

FIRST DIVISION

[G.R. NO. 146797, February 18, 2005]

**TOMMY & HELEN ONG, PETITIONERS, VS. CRISTINA YAP,
RESPONDENT.**

DECISION

AZCUNA, J.:

This is a petition for review on *certiorari* of the decision of the Court of Appeals, in CA-G.R. CV No. 52194, which affirmed the decision of the Regional Trial Court of Cebu City, Branch 10, in Criminal Case No. CBU-31101, and ruled that respondent Cristina Yap is not civilly liable to petitioners.

Respondent Cristina Yap and the spouses Cesar and Ava Gardola were charged of Estafa in an Information which reads:

That during the month of June 1991, and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping one another, that [sic] accused Cristina Yap of Majesty Pharmacy and spouses Cesar Gordola and Ava Gordola of Paramount Lending Corporation, with deliberate intent, with intent of gain and by means of false pretenses and fraudulent acts executed prior to or simultaneously with the commission of the fraud, to wit: by falsely pretending to spouses Tomy and Helen Ong and convincing them to invest with Paramount Lending Corporation as the prospect of the returns in terms of interest is bright and higher if compared to the interest rates given by the other banks and that further assuring the said spouses that the money invested will be returned plus interest and inducing the said spouses to entrust to the herein accused the total sum of P7,000,000.00, when in truth and in fact, as the accused very well knew they had no intention of investing the said sum of P7,000,000.00 owned by the herein spouses and that such scheme and other similar deceit were employed merely to obtain possession of the aforesaid sum of money, thereby misappropriating, misapplying and converting to their own personal use and benefit the same and have absconded or run away with the said sum of P7,000,000.00, thus to the damage and prejudice of the said spouses Tomy Ong and Helen Ong in the amount aforestated.

CONTRARY TO LAW.^[1]

When arraigned, respondent Cristina Yap pleaded not guilty. Trial proceeded separately against her.

The evidence of the prosecution showed that in 1979, petitioner Tommy^[2] Ong

worked as a salesman in a drug company and respondent Cristina Yap, owner of the Majesty Pharmacy, was one of his customers. Ong opened his own pharmacy in 1985 and bought products from Yap for about seven to eight years. In the process, trust and confidence allegedly developed between the petitioners and respondent.^[3]

In the early part of 1991, Yap mentioned to the Ongs that she was investing some amount of money with Paramount Lending Investors,^[4] owned by the spouses Cesar and Ava Gordola, which gave her a very high margin of profit. Yap also told them that her poultry business in Talamban was put up mainly from the profit of her investment with Paramount Lending Investors. The Ongs visited said poultry and they were convinced that investing with the Gordolas would be a profitable business.^[5]

According to Tommy Ong, Ava and Cesar Gordola were former medical representatives, so they would sometimes meet in some drugstores, but Ong allegedly knew the Gordolas only by their faces.^[6]

When the Ongs sold their house, they were allegedly persuaded by the proddings and assurances of Yap to invest the proceeds of the sale, in the amount of P3.6 million, with Paramount Lending Investors sometime in September 1991. Yap told the Ongs that she would ask Ava Gordola to pick up the money at the Ongs' drugstore. When Ava Gordola picked up the money, she issued the Ongs two postdated checks, one for the principal and the other for the interest, which was her usual procedure.^[7]

Weeks after the first transaction with the Gordolas, Yap allegedly convinced the Ongs to obtain a loan in the amount of P2.5 million from Metrobank using their real property in Guadalupe as collateral. Tommy Ong testified that they invested the P2.5 million with Paramount Lending Investors because, at that time, the interest Gordola was paying was five percent per month against the bank's interest of only about 24 percent per annum; hence, they were convinced that they would make a net profit of about three percent.^[8]

When the Ongs obtained a housing loan from the Union Bank in January 1992, they again invested the partial release of P900,000 with Paramount Lending Investors allegedly upon the persuasion of Yap.^[9]

In the beginning, the Ongs were able to realize profits from their investment with the Gordolas. However, sometime in March 1992, some checks issued by the Gordolas to the Ongs started to bounce. The Ongs requested Ava Gordola to replace the bounced checks. The Ongs informed Yap about the checks that bounced. Yap assured them that they would be paid, and dissuaded them from filing a case against the Gordolas, reasoning that only Filipinos go to court, but the Chinese don't. After 12 checks issued by the Gordolas had bounced, the Ongs filed a case against the Gordolas, which Tommy Ong claimed was just a "paper victory."^[10]

Tommy Ong testified that when they filed the first case against the Gordolas, they were made to believe that Yap had nothing to do with their loss of investment. But when they talked with some people, they were finally convinced that it was the handiwork of Yap that actually caused their loss. They reprimanded Yap, but she

denied it, so their last resort was to go to court.^[11]

