

TENTH DIVISION

[CA-G.R. CR No. 36143, November 25, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NENITA M. SARMIENTO, ACCUSED-APPELLANT.**

DECISION

VELOSO, J.:

The Case

On appeal^[1] by accused Nenita Sarmiento (“**accused-appellant**”) is the **October 04, 2013 Decision**^[2] of the Regional Trial Court of Las Piñas City^[3] in Crim. Case No. 11-0220 entitled “*PEOPLE OF THE PHILIPPINES, Plaintiff, -versus- NENITA M. SARMIENTO, Accused,*”, the dispositive portion of which reads:

“WHEREFORE, the Court finds accused NENITA M. SARMIENTO, **GUILTY** beyond reasonable doubt of the crime of ***estafa* as defined under paragraph 1(b) of Article 315 of the Revised Penal Code** and is hereby sentenced to an indeterminate penalty of **Four (4) Years Two (2) Months of prision correccional**, as minimum, and **Seventeen (17) Years of Reclusion Temporal**, as maximum, as well as to pay private complainant Aida Celestina H. Vilog the amount of **One Hundred Fourteen Thousand Pesos (Php114,000.00)**, as civil liability, with legal interest thereon at the rate of twelve (12%) per annum, from filing of the instant case until fully paid.

The civil liability awarded to the private complainant is subject to a lien representing the amount of the docket fees imposed under Section 21 (a) of Rule 141 of the Revised Rules of Court, to be computed by the Clerk of Court of the Regional Trial Court of Las Piñas City.

As such, furnish the Office of the Clerk of Court of the Regional Trial Court of Las Piñas City with a copy of this decision.

SO ORDERED.”^[4] (emphasis and italics supplied)

The Facts

The antecedent facts, as found by the trial court, are as follows:

"Before this Court is an Information for Estafa, as defined under Article 315, Paragraph 1(b) of the Revised Penal Code (RPC) filed by Assistant State Prosecutor Mario C. Mangrobang against Nenita M. Sarmiento (**accused**, for brevity), which reads as follows –

*'That on or about the **19th day of March, 2010** in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from complainant **Aida Celestina H. Vilog** pieces of jewelry with a total value of **P450,000.00** on consignment basis with the express obligation to sell and to return the said jewelry to said complainant if unsold within a reasonable time, however, Accused was able to remit/return some of the jewelries with a total value of P336,000.00 leaving balance of P114,000.00 but said accused once in possession of remaining jewelry and far from complying with her obligation, with abuse of confidence and with intent to defraud said complainant, did, then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to his (sic) own personal use and benefit the proceeds of the remaining pieces of jewelry valued at **P114,000.00** and despite repeated demands made by the complainant, accused failed and refused and still fails and refuses to pay said amount or to return the said jewelry, to her damage and prejudice in that aforementioned amount of **P114,000.00**.*

CONTRARY TO LAW.'

xxx xxx xxx

After several postponements, the prosecution was able to present private complainant Aida Celestina Vilog (**Aida**, for brevity) on August 23, 2012, who testified that she has been in the business of buying and selling of jewelry since 1990 up to the present. On or about October of 2009, a common friend, a certain Nenita Carmelo (**Carmelo**, for brevity) introduced the herein accused to her at her (Aida's) house at Block 6, Lot 2, Villa Feliza Homes, Real St., Las Piñas City, and requested if she could accommodate said accused as her agent to sell her jewelry. Aida accepted such request with the arrangement that the accused must return to her the unsold pieces of jewelry within four (4) days after receipt thereof. On the other hand, the payment for the sold pieces of jewelry should be remitted to her by the accused within thirty (30) days from receipt of the jewelry.

According to Aida, the agency between her and the accused for the latter to sell her jewelry was not put into writing as this was her common practice with her other agents.

Aida continued to testify that on March 19, 2010, the accused came to

her house and received ten (10) pieces of jewelry from her, itemized and described as –

<u>Description</u>	<u>Value</u>
1) Bangle	Php165,000.00
2) Set illusion	Php165,000.00
3) Gucci watch	Php 3,500.00
4) South Sea earrings	Php 7,000.00
5) Cross pendant	Php 7,000.00
6) Men's ring	Php 18,000.00
7) Fossil watch	Php 3,000.00
8) Men's bracelet	Php 55,000.00
9) Rolex ring	Php 9,000.00 and
10) Set	<u>Php 18,000.00</u>
Total Php450,500.00	

As proof of receipt by the accused of the above enumerated pieces of jewelry, Aida presented a Trust Receipt dated March 19, 2010 marked as Exhibit 'A'. Aida claimed that she and the accused agreed that the latter had to return to her the unsold pieces of jewelry within four (4) days after her receipt thereof, and to remit to her the payment for the sold ones within thirty (30) days reckoned also from her receipt of the said pieces of jewelry. Contrary to their agreement, however, the accused, on March 26, 2010, came to her house and returned only the following pieces of jewelry, viz – 1) Bangle (worth Php165,000.00); 2) Set illusion (worth Php165,000.00); and 3) Fossil watch (worth Php3,000.00). The accused purportedly remitted to her only the amount of Php3,500.00 as her payment for the Gucci watch. The accused allegedly told her that she (accused) was still waiting for the payment of her supposed buyers for the rest of the sold pieces of jewelry. Aida just warned the accused that the latter should be able to remit the said payments for the rest of the unreturned pieces of jewelry within the thirty (30)[-]day period earlier agreed upon. Unfortunately, the accused failed to remit such payment within the set period. Thus, sometime in the months of May and June of 2010, Aida went to the house of the accused located at #10, 18th St., De Leon Cpd., Sto. NiñoNiño, Parañaque City, and verbally demanded for the payment of the unreturned pieces of jewelry, but to no avail. Hence, on July 19, 2010, Aida wrote the accused a demand letter for the collection of Php114,000.00 (representing the total price of the unreturned pieces of jewelry) which was received by the latter on July 22, 2010. As her demand was ignored by the accused, Aida then decided to file the instant case.

Upon cross-examination, Aida expounded that only the obligation of the accused for her to return the unsold pieces of jewelry within four (4) days from her receipt thereof was included in the Trust Receipt (Exhibit 'A'); that although the Trust Receipt also speak of the accused's obligation for the latter to remit the payment for the sold pieces of jewelry, the period therefor was only agreed upon by them verbally, *i.e.* thirty (30) days from receipt of such pieces of jewelry; that her first transaction with the accused for the latter to sell her jewelry occurred sometime in early 2009; that an item in the first transaction *i.e.* the Gucci watch, was incorporated in their transaction made on March 19, 2010; and that the amounts appearing in parenthesis on the Trust Receipts represent the pawn value of the corresponding items.

On September 20, 2012, the prosecution formally offered the following documents, to wit –

- Exhibit 'A' - Receipt dated March 19, 2010
- Exhibit 'B' - Demand Letter of private complainant Aida Celestina Vilog to accused;
- Exhibit 'C' - Stamp registry receipt;
- Exhibit 'D' - Business mailer registry return receipt; and
- Exhibit 'E' - Affidavit-Complaint,

which the Court admitted on even date.

Subsequently on January 15, 2013, the accused denied the herein accusation against her. She confirmed, however, that she was introduced by Carmelo, *supra*, to Aida and that she was able to get pieces of jewelry from said private complainant Aida for purposes of selling some of them and purchasing some for herself. She testified that she and Aida had agreed for her to sell Aida's pieces of jewelry, and if the same are not sold, she was obligated to return the same to Aida. She further testified that she was allowed by Aida to pay for the sold pieces of jewelry on installment basis, depending on how much she could collect from her buyers. According to her, she could no longer remember the duration of the terms of payments she made with Aida.

The accused continued to testify that on March 19, 2010, Aida gave her pieces of jewelry to be sold, as evidenced by the Trust Receipt (common exhibit) which she had signed. She confirmed the allegation of the prosecution that she had already returned the 'Bangle', the 'set illusion' and the Fossil watch to Aida, as shown by the line the latter had made across the said words and their corresponding prices, appearing on the Trust Receipt, and that she had already paid for the Gucci watch, as shown by the notation, 'pd', indicated also on the Trust Receipt, particularly after the price corresponding therefor. She however maintained that she had bought from Aida the South Sea Earrings, the cross pendant, the men's ring, the men's bracelet and the 'Set', on

installment basis, and that she had lost the Rolex ring.

The accused also claimed that her installment payment for the pieces of jewelry she had bought depended on the monthly allowance she would receive from her child who is abroad.

When cross-examined, the accused explained that her highest educational attainment was up to first year Bachelor of Science in Elementary Education; that because she knows how to read and understand English, she thoroughly understood the contents of the Trust Receipt; that she could no longer remember where the South Sea earrings are; and that she has given the pendant cross to her grandchild, a certain Christian.

On July 25, 2013, the defense further presented Joylie Ann Sarmiento (**Joylie**, for brevity) who testified that she is the granddaughter of the accused, the latter being the mother of her father. Joylie claimed that on March 19, 2010, she was at her home located at 18th Street, Col. De Leon Compound, Wawa, Sto. Niño, Parañaque City, with her baby stepbrother, Christian Joy Sarmiento, the accused and the 'yaya' of her aforementioned stepbrother. That same day, she had heard the accused speaking to someone over the phone and was thereafter ordered (by the accused) to dress up her stepbrother as they were going to herein Aida's place in Las Piñas. The four (4) of them rode a taxi and upon arriving at Aida's home, they were told by the accused to just wait inside the said taxi as she would not take long. After waiting for about 30-45 minutes, the accused stepped out from Aida's home and told them to go inside. When already inside Aida's home, Joylie confirmed that Aida had showed the accused pieces of jewelry. The accused then asked her (Joylie) to choose from among those shown pieces of jewelry. As such, she then chose a set composed of a ring and earrings, particularly described by her as 'White gold with a lot of stones'. According to her, the accused gave her the set as a gift for her birthday about two (2) months ago in January. The accused also bought for her baby brother the pendant cross.

Joylie continued to testify that after the accused had bought the 'set' and the cross pendant from Aida on March 19, 2010, the former handed the latter the payment therefor and had signed something before they left.

When asked where the pieces of jewelry bought for them by the accused are now, Joylie replied that she purportedly does not know.

When cross-examined, Joylie pointed out from the Trust Receipt the items or pieces of jewelry which were given by the accused to her and to her stepbrother, *i.e.* the set worth Php18,000.00 and the pendant cross. However, she maintained that she did not know about what Aida and the accused had agreed upon with respect to the amount to be paid therefor. Joylie also does not know the total number of pieces of jewelry the accused had received from Aida that day."^[5] (emphasis and italics supplied)