

SECOND DIVISION

[G.R. No. 211917, February 27, 2017]

**NORMA C. GAMARO AND JOSEPHINE G. UMALI, PETITIONERS,
VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

PERALTA, J.:

Before us is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court which seeks the reversal of the Decision^[2] dated November 25, 2013, and Resolution^[3] dated February 21, 2014 of the Court of Appeals (CA) in CA-G.R. CR No. 34454. The CA affirmed the Decision of the Regional Trial Court (RTC), Branch 32, San Pablo City in Criminal Case No. 15407 finding petitioner Norma C. Gamaro guilty of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code, while exonerating petitioner Josephine G. Umali from the crime charged. The RTC also adjudged the petitioners jointly and severally liable to pay the monetary awards in favor of private complainant Joan Fructoza E. Fineza.

The factual antecedents are as follows:

On March 1, 2005, the petitioners were charged with Estafa under Article 315, paragraph 2(a), of the Revised Penal Code before Branch 32 of the RTC of San Pablo City under the following Information:

That on or about January 2, 2002, in the City of San Pablo, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the accused above-named, conspiring, confederating and mutually helping one another, did then and there, defraud one JOAN FRUCTOZA E. FINEZA, in the following manner, to wit: That Norma C. Gamaro, pretending that she is knowledgeable in the business of buy and sell of jewelry, other merchandise and financing, assuring complainant of a sure market and big profit lure and entice complainant Joan Fructoza E. Fineza to enter into the business and the latter purchased and delivered to her the jewelry amounting to P2,292,519.00 with the obligation to manage the business for private complainant and remit the proceeds of the sale to her, but accused, far from complying, with her obligation, managed the business as her own, failing to remit the proceeds of the sale and pledging jewelries to Lluillier Pawnshop where accused Josephine Umali work while the checks issued by respondent Rowena Gamaro to guarantee their payment were all dishonoured for having been drawn against insufficient funds, to the damage and prejudice of the offended party in the aforementioned amount.

CONTRARY TO LAW.^[4]

When arraigned on August 4, 2005, petitioners pleaded not guilty to the crime charged, while accused Rowena C. Gamaro remained at-large.^[5] Thereafter, trial on the merits ensued.

The evidence disclosed the following facts:

Sometime in 2002, private complainant Joan Fructoza E. Fineza (*Fineza*) engaged in a business venture with petitioner Norma C. Gamaro and her daughters - petitioners Josephine G. Umali (*Umali*) and accused Rowena Gamaro. Fineza would buy any foreclosed pieces of jewelry from M. Lhuillier Pawnshop whenever informed by Umali who was then the manager of the said pawnshop located at Basa St., San Pablo City, Laguna. The pieces of jewelry would then be sold for profit by Norma Gamaro to her co-employees at the Social Security System (SSS) in San Pablo City. The proceeds of the sale would then be divided among them in the following manner: fifty percent (50%) would go to Fineza, while the other fifty percent (50%) would be divided among Umali, Norma Gamaro and Rowena Gamaro. As security for the pieces of jewelry which were placed in the possession of Norma Gamaro and her daughter Rowena Gamaro, the two would issue several checks drawn from their joint bank account in favor of Fineza reflecting the appraised amount of the pieces of jewelry.

^[6]

The business venture was initially successful. However, when Fineza discovered that Norma Gamaro, together with her daughters Rowena Gamaro and Umali, also engaged in a similar business with other suppliers of pieces of jewelry, she decided to terminate the business. To wind up the business, it was agreed that Norma Gamaro and Rowena Gamaro would just dispose or sell the remaining pieces of jewelry in their possession. But when Fineza tried to encash the checks which were issued to her by Rowena Gamaro, the same were dishonored because the account of the Gamaros had been closed. Fineza then confronted petitioner Norma Gamaro about the dishonored checks, and the latter confessed that she did not have enough money to cover the amount of the checks. Fineza also learned that the pieces of jewelry were pawned to several pawnshops and private individuals contrary to what they had agreed upon. Petitioner Norma Gamaro furnished Fineza with a list of the pawnshops, such that, the latter was compelled to redeem the pieces of jewelry with her own money. It appeared in the pawnshop tickets that it was the nephew of Norma Gamaro named Frederick San Diego who pledged the pieces of jewelry.^[7]

To settle the matter, Fineza asked Norma Gamaro to return the remaining pieces of jewelry in her possession but the latter failed to do so, and instead, offered her house and lot as payment for the pieces of jewelry. Fineza, however, did not accept the said offer.^[8]

A demand letter was then sent by Fineza to Umali, Norma Gamaro and Rowena Gamaro, dated February 16, 2004, asking for the return of the amount of P2,292,519.00 as payment for all the pieces of jewelry which were not returned to her, including the cash given by Fineza for the rediscounting business. The demand letter was left unanswered.^[9]

For her part, Norma Gamaro, averred that she had no involvement in the jewelry business of her daughters. Umali likewise denied having any business dealings with her sister Rowena Gamaro and with Fineza. While admitting that there were pieces

of jewelry pledged by her cousin, Frederick San Diego, in the pawnshop where she was the manager, Umali denied that she knew where those pieces of jewelry came from.^[10]

On July 25, 2011, the RTC issued a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, this court hereby renders judgment, as follows:

- a. **FINDING** accused **Norma Gamaro** guilty beyond reasonable doubt of the crime of estafa as defined and penalized under Section 1 (b), Article 315 of the Revised Penal Code, and hereby sentences her to suffer the indeterminate prison term of Four (4) Years and Two (2) Months of *Prision Correccional*, as Minimum, to Twenty (20) Years of *Reclusion Temporal*, as Maximum;
- b. **EXONERATING** accused **Josephine G. Umali** of any criminal liability;
- c. **DIRECTING** both accused **Norma Gamaro** and **Josephine Umali** to pay the private complainant jointly and solidarity the following amounts:
 1. P1,259,841.46, plus legal interest from date of demand on February 16, 2004, until fully paid;
 2. P50,000.00 for and by way of moral damages;
 3. P25,000.00, for and by way of exemplary damages;
 4. P50,000.00, for and by way of attorney's fees; and
 5. To pay the costs.

