



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 15, 2023** which reads as follows:*

“G.R. No. 233218 (*Florian G. Bautista v. People of the Philippines*).
– This Petition for Review on *Certiorari*¹ seeks to reverse and set aside the Decision² dated 26 April 2017 and the Resolution³ dated 20 July 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 37604. The CA affirmed with modification the Decision⁴ dated 08 October 2014 of Branch 75, Regional Trial Court (RTC) of Valenzuela City in Criminal Case No. 188-V-04 finding Florian G. Bautista (petitioner) guilty beyond reasonable doubt of the crime of Estafa under Article 315 (1) (b) of the Revised Penal Code⁵ (RPC).

Antecedents

Petitioner was indicted for the crime of Estafa in an Information, the accusatory portion of which states:

That sometime in November 2002 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud and deceive one LUCIANA P. NOLASCO in the following manner, to wit: said accused was able to obtain ₱335,000.00 from the said complainant under the express obligation on the part of the said accused to distribute to certain borrowers and to account for, but said accused once in possession of the said cash money with abuse of trust and confidence, misappropriate, misapply and convert to her own personal use and benefit the said amount of ₱335,000.00 and despite repeated demands to her to immediately account for or to return the cash money, refused and failed and still refuses and fails to do so, to the damage and prejudice of the said

¹ *Rollo*, pp. 10-35.

² *Id.* at 78-86; Penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justices Ramon R. Garcia and Henri Jean Paul B. Inting (now a Member of this Court).

³ *Id.* at 108-109; Penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justices Ramon R. Garcia and Henri Jean Paul B. Inting (now a Member of this Court).

⁴ *Id.* at 55-61; Penned by Presiding Judge Lilia Mercedes Encarnacion A. Gepty.

⁵ Entitled “AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS.” Approved: 08 December 1930.

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complainant in the aforementioned amount of ₱335,000.00.

CONTRARY TO LAW.⁶

Upon arraignment, petitioner entered a plea of not guilty.⁷ Thereafter, trial on the merits ensued.

Version of the Prosecution

Sometime in November 2002, petitioner went to the residence of private complainant Luciana P. Nolasco (private complainant) in Valenzuela City to borrow money which petitioner could lend to her officemates. Private complainant acceded to petitioner's request and lent the latter ₱335,000.00. After private complainant gave petitioner the said amount, petitioner issued four postdated checks dated 04, 10, 27, and 28 February 2003 corresponding to the amount of the loan. Petitioner assured private complainant that the checks would be good.⁸

Petitioner failed to return the money she borrowed from private complainant, prompting the latter to deposit the postdated checks. However, the checks were dishonored because they were drawn against insufficient funds. Although a demand letter was sent to petitioner, she still failed to return the loaned amount.⁹

Version of the Defense

On the other hand, petitioner asserted that she and private complainant were engaged in the business of lending money, and it was petitioner who would look for people interested in borrowing money. They charged a ten percent (10%) interest to borrowers, with petitioner and private complainant receiving five percent (5%) each. Petitioner claimed that she only acted as private complainant's agent, and both of them agreed that petitioner would remit payments once the amounts are paid by the actual borrowers.¹⁰

As for the amount of ₱335,000.00, petitioner contended that the same pertained to various loans given to other people. Of the said amount, petitioner already paid ₱50,000.00 to private complainant. Since petitioner failed to collect the balance from the actual borrowers, she was required to issue four checks in favor of private complainant, even though she informed the latter that she had no funds sufficient to cover the checks. One check petitioner issued was for ₱50,000.00, two for ₱100,000.00 each, and the last

⁶ Id. at 78.

⁷ Id. at 79.

⁸ Id.

⁹ Id.

¹⁰ Id. at 79-80.

was for ₱85,000.00.¹¹

She further testified that her husband received private complainant's demand letter, which she later read. The demand letter, however, had no definite date when payments should be made.¹²

Ruling of the RTC

On 08 October 2014, the RTC rendered its Decision,¹³ the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused Florian G. Bautista GUILTY beyond reasonable doubt as charged of the crime of estafa penalized under Article 315, par. 1 (b) of the Revised Penal Code and she is hereby sentenced to an indeterminate penalty of 4 years and 2 months of [*prision correccional*] as minimum to twenty (20) years of [*reclusion temporal*] as maximum. The accused is likewise ordered to pay the complainant the amount of P355,000.00 as actual damages, and to pay the costs of suit.

