

FIRST DIVISION

[G.R. No. 203466, February 25, 2015]

**CHERRY ANN M. BENABAYE, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated August 31, 2011 and the Resolution^[3] 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 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 P470,768.00 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 memorandum^[8] 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 explanation^[9] 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 memorandum^[10] 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 explanation^[11] 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 terminated^[12] 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 Information^[13] which reads:

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 P688,833.00, 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 P688,833.00, to the damage and prejudice of the said Siam Bank, Inc. in the aforesaid amount of P688,833.00, Philippine currency.

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

In her defense, Benabaye reiterated^[15] 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]

The RTC Ruling

In a Decision^[21] 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 P688,833.00 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 P688,833.00 insofar as Benabaye is concerned and P25,955.00 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 appealed^[26] her conviction to the GA, 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 appealed^[28] his conviction, but was however denied by the RTC in an Order^[29] dated October 9, 2009. The RTC held that Tupag lost his remedy to appeal under Section 6, Paragraph 5, Rule 120^[30] of the Revised Rules on Criminal Procedure. Records of this case were then elevated to the CA.^[31]

The CA Ruling

In a Decision^[32] 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 Resolution^[39] 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.

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 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 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 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