

## FIRST DIVISION

[ G.R. No. 191025, July 31, 2013 ]

**RHODORA PRIETO, PETITIONER, VS. ALPADI DEVELOPMENT CORPORATION, RESPONDENT.**

### R E S O L U T I O N

**LEONARDO-DE CASTRO, J.:**

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, petitioner Rhodora Prieto (Prieto) seeks to annul and set aside the Decision<sup>[1]</sup> dated August 28, 2009 and Resolution<sup>[2]</sup> dated November 12, 2009 of the Court of Appeals in CA-G.R. SP No. 91714, which (1) annulled and set aside, on the ground of grave abuse of discretion, the Orders dated March 8, 2005<sup>[3]</sup> and August 8, 2005<sup>[4]</sup> of the Regional Trial Court {RTC} of Manila, Branch 8, in Criminal Case No. 97-157752, granting Prieto's Demurrer to Evidence; and (2) reinstated and remanded said criminal case to the RTC for further trial.

Prieto was employed as an accounting clerk and cashier of the Alpadi Group of Companies, composed of respondent Alpadi Development Corporation (ADC), Manufacturers Building, Incorporated (MBI), and Asian Ventures Corporation (AVC). ADC and MBI are both engaged in the business of leasing office spaces.

Prieto was charged before the RTC with the crime of estafa in an Information<sup>[5]</sup> dated May 13, 1997 that reads:

That in or about and during the year from 1992 up to 1994, inclusive, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud ALPADI DEVELOPMENT CORPORATION, a business entity duly organized and existing under the laws of the Republic of the Philippines, and doing business in said City, in the following manner, to wit: the said accused being then employed as cashier and accounting clerk of the said corporation, collected and received rental payments from the different tenants of Alpadi Development Corporation in the total amount of P544,858.64, under the express obligation on the part of said accused to account for and remit immediately the deposits and rentals due to said corporation, but the said accused, once in the possession of the said amount, far from complying with her aforesaid obligation, failed and refused and still fails and refuses to do so, despite repeated demands made upon her to that effect and instead, with intent to defraud, unfaithfulness and grave abuse of confidence, misappropriated, misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of Alpadi Development Corporation represented by Angeles Manzano, in the aforesaid sum of P544,858.64, Philippine Currency.

Trial ensued and the prosecution presented its evidence which included, among other things, the testimonies of Angeles A. Manzano (Manzano), Office Manager of ADC and MBI, and Jaime Clamar, Jr. (Clamar), Private Investigator; Prieto's "*kusang-loob na salaysay*" executed before Clamar on January 3, 1995, in which Prieto admitted collecting rental payments from the tenants of ADC and MBI, making it appear through fraudulent deposit slips that she deposited her collections in the bank accounts of ADC and MBI, and actually using said collections to pay for her household expenses and to lend to employees of Tri-Tran Transit; the fraudulent deposit slips; Clamar's Investigation Report dated July 18, 1995 recommending that Prieto be charged in court for *estafa* and be made to pay the amount she misappropriated; computation of Prieto's unremitted/undeposited rental collections prepared by Lourdes P. Roque, Supervising Director, and Manzano, Office Manager, with the *conforme* of Prieto; and Affidavit dated December 16, 1994 of Harry Chua Ga Haou, a tenant of MBI, stating that Prieto, personally and by a handwritten note, requested that rental payments be made in cash rather than checks.

After resting its case, the prosecution filed its Formal Offer of Evidence, which was admitted by the RTC in an Order dated December 13, 2004. Prieto, represented by the Public Attorney's Office (PAO), asked for leave of court to file a Demurrer to Evidence. The RTC gave Prieto 20 days from December 13, 2004 within which to file her Demurrer to Evidence. The 20<sup>th</sup> day of the period was January 2, 2005, a Sunday, so Prieto could still file her Demurrer to Evidence on January 3, 2005, a Monday. Records show that Prieto filed her Demurrer to Evidence only on January 13, 2005.

In her Demurrer to Evidence, Prieto argued that she could not be convicted for *estafa* because (1) as an employee, her custody of the rental collections was precarious and for a temporary purpose or short period only, and the juridical or constructive possession of the said collections remained in her employer; and (2) there was no showing that demand was made upon Prieto to deliver or return the rental collections to ADC.

In an Order dated March 8, 2005, the RTC granted Prieto's Demurrer to Evidence, reasoning as follows:

Accused being an employee of the complaining corporation, cannot be convicted of *estafa* because when accused received the rental payments from the tenants, she only received the material and physical possession of the money and the juridical possession remains in the owner. The position of accused is likened to that of a bank teller receiving money from the depositors.

The Supreme Court ruled in the case *GUZMAN vs. CA* (G.R. No. L-9572[,], July 31, 1956) that:

"The case cited by the Court of Appeals (*People v. Locson*, 57 Phil., 325), in support of its theory that appellant only had the material possession of the merchandise he was selling for his principal, or their proceeds, is not in point. In said case, the receiving teller of a bank who misappropriated money received by him for a bank, was held guilty of qualified theft on the theory that the possession of the teller is the

possession of the bank. There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his principal. In the former case, payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous, right to retain the money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault (Article 1915, new Civil Code; Article 1730, old)."

Accused in this case is not even an agent of the corporation but a cashier and accounting clerk. Payment of rentals by the tenants to the accused is also payment to the corporation because accused is only a cashier whose duties include the receipt of rentals due from the tenants.

WHEREFORE, the Demurrer to Evidence is granted.

