

## SECOND DIVISION

[ G.R. No. 188052, April 21, 2014 ]

**JEAN D. GAMBOA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PEREZ, J.:**

Petitioner Jean D. Gamboa (Gamboa) beseeches us in this appeal by *certiorari* for reprieve from the concurring convictions by the lower courts, specifically, the Regional Trial Court (RTC), Branch 145, Makati City in Criminal Case No. 00-526,<sup>[1]</sup> and the Court of Appeals in CA G.R. CR. No. 30354,<sup>[2]</sup> finding her guilty of *Estafa* under Article 315, paragraph 1(b) of the Revised Penal Code.

Gamboa was charged in an Information dated 18 February 2000, which reads:

That on or about the month of February, 1999 or prior thereto, at Makati City, Metro Manila, Philippines and within the jurisdiction of the Honorable Court, the above-named accused [Gamboa], being then employed as Liaison Officer of complainant TFS Pawnshop, Inc. represented by its Operations Manager Felicidad Samson and as such is authorized among others to secure and/or renew municipal/city licenses and permits for TFS Pawnshop branches received in trust from complainant the total amount of P78,208.<sup>[9]</sup>5 with the obligation on the part of the accused to use the said amount for the renewal of licenses and permits for all complainant's branches located in Manila, but [Gamboa], once in possession of the said amount, with intent to gain and abuse of confidence, did then and there willfully, unlawfully, and feloniously misappropriate, misapply and convert to her own personal use and benefit said amount of P78,208.95 as a consequence thereof[,] complainant paid the total amount of P85,187.00 for the renewal of the licenses and permits of its branches in Manila and that [Gamboa] refused and/or failed and still refuses and/or fails to account or return said amount despite demand from complainant, to the damage and prejudice of the latter in the total amount of P163,395.95.<sup>[3]</sup>

Upon arraignment on 28 September 2000, Gamboa pleaded not guilty.

At the trial, the prosecution presented four (4) witnesses: (1) Felicidad Samson (Samson), Operations Head of (private complainant) Tambunting Finance Services Pawnshop, Inc. (TFS); (2) Knestor Jose Y. Godino (Godino), the Human Resource Manager of TFS at the time of the incident in question subject of this criminal case; (3) Estrella Cuyno, Liaison Officer of TFS; and (4) Liberty Toledo, former Assistant

City Treasurer – Chief of the License & Permit Division of the City of Manila, now the City Treasurer of Manila. The following facts were testified to:

Gamboa's job function, as the liaison officer of TFS, included the processing and securing of the necessary government permits and licenses of all branches of TFS in Metro Manila. In that regard, Gamboa received from TFS the money allotment therefor in the total amount of P247,117.25. The money allotment included the sum of P81,000.00 to cover the renewal and processing of government licenses and permits of twelve (12) of TFS' branches in the City of Manila.

Gamboa's receipt of the amount of P81,000.00 was evidenced by a Request for Payment dated 18 January 1999 signed by her and approved by TFS President, a certain Ongsiako. Witness Samson, Operations Head of TFS, likewise presented in evidence a notebook which she kept for recording purposes and which contained Gamboa's signature next to a written entry corresponding to Gamboa's receipt of the amount of P81,000.00.

TFS, through Samson, a Mrs. Tan and Godino, TFS' Human Resource and Management Development (HRMD) Manager, made several demands for Gamboa to render a proper liquidation report of the various money allotments she had received for the renewal of the government permits and licenses of the twelve (12) TFS branches. However, the demands went unheeded.

TFS' HRMD issued HRMD Memorandum No. 036 dated 25 February 1999 notifying Gamboa of her violation of company rules and regulations for failing to liquidate the sum of P249,117.27. On the same date, Gamboa had an altercation with some of TFS' officers.

In response to HRMD Memorandum No. 036, Gamboa submitted a letter dated 27 February 1999, explaining that: (1) the money allotment constituting her cash advances were distributed to her staff for the delegated assignment of renewal of the required government permits and licenses for TFS' branches all over Metro Manila; (2) she has surrendered all the necessary liquidation papers; and (3) as scheduled, all of the required licenses of TFS' branches were already fully paid on 20 January 1999 and no additional penalty was incurred therefor.

Notwithstanding her letter-explanation, Gamboa was placed under preventive suspension via Memorandum No. 037 dated 1 March 1999 which also notified Gamboa of another failure on her part to liquidate the amount of P50,809.85 as of 26 February 1999.

On 9 May 1999, Gamboa was terminated from employment.

Apparently, contrary to Gamboa's claim, payment for the permits and licenses of all of TFS' branches in Manila for the year 1999 was never made.<sup>[4]</sup>

Subsequently, TFS, through, Samson, filed the criminal complaint charging Gamboa with the crime of *Estafa* under Article 315, paragraph 1(b) of the Revised Penal Code for misappropriating, misapplying or converting the following amounts: (1) P78,208.95 for the renewal of permits and licenses of the twelve (12) branches in Manila; (2) P85,187.00 representing the permits and license fees including surcharges which TFS paid because of Gamboa's failure to do so; and (3)

P25,213.58 comprising of previous cash advances to Gamboa.

Gamboa denied that she misappropriated, misapplied or converted the various unliquidated amounts insisted upon by TFS. On the whole, albeit belatedly, and only at the trial stage before the RTC, Gamboa claimed that for the year 1999, upon the instruction of her superior, Estrella Cuyno (Cuyno), she transacted with a Joselito "Lito" Jacinto, a casual employee of the Office of the City Mayor of Manila, concerning the processing and renewal of TFS' branches' business permits and licenses.

As part of her transaction, Gamboa admitted receipt of the amount of P45,587.65 evidenced by Request for Payment dated 18 January 1999. Gamboa likewise admitted receipt of the amount of P24,000.00 representing a mobilization fee of P2,000.00 per TFS branch evidenced by Request for Payment also dated 18 January 1999. These Requests for Payment were duly signed and approved by TFS Vice-President Ramon Luis Carlos Tambunting, and the amounts represented therein admittedly received by Gamboa.

Gamboa claimed she turned over the monies to Lito Jacinto as instructed by Cuyno. In support of the claim, Gamboa presented as documentary evidence, a photocopy of a receipt covering the amount of P45,587.65 signed by Lito Jacinto. The original of this receipt designated during trial as Exhibit "6" was purportedly lost in an occasion when Gamboa rode a taxi cab.<sup>[5]</sup>

Gamboa further claimed that two others were present when she handed the monies as payment to Lito Jacinto: one of TFS' messengers, a certain Jayson, and Carmencita "Menchie" Cornejo, an officemate of Lito Jacinto.

As is routine, Gamboa followed up on the renewal permits with Lito Jacinto who told her that the permits were still being processed.

After Gamboa received Memorandum No. 036 dated 25 February 1999 notifying her of her supposed violation of TFS' company policies for failing to liquidate the amounts representing the renewal of TFS' branches' permits and licenses, she learned from Lito Jacinto's officemates that the latter did not remit the monies she had handed over to him as supposed payment for TFS' renewal permits and licenses.

Consistent with her story, Gamboa claimed that she filed an administrative complaint by way of a letter dated 9 March 1999 against Lito Jacinto before the Office of the City Mayor of Manila. In conjunction with the administrative complaint, Gamboa purportedly filed a criminal complaint against Lito Jacinto before the City Prosecutor's Office of Manila. However, this same criminal complaint was subsequently dismissed upon Gamboa's motion to withdraw the complaint.

To corroborate her claim that she handed the monies representing payment of TFS' renewal permits and licenses for its branches in Manila, Gamboa presented the testimony of Rey Marquez (Marquez), also a liaison officer of Tambunting Puyat Pawnshop, Inc. (TPP), a sister company of TFS. Marquez testified that in 1999, he likewise transacted with Lito Jacinto for the renewal of TPP's business permits and licenses. Specifically, on 15 January 1999, Marquez and Gamboa both transacted with Lito Jacinto on behalf of their respective companies. Marquez himself had

handed the amount of P10,000.00 to Lito Jacinto for the processing of the renewal of TPP's business permits and licenses. Lito Jacinto also absconded with the money so Marquez likewise filed an administrative complaint dated 15 March 1999 before the Office of the City Mayor.

On 18 May 2006, the RTC convicted Gamboa of *Estafa* under Article 315, paragraph 1(b) of the Revised Penal Code for misapplying and/or converting the amount of P81,000.00 which she had received in trust for the specific purpose of the renewal of TFS' branches' business permits and licenses. The trial court found credible the testimony of Samson as to Gamboa's receipt of the amount of P81,000.00. On the other hand, the trial court found Gamboa's defense, that as instructed, she handed the monies, P45,587.65 and P24,000.00, respectively, to Lito Jacinto to facilitate the renewal of TFS' business permits and licenses, as an afterthought, and this defense directly contradicted her categorical statement that the licenses and business permits of TFS had already been paid as of 20 January 1999. The trial court extrapolated, thus:

Anent to her defense that she merely acted as messenger upon the instruction of her supervisor Ms. Cuyno to give the amount of P45,587.65 to Lito Jacinto, thus, she should not be accountable for the same, this contention is unavailing, given the oral as well as documentary evidence of the prosecution.