SO ORDERED.¹⁴

The RTC held that the prosecution was able to establish the crime of Estafa. Petitioner's failure to inform private complainant as to who the defaulting borrowers were, her inability to collect from those borrowers, and her failure to account for the loaned money after her husband's receipt of the demand letter showed that she misappropriated or converted the money to the prejudice of private complainant.¹⁵

Aggrieved, petitioner appealed to the CA.

Ruling of the Court of Appeals

In its Decision¹⁶ dated 26 April 2017, the CA affirmed the judgment of conviction but reduced the amount of actual damages to ₱335,000.00, thus:

WHEREFORE, we **AFFIRM with MODIFICATION** the Decision of the Regional Trial Court of Valenzuela City, Branch 75 in Criminal Case No. 188-V-04. Accused-appellant **FLORIAN G. BAUTISTA** is found GUILTY beyond reasonable doubt of the crime of estafa, as defined and penalized in Article 315, paragraph 1 (b) of the Revised Penal Code, for which she is sentenced to a prison term of four (4) years and two (2) months of *prision correccional* as minimum, to twenty (20) years of *reclusion temporal*, as maximum pursuant to Article 315, 1st

¹¹ Id. at 80.

¹² Id.

¹³ Id. at 55-61.

¹⁴ Id. at 60.

¹⁵ Id. at 59-60.

¹⁶ Id. at 78-86.

paragraph of the Revised Penal Code. As modified, accused-appellant is ordered to indemnify private complainant Luciana Nolasco in the amount of Three Hundred Thirty Five Thousand Pesos (P335,000.00) as actual damages, with legal interest of six percent (6%) per annum from the time of extrajudicial demand *i.e.* on 02 July 2003, until the said amount is fully paid.¹⁷

The CA held that the RTC committed a typographical error in the *fallo* of its Decision when it ordered petitioner to pay private complainant P355,000.00 considering that in the body of the decision, the amount proven to be misappropriated or converted by petitioner to her own personal use and benefit was only P335,000.00.¹⁸

The CA found that petitioner failed to prove her assertions that she was merely an agent of private complainant in the latter's alleged financing or lending business and that she had turned over P50,000.00 to private complainant as partial remittance.¹⁹

Hence, this Petition.

Issue

The issue is whether or not the CA correctly affirmed petitioner's conviction for Estafa under Art. 315 (1) (b) of the RPC.

Ruling of the Court

The Petition is meritorious.

It is well-settled that this Court will not disturb the factual findings of the trial court in view of the latter's first-hand opportunity to hear the witnesses and to observe their deportment and manner of testifying during trial. However, the rule admits of exceptions, including one where substantial errors were committed, or determinative facts were overlooked that would otherwise justify a different conclusion or verdict.²⁰

*The elements of Estafa under Art. 315
(1) (b) of the RPC were not established*

Article 315 (1) (b) of the RPC states:

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

¹⁷ Id. at 85-86.

¹⁸ Id. at 82.

¹⁹ Id. at 84.

²⁰ *Ibañez v. People*, G.R. No. 198932, 09 October 2019.

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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.

The crime of Estafa with unfaithfulness or abuse of confidence has the following elements:

1. That money, goods or other personal properties are 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;
2. That there is a misappropriation or conversion of such money or property by the offender or denial on his [or her] part of the receipt thereof;
3. That the 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.²¹

As to the first element, mere receipt of money, goods, or personal property does not satisfy the requirement. It is essential to prove that the accused acquired both material or physical possession and juridical possession of the thing received.²² Juridical possession is the type of possession that is acquired by the transferee of a thing when he or she receives the same under the circumstances mentioned in Art. 315 (1) (b). When juridical possession is acquired, the transferee obtains such right over the thing that he or she can set up even against its owner.²³

As such, Art. 315 (1) (b) of the RPC does not apply when the contract between the accused and the complainant has the effect of transferring to the accused the ownership of the thing received.²⁴ When the court finds that the source of obligation is a contract, as in a contract of loan, it takes a position completely inconsistent with the presence of estafa.²⁵ This is because in a loan contract, ownership over the money is transferred to the debtor.²⁶ Being the owner, the borrower can dispose of it for whatever purpose he or she may

²¹ *Reside v. People*, G.R. No. 210318, 28 July 2020; See *Ibañez v. People*, supra.

²² *Legaspi v. People*, 842 Phil. 72, 81 (2018).

²³ *Remo v. Devanadera*, 802 Phil. 860 (2016); *Reside v. People*, supra.

²⁴ Luis B. Reyes, *The Revised Penal Code: Criminal Law Book Two* (2012), p. 787; See also *Guingona, Jr. v. City Fiscal of Manila*, 213 Phil. 516 (1984).

²⁵ *Dy v. People*, 792 Phil. 672, 690 (2016).

²⁶ *Liwanag v. Court of Appeals*, 346 Phil. 211, 217 (1997).

deem proper.²⁷ While the borrower has the obligation to return the amount loaned, he or she has no obligation to return the *same* money he or she received.²⁸ Failure to return the amount loaned will only give rise to civil liability.²⁹

As applied to this case, the first element is absent since petitioner did not receive the ₱335,000.00 from private complainant in trust, on commission, or for administration. Private complainant and the prosecution are consistent in their stance that petitioner received the said amount pursuant to a loan agreement she and private complainant entered into. Hence, the relationship between private complainant and petitioner is actually that of creditor and debtor. In fact, private complainant did not concern herself on whom petitioner will give the money to. As far as private complainant was concerned, it was petitioner who was liable to pay the amount she loaned. As admitted by private complainant during cross-examination:

[ATTY. CRISOSTOMO to private complainant:] Now, you said that you were engaged in a lending business so, do I understand correctly that the money, the said money you just mentioned THREE HUNDRED THIRTY FIVE [THOUSAND PESOS] (Php335,000.00) pesos, which you turned over to the accused was intended to re lending to a third person, am I correct Madam witness?

[Private complainant:] **The accused approached me and asked me to lend her THREE HUNDRED THIRTY FIVE [THOUSAND PESOS] (Php335,000.00) pesos and according to the accused she will lend it to the other person and I informed her that she will be the one responsible because she was the one who got the money from sir.**

[ATTY. CRISOSTOMO to private complainant:] So you were aware that the accused would lend the money to the third person, to the other people because she informed to you about it?

[Private complainant:] Yes, sir, I know it.

[ATTY. CRISOSTOMO to private complainant:] But although you were aware that the accused would lend the money to the other person, **you were not informed as to the identity or persons whom she would lend the money, you were not aware?**

[Private complainant:] **No, sir, she is the only person I know.**

[ATTY. CRISOSTOMO to private complainant:] So Madam witness, let us make it clear, **the accused borrowed money from you, I am referring to the amount of THREE HUNDRED THIRTY FIVE [THOUSAND PESOS] (Php335,000.00) pesos is that correct?**

[Private complainant:] Yes, sir.

²⁷ Id.

²⁸ *Guingona, Jr. v. City Fiscal of Manila*, supra.

²⁹ Id.

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[ATTY. CRISOSTOMO to private complainant:] So, considering that the accused did not sign any document whereby she bind herself to pay you the loan, you required her to issue you checks as proof that she borrowed money from you?

[Private complainant:] **None because before the loan agreement push through I asked her checks to be issued to me**, so that whenever I gave her the money I have the checks, sir.

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[ATTY. CRISOSTOMO to private complainant:] **So you agree with me that you required the checks so that you will have some sort of proof of the existence of the loan and security for such loan?**

[Private complainant:] Yes, sir.³⁰

As the prosecution further highlighted in its comment on this petition, the agreement between private complainant and petitioner was not contingent upon the payments of petitioner's borrowers.³¹ This clearly shows that petitioner's only obligation was to pay the amount loaned. There was no element of trust, commission, or administration. The transaction between the parties is a simple contract of loan, which negates the presence of estafa. As such, the first element is absent, and petitioner cannot be convicted of estafa under Art. 315 (1) (b) of the RPC.³²

Anent the second element, there is misappropriation or conversion when there is a disposition of one's property without any right.³³ Since the transaction was a loan, there could be no misappropriation or conversion. Ownership over the money passed to petitioner and she could freely dispose of it in whatever manner she desires. Absent misappropriation or conversion, petitioner cannot be convicted of estafa under Art. 315 (1) (b) of the RPC.³⁴

With the absence of the first and second elements, petitioner's acquittal must ensue. There is no crime of estafa. It is well-settled that conviction can be handed down only if every element of the crime was alleged and proved. The State did not discharge its burden of proof if the evidence did not meet the test of moral certainty required for conviction. Thus, the presumption of innocence must be upheld in petitioner's favor, and her acquittal should necessarily follow.³⁵

³⁰ Records, TSN, 07 December 2005, pp. 156-159.

³¹ *Rollo*, p. 118.

³² *Chua-Burce v. Court of Appeals*, 387 Phil. 15, 26 (2000).

³³ *Coson v. People*, 818 Phil. 271, 284 (2017).

³⁴ *Remo v. Devanadera*, supra note 22.

³⁵ *Ibañez v. People*, supra note 19; *Legaspi v. People*, supra note 22.

Petitioner's liability is purely civil in character

Notwithstanding her acquittal, petitioner is not entirely free from liability. As mentioned, failure to pay the loaned money gives rise to a civil liability.³⁶ On this score, We note that petitioner's civil liability for the amount she borrowed had already been adjudicated in a separate case. We take judicial notice of the Decision³⁷ dated 12 December 2006 rendered by Branch 82 of the Metropolitan Trial Court (MeTC) of Valenzuela City in Criminal Case No. 67373-76, which petitioner attached to her motion for reconsideration before the CA. In said Decision, petitioner was acquitted of four (4) counts of violation of Batas Pambansa Blg. 22³⁸ (BP 22) involving the same checks subject of this case. The acquittal was based on the prosecution's failure to establish that petitioner received the demand letter.³⁹ Notwithstanding her acquittal, the MeTC ordered petitioner to pay the value of the checks, as follows:

WHEREFORE, premises considered, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, said accused **Florian Bautista y Gutierrez** is hereby **ACQUITTED** of the crime of violation of Batas Pambansa Blg. 22 on all four (4) counts. Said accused however is ordered to indemnify private complainant Luciana Puno Nolasco the sum equivalent to the value of the subject checks plus legal interest from the date of filing of the criminal Informations and to pay the costs of suit.

SO ORDERED.⁴⁰

Thus, despite her acquittal in this case, petitioner remains liable for the value of the checks. However, to prevent double recovery, private complainant cannot recover the value of the checks through this case, considering that the same has already been adjudicated and awarded in the BP 22 case.

WHEREFORE, the instant petition for review is hereby **GRANTED**. The Decision dated 26 April 2017 and Resolution dated 20 July 2017 of the Court of Appeals in CA-G.R. CR No. 37604, finding petitioner guilty beyond reasonable doubt of the crime of estafa under Article 315, paragraph 1 (b) of the Revised Penal Code, is **REVERSED** and **SET ASIDE**. Petitioner **FLORIAN G. BAUTISTA** is hereby **ACQUITTED**.

³⁶ *Guingona, Jr. v. City Fiscal of Manila*, supra.

³⁷ *Rollo*, pp. 99-103.

³⁸ Bouncing Checks Law.

³⁹ *Rollo*, p. 102.

⁴⁰ *Id.* at 107.

SO ORDERED.”

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:



MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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181

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PUBLIC ATTORNEY’S OFFICE
Special and Appealed Cases Service
Counsel for Petitioner
5/F, DOJ Agencies Building
NIA Road cor. East Avenue
Diliman, 1101 Quezon City

Ms. Florian G. Bautista
Petitioner
133 Ibayo, Marilao
3019 Bulacan

Court of Appeals (x)
1000 Manila
(CA-G.R. CR No. 37604)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 75
1440 Valenzuela City
(Crim. Case No. 188-V-04)

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