

THIRD DIVISION

[G.R. No. 165411, June 18, 2009]

**WILMA TABANIAG, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

For review before this Court is the February 27, 2004 Decision^[1] and September 22, 2004 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CR No. 24906, which affirmed the October 16, 2000 Decision^[3] of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 268, Pasig City, finding Wilma Tabaniag (petitioner) guilty of the Crime of *Estafa* as defined and penalized under Article 315 of the Revised Penal Code, with modification as to the penalty.

The Information^[4] dated September 15, 1994, in Criminal Case No. 106995, reads as follows:

That on or about and during the month of January 1992, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding each other, received in trust from one Dennis Espiritu assorted jewelries (sic) amounting to P509,940.00 under the express obligation on the part of the accused to sell the same and thereafter to remit the proceeds of the sale and/or return said jewelries (sic) if not sold to said complainant, but the accused once in possession of said jewelries (sic), far from complying with their aforesaid obligation, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misapply, misappropriate, and convert to their own personal use and benefit and despite demands to pay the proceeds of the sale and/or to return the said jewelries (sic) in the amount of P509,940.00, they failed and refused, to the damage and prejudice of the complainant in the aforementioned amount of P509,940.00.

CONTRARY TO LAW.^[5]

When arraigned, petitioner pleaded "not guilty." Co-accused Melandia Olandia (Olandia) was dropped from the Information upon the request^[6] of complainant Dennis Espiritu (Dennis).^[7] Thereafter, trial ensued.

The prosecution presented two witnesses, namely: Dennis and his wife Ma. Victoria (Victoria) [complainants].

On March 5, 1997, the prosecution filed a Motion^[8] for the admittance of an Amended Information. The defense filed their Opposition^[9] to the said motion.

On August 27, 1997, the RTC issued an Order^[10] granting the motion of the prosecution. The RTC ruled that the amendments to the Information sought by the prosecution were merely amendments in form and thus allowable under the rules.

The Amended Information^[11] reads as follows:

On or about and during the month of February 1992, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, and mutually helping and aiding each other, received in trust from one Victoria Espiritu assorted jewelries (sic) amounting to P155,252.50 under the express obligation on the part of the accused to sell the same and thereafter to remit the proceeds of the sale and/or return said jewelries (sic) if not sold to said complainant, but the accused once in possession of said jewelries (sic), far from complying with their aforesaid obligation, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misapply, misappropriate, and convert to their own personal use and benefit and despite demands to pay the proceeds of the sale and/or to return the said jewelries (sic) in the amount of P155,252.50, they failed and refused, to the damage and prejudice of the complainant in the aforementioned amount of P155,252.50.

CONTRARY TO LAW.^[12]

The defense presented two witnesses, namely: petitioner Tabaniag and Juan Tapang III (Tapang).

On October 16, 2000, the RTC found petitioner guilty of the crime of *Estafa*, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused WILMA TABANIAG guilty beyond reasonable doubt of the crime of Estafa as defined and penalized under Article 315 of the Revised Penal Code and hereby sentences her to suffer the penalty of imprisonment from ten (10) years and one (1) day of Prision Mayor in its maximum period to fourteen (14) years and eight (8) months of Reclusion Temporal in its minimum period and to indemnify the offended party in the amount of Sixty-Two Thousand Nine Hundred (P62,900.00). With costs.

SO ORDERED.^[13]

The facts of the case as gleaned from the records are as follows:

Complainants, both doctors by profession, are engaged in part-time jewelry business.^[14] Petitioner, on the other hand, is an agent who sells the pieces of jewelry of complainants on commission basis. On February 7, 1992, petitioner received from Victoria several pieces of jewelry amounting to Php106,000.00 as

evidenced by a trust receipt^[15] signed by petitioner. Later on February 16, 1992, petitioner again received several pieces of jewelry amounting to Php64,515.00 as evidenced by another trust receipt^[16] signed by petitioner.

After weeks passed, Victoria alleged that she made several verbal demands^[17] to petitioner to return the pieces of jewelry. Likewise, complainants filed a complaint^[18] at *Barangay Kapitolyo*, Pasig City, against Tabaniag, Jane Bisquera (Bisquera) and Olandia for *estafa* and violations of *Batas Pambansa Bilang 22* (BP 22).

Petitioner, in her defense, alleged that she entrusted the pieces of jewelry to Bisquera who issued Security Bank Checks^[19] as payment. Petitioner claimed that Victoria knew that she was planning to sell the pieces of jewelry to Bisquera.^[20] Moreover, petitioner contends that she and Olandia delivered the said Security Bank checks to Victoria, who then deposited the same to her account. The checks issued by Bisquera bounced as the accounts were closed and thus Victoria asked petitioner to do something about it. Petitioner claimed that she filed cases for *estafa* and violation of BP 22 against Bisquera. Likewise, petitioner asked the court for the issuance of an *alias* warrant of arrest and a hold departure order against Bisquera.^[21]

On cross-examination, however, petitioner admitted that the cases she filed against Bisquera did not involve the same checks which are the subject matter of the case at bar.^[22]

On February 27, 2004, the CA affirmed with modification the RTC decision, the dispositive portion of which reads as follows:

WHEREFORE, the Decision finding accused-appellant Wilma Tabaniag guilty beyond reasonable doubt of the crime of *estafa* is AFFIRMED with the indeterminate penalty modified to four (4) years and two (2) months of *prision correccional*, as minimum, to twelve (12) years of *prision mayor*, as the maximum, and with the award of indemnity in the amount of Php62,900.00, deleted.

