

## THIRD DIVISION

[ G.R. No. 172820, June 23, 2010 ]

**DULCE PAMINTUAN, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

We review in this **Rule 45 petition** the decision<sup>[1]</sup> and the resolution<sup>[2]</sup> of the Court of Appeals (CA) that totally affirmed the decision<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 2, Batangas City in Criminal Case No. 11002.

The RTC found **Dulce Pamintuan** (*petitioner*) guilty beyond reasonable doubt of the crime of *estafa*, penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, and sentenced her to imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

The Information charging the petitioner with *estafa*, as defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, reads:

That on or about February 16, 1996 at Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, after having received in trust and on commission from one Jeremias Victoria a diamond ring worth SEVEN HUNDRED SIXTY FIVE THOUSAND (P765,000.00) PESOS, Philippine Currency, with the understanding and agreement that the same shall be sold by her on cash basis at a price not less than its value and that the overprice, if any, shall be her commission and the proceeds of the sale shall be remitted to Jeremias Victoria immediately upon sale thereof, and if unsold, said diamond ring will be returned to Jeremias Victoria within a period of three (3) days from the date of receipt, but said accused, far from complying with her obligation to return the unsold diamond ring, with grave abuse of confidence, with intent to defraud, did then and there willfully, unlawfully and feloniously convert and misappropriate the same to her own personal use and benefit and despite demands made upon her to return the said jewelry, she failed and refused to do so, to the damage and prejudice of Jeremias Victoria in the aforementioned amount of P765,000.00, Philippine Currency.

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

The petitioner pleaded not guilty to the charge; trial on the merits followed.

### **The Prosecution Evidence**

The prosecution presented two witnesses Ð Jeremias Victoria and Aurora C. Realon Ð to establish its case. Jeremias testified that on February 16, 1996, the petitioner received from him a diamond ring worth P765,000.00 on the condition that it would be sold on commission basis. At the time she received the ring, the petitioner signed a document entitled *Katibayan*,<sup>[5]</sup> authorizing the sale of the ring under the following express conditions: the petitioner was to sell the ring for cash and with an overprice as her profit, and remit the full payment to Jeremias; she would not entrust the ring to anybody; and if unsold within three days, she must return the ring, or pay for it in cash.<sup>[6]</sup>

The petitioner failed to remit payment for the diamond ring despite the lapse of the agreed period. Neither did she return the diamond ring. Subsequently, Jeremias, through his lawyer, sent two (2) formal demand letters<sup>[7]</sup> for the petitioner to comply with her obligations under the *Katibayan*. The demand letters went unheeded. Thus, the petitioner failed to comply with her obligations to Jeremias.<sup>[8]</sup>

As *rebuttal* evidence, Jeremias claimed that the petitioner failed to return the diamond ring because she pawned it. Jeremias also denied that he received any jewelry from the petitioner in exchange for the diamond ring.<sup>[9]</sup>

### **The Defense Evidence**

The petitioner testified in her behalf and admitted that she received the diamond ring from Jeremias in exchange for seven (7) pieces of jewelry valued at P350,000.00 that she also then delivered to Jeremias for cleaning and eventual sale. The petitioner likewise stated that the delivery of the seven pieces of jewelry was evidenced by a receipt that Jeremias signed,<sup>[10]</sup> and that she subsequently tried to return the diamond ring but he refused to accept it. Although the petitioner acknowledged signing the *Katibayan*, she claimed that Jeremias entrusted the diamond ring to her before he left for abroad, and that she only heard from him again after the criminal case had been filed against her. The petitioner likewise claimed that she tried to return the diamond ring during the preliminary investigation of the case, but Jeremias refused to accept it.

As *sur-rebuttal* evidence, the petitioner presented a Deed of Real Estate Mortgage dated August 25, 2003 (*mortgage deed*),<sup>[11]</sup> executed by Danilo Pamintuan, the petitioner's husband. According to the terms of the mortgage deed, Danilo admitted that Jeremias had entrusted the diamond ring to him on February 16, 1996, not to the petitioner, and that the mortgage deed was constituted in consideration of Danilo's promise to return the diamond ring to Jeremias.

