

G.R. No. 174113 – PAZ CHENG y CHU, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:

JAN 13 2016

DISSENTING OPINION

BERSAMIN, J.:

I dissent. The State did not establish beyond reasonable doubt the culpability of the accused for the crimes charged.

Based on the assailed decision of the CA, the following were the factual and procedural antecedents, *viz.*:

Accused-Appellant was charged with 3 counts of Estafa under Article 315, par. 1(b) of the Revised Penal Code. Similarly worded except as to the date of the commission of each estafa, the number of pieces of jewelry, and the amount involved, the 3 *Informations* charged as follows:

That on or about the __ day of ____, 1997 in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud ROWENA RODRIGUEZ in the following manner, to wit: the said accused received in trust from said complainant __ pieces of Jewelry worth ₱ ____, Philippine Currency, for the purpose of selling the same on commission basis, under the express obligation on the part of said accused of turning over the proceeds of the sale to said complainant if sold, or of returning the same if unsold to said complainant, but the said accused, once in possession of the said items, far from complying with her obligation as aforesaid, with intent to defraud, unfaithfulness and grave abuse of confidence, failed and refused and still fails and refuses to fulfill his aforesaid obligation despite repeated demands made upon her to do so and instead misapplied, misappropriated and converted the same or the value thereof, to her own personal use and benefit, to the damage and prejudice of said ROWENA RODRIGUEZ in the aforesaid amount of ____ Philippine Currency.

CONTRARY TO LAW.

Private Complainant testified as follows:

Private Complainant and Accused-Appellant entered into various and numerous transactions. At times, Accused-Appellant acquired loans from Private Complainant or acted as the latter's sales agent.

On July 12, 1997, Private Complainant delivered 2 pieces of jewelry amounting to ₱18,000.00 for Accused-Appellant to sell on commission basis. Both agreed that Accused-Appellant shall remit to Private Complainant the proceeds of the sale, or return the jewelry if unsold after 1 month. The parties entered into a similar transaction on July 16, 1997, but this time involving 3 pieces of jewelry valued at ₱36,000.00. The agreement on these transactions were written in one document.

On August 12, 1997, Private Complainant delivered another set of jewelry amounting to ₱257,950.00 reflected in a written agreement executed between the parties. Accused-Appellant likewise issued a *check* worth ₱120,000.00 as security for the first two deliveries and as partial payment for the last delivery.

When Accused-Appellant failed to return the unsold jewelries (sic) on due date, Private Complainant presented the check for encashment. However, the check was dishonored due to insufficiency of funds. Consequently, Accused-Appellant promised to pay Private Complainant on the first week of November.

However, when Private Complainant re-deposited the check on November 4, 1997, the check was again dishonored because the account was closed. When confronted, Accused-appellant refused to pay Private Complainant and instead uttered: "*AKALA MO, BABAYARAN PA KITA?*"

Private Complainant filed criminal charges for estafa against the Accused-Appellant.

The Defense presented *Accused-Appellant and Virginia Araneta*, who testified as follows:

Accused-Appellant denied receiving any jewelry from Private Complainant or entering into any agreement for her to sell said jewelry on commission basis. Accused-Appellant denied signing the 2 written agreements presented by Private Complainant purporting to be contracts for the sale of jewelries. (Sic)

Accused-Appellant claimed that Private Complainant is a usurious money lender engaged in what is otherwise known as "5-6." It was Private Complainant who loaned her part of the capital for her vegetable business.

On one occasion, Virginia Araneta accompanied Accused-Appellant to borrow money from Private Complainant. Accused-Appellant pledged some pieces of jewelry as collateral for the loan and signed a written contract. Unfortunately, Accused-Appellant failed to ask a copy of the written contract from Private Complainant. Private Complainant also requested Accused-Appellant to issue a check to serve as a security for said loan but promised not to deposit the same on due date.

Accused-Appellant admitted that her loan with Private Complainant remained unpaid but she, nevertheless, was surprised of her arrest. It was only when she was at the Quezon City Jail that she was informed by Private Complainant that Estafa cases were filed against her.

The Regional Trial Court (RTC), Branch 226, in Quezon City found and declared the petitioner guilty of three counts of *estafa* in Criminal Case No. Q-98-75440, Criminal Case No. Q-98-75441 and Criminal Case No. Q-98-75442, all entitled *People of the Philippines v. Paz Cheng y Chu*, through the judgment rendered on December 7, 2000,¹ decreeing thusly:

In view of all the foregoing, this Court finds the accused guilty beyond reasonable doubt of 3 counts of estafa, defined and penalized under Art. 315, 1 (b) of the Revised Penal Code.