On cross-examination, Tommy Ong testified that it was sometime in September 1991 that Yap introduced him to the Gordolas. He and his wife, along with Yap, went to the house of the Gordolas where they first met Ava Gordola. They met a few occasions before they invested with Paramount Lending Investors, but no friendship was established.^[12]

However, Ong subsequently admitted that he testified in Civil Case No. 71128, the case which he filed earlier against the Gordolas, that he met the Gordolas on many occasions, that they (Ongs) were shown the Gordolas' big house and different businesses so that they (Ongs) decided to let the Gordolas borrow money.^[13]

Tommy Ong admitted that Yap did not issue them any check as a guarantor or debtor in connection with their investment with Paramount Lending Investors. No evidence was presented showing that Yap was a stockholder, an officer, or in any way connected with Paramount Lending Investors.^[14]

The prosecution presented, among others, 12 bouncing checks totaling P7,000,000, which amount represents the business investment of the Ongs.^[15]

After the prosecution presented its evidence, respondent Yap filed a demurrer to the evidence on the ground of insufficiency of evidence.

On December 1, 1994, the trial court issued an Order^[16] that resolved Yap's demurrer to the evidence and the case on the merits, the dispositive portion of which reads:

WHEREFORE, for insufficiency of evidence, the case is hereby DISMISSED and accused Cristina Yap ACQUITTED.

The bond put up by aforementioned accused for her temporary liberty is hereby CANCELLED and RELEASED.

Costs de officio.

SO ORDERED.^[17]

The trial court held that the prosecution failed to prove that respondent Yap conspired with the Gordolas in embezzling petitioners. It also stated, thus:

The apparent involvement of the herein accused was merely to accompany the spouses to the presence of the herein complainant or her presence thereabout. In so doing, there was no pretense whatever on the part of either, for the execution of the unlawful objective, that is to defraud the complainant. For it was possible that the herein accused had no knowledge of the design of her co-accused (spouses Gordola) if there was any, nor of the intended defraudation of the victim by the latter, if there was any. The mere [act of] accompanying her co-accused to the place of the victim, could be interpreted differently if the accused herself was the recipient of the amount, which she was not. The rule is well-

settled that if the facts apparently inculpatory may be explained, consistent with one's innocence, the evidence does not fulfill the test of moral certainty to support conviction (*People vs. Jorge*, G.R. 99379, April 22, 1994).

The prosecution drew the inference that accused Yap must be guilty for the reason that she received checks (Exhs. "T," "U," "V" to "OOO") from spouses Gordola. However, said checks are irrelevant to the case at bar. The checks in question are the herein twelve (12) bouncing checks (Exhs. "A" to "L"), [regarding] which the prosecution failed to usher in hard evidence that accused Yap had cooperated with spouses Gordola in embezzling them.

It is noteworthy that the prosecution admitted that not one of the checks in question w[as] made, issued or drawn by accused Yap and that Yap has no connection whatsoever with the PILC, whose owner-operator (the Gordolas) manifestly gyped complainant-spouses Ong.

Wanting in evidence, the prosecution now wanted to shift the burden of proof to the defense by arguing that accused Yap should be placed on the box to explain the character of the checks she had received from spouses Gordola. Such proposition is procedurally improper. As a rule, the burden of proof is never on the accused to establish his/her innocence.

. . .

Under the circumstances obtaining, the Court is not inclined to make an inference on the existence of conspiracy based on another inference.

At most, the proofs on hand cast suspicion on accused Yap. But suspicion, however strong, cannot serve as substitute of evidence.^[18]

Petitioners appealed the trial court's Order dated December 1, 1994 to the Court of Appeals. Respondent Yap opposed the appeal on the ground that said Order granting the demurrer to the evidence amounts to an acquittal; therefore, an appeal is legally barred as it would place her in double jeopardy.

In its Order^[19] dated January 10, 1996, the trial court held that the Order dated December 1, 1994 which granted the demurrer to the evidence and dismissed the case on the ground of insufficiency of evidence amounted to the acquittal of respondent Yap; hence, an appeal therefrom would place respondent in double jeopardy, citing *People v. Silay*;^[20] *People v. Declaro*; ^[21] *People v. Bellaflor*;^[22] and *People v. Bans*.^[23] Consequently, the trial court did not give due course to the criminal aspect of the appeal, but only gave due course to the civil aspect. The dispositive portion of its Order reads:

WHEREFORE, the appeal, insofar as the civil aspect is concerned, is hereby given due course.

The Clerk of Court of this Branch is directed to transmit the complete records of the case to the appellate court as soon as possible.