

THIRD DIVISION

[G.R. No. 149472, October 15, 2002]

**JORGE SALAZAR, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

PUNO, J.:

In an information dated January 21, 1987, petitioner Jorge Salazar was charged with estafa under Article 315 paragraph 1(b) of the Revised Penal Code. The information reads:

"That on or about the 10th date of January 1986 in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the Vice President and Treasurer of Aurora/Uni-Group, Inc., received from Olivier Philippines and Skiva International, Inc. as represented by Teresita M. Tujan the amount of \$41,300.00 for the sole purpose of meeting the cost of textile and labor in the manufacture of seven hundred dozen stretch twill jeans which he (accused) is duty bound to deliver to said complainant, and the accused once in possession of the same, far from complying from his obligation, with unfaithfulness and abuse of confidence and to defraud said complainant, did, then and there willfully and unlawfully and feloniously misappropriate, misapply and convert the same for his own personal use and benefit despite repeated demands to return the said amount, failed and refused and still fails and refuses to do so, to the damage and prejudice of said complainant, in the aforementioned amount of \$41,300.00 or its equivalent in Philippine currency.

Contrary to law."^[1]

On arraignment, petitioner pleaded "not guilty" to the charge.

It appears that Skiva International, Inc. ("Skiva") is a New York-based corporation which imports clothes from the Philippines through its buying agent, Olivier (Philippines) Inc. ("Olivier"). Aurora Manufacturing & Development Corporation ("Aurora") and Uni-Group Inc. ("Uni-Group") are domestic corporations which supply finished clothes to Skiva. Mr. Werner Lettmayr is the President of both Aurora and Uni-Group while the petitioner, Jorge Salazar, is the Vice-President and Treasurer of Uni-Group and a consultant of Aurora.

Skiva, through its buying agent, Olivier, has been purchasing finished clothes from Aurora and Uni-Group. When an order is procured for the delivery of clothes, Olivier, issues to the local supplier, Aurora/Uni-Group, a "Purchase Contract" and Olivier issues to Skiva a "Sales Contract". In these transactions, payment is usually made

by way of a letter of credit wherein the supplier is paid only upon the presentation of the proper shipping documents to the designated bank.^[2]

In December 1985, Skiva informed Olivier that it needs ladies jeans to be delivered sometime in January 1986. Olivier, in turn, through its Officer-in-Charge, Ms. Teresita Tujan, contacted Aurora and Uni-Group to supply the jeans. ^[3] Thus, a Purchase Contract dated December 18, 1985 was issued by Olivier to Uni-Group wherein Uni-Group was to supply 700 dozens of three (3) different designs of "Ladies Basic 5 Pockets Stretch Twill Jeans" payable by means of a letter of credit at sight.^[4] The Purchase Contract was confirmed by Mr. Lettmayr on December 30, 1985. ^[5] A Sales Contract was also issued by Olivier to Skiva containing the same terms and conditions as the Purchase Contract and was confirmed by Mr. Jack Chehebar of Skiva.^[6]

On January 7, 1986, the parties agreed that Skiva will advance to Aurora/Uni-Group the amount of US\$41,300.00 (then equivalent to P850,370.00 at the exchange rate of P20.59 to US\$1.00) as Aurora/Uni-Group did not have sufficient funds to secure raw materials to manufacture the jeans.^[7] It was also agreed that the amount advanced by Skiva represents advance payment of its order of 700 dozens of ladies jeans. ^[8] Skiva then issued a check in the said amount payable to Uni-Group. ^[9] However, due to the length of time needed for the check to be cleared, the parties made arrangements to remit the funds instead by way of telegraphic transfer. ^[10] Thus, the check issued by Skiva was returned by Mr. Lettmayr^[11] and as agreed, the funds were remitted by Skiva from its bank in New York, the Israel Discount Bank, to the joint account of Mr. and Mrs. Jorge Salazar and Mr. and Mrs. Werner Lettmayr at Citibank N.A.^[12]

On January 16, 1986, petitioner, who had possession and control of the passbook of the said joint account, withdrew the amount of US\$21,675.21^[13] and on January 22, 1986, petitioner withdrew the amount of US\$20,000.00.^[14] The prosecution also presented evidence that subsequent to said withdrawals, the amounts of US\$71.70 and US\$63.99 were deducted from the joint account as telegraphic transfer fee and commission for the remittance of the funds to another account.^[15]

In the meantime, Ms. Tujan contacted Aurora/Uni-Group to follow up on the production of the jeans. She learned that only 3,000 meters out of the 10,000 meters of Litton fabrics required for the order were purchased from Litton Mills by the petitioner.^[16] 3,000 meters of Litton fabrics are enough to produce only 200 dozens of ladies jeans - an amount insufficient to satisfy the order of Skiva of 700 dozens of ladies twill jeans.^[17] Upon inquiry with Mr. Lettmayr, the latter advised Ms. Tujan that the query be directed to petitioner as petitioner is in charge of securing the materials. ^[18] However, Ms. Tujan could not locate the petitioner.^[19]

Consequently, in a letter dated March 13, 1986, demand was made upon Aurora/Uni-Group through its President, Mr. Lettmayr, to return the money advanced in the amount of US\$41,300.00.^[20]

For failure of Aurora/Uni-Group to deliver the ladies jeans or to account for the US\$41,300.00 despite demand, Skiva, through its local agent represented by Ms. Tujan, filed a criminal complaint for estafa against Mr. Lettmayr and petitioner. After

preliminary investigation, the Public Prosecutor dismissed the complaint against Mr. Lettmayr and an information was filed against petitioner.^[21]

After trial, the lower court convicted herein petitioner of estafa under Article 315 paragraph 1 (b) of the Revised Penal Code, sentencing him to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day of *prision mayor* as the minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as the maximum and to pay Uni-Group and Aurora the amount of P595,259.00. ^[22] On March 13, 1997, the lower court denied petitioner's Motion for Reconsideration. ^[23] On appeal, the Court of Appeals affirmed *in toto* the decision of the trial court and denied petitioner's Motion for Reconsideration.^[24]

Aggrieved by the aforementioned rulings, petitioner files the instant petition for review.

The petition is bereft of merit.

The following are the elements of estafa under Article 315 paragraph 1 (b) of the Revised Penal Code: 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 made by the offended party to the offender.^[25]

We agree with the trial court's finding that the contract between Skiva and Aurora/Uni-Group was one of sale.^[26] Thus, upon remittance by Skiva of its advance payment in the amount of US\$41,300.00, ownership thereof was transferred to Aurora/Uni-Group and Aurora/Uni-Group had no obligation to account or deliver the money to Skiva, its only obligation under the contract of sale being to deliver the 700 dozens of ladies jeans. However, petitioner, as an employee of Aurora/Uni-Group who was aware of the specific purpose of the remittance, upon receipt of the amount, had the obligation to account for the proceeds thereof to Aurora/Uni-Group.

The records establish that: 1) the amount of US\$41,300.00 was remitted by telegraphic transfer to the joint account of the petitioner and his wife and Mr. and Mrs. Werner Lettmayr;^[27] 2) the said amount was remitted as advance payment by Skiva for the jeans it ordered;^[28] and 3) the amount of US\$21,675.21 was withdrawn by petitioner on January 16, 1986 and the amount of US\$20,000.00 was withdrawn by petitioner on January 22, 1986.^[29] In fact, petitioner himself admits having withdrawn from the joint account on two occasions after the remittance was made.^[30] Petitioner further admits having made such withdrawal for the purpose of purchasing materials to be used for the jeans ordered by Skiva and a portion thereof to be given to Aurora.^[31] Thus, upon withdrawal by petitioner of the amounts advanced by Skiva, petitioner received the same in trust with an obligation to return the funds or account for the proceeds thereof.

With respect to the element of conversion or misappropriation of the amount received, petitioner claims that a portion of the amount was used to purchase 3,000

meters of Litton fabrics and the balance was returned to Aurora.^[32] However, upon cross-examination, petitioner was unable to recall the amount paid for the purchase of the fabrics or the amount given to Aurora nor was petitioner able to identify whether payment for the purchase of fabric or the return of funds to Aurora was made in cash or in check.^[33]

In fact, except for his bare testimony, petitioner failed to present evidence to support his defense that payment for the purchase of fabrics had been made or that the balance of the amount received by petitioner was given to Aurora. The only reason why the Court is inclined to believe that 3,000 meters of Litton fabrics were purchased for the manufacture of the jeans is because the witness for the prosecution, Ms. Tujan, independently verified the purchase of the said materials from Litton Mills.^[34]

To support petitioner's claim that the remainder of the amount withdrawn was returned to Aurora, petitioner presents a letter dated October 15, 1986 from the Philippine Veterans Investment Development Corporation (PHIVIDEC) addressed to Mr. Werner Lettmayr, President of Aurora, regarding the financial audit of Aurora, wherein the amount of P850,780.00 is indicated as an amount "due to Uni-Group."^[35] Atty. Cesar Singson, witness for the defense, testified that the amount of P850,780.00 indicated in the said letter represents the peso equivalent of the advance payment of US\$41,300.00 made by Skiva to Uni-Group.^[36]

We agree with the trial court that the probative value of the said letter is nil. The trial court correctly ruled:

"The court doubts the probative value of the contents of [the letter] because the person who testified thereon, a certain Atty. Cesar Singson, was not the one who prepared the document. He was only one [of] those who was furnished a copy thereof. Moreover, when said piece of evidence was presented, there were inconsistencies in the testimony of the [petitioner] as to how he was able to procure said documents. In a hearing he testified that he personally procured said letter from the records of PHIVIDEC and the person who certified said copy signed the same in his presence. On cross examination, he testified that he did not personally obtain said letter and he was not there when the person who authenticated said letter signed it and that it was only given to him by his former counsel. This is further muddled when Atty. Singson testified that he was the one who authenticated said document on December 7, 1987 from his copy upon the request of the accused. Atty. Singson has already severed his ties with PHIVIDEC on the latter part of the year 1986. This means that Atty. Singson was no longer connected with PHIVIDEC when he authenticated said document based on his copy which implies that the document was not obtained from the records of PHIVIDEC."^[37]

Further, even assuming that the letter may be given credence, we are unable to see any indication that the amount of P850,780.00 or at least a portion thereof (assuming that the said amount represents the advance payment made by Skiva) has been received by Aurora and/or Uni-Group from petitioner. At most, what said letter indicates is that Aurora acknowledges liability to Uni-Group in the said amount or that said amount has been received by Uni-Group from Skiva as advance payment which Uni-Group may have, in turn, assigned to Aurora. The glaring fact