On the civil aspect of the case, set for hearing on May 25, 2005 and June 13, 2005 at 8:30 A.M. <sup>[6]</sup>

ADC, as the private complainant in Criminal Case No. 97-157752, filed a Motion for Reconsideration of the aforementioned RTC Order. The RTC, in an Order dated August 8, 2005, denied the Motion for Reconsideration, thus:

[T]he Court is constrained to deny the [Motion for Reconsideration filed by private complainant] because the prosecution failed to prove all the elements of estafa with abuse of confidence under paragraph 1(b) of Art. 315 which are the following:

- 1) That money, goods or other personal property be 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 as 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 to the offender.

In this case, the prosecution failed to prove the first element. The Supreme Court ruled in the case of *Burce vs. CA, supra*, to wit:

"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. In this case, petitioner was a cash custodian who was primarily responsible for the cash-in-vault. Her possession of the cash belonging to the bank is akin to that of a bank teller, both being mere bank employees."

To reiterate, when accused received the rental payments from the tenants, she only received the material and physical possession of the money and the juridical possession remains in the owner.

In view of the foregoing, [the] Motion for Reconsideration is hereby DENIED.

ADC sought recourse from the Court of Appeals by filing a Petition for *Certiorari*, docketed as CA-G.R. SP No. 91714. ADC averred that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Orders dated March 8, 2005 and August 8, 2005, contrary to law and jurisprudence, and despite the overwhelming evidence on record proving Prieto's liability for estafa. ADC additionally pointed out that Prieto's Demurrer to Evidence was filed beyond the 20-day period granted by the RTC.

Prieto, through the PAO, filed her Comment, arguing that: (1) the Petition for *Certiorari* of ADC was not anchored on any of the grounds provided under Rule 65 of the Rules of Court and failed to expressly indicate that there was no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, available; (2) ADC had no personality to file the Petition because only the Office of the Solicitor General (OSG) may represent the Republic of the Philippines or the People, in criminal proceedings, before the Court of Appeals and the Supreme Court; and (3) the grant of the demurrer to evidence dismissed the criminal case and was equivalent to Prieto's acquittal, from which no appeal could be taken, as it would place Prieto in double jeopardy.

The OSG, on behalf of the People, eventually filed, in lieu of a Comment, a Manifestation and Motion ratifying and adopting the Petition for *Certiorari* of ADC. According to the OSG, in addition to Prieto's own confession, the prosecution had duly proven the elements of *estafa*. The cases cited by the RTC in its assailed Orders were inapplicable to Prieto's case. Also, since the grant of the demurrer to evidence is tantamount to an acquittal, albeit based on erroneous grounds and misinterpretation of law and jurisprudence, the remedy of appeal was not available to the People. Thus, the Petition for *Certiorari* was the proper remedy.

The Court of Appeals rendered its Decision on August 28, 2009 granting the Petition for *Certiorari* in CA-G.R. SP No. 91714 and finding that:

Evidence on record strongly supports the People's argument that the cases cited by the trial court are inapplicable in this case. The elements of Estafa have been duly proven by the prosecution. Records reveal that

[Prieto] had admitted having failed to remit the rentals from 1992 to 1994, or for a period of two (2) years. While it is a fact that she was instructed to have the rentals collected to be deposited on the day of the collection or the following day, however, since the misappropriation was discovered only after two (2) years, it only goes to show that she had the discretion as to when to have these rentals deposited or not to have them deposited at all. She had control as to the amount she wished to include as part of her collections, which led her to misappropriating the rental collections. The said misappropriation would not have been discovered only after 2 years had there not been a fiduciary relationship between [Prieto] and her employer. As such, she could not be considered not having juridical possession of the rentals she had collected. Clearly, the trial court erred in declaring that [Prieto] is likened to a bank teller, whose possession of the cash collections is merely physical. Contrary to such findings, [Prieto] in this case had physical or material possession and juridical possession with a duty to make delivery of the collections she received in trust.

Moreover, it is well to note that the case of *People vs. Benitez* raised by [ADC], finds application in the instant case. In *Benitez*, the accused was employed as collector of rents of the houses owned by his employer. For two (2) months, the accused made several collections from his employer's tenants amounting to P540.00. Having failed to turn over said amount, or to account for it, to his employer, upon demand, the accused offered to work in the former's establishment, in the sum of P100.00, to be deducted from his salary every month until the whole amount of P540.00 is fully paid. The agreement was reduced to writing. However, after working for a few days, the accused did not report for work. His employer sent him a demand letter for the settlement of his account. As the accused failed to pay the amount of his obligation, a complaint for Estafa was filed against him, and for which he was convicted. The Supreme Court ratiocinates in this case that the failure to account upon demand, for funds or property held in trust is circumstantial evidence of misappropriation.<sup>[7]</sup>

Given the findings of the Court of Appeals that the RTC Orders were in contravention of law and settled jurisprudence and were, therefore, issued with grave abuse of discretion amounting to lack or excess of jurisdiction, the appellate court held that its reversal of the grant of Demurrer to Evidence did not violate Prieto's right against double jeopardy, citing *People v. Hon. Laguio, Jr.*<sup>[8]</sup> and *Dayap v. Sendiong*.<sup>[9]</sup>

The Court of Appeals lastly ruled, based on *People v. Nano*,<sup>[10]</sup> that the filing of the Petition for *Certiorari* by ADC, instead of by the OSG, was a mere defect in form, which was cured when the OSG subsequently filed a Manifestation and Motion ratifying and adopting said Petition.

In the end, the Court of Appeals decreed:

**WHEREFORE**, finding grave abuse of discretion amounting to lack or excess of jurisdiction, as prayed for, the assailed Orders, of the Regional Trial Court of Manila, Branch 8, dated 08 March 2005 and 08 August 2005, in Criminal Case No. 97-157752, are hereby **ANNULLED and SET**