

## THIRD DIVISION

[ G.R. No. 204755, September 17, 2014 ]

**SOLEDAD TRIA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### D E C I S I O N

**REYES, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated April 20, 2012 and Resolution<sup>[2]</sup> dated September 18, 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 33529 which affirmed the Decision<sup>[3]</sup> dated July 16, 2010 of the Regional Trial Court (RTC) of Valenzuela City, Branch 172, in Criminal Case No. 970-V-01, finding Soledad Tria (petitioner) guilty beyond reasonable doubt of *estafa* and sentencing her to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum.

#### The Facts

The criminal information to which the petitioner pleaded "Not Guilty" reads:

That on or [about] March 8, 2000 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously defraud and deceive SEVEN SPHERE ENTERPRISES represented by one GERTRUDES MENESES in the following manner to wit: the said accused received assorted jewelry from SEVEN SPHERE ENTERPRISES worth **P23,375.50** under the express obligation on the part of the said accused to sell the same and to account for and deliver the proceeds of the sale or to return the merchandise, if unsold, to SEVEN SPHERE ENTERPRISES, within six (6) days from receipt thereof, but said accused once in possession of the pieces of jewelry, with abuse of trust and confidence, misappropriate, misapply and convert to her own personal use and benefit the said amount of **P23,375.50** and despite repeated demands to her to immediately account for and remit the proceeds of the sale of [sic] to return the goods, refused and failed and still refuses and fails to do so, to the damage and prejudice of SEVEN SPHERE ENTERPRISES in the aforementioned amount of **P23,375.50**.

CONTRARY TO LAW.<sup>[4]</sup>

In support of the foregoing accusation, the prosecution presented the testimony of its lone witness, Gertrudes Meneses (Meneses), as well as several pieces of documentary evidence. Taken together, the evidence for the prosecution showed

that:

Meneses is a Cash Custodian of Seven Sphere Enterprises (Seven Sphere) while the petitioner was one of the consignees. On March 8, 2000, the petitioner received on consignment from Seven Sphere twenty two (22) pieces of jewelry valued at P47,440.00 subject to the condition that she will remit the proceeds of the sale thereof and return any unsold pieces within six (6) days.<sup>[5]</sup> The petitioner returned eight (8) unsold pieces of the jewelry valued at P16,380.00 leaving a balance of P31,060.00. To cover the balance, the petitioner issued four (4) Banco Filipino post-dated checks all with the equal face value of P7,765.00 to wit: No. 0089027 dated March 30, 2000; No. 0089028 dated April 15, 2000; No. 0089029 dated April 30, 2000, and No. 0089030 dated May 15, 2000. When presented for payment, however, the checks were dishonored by the issuing bank for the reason: "account closed." Upon being informed by Seven Sphere that the checks were dishonored for payment, the petitioner returned three (3) pieces of jewelry valued at P7,684.50 thus leaving the unpaid balance of P23,375.50.<sup>[6]</sup>

Seven Sphere then sent a demand letter to the petitioner for the payment of the unpaid balance. Despite receipt of the letter, however, the petitioner failed to pay.<sup>[7]</sup>

The defense failed to present evidence despite several opportunities given by the trial court. Hence, on April 19, 2010, the petitioner was declared to have waived her right to present evidence and the case was submitted for decision.<sup>[8]</sup>

### **Ruling of the RTC**

In its Decision<sup>[9]</sup> dated July 16, 2010, the RTC found the petitioner guilty of *estafa*, as defined and penalized under Article 315 (1)(b) of the Revised Penal Code (RPC), for misappropriating the proceeds of the sale of the jewelry consigned to her by Seven Sphere. The RTC found that the unremitted balance was actually P23,370.00 because the petitioner remitted cash and jewelry worth P7,690.00.<sup>[10]</sup> Accordingly, the RTC judgment disposed as follows:

WHEREFORE, premises considered, the Court finds the accused SOLEDAD TRIA guilty beyond reasonable doubt as principal of the crime of *estafa* under Art. 315 subdivision No. 1 paragraph (b) of the Revised Penal Code. She is hereby sentenced to suffer the indeterminate penalty of four (4) years two (2) months of prision correccional as minimum to eight (8) years of prision mayor as maximum. The accused is ordered to indemnify the private complainant of the unremitted amount of P23,370.00.

There being no showing on record that the private complainant paid the legal fees on the civil liability arising from the crime as there was no notice to pay sent to the private complainant, the legal fees shall be considered a lien on the judgment in satisfaction of said lien.

Costs against the accused.