For one thing, this defense appears to be contrived as it was never raised in her reply to the memorandum [of] TFS x x x asking her to liquidate her cash advances. On the contrary, she pithily claimed that all municipal licenses for all branches were completely paid as of January 20, 1999 as per schedule, thereby making it appear to her employer TFS that she has nothing to account for.

For another, this actuation is palpably contrary to logic and common sense since if she already knew that Lito Jacinto had converted to his benefit the sum of P45,587.65, then she should not have incessantly asserted that the licenses and permits of all the branches of TFS in the City of Manila had already been paid for as of 20 January 1999.

This inconsistency is also evident in the Counter-Affidavit and Supplemental Counter-Affidavit, which she submitted to the Office of the City Prosecutor of Makati City during the preliminary investigation, when she egregiously failed to aver any transaction she had with Lito Jacinto and that the latter should be solely responsible for the loss of the aforementioned amount. Verily, and as observed earlier, this defense is clearly an afterthought and does not deserve faith and credit.

Additionally, on the assumption that she indeed turned over the amount of P45,587.65 to Jacinto, she failed to establish the fact that she is authorized to do so by private complainant TFS. This notwithstanding however, insofar as the civil liability of the accused is concerned, she is only to be held accountable of P81,000.00 proven to be received by her. The amount of P74,690.00 subsequently paid by TFS to the City Government of Manila for its licenses and permits cannot be charged to

the accused as she did not benefit from this and it is the obligation of TFS to pay its licenses and permits fees in order to legally operate its business.

x x x x

PREMISES CONSIDERED, judgment is rendered finding the accused GUILTY beyond reasonable doubt of the offense of *Estafa* under paragraph 1(b) of Article 315 of the Revised Penal Code, sentencing her to suffer the penalty of imprisonment under an indeterminate sentence of four (4) years[,] two (2) months and one (1) day of *prision correccional* as minimum to twelve (12) years of *prision mayor* as maximum with all the accessory penalties provided by law. She is further ordered to pay the private complainant TFS Pawnshop Incorporated the sum of P81,000.00 representing the amount misappropriated by her plus interest at the rate of six (6%) to be reckoned from the rendition of the judgment until fully paid (Article 2211, NCC). Costs against [Gamboa].<sup>[6]</sup>

At the appeal stage before the Court of Appeals, the Office of the Solicitor General (OSG) joined Gamboa's stance of innocence and prayed for the reversal and setting aside of the trial court's judgment of conviction. The OSG filed a Manifestation in *Lieu of Appellee's* Brief arguing the absence of the element of misappropriation because Gamboa simply followed instructions when she gave the monies to Lito Jacinto for the renewal of TFS' branches' business permits and licenses. Ultimately for the OSG, the fact that the business licenses and permits were apparently not paid does not establish misappropriation or conversion by Gamboa of the monies allotted therefor.

The Court of Appeals agreed with the findings of the RTC. Extensively delving on Gamboa's defense that there was no misappropriation since she turned over the amount of P45,587.65 and P24,000.00 to Lito Jacinto as instructed by her superior, the Court of Appeals reviewed the case, thus:

It likewise bears stressing that prior to the filing of the instant estafa case, [Gamboa] was requested in several instances by TFS, oral and written, to liquidate the cash advances made by her, but, she failed to do so.

In [Gamboa's] effort to exculpate herself from criminal liability, she belatedly claimed during her direct examination in court that she gave the amount of P45,587.65 as payment for the renewal of the business permits and licenses and P24,000.00 as mobilization fee to one Lito Jacinto, allegedly an employee of the Office of the City Mayor of Manila who was assigned at the Mayor's Permits and License Division, in order to expedite the processing thereof. This was allegedly upon the express instruction of her superior, Estrella Cuyno, that she deal directly with Lito Jacinto, TFS' contact person in Manila City Hall. To prove the actual receipt of the said amount by Lito Jacinto, she presented a document marked as Exhibit "6." The said document was prepared by [Gamboa] herself, which is just a reproduction of Exhibit "5" or the Request of