### **The RTC's Ruling**

The RTC found the petitioner guilty beyond reasonable doubt of *estafa*.<sup>[12]</sup> It also found that the defense failed to refute the prosecution evidence establishing all the elements of the crime charged. The RTC ruled, too, that the mortgage deed only served as proof of the restitution of or reparation for the value of the diamond ring

and thus addressed only the petitioner's civil liability, not her criminal liability. The dispositive portion of the RTC decision reads:

**WHEREFORE**, finding the accused **DULCE PAMINTUAN** guilty beyond reasonable doubt for the crime of *estafa*, defined and penalized under Article 315, par. 1 (b) of the Revised Penal Code, without modifying circumstances, she is hereby sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

Considering that there is already a settlement as to the payment of the civil liability, as embodied in the Real Estate Mortgage executed by the parties, this Court hereby refrains to pronounce the corresponding civil indemnity.

**SO ORDERED.**

The petitioner appealed to the CA.

### **The CA Ruling**

The CA agreed with the RTC that the petitioner was guilty beyond reasonable doubt of *estafa* and thus dismissed the petitioner's appeal.<sup>[13]</sup> The CA ruled that the prosecution evidence showed that Jeremias entrusted possession of the diamond ring to the petitioner, not to her husband. The CA observed that the prosecution duly proved the petitioner's misappropriation by showing that she failed to return the diamond ring upon demand. That misappropriation took place was strengthened when the petitioner failed to refute Jeremias's allegation that she pawned the diamond ring – an act that ran counter to the terms of her agency under the *Katibayan*.

The petitioner moved to reconsider the CA decision, arguing that the CA disregarded the legal significance of the mortgage deed, and filed the present petition after the CA denied her motion.

### **The Issues**

The petitioner raises the following issues:

1. whether the CA correctly disregarded the effect of the mortgage deed on her criminal liability; and
2. whether the elements of the crime of *estafa* under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, were duly proven beyond reasonable doubt.

The petitioner asserts that the terms of the mortgage deed negated the element of misappropriation, and the RTC and the CA did not at all consider these when they convicted her. At the same time, she disputes the terms of the *Katibayan*, as its

stipulations, written in fine print, did not truly disclose the real nature of the transaction between her and Jeremias. She also claims that she became the owner of the diamond ring after it was turned over to her. The petitioner further insists that she signed the *Katibayan* without taking heed of its terms because she trusted Jeremias.

### **The Court's Ruling**

#### **We find the petition unmeritorious.**

The issues raised by the petitioner are essentially encapsulated by the second issue outlined above *Ð i.e.*, whether the crime of *estafa* has been sufficiently established; the first issue relating to the mortgage deed is a matter of defense that should be considered in resolving the second issue.

Article 315, paragraph 1(b) of the Revised Penal Code, as amended, under which the petitioner was charged and prosecuted, 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 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: (1)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; (2)misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (3)the misappropriation,

conversion or denial is to the prejudice of another; and (4) demand by the offended party that the offender return the money or property received.<sup>[14]</sup>

The essence of this kind of *estafa* is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made.<sup>[15]</sup> 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.<sup>[16]</sup> 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.<sup>[17]</sup> In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.<sup>[18]</sup>

In this case, the petitioner asserts that the prosecution failed to sufficiently prove the first and second elements of the crime. The petitioner also asserts that these elements were negated by her testimony and by the mortgage deed that showed she received the diamond ring as owner, and not as an agent. The petitioner argues that she could not have misappropriated or converted the diamond ring precisely because she was its owner.

### **The First Element: Receipt of Goods in Trust**

The prosecution proved the first element of the crime through the testimony of Jeremias who related that he gave the petitioner the diamond ring for sale on commission basis. The unequivocal terms of the *Katibayan* corroborated Jeremias' testimony and showed the fiduciary relationship between the two parties as principal and agent, where the petitioner was entrusted with the diamond ring under the specific authority to sell it within three days from its receipt and to return it if it remains unsold within that period.

Significantly, the petitioner admitted the fiduciary relationship between herself and Jeremias - an aspect of the case that the RTC and the CA duly noted through the finding that the petitioner admitted receiving the diamond ring from Jeremias to be sold on commission basis.<sup>[19]</sup>

Against the prosecution's case, the defense submitted its own evidence and varying theories that unfortunately suffered from serious contradictions.

*First*, at the earliest stages of the trial proper, the petitioner categorically admitted on the witness stand that she received the diamond ring in order to sell it on commission basis. Immediately after, she testified that she gave several pieces of jewelry (evidenced by a receipt) to Jeremias in exchange for the diamond ring. As the RTC noted, however, the written receipt of the pieces of jewelry did not support the theory that they had been given by way of exchange for the diamond ring. The RTC observed:

[T]here is nothing in the document to show that it was received, nor it was given to the private complainant in exchange of the latter's ring. There is not even, in the said list, any valuation or costing of each