery Receipt when the unit was delivered by Amor in his house. He only went to Alson's when the unit became defective, which [Zenaida] promised to replace. When it was not replaced, he no longer made any payments.

RODRIGO VALENCIANO x x x - He is the husband of Lina Valenciano, who bought a Sony VHS player on installment from Alson's Trading Polangui, but which had been fully paid. He identified his wife's signature (Exhibit JJ-1) in the delivery receipt dated September, 1997. Other than that, he has no personal knowledge regarding the purchase and delivery of aforesaid item.

ANTONIO NOLES x x x - He purchased a TV set from Alson's Polangui branch in 1997, wherein [Zenaida] was the one who attended to him. As direct buyer, he paid a discounted price of [Php5,300.00], from the