

## THIRD DIVISION

[ G.R. No. 96428, September 02, 1999 ]

**WILMA T. BARRAMEDA, PETITIONER, VS. THE COURT OF APPEALS AND LOLITA WATANABE, RESPONDENTS.**

### DECISION

**GONZAGA-REYES, J.:**

This is a petition for review on certiorari of the decision rendered by the Court of Appeals<sup>[1]</sup> in CA-G.R. No. 07512 affirming the decision of Branch 111 of the Regional Trial Court<sup>[2]</sup> of Pasay City in Criminal Case No. 85-8694-P convicting Wilma Barrameda of the crime of estafa under article 315, par. 1(B) of the Revised Penal Code.

The information<sup>[3]</sup>, filed on September 5, 1985, reads as follows:

“That on or about the 27th day of November 1984 in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Wilma Barrameda, having received in trust from Lolita Paguinto Watanabe the amount of US\$1,400.00 and 400,000.00 yen, equivalent to P50,000.00 Philippine currency, more or less, with the express obligation on her part to deliver the same to Papiniana Paguinto at the Manila International Airport, did then and there willfully, unlawfully and feloniously with abuse of confidence reposed upon her, fail to deliver the money to Papiniana Paguinto and when demands were made upon her to account for the amount, said accused deny (sic) ever having received the same, to the damage and prejudice of Lolita Paguinto in the amount of P50,000.00 more or less.”

Accused-appellant, duly assisted by counsel, pleaded not guilty to the charge on April 21, 1986<sup>[4]</sup> and thereafter trial on the merits ensued.

The facts of the case as set out in the People’s Brief and quoted *in toto* by the Court of appeals are as follows:

“Lolita Watanabe first set foot in Japan as a cultural dancer, but landed later as a caretaker of a Japanese company (TSN, September 8, 1986, p. 35). At around 6:00 p.m. of November 26, 1984, she, together with her brother and some Japanese friends, visited her aunt (being the wife of her mother’s brother), appellant herein, at the residence of Mr. And Mrs. Edmund Guiking at Atsuigi Base. As appellant was leaving for the Philippines the following day, Lolita Watanabe decided to send money to her mother in the Philippines through appellant, consisting of \$1,400.00 and 400,000.00 yen which, if converted to Philippine money would amount to more or less P50,000.00. Watanabe counted the money in

appellant's presence, placed it inside an envelope and handed it to appellant. The latter likewise counted the money before putting it inside her bag (TSN, *ibid*, pp. 21-22). Watanabe then bid appellant goodbye and wished her a happy trip.

When she received a long distance call that day (November 26) from her mother, Lolita Watanabe informed the latter that she was sending money through appellant (TSN, *ibid*, p. 48). The call is evidenced by a receipt dated November 26, 1984 (Exhibit B-1).

On November 27, 1984, Lolita Watanabe's mother, Papiniana Barrameda Paguinto, went to the Manila International Airport to fetch appellant (her sister-in-law). They embraced upon seeing each other. Then appellant said "Ate, it is unfortunate. There is money sent to you by your daughter from Japan but unfortunately I misplaced it. It could have been in the baggages" (TSN, June 25, 1986, p. 9). Appellant was trembling and feeling cold when she told her sister-in-law (Papiniana Paguinto) "Ate, let us look for it in the baggage" (TSN, *ibid*, p. 10). Per appellant's suggestion, they proceeded to the house of Papiniana Paguinto's brother at Cabrera, Pasay City (*ibid*, p. 10) where they would open the baggage and look for the money. But since there were many people there, it being a beer-house, appellant suggested that her baggage be opened at her own home in Pacita Complex, San Pedro, Laguna. Papiniana Paguinto placed a long distance call to Japan to inform her daughter that she had not yet received the money from appellant because the same cannot be found. Lolita Watanabe also talked with appellant and she was informed by the latter that she (appellant) was still looking for the money among her baggage (TSN, September 8, 1986, pp. 32-24).

Appellant proceeded to her house at Pacita Complex, San Pedro, Laguna. But Papiniana Paguinto did not go anymore with appellant since the latter assured her that she would deliver the money the following morning (*Ibid*, p. 13). Besides, San Pedro is quite far and she was afraid that on her way home, something might happen, considering that she would then be carrying a substantial sum of money.

When appellant failed to deliver the money the following day, Papiniana Paguinto, together with her husband, went to appellant's home at Pacita Complex. There she was informed by appellant that the money has not yet been found. Appellant assured Paguinto that she would continue looking for it. However, despite repeated demands, appellant never gave the money to Papiniana Paguinto (*Ibid*, p. 15)".

For her part, accused-petitioner denied ever having received the amount of US\$1,400.00 and 400,000.00 yen from private complainant Lolita Watanabe intended for her mother. Instead, she alleged in substance that before she left for Japan for the Philippines on November 27, 1984, private complainant visited her and requested her to bring two boxes of assorted goods for her parents. Accused-petitioner brought the two boxes to the airport but she was not able to bring them to the Philippines as these were excess baggage and private complainant did not give her money for their freight charges. Instead, she called the Guiking couple, where private complainant was staying, and requested them to inform the latter

that the two boxes were left at the airport. As to the motive behind the filing of the case against her, accused-petitioner opined that her husband, from whom she has separated, must have connived with his sister Papiniana Paguinto and Lolita Watanabe in filing the case against her to prevent her from leaving the Philippines for Japan.

On 25 May 1989, the trial court rendered the questioned decision, the dispositive portion of which states as follows:

“WHEREFORE, the court finds the accused WILMA BARRAMEDA, guilty beyond reasonable doubt, as principal, of the crime of estafa as charged in the information. Extending in her favor the benefits of the Indeterminate Sentence Law, the court hereby sentences the accused to imprisonment for an indeterminate period ranging from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional, as minimum, to TEN (10) YEARS of prision mayor, as maximum, to indemnify the offended party LOLITA PAGUINTO WATANABE, in the sum of P50,000.00 representing the amount embezzled, and to pay the costs.

SO ORDERED.”

This decision was appealed to the Court of Appeals on July 13, 1989 wherein accused-appellant raised the following assignment of errors:

I.

THE LOWER COURT ERRED IN TAKING COGNIZANCE OF THE CASE FOR LACK OF JURISDICTION.

II.

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE UNCORROBORATED TESTIMONY OF PRIVATE COMPLAINANT-LOLITA PAGUINTO WATANABE REGARDING THE ALLEGED ACTUAL TURN-OVER OF FOURTEEN (14) PIECES OF ONE HUNDRED US DOLLARS (US\$ 1,400.00) AND FORTY (40) PIECES OF JAPANESE YEN AT TEN THOUSAND DENOMINATION EACH FOR A TOTAL OF FIFTY THOUSAND PESOS (P50,000.00) PHILIPPINE CURRENCY BY THE FORMER TO THE ACCUSED-APPELLANT TO BE GIVEN TO PAPIANIANA PAGUINTO.

III.

THE LOWER COURT ERRED IN APPRECIATING THE CONTENTS AND VERACITY OF THE LETTER DATED NOVEMBER 15, 1984 ALLEGEDLY SENT BY PRIVATE COMPLAINANT LOLITA PAGUINTO WATANABE (EXH. A) BASED ON THE BIASED TESTIMONIES OF: (1) COMPLAINANT LOLITA PAGUINTO WATANABE; AND (2) HER MOTHER PAPIANIANA PAGUINTO.

IV.

THE LOWER COURT GRAVELY ABUSED ITS DISCRETION IN ADMITTING THE TELEPHONE RECEIPTS (EXHS. B, B-1, B-2); AND FURTHER ABUSED

ITS DISCRETION IN GIVING WEIGHT TO THE SAID EXHIBITS.

V.

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE BIASED AND UNCORROBORATED TESTIMONIES OF THE FOLLOWING PROSECUTION WITNESSES, NAMELY:

(1) PAPINIANA PAGUINTO, THE MOTHER OF COMPLAINANT LOLITA PAGUINTO WATANABE; and

(2) RUBEN BARRAMEDA, THE UNCLE OF PRIVATE COMPLAINANT LOLITA PAGUINTO WATANABE.

VI.

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT ON THE GROUND THAT THE PROSECUTION HAS NOT PROVED HER GUILT BEYOND REASONABLE DOUBT.

On 15 August 1990, the Court of Appeals promulgated its decision affirming *in toto* the decision rendered by the Regional Trial Court.<sup>[5]</sup> On 6 September 1990, accused-appellant, through counsel, filed a Motion for Reconsideration of the Court of Appeals decision which was however denied in a Resolution dated November 28, 1990.<sup>[6]</sup>

Hence, the present petition for review on certiorari wherein accused-appellant claims that the Court of Appeals gravely abused its discretion when it affirmed *in toto* the decision of the regional trial court knowing fully well that the said decision is contrary to law and jurisprudence<sup>[7]</sup>. In support, accused-petitioner reiterates the assignment of errors she raised during the proceedings in the appellate court.

We find for the respondents.

In her petition, accused-petitioner first questions the jurisdiction of the Regional Trial Court of Pasay City in taking cognizance of the case. Accused-petitioner alleges that not a single element of the crime occurred within the territorial jurisdiction of the Regional Trial Court of Pasay City. As such, the complaint should have been filed in Japan, where the money was allegedly turned-over to accused-petitioner, or in San Pedro, Laguna, where Papiniana Paguinto allegedly demanded the delivery of the money. Accused-appellant argues further that the crime of estafa did not even reach its incipient stage because no demand was ever made by the offended party.

The contentions of accused-petitioner are misplaced.

Accused-petitioner was charged with the crime of estafa through misappropriation or conversion as defined in and penalized under paragraph 1(b) of the Revised Penal Code<sup>[8]</sup>. The elements of the said crime are: (1) that money, goods or other personal property is received by the offender in trust, or on commission of for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there be misappropriation or conversion of such

money or property by the offender or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender<sup>[9]</sup>

In all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or territory wherein the offense was committed or where any one of the essential ingredients thereof took place<sup>[10]</sup>. In the case at bench, if one of these elements is proven to have occurred within the territorial jurisdiction of the Regional Trial Court of Pasay, then the said court made a valid exercise of its jurisdiction.

On this point, respondent Court of Appeals correctly ruled that a demand was made by the mother of the private complainant at the Ninoy Aquino International Airport ("NAIA"), which is within the territorial jurisdiction of the Regional Trial Court of Pasay City. Thus:

"... the records show that Papiniana Paguinto was at the Manila International Airport at the date and time when appellant arrived from Japan upon being informed by the arrival of the latter by Mrs. Watanabe by overseas call with the purpose of collecting from the appellant the money sent by Mrs. Watanabe, her daughter. The appellant, however, immediately informed Mrs. Paguinto that the money was allegedly misplaced and that she will look for it among her baggage at Cabrera, Pasay City.

We believe that the presence of Mrs. Paguinto at the airport was for no other purpose but to demand the money which was entrusted to her by Mrs. Watanabe. Logically, it follows that since the international airport is within the territorial jurisdiction of the trial court, then jurisdiction over the case vests in the trial court."<sup>[11]</sup>

It must be noted that the specific word "demand" need not be used to show that demand had indeed been made upon the person charged of the offense. A query as to the whereabouts of the money, such as the one proven in the case at bench, is tantamount to a demand<sup>[12]</sup>

Thus, the trial court validly exercised its jurisdiction over the crime charged against accused-petitioner inasmuch as one of the elements of estafa, that of demand, occurred within its territorial jurisdiction.

Accused-petitioner next alleges that the Court of Appeals and the trial court erred in convicting accused-appellant on the ground that the prosecution was not able to prove her guilt beyond reasonable doubt<sup>[13]</sup>. In support, accused-petitioner faults the trial court in appreciating and giving credence to the evidence, both oral and documentary, presented by the prosecution.

On the issue of credibility of witnesses, it is axiomatic that appellate courts will usually not disturb the findings of the trial court, the latter being in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial, unless certain facts of substance and value had been overlooked which, if considered, might affect the result of the case<sup>[14]</sup>