On the first count, accused is sentenced to an indeterminate penalty ranging from 4 years 2 months and 1 day to 6 years 8 months and 21 days to 8 years of prision correccional in its maximum period to prision mayor in its minimum period (maximum).

On the second count, accused is sentenced to an indeterminate penalty ranging from 6 months and 1 day to 1 year 8 months and 20 days of prision correccional in its minimum and medium periods to 6 years 8 months and 21 days to 8 years of prision correccional in its maximum period to prision mayor in its minimum period (Maximum).

On the third count, accused is sentenced to an indeterminate penalty ranging from 6 months 1 day to 1 year 8 months and 20 days of prision correccional in its minimum and medium periods to 4 years 2 months and 1 day to 5 years 5 months and 10 days of prision correccional in its maximum period to prision mayor in its minimum period (minimum).

The sentence shall be served successively; and the accused is ordered to indemnify the private complainant Rowena Rodriguez in the amount of ₱257,950.00, ₱36,000.00 and ₱18,000.00 and to pay the costs of the suit.

SO ORDERED.²

On appeal, the petitioner submitted that:

I

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT AND IN TOTALLY DISREGARDING THE VERSION OF THE DEFENSE.

¹ *Rollo*, pp. 31-45; penned by Presiding Judge Leah S. Domingo-Regala.

² *Id.* at 87-90.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE THREE (3) COUNTS OF ESTAFA.³

Nonetheless, the CA affirmed the conviction of the petitioner with modification of the penalties,⁴ to wit:

WHEREFORE, the instant Appeal is **DISMISSED**. The assailed Decision, dated December 7, 2000, of the Regional Trial Court of Quezon City, Branch 226, in Criminal Case No. Q98-75440-2, is hereby **AFFIRMED** with the following **MODIFICATIONS**:

1. On the first count, Accused-Appellant shall suffer the indeterminate penalty of 4 years and 2 months of Prision Correccional, as **MINIMUM**, to 20 years as **MAXIMUM**;
2. On the second count, Accused-Appellant shall suffer the indeterminate penalty of 4 years and 2 months of Prision Correccional, as **MINIMUM**, to 9 years as **MAXIMUM**;
3. On the third count, Accused-Appellant shall suffer the indeterminate penalty of 4 years and 2 months of Prision Correccional, as **MINIMUM**, to 6 years, 8 months and 20 days, as **MAXIMUM**.

SO ORDERED.

The CA later denied the petitioner's motion for reconsideration on June 26, 2006.⁵

In her present appeal, the petitioner urges the Court to consider and resolve the following issues, namely:

I

WHETHER THE PETITIONER COMMITTED THE CRIME OF ESTAFA UNDER ARTICLE 315, PARAGRAPH 1(B) OF THE REVISED PENAL CODE.

II

WHETHER THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN GIVING WEIGHT TO THE EVIDENCE OF THE PROSECUTION AND FAILED TO CONSIDER THE MERITS OF THE PETITIONER'S DEFENSE.⁶

³ Id. at 49.

⁴ Id. at 86-97; penned by Associate Justice Noel G. Tijam, with the concurrence of Associate Justice Elvi John S. Asuncion and Associate Justice Mariflor P. Punzalan Castillo.

⁵ Id. at 107-108.

⁶ Id. at 21.

In its comment,⁷ the Office of the Solicitor General (OSG) counters that the petitioner hereby seeks the review of the facts and the evidence; that the appeal should be rejected because it urges a departure from the general rule that the CA's findings of fact, which have affirmed the factual findings of the trial court, should be accorded great respect, even finality; that this case did not constitute an exception to warrant the re-evaluation of the unanimous findings of fact of the lower courts; that the Prosecution established the guilt of the petitioner by sufficiently showing the concurrence of all the essential elements of the offense charged; and that her bare denial, being negative in nature, did not prevail over the positive evidence presented against her.

Submission

I vote to acquit the petitioner on the ground that the State did not establish her guilt for *estafa* through misappropriation beyond reasonable doubt. I insist that in every criminal prosecution, the State must discharge the duty to establish the guilt of the accused by proof beyond reasonable doubt. Otherwise, the accused is entitled to acquittal.

The felony of *estafa* through misappropriation is defined and penalized in Article 315, 1(b) of the *Revised Penal Code*, viz:

Article 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

⁷ Id. at 130-147.

1. With unfaithfulness or abuse of confidence, namely:

x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property 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, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property. (bold emphasis supplied)

x x x x

The elements of *estafa* through misappropriation are: (a) that personal property is received in trust, on commission, for administration or under any other circumstances involving the duty to make delivery of or to return the same, even though the obligation is guaranteed by a bond; (b) that there is conversion or diversion of such property by the person who has so received it or a denial on her part that she received it; (c) that such conversion, diversion or denial is to the injury of another; and (d) that there be demand for the return of the property.⁸

According to the CA, the Prosecution established the petitioner's commission of *estafa* through misappropriation, to wit:

All these elements were duly proven by the Prosecution.

The 2 written agreements *stipulated* that the pieces of jewelry were delivered to Accused-Appellant to be sold on commission basis or to be returned if unsold within 1 month. Clearly, the jewelry delivered to Accused-Appellant was for a specific purpose, that is, for Accused-Appellant to sell them, and in the event that it cannot be sold, to return the same to Private Complainant.

Accused-appellant, however, insisted that the Prosecution "*failed to prove the existence of misappropriation*" as *there was no proof that the accused-appellant kept the proceeds of the sale.*"

We disagree.

The words "convert" and "misappropriate" as used in Article 315 connote an act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon. To "misappropriate" a thing of value for one's own use or benefit, not only the conversion to one's personal advantage but also every attempt to dispose of the property of another without a right. Misappropriation or conversion may be proved by the prosecution by direct evidence or by

⁸ *Manahan, Jr. v. Court of Appeals*, G.R. No. 111656, March 20, 1996, 255 SCRA 202, 213; *Saddul, Jr. v. Court of Appeals*, G.R. No. 91041, December 10, 1990, 192 SCRA 277, 286.

circumstantial evidence. Failure to account, upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation.

Demand need not be formal. It may be verbal. A query as to the whereabouts of the money, such as the one proven in the case at bench, is tantamount to a demand. In this case, despite repeated demands from Private Complainant, Accused-Appellant still failed to return the jewelry or to remit the proceeds of the sale to the prejudice of Private Complainant. Accused-Appellant's failure to account for the jewelry entrusted to her by Private Complainant constitutes misappropriation. Accused-Appellant is, thus, liable for conversion under Art. 315, par. 1 (b) of the Revised Penal Code.

x x x x⁹

The Majority concur with the CA.

However, I cannot join my distinguished Brethren in the conclusion that the CA correctly affirmed the conviction of the petitioner. My assiduous and thorough review of the records of the trial convinces me that the real agreement between the parties was a *sale* of the items of jewelry, not the supposed agency to sell such items on commission basis as the RTC and the CA concluded.

It is conceded that the text of Exhibits A, Exhibit A-1 and Exhibit A-2 – the documents *evidencing* the transactions – seemed to allude to the petitioner's obligation as one of agency to sell the items of jewelry on commission basis. Under ordinary circumstances, the literal terms of such documents would control and be regarded as the manifestation of the true intention of the parties. But to give outright credence to the interpretation of the evidence as the CA did would be to ignore and disregard what complainant Rowena Rodriguez had herself declared to be the true nature of the transactions with the petitioner.

Rodriguez testified as follows:

Q. After the delivery of these several items totaling ₱257,950.00, what happened next?

A. She issued a check worth ₱120,000.00.

Q. What check is that?

A. PDCP Bank, sir.

Q. What is this check for, Ms. Witness?

⁹ *Rollo*, pp. 94-95.

A. **As payment for the first and second transactions, sir, for ₱18,000.00 and ₱36,000.00 and the excess amount is applied for the third transaction.**¹⁰

x x x x

Q. So, all in all, you have sixty (60) days period with respect to this item, and the first delivery expired. I am referring to July 12, 1997 worth ₱18,000.00 which will mature on September 11, so, from September 11, what happened?

A. **These were considered paid because she issued me a check for the period of August 13, so I was expecting that.**¹¹

x x x x

By stating that the check issued by the petitioner was “payment for the first and second transactions, sir, for ₱18,000.00 and ₱36,000.00 and the excess amount is applied for the third transaction,” Rodriguez revealed that she *had sold* the pieces of jewelry to the latter. Thus, the petitioner was the buyer of Rodriguez, not an agent on commission basis.

The right to a commission only establishes the relation of principal and agent, with the agent coming under the obligation to turn over to the principal the amount collected minus such commission. If the agent should retain more than the commission, she would be guilty of *estafa* through misappropriation.¹² Yet, because the transaction between Rodriguez and the petitioner was a sale, the former effectively transferred to the latter the possession and the ownership of the items of jewelry.¹³ Once the ownership of the jewelry became vested in the latter,¹⁴ she could not misappropriate the items of jewelry.

The foregoing excerpts of testimony further showed Rodriguez to have “considered [the items of jewelry] paid” by the petitioner. We should consider and regard such express declaration as a confirmation of the true nature of her agreement with the petitioner as a sale of the jewelry. The CA erroneously ignored the testimony despite its being a forthright judicial admission in the context of Section 4, Rule 129 of the *Rules of Court*.¹⁵

¹⁰ TSN, October 21, 1998, p. 16.

¹¹ *Id.* at 19.

¹² Guevara, *Commentaries on the Revised Penal Code*, Fourth Ed., Revised and Enlarged, Filipino Book Dealers' Association, Manila, 1946, p. 646; 649-651.

¹³ *Id.*

¹⁴ According to Article 1458, *Civil Code*, by the contract of sale, one of the contracting parties obligates herself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

¹⁵ Section 4 *Judicial admissions*. – An admission, verbal or written, made by a party **in the course of the proceedings in the same case**, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Although Rodriguez had described the petitioner's PDCP Check No. 003626 for ₱120,000.00 (Exhibit B) as the *security* for the items of jewelry listed under Exhibits A and Exhibit A-1, and as the *partial payment* for the last delivery listed under Exhibits A-2, her presenting the check to the drawee bank for payment or collection of the *entire amount* of the check indicated that the check was always intended as payment. This finding is still consistent with holding the transactions as sales of the items of jewelry. Indeed, the presentment of the check to the drawee bank as the person primarily liable was antithetical to the notion of having the check serve as mere security.

Clearly, the CA had no basis to hold the written text of Exhibits A, Exhibit A-1 and Exhibit A-2 as controlling. In contracts the intent of the parties always prevails over the written form.

Did the dishonor of PDCP Check No. 003626 affect the character of the transactions between the petitioner and Rodriguez as sales of the items of jewelry?

I submit that the dishonor did not alter the character of the transactions as sales but only rendered Rodriguez an unpaid seller. The relationship between them resulting from the dishonor was that of a creditor-and-debtor. In a purely debtor-and-creditor relationship, the debtor who merely refuses to pay or denies the indebtedness cannot be held liable for *estafa* by misappropriation. The reason is readily apparent. To convict a person of *estafa* under Article 315, par 1(b) of the *Revised Penal Code*, the State must prove that she has the obligation to deliver or return the same money, goods or personal property received.¹⁶ Considering that the petitioner already became the owner of the pieces of jewelry, she could dispose of the same, and her disposal of them would not amount to the misappropriation thereof.¹⁷ In short, the petitioner did not thereby violate any trust or other obligation to account for the items of jewelry that she already owned.

Considering that the Prosecution did not establish the petitioner's guilt for the crimes of *estafa* through misappropriation beyond reasonable doubt, she was entitled to acquittal,¹⁸ for it is always indispensable for the valid conviction of the accused that the State shall prove the existence of all the essential elements of the offense charged beyond reasonable doubt. With

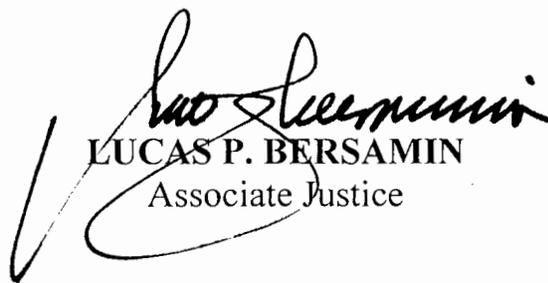
¹⁶ *Tanzo v. Drilon*, G.R. No. 106671, March 30, 2000, 329 SCRA 147, 155.

¹⁷ *Yam v. Malik*, L-50550-52, October 31, 1979, 94 SCRA 30, 35.

¹⁸ Section 2, Rule 133 of the *Rules of Court* states:

Section 2. *Proof beyond reasonable doubt.* - In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. (2 a)

less than all the elements of the offense charged having been established, it is unwarranted and unjust to still find her criminally liable.



LUCAS P. BERSAMIN
Associate Justice