SO ORDERED.^[23]

The pertinent portions of the CA decision are hereunder reproduced, to wit:

Tabaniag entered into an agreement with Victoria Espiritu for the sale of jewelry. She obligated herself, among others, to deliver and account for the proceeds of all jewelry sold and to return all other items she could not sell. The jewelry could not be sold on installment. She abused the confidence reposed upon her by misrepresenting herself to have sold the jewelry to a certain Bisquera and failing to remit the profit after demand to do so by Espiritu. Due to her failure to forward the returns from the sale of the jewelry, Espiritu suffered loss of income and profit.

The receipts issued to and signed by Tabaniag corroborate the prosecution's testimonial proof that she personally received the jewelry. Tabaniag's uncorroborated claim that Victoria Espiritu directly transferred

the jewelry to a certain Jane Bisquera cannot stand along against this factual finding. The checks issued by Bisquera do not conclusively prove a direct transaction between her and Espiritu. x x x^[24]

On March 26, 2004, petitioner filed a Motion for Reconsideration^[25] assailing the CA decision.

On August 2, 2004, Dennis filed a Motion to Dismiss,^[26] attaching thereto an Affidavit of Desistance,^[27] to the effect that he was withdrawing the criminal complaint because he and petitioner had already reached an amicable settlement, the latter obligating herself to pay the civil aspect of the case.

On September 22, 2004, the CA issued a Resolution^[28] denying petitioner's Motion for Reconsideration, as well as the Motion to Dismiss filed by Dennis.

Hence, herein appeal with the following assignment of errors:

First Assignment of Error

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN CONCLUDING THAT THERE WAS ABUSE OF CONFIDENCE ON THE PART OF ACCUSED/PETITIONER TABANIAG IN ENTRUSTING THE SUBJECT JEWELRIES (SIC) TO BISQUERA FOR SALE ON COMMISSION TO PROSPECTIVE BUYERS.

Second Assignment of Error

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RULING ON THE VALIDITY OF THE AMENDMENT OF INFORMATION DESPITE ITS VIOLATION OF SUBSTANTIAL RIGHT OF ACCUSED TABANIAG.

Third Assignment of Error

THE HONORABLE COURT OF APPEALS SERIOUSLY ABUSED ITS DISCRETION IN RULING THAT THE LETTER COMPLAINT SENT TO THE BGY. CAPTAIN OF BGY. KAPITOLYO WHICH WAS NEVER RECEIVED BY ACCUSED A DEMAND IN CONTEMPLATION OF SECTION 1(b) OF ARTICLE 315 OF THE REVISED PENAL CODE.

Fourth Assignment of Error

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT THE MOTION TO DISMISS/AFFIDAVIT OF DESISTANCE OF ESPIRITU WILL NOT EXONERATE ACCUSED TABANIAG DESPITE IT BEING THE SAME PERSON WHO EXECUTED THE SAME AFFIDAVIT TO DISMISS CASE VERSUS ACCUSED MELANIA OLANDIA.

Fifth Assignment of Error

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT FAILED TO RENDER A JUDGMENT OF ACQUITTAL OF THE ACCUSED ON GROUND OF REASONABLE DOUBT.^[29]

The petition is impressed with merit.

The elements of *estafa* under Article 315, par. 1 (b) of the Revised Penal Code are the following: (a) that money, goods 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; (b) that there be misappropriation or conversion of such money or property by 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) there is demand by the offended party to the offender.^[30]

Anent the first error raised by petitioner, this Court finds that, given the facts of the case and the evidence on record, the evidence is wanting to prove that petitioner had misappropriated or converted the pieces of jewelry entrusted to her by Victoria.

In his Complaint-Affidavit,^[31] Dennis alleged that petitioner gave the pieces of jewelry to her sub-agent Bisquera for the latter to sell the same. Furthermore, Dennis alleged that the checks issued as payment were dishonored, the reason being that the accounts were closed.

Petitioner does not deny entrusting the pieces of jewelry to Bisquera. The records of the case reveal that petitioner had in fact entrusted the pieces of jewelry to Bisquera as evidenced by two receipts^[32] dated February 16, 1992. The same is bolstered by the testimony of Tapang, who testified that he witnessed petitioner give the pieces of jewelry to Bisquera.^[33] Thus, since the pieces of jewelry were transferred to Bisquera, petitioner argues that she could not be guilty of misappropriation or conversion as contemplated by Article 315, par. 1(b) of the Revised Penal Code.

The essence of *estafa* under Article 315, par. 1(b) is the appropriation or conversion of money or property received to the prejudice of the owner. The words "convert" and "misappropriate" connote an 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.^[34]

The factual milieu of the case at bar is similar to *Serona v. Court of Appeals*^[35] (*Serona*) where pieces of jewelry were also transferred to a sub-agent. The Solicitor General, however, contends that the doctrine laid down in *Serona* is inapplicable as the agreement between complainants and petitioner provide a clear prohibition against sub-agency.^[36]

The conditions set forth in the two trust receipts signed by petitioner read:

x x x in good condition, to be sold in CASH ONLY within _____, days from date of signing this receipt. If I could not sell, I shall return all the