Let a warrant issue for the arrest of **Rowena Gamaro**. The Bureau of Immigration is likewise directed to issue a HOLD DEPARTURE ORDER against ROWENA GAMARO, her personal circumstances are as follows:

Name: ROWENA C. GAMARO

Former Residence: Lot 20, Block 16, National Housing Authority (NHA), Brgy. San Jose, San Pablo City

SO ORDERED.^[11]

Aggrieved, petitioners filed an appeal before the CA. In a Decision dated November 25, 2013, the CA affirmed the Decision of the RTC. The *fallo* of the Decision states:

WHEREFORE, the instant appeal is **DENIED**. The assailed Decision dated July 25, 2011 of the Regional Trial Court, Branch 32, San Pablo City, in Criminal Case No. 15407 is hereby **AFFIRMED**.

SO ORDERED.^[12]

A motion for reconsideration was filed by the petitioners, but the same was denied by the CA on February 21, 2014.

Hence, this petition, raising the following errors:

A) THE CA COMMITTED AN ERROR OF LAW AND GRAVE ABUSE OF DISCRETION IN AFFIRMING THE RTC DECISION FINDING NORMA GAMARO GUILTY OF THE CRIME OF ESTAFA UNDER SECTION 1(b), ARTICLE 315 OF THE REVISED PENAL CODE DESPITE THE INFORMATION ACCUSING HER OF THE CRIME OF ESTAFA UNDER PARAGRAPH 2(A) ARTICLE 315 OF THE REVISED PENAL CODE IN GRAVE VIOLATION OF THE PETITIONER'S CONSTITUTIONAL RIGHT TO BE INFORMED OF THE CHARGE AGAINST HER;

B) THE CA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT SUSTAINED THE FINDINGS OF THE RTC DESPITE THE FACT THAT IT (RTC) RELIED ON THE FINDINGS ON THE PROCEEDINGS IN THE ADMINISTRATIVE CASE WITH SSS AGAINST NORMA GAMARO;

C) THE CA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT SUSTAINED THE FINDINGS OF THE RTC DESPITE THE FACT THAT IT (RTC) CONSIDERED THE TESTIMONY OF PROSECUTION WITNESS ATTY. BALDEO DESPITE CONFLICT OF INTEREST IN THAT SHE (ATTY. BALDEO) GAVE NORMA GAMARO ADVISE REGARDING HER CASE; and

D) THE CA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE FINDINGS OF FACT OF THE RTC THAT NORMA GAMARO RECEIVED THE SUBJECT JEWELRIES DESPITE THE INCOMPETENT AND CONTRADICTIONARY EVIDENCE OF THE PROSECUTION ITSELF.^[13]

The first issue for resolution is whether a conviction for the crime of Estafa under a different paragraph from the one charged is legally permissible.

The Bill of Rights of the 1987 Constitution guarantees some rights to every person accused of a crime, among them the right to be informed of the nature and cause of the accusation, viz.:

Section 14. (1) **No person shall be held to answer for a criminal offense without due process of law.**

(2) **In all criminal prosecutions, the accused** shall be presumed innocent until the contrary is proved, and **shall enjoy the right** to be heard by himself and counsel, **to be informed of the nature and cause of the accusation against him**, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed

notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.^[14]

The constitutional provision requiring the accused to be "informed of the nature and cause of the accusation against him" is for him to adequately and responsively prepare his defense. The prosecutor is not required, however, to be absolutely accurate in designating the offense by its formal name in the law. It is hornbook doctrine that what determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the information or complaint and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law.^[15]

The controlling words of the information are found in its body. Accordingly, the Court explained the doctrine in *Flores v. Hon. Layosa*^[16] as follows:

The Revised Rules of Criminal Procedure provides that an information shall be deemed sufficient if it states, among others, the designation of the offense given by the statute and the acts of omissions complained of as constituting the offense. However, the Court has clarified in several cases that the designation of the offense, by making reference to the section or subsection of the statute punishing, it [sic] is not controlling; **what actually determines the nature and character of the crime charged are the facts alleged in the information.** The Court's ruling in *U.S. v. Lim San* is instructive:

x x x Notwithstanding the apparent contradiction between caption and body, we believe that we ought to say and hold that the characterization of the crime by the fiscal in the caption of the information is immaterial and purposeless, and that the facts stated in the body of the pleading must determine the crime of which the defendant stands charged and for which he must be tried. The establishment of this doctrine is permitted by the Code of Criminal Procedure, and is thoroughly in accord with common sense and with the requirements of plain justice x x x.^[17]

In the instant case, the crime of estafa charged against petitioners is defined and penalized by Article 315, paragraph 2 (a) of the Revised Code, viz.:

Article 315. *Swindling (estafa)*. Any person who shall defraud another by any of the means mentioned herein below 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.