SO ORDERED.<sup>[11]</sup>

## **Ruling of the CA**

In its Decision<sup>[12]</sup> dated April 20, 2012, the CA sustained the conviction meted upon the petitioner upon finding that all the elements of estafa were established beyond reasonable doubt by the prosecution. The CA ruling disposed thus:

**WHEREFORE**, the appealed Decision in Criminal Case No. 970-V-01 is hereby **AFFIRMED** and the instant appeal is **DISMISSED** for lack of merit.

**SO ORDERED.**<sup>[13]</sup>

The petitioner sought reconsideration<sup>[14]</sup> but her motion was denied in the CA Resolution<sup>[15]</sup> dated September 18, 2012. Hence, this petition.

### **The Arguments of the Petitioner**

In lobbying for her acquittal, the petitioner asserts that the element of fraud in estafa is absent in view of Meneses' admission that the petitioner returned the unsold pieces of jewelry and remitted part of the sale proceeds of the sold pieces. The petitioner also claims that during the pendency of the case, she has been paying her balance to Seven Sphere upon the latter's declaration that she will be eventually absolved from liability once she settles the full amount. The petitioner avers that if it was her intention to defraud Seven Sphere, then she could have evaded paying the balance or even denied receipt of the jewelry entrusted to her.<sup>[16]</sup>

The petitioner further argues that the penalty imposed by the courts *a quo* was incorrect because "the fact that the amount involved exceed P22,000.00 should not be considered in the initial determination of the indeterminate penalty and instead, the matter should be taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence." She proffers that the minimum of her indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years while the maximum term should be at least six (6) years and one (1) day, plus an additional one (1) year for each additional P10,000.00 in excess of P22,000.00.<sup>[17]</sup>

In its Comment,<sup>[18]</sup> filed through the Office of the Solicitor General (OSG), the respondent prays that the petition be denied and the conviction meted by the courts *a quo* upon the petitioner be sustained for lack of reversible error.

In her Reply,<sup>[19]</sup> the petitioner explains that her failure to present any evidence during trial was due to her verbal agreement with Seven Sphere, through Meneses. Apparently, the petitioner agreed to render services to Seven Sphere in order to settle her unpaid accountabilities by deducting portions thereof from her monthly salary. The petitioner claims that she relied in good faith on the representation of Seven Sphere that such arrangement will cause the dismissal of the case filed against her. Attached to her Reply are copies of the front pages of her pay envelopes

showing that she started working for Seven Sphere in September 2006 and from then on until February 2008, payments for her unpaid balance to Seven Sphere were deducted from her monthly salary.<sup>[20]</sup>

Lastly, the petitioner contends that she failed to account for the jewelries or their equivalent value because “[they] were, in truth and in fact, sold on credit, to different customers, who, however, failed and/or refused to return the jewelries or pay the value thereof.”<sup>[21]</sup>

### **Ruling of the Court**

The appeal is devoid of merit.

Preliminarily, it bears emphasizing that factual findings of the trial court, especially when affirmed by the appellate court, are binding on and accorded great respect by this Court.<sup>[22]</sup> There are instances when this rule is not applicable such as: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the CA is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the CA went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the CA overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the CA are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the CA are premised on the absence of evidence and are contradicted by the evidence on record.<sup>[23]</sup>

None of these situations are, however, attendant in the present case. Instead, a re-examination of the evidence proffered by the prosecution and all records in the trial proceedings confirm the moral certainty of the petitioner’s guilt for the crime imputed to her.

*Estafa* through misappropriation or conversion is defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code (RPC), which states:

Art. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow 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.

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: (1) that the money, good or other personal property is 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 be 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.<sup>[24]</sup>

The first, third and fourth elements are immediately discernible from the prosecution's evidence. Exhibit "B" which is the 'Receipt of Goods on Consignment' shows that on March 8, 2000, the petitioner received pieces of jewelry on consignment from Seven Sphere with the obligation to return the unsold pieces or remit the sale proceeds of the sold items. This documentary evidence was corroborated by the testimony of Meneses, who signed the document in behalf of the consignor at the time of its execution. She identified the petitioner's signature on the document and she confirmed the contents of the agreement as being a consignment contract, as well as the petitioner's consequent duties thereunder to remit sale proceeds or return the unsold pieces of jewelry.

It is also indubitable from Meneses' un rebutted testimony that Seven Sphere was prejudiced in the amount of P23,370.00 after the petitioner failed to return the remaining eleven (11) pieces of jewelry consigned to her or their value. Demand for payment was made upon the petitioner in a letter dated August 21, 2001 but despite receipt thereof, she was unable to return the remaining pieces of jewelry or remit their sale proceeds.

Meanwhile, the second element of misappropriation or conversion has been defined in this wise:

The words "convert" and "misappropriate" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation,