

THIRD DIVISION

[G.R. No. 171121, August 26, 2008]

**GINA DIAZ Y JAUD, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure which seeks to reverse and set aside (1) the Decision^[1] of the Court of Appeals in CA-G.R. CR No. 28751, dated 29 September 2005, which affirmed *in toto* the Decision^[2] of the Regional Trial Court (RTC) of Pasay City, Branch 117, in Criminal Case No. 02-1840, dated 11 December 2003, finding herein petitioner Gina Diaz y Jaud guilty beyond reasonable doubt of the crime of *Estafa* under paragraph 1(b),^[3] Article 315 of the Revised Penal Code; and (2) the Resolution^[4] of the appellate court, dated 10 January 2006, which denied herein petitioner's Motion for Reconsideration.

On 14 August 2002, an Information^[5] was filed against the petitioner before the RTC of Pasay City, Branch 117, charging her with the crime of *Estafa* under paragraph 1(b), Article 315 of the Revised Penal Code committed as follows:

That on or about the **13th day of May 2002**, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named [petitioner], **received in trust** from complainant **Erwina Sanuelle^[6]-Orallo**, cash amount of **Two Hundred Sixty Five Thousand and Nine Hundred (Php265,900.00) Pesos** under the express obligation of returning the same anytime upon demand of complainant, but the herein [petitioner], once in possession of the said amount, and far from complying with her obligation aforesaid, did then and there wilfully (sic), unlawfully and feloniously misappropriate, misapply and convert the said cash amount to her own personal use and benefit to the damage and prejudice of said complainant in the amount of **Php265,900.00 Pesos**. (Emphases supplied.)

Petitioner was arrested on 22 October 2002^[7] but was released after she posted a bail bond for P40,000.00.^[8]

Upon arraignment, the petitioner, assisted by counsel *de officio*,^[9] pleaded NOT GUILTY to the crime charged. During the pre-trial conference, petitioner admitted she is the same person charged in the Information and that she and Erwina Sanuelle-Orallo, the private complainant, know each other. Petitioner then interposed the defense of denial. Pre-trial was terminated.^[10] Thereafter, trial on the merits ensued.

The prosecution presented the private complainant as the principal and rebuttal witness. It also offered in evidence a document denominated as "Certification"^[11] which was marked as Exhibit "A."

Private complainant testified that she knows the petitioner because the latter was her former neighbor in Villamor Air Base until 1991. She disclosed that the petitioner is also her friend and their friendship developed as the latter frequented her house, as well as her barber shop, which was located in her residence. They frequently talked to each other and, as a result, they were able to establish a close relationship.^[12]

Sometime in the year 2001, petitioner borrowed from her various amounts of money, to wit: P3,000.00, P5,000.00 and P10,000.00. There was no consideration for lending the money to the petitioner other than their friendship. The same was not also subject to any interest. The petitioner simply promised that she would pay back the money on a day certain upon demand. The petitioner then was able to pay her back the aforesaid amounts in a span of five days, or sometimes within 15 days, or even within a period of one month.^[13]

Again, on 13 May 2002, private complainant lent to petitioner the amount of P265,900.00. Their arrangement as regards the said amount was embodied in a notarized document captioned "Certification," which was then marked as Exhibit "A." The "Certification" states:

THIS IS TO CERTIFY that I received in trust TWO HUNDRED SIXTY FIVE THOUSAND NINE HUNDRED (P265,900.00) PESOS from MRS. ERWINA SANUELE-ORALLO.

This certifies further that at anytime upon demand I shall return the said amount of TWO HUNDRED SIXTY FIVE THOUSAND NINE HUNDRED PESOS (P265,900.00) for herein MRS. ERWINA SANUELE-ORALLO without any interest.

IN WITNESS WHEREOF, we hereunto affix our signatures this 13th day of May 2002 at Villamor Air Base, Pasay City.^[14] (Emphases supplied.)

The afore-quoted document was signed by her as "trustor" and by the petitioner as "trustee."

Private complainant confirmed that she gave the amount of P265,900.00 to the petitioner because she trusted her and she was a good payer before. In other words, she lent to petitioner that big amount of money because of their friendship. She likewise affirmed that the petitioner had the freedom on how to spend, use or dispose of the money the latter borrowed from her.^[15]

On 30 May 2002, she demanded payment^[16] of the aforesaid amount from the petitioner. The petitioner, however, failed to pay without giving any reason for her failure to do so. She then brought the matter before the *barangay* for conciliation,^[17] but the petitioner ignored the same.^[18] Consequently, she instituted a criminal complaint for *Estafa* under paragraph 1(b), Article 315 of the Revised Penal Code

against the petitioner.

For its part, the defense presented the petitioner to refute the allegations of the private complainant. It also presented several pieces of documentary evidence which were marked as Exhibits "1" to "14."^[19]

During her testimony, petitioner admitted that she entered into a transaction with the private complainant wherein she borrowed money from her in the amount of P100,000.00 subject to interest payment.^[20] Together with the agreed interest, her total obligation to the private complainant amounted to P264,000.00. She claimed that out of the said amount, she had already paid the private complainant a total of P209,000.00. And as proof of payment, she presented lists of payment^[21] made by different people.^[22]

Petitioner revealed that the private complainant was involved in a money-lending business. The borrowers made payments to the petitioner every day. The P100,000.00 borrowed by her from the private complainant was distributed to different people, and the private complainant did not interfere on how she used the said money. The only thing she had to do was to pay back the amount to the private complainant.^[23]

Petitioner further explained that the aforesaid business was hers and that of the private complainant. The money would come from the private complainant and she would be the one in-charge of looking for clients to whom she would distribute the money that she obtained from the private complainant in the nature of a loan. Thereafter, she would collect from the borrowers and she would remit to the private complainant the payments on a daily basis. The private complainant acknowledged the receipts of payment every day by her signature affixing thereto. This was the reason why the lists of payment shown by her before the court *a quo* were made by different people and why the receipts were named after different persons.^[24]

On her cross-examination, petitioner admitted having signed a document captioned "Certification," wherein she acknowledged that she received the amount of P265,900.00 from the private complainant on 13 May 2002.^[25]

Petitioner further alleged that the P100,000.00 obtained by her from the private complainant was not given to her in full but in staggered sums. She affirmed that every time someone wanted to borrow money from her, the private complainant would give her the amount. Private complainant never met any of the borrowers because it was only her who had contact with them. She was the one who would guarantee the payments of the borrowers. **Petitioner stated that the private complainant simply gave her the money without any knowledge to whom she would lend the same because the former trusted her.**^[26]

Petitioner affirmed that the names in the receipts, which were marked as Exhibits "1" to "14," represented the names of the people to whom she lent the money. **The money she got from the private complainant was the very same money she distributed to other people.** She admitted that she was collecting the debts of the borrowers on behalf of the private complainant. She also revealed that she was acting as an agent of the private complainant in lending money to the borrowers.

The money that private complainant gave her was not loaned to her but was loaned to other people. Thus, she only held the money in trust to be lent to other people.^[27] Her money-lending transaction with the private complainant lasted only for nine (9) months.^[28]

To refute the testimony of the petitioner that most of the P265,900.00, which she received in trust from the private complainant had been paid as shown by the receipts marked as Exhibits "1" to "14," the prosecution again called the private complainant to the witness stand.

On rebuttal, private complainant clarified that the receipts presented by the petitioner before the court *a quo* as proofs of payment were receipts of the money which had already been paid. These receipts, however, did not include the amount mentioned in a document captioned "Certification," which both of them signed on 13 May 2002. Private complainant stated that the listings, which had been marked as Exhibits "1" to "14," were indeed proofs of payment. These, however, were proofs of payment of the previous amounts given to the petitioner. The said listings did not include the amount received by the petitioner as reflected in the "Certification." Thus, the amount of P265,900.00 remained unpaid.^[29]

Finally, private complainant emphasized that the first phase of her transaction with the petitioner wherein the amount involved was P100,000.00 happened between July or August, 2001 and November 2001; the second phase involving the amount of P265,900.00 started on 13 May 2002.^[30] **Private complainant affirmed that the amount of P265,900.00 she gave to the petitioner was not a loan. The same was given to the petitioner in trust, to be loaned by the petitioner to other people.** She considered it a loan when the petitioner failed to return the money to her. Likewise, it was the petitioner alone who released the money to the borrowers and collected their payments.^[31]

On 11 December 2003, the RTC rendered a Decision finding the petitioner guilty beyond reasonable doubt of the crime of *Estafa* under paragraph 1(b), Article 315 of the Revised Penal Code. The dispositive portion of the said Decision reads:

WHEREFORE, [herein petitioner] **GINA DIAZ Y JAUD** is hereby found **GUILTY** beyond reasonable doubt of the crime of **ESTAFA** under paragraph 1(b), Article 315 of the Revised Penal Code.

Accordingly, she is hereby sentenced to suffer an indeterminate penalty of **SIX (6) YEARS** of *prision correccional* as minimum, to **TWENTY (20) YEARS** of *reclusion temporal* as maximum.

Moreover, said [petitioner] is ordered to indemnify **ERWINA SANUELE-ORALLO** the sum of **P265,900.00** as actual damages.^[32] (Emphases supplied.)

Aggrieved, the petitioner seasonably appealed^[33] the aforesaid Decision of the RTC to the appellate court assigning the following error:

THE TRIAL COURT ERRED IN CONVICTING THE [PETITIONER] DESPITE THE FACT THAT HER GUILT WAS NOT PROVEN BEYOND REASONABLE

DOUBT.^[34]

In a Decision dated 29 September 2005, the Court of Appeals affirmed the trial court's Decision *in toto*. Petitioner's Motion for Reconsideration was likewise denied in a Resolution dated 10 January 2006.

Hence, this Petition.

Petitioner now comes before this Court with a sole assignment of error:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT THE PETITIONER IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ESTAFA.^[35]

In her Memorandum,^[36] petitioner argues that the true nature of the agreement between her and the private complainant was that of a simple loan. This was evident from the fact that she had the freedom to dispose of the money given to her by the private complainant. Moreover, the notarized document captioned "Certification," which was signed by her and by the private complainant, appears to be a simple receipt evidencing a simple loan of money. This proves beyond cavil that the element of "trust" was not present in their transaction. Absent such element of trust, petitioner maintains she cannot be held guilty of the crime of *Estafa* under paragraph 1(b), Article 315 of the Revised Penal Code.

Lastly, petitioner asserts that the prosecution failed to sufficiently establish the fact that she misappropriated or converted the amount of P265,900.00 to her own personal use or benefit. What was only proven by the prosecution, she claims, was the existence of a lending business between her and the private complainant; and the aforesaid amount, which was the money subject of the document captioned "Certification," was used in the said business. Without proof that she collected the total amount of P265,900.00 and that she failed to remit the same, the fact of her non-payment of the said amount cannot constitute the crime of *Estafa* under paragraph 1(b), Article 315 of the Revised Penal Code. As the prosecution failed to prove beyond reasonable doubt the existence of deceit or abuse of confidence, she should not be allowed to suffer imprisonment for non-payment of a purely civil obligation.

The present Petition is without merit.

Primarily, the petitioner insists that the nature of her transaction with the private complainant was just a simple loan.

It bears emphasis that the agreement of the petitioner and the private complainant was embodied in a document captioned "Certification." **It was expressly stated therein that the amount of P265,900.00 was received by the petitioner in trust for the private complainant, and that the said amount must be returned to the latter anytime upon demand.** Indeed, the said "Certification" did not state that the money given in trust to the petitioner should be lent to other people. From the following testimonies of both the petitioner and the private complainant before the court *a quo*, it can be clearly inferred that their transaction was not really a simple loan, as the money placed in trust with the petitioner was intended to be loaned to other people. Petitioner testified as follows: