

FIRST DIVISION

[G.R. No. 102784, April 07, 1997]

**ROSA LIM, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF
THE PHILIPPINES, RESPONDENTS.
R E S O L U T I O N**

HERMOSISIMA, JR., J.:

Acting on the motion for reconsideration filed by petitioner Rosa Lim praying for her acquittal, this Court takes a second hard look at the present case in the light of the various arguments raised by the movant.

Petitioner Rosa Lim was charged with, and subsequently convicted of, the crime of estafa as defined under Art. 315, par. 1(b) of the Revised Penal Code before Branch 92 of the Regional Trial Court of Quezon City.^[1] This conviction was affirmed by the Court Appeals.^[2] Aggrieved by the decision of the appellate court, Rosa Lim filed a petition for review under Rule 45 before the Supreme Court. This Court subsequently sustained the ruling of the Court of Appeals, hence, this Motion for Reconsideration seeking the reversal of our decision dated February 28, 1996.

Her motion for reconsideration is anchored on the following grounds:

I. THE COURT A QUO FAILED TO CONSIDER EVIDENCE TO THE EFFECT THAT THE TRUE AGREEMENT BETWEEN THE PARTIES WAS A SALE ON CREDIT AND NOT AN AGENCY TO SELL AS BROUGHT OUT IN THE CROSS-EXAMINATION MADE BY THE PRIVATE PROSECUTOR ON THE PETITIONER AND AURELIA NADERA AS WELL AS ON THE CROSS EXAMINATION MADE ON THE COMPLAINANT BY THE COUNSEL FOR THE PETITIONER; and

II. ON THE ISSUE OF WHETHER OR NOT THE PETITIONER RETURNED THE RING VALUED AT P169,000.00 TO COMPLAINANT THRU AURELIA NADERA, THE COURT A QUO FAILED TO CONSIDER CONCLUSIVE EVIDENCE THAT SAID RING WAS IN FACT RETURNED TO COMPLAINANT AS SHOWN BY THE FACT THAT SHE FILED A CRIMINAL CASE AGAINST AURELIA NADERA FOR ISSUING A BOUNCING CHECK IN THE AMOUNT OF P169,000.00 WHICH SHE ISSUED IN PAYMENT OF THE RING IN THE REGIONAL TRIAL COURT OF QUEZON CITY.

It will be recalled that the facts of this case are as follows:

Rosa Lim arrived in Manila from Cebu City sometime in October, 1987 with her friend Aurelia Nadera. On October 8, 1987, they went to the Williams Apartelle in Timog, Quezon City, where they met Victoria Suarez, a jewelry dealer. Suarez and Nadera knew each other since the latter often sold jewelry for the former on commission basis. Nadera had previously introduced Rosa Lim to Suarez as a

wealthy businesswoman.

Lim was offered two pieces of jewelry by Suarez, to wit: one (1) 3.35 carat diamond ring worth P169,000.00 and one (1) bracelet worth P170,000.00. The pieces were to be sold by Lim on commission. Accordingly, Lim signed a receipt, prepared by Nadera for Suarez, which stated that:

"THIS IS TO CERTIFY, that I received from Vicky Suarez the following jewelry:

Description	Price
1 ring 3.35 solo	P169,000.00
1 bracelet	170,000.00
Total	P339,000.00

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 jewelry, within the period mentioned above; if I would be able to sell, I shall immediately deliver and account the whole proceeds of sale thereof to the owner of the jewelries [sic] at his/her residence; my compensation or commission shall be the over-price on the value of each jewelry quoted above. I am prohibited to sell any jewelry on credit or by installment; deposit, give for safekeeping; lend, pledge or give as security or guaranty under any circumstance or manner, any jewelry to other person or persons,'

I sign my name this . . . day of . . . 19 . . . at Manila.

Signature of Persons who received jewelries [sic]

Address:"[3]

On October 12, 1987, before departing for Cebu, Lim called up Mrs. Suarez by telephone to inform her that she was no longer interested in the ring and the bracelet. Suarez replied that she was busy at the time and instructed her to return the pieces of jewelry to Nadera instead, who would in turn give them back to Suarez. Lim then returned the jewelry to Nadera who issued a handwritten receipt dated October 12, 1987.^[4] On March 21, 1988, Suarez, thru her counsel, sent Lim a demand letter asking for the return of the ring. Lim, also thru counsel, sent a response letter to Suarez averring that she had already returned both ring and bracelet to Nadera and as such, she no longer had any liability to Suarez insofar as the said items were concerned. Irked, Suarez filed a complaint for estafa under Article 315, par.1(b) against Rosa Lim. Trial ensued thereafter.

During the trial, Lim asserted that she had already returned both the bracelet and ring to Nadera. This was admitted by Nadera during her direct examination before

the trial court:

Q: Do you know if Rosa Lim returned the jewelries [sic]?

A: She gave the jewelries [sic] to me.

Q: Why did Rosa Lim give the jewelries [sic] to you?

A: Rosa Lim called up Vicky Suarez the following morning and told Vicky Suarez that she was going home to Cebu and asked if she could give the jewelries [sic] to me.

Q: And when did Rosa Lim give you the jewelries [sic]?

A: Before she left for Cebu."^[5]

Nadera further testified that she issued a check in favor of Suarez in payment for the ring which Lim had previously returned to her:

Q: What happened to the ring?

A: I sold it.

x x x

Q: What happened to the proceeds of the sale of the ring?

A: The check that was paid to me bounced. So my check also bounced."^[6]

After another thorough and painstaking scrutiny of the records of this case, we have decided to act favorably on the petitioner's motion. Thus, upon a careful and deliberate consideration of the errors assigned by the petitioner, as well as of prevailing jurisprudence, we are convinced that Rosa Lim must be acquitted.

Rosa Lim asserts that she gave both the bracelet and the ring to Aurelia Nadera for it to be returned to Suarez and that it was Suarez herself who instructed her to do so. Suarez, on the other hand, refutes this contention by saying that she could not have entrusted the return of the pieces of jewelry to Nadera since the latter already owed her a substantial amount of money and that to entrust the return of the said ring would be to tantamount to undue risk on her part. However, Suarez herself admitted that the bracelet was in fact received by her from Nadera:

ATTY. TORIO: Now, Mrs. Witness, you said that the bracelet was returned to you, is it not true that this bracelet was returned by Aurelia Nadera?

A: I already answered that.

COURT: What was the answer?

WITNESS: It was returned by Aurelia Nadera."^[7]

It is highly unlikely that Lim, if she truly had any intention of defrauding Suarez, would still make an effort to return the bracelet, considering that as between the two items, it is the more expensive one. Moreover, the Court of Appeals in examining the facts of this case held that there was indeed such a return: