



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DIOSA ARRIVAS,
Petitioner,

G.R. No. 228704

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

MANUELA BACOTOC,
Respondent.

Promulgated:

DEC 02 2020

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DECISION

PERALTA, C.J.:

Before Us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision¹ dated May 26, 2016 and the Resolution² dated September 30, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 01596, which affirmed, with modifications, the Decision dated September 7, 2010 of the Regional Trial Court, Iloilo City, Branch 31 finding herein petitioner guilty beyond reasonable doubt of the crime of *Estafa* under Article 315, paragraph 1(b) of the Revised Penal Code.

The antecedent facts are as follows:

Diosa Arrivas was charged with *Estafa* in an Information, which read:

¹ Penned by Associate Justice Edgardo L. Delos Santos (now a member of this Court), with Associate Justices Edward B. Contreras and Geraldine C. Fiel-Macaraig concurring; *rollo*, pp. 27-40.

² *Id.* at 50-53.

That on or about the 23rd day of July, 2003, in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, herein accused, took and received in trust from Manuela Bacotoc one (1) men's ring with 2K solo diamond at the center with eight smaller diamonds around, in yellow Gold (14K) valued at P75,000.00 to be sold by her at an overprice, the overprice will constitute as her commission, with the express duty and obligation to remit the proceeds of the sale within the same period, however, said accused, far from complying with her express duty and obligation and with grave abuse of confidence, did then and there willfully, unlawfully, and criminally convert and misappropriate to her own personal use and benefit the amount of P75,000.00 or the jewelry received, that despite repeated demands made upon her to remit the proceeds of the sale or return the unsold items, fails and refuses to do so, to the damage and prejudice of Manuela Bacotoc in the sum of P75,000.00.³

Arrivas pleaded not guilty, and thus, trial ensued.

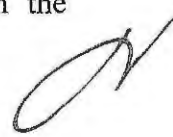
Version of the Prosecution and Herein Private Respondent Manuela Bacotoc

Diosa Arrivas and Manuela Bacotoc personally knew each other and had been long-time acquaintances. They are both engaged in buying and selling of jewelries, and had done business together countless times.

On July 23, 2003, Arrivas told Bacotoc that she knew someone who was interested in a male's ring and was willing to buy one at a price ranging from ₱50,000.00 to ₱80,000.00. She asked Bacotoc if she had an available item within the given specification. When Bacotoc told Arrivas that she had an available ring, Arrivas asked Bacotoc if she could bring the said ring to her client. Considering the price of the ring, Bacotoc was hesitant at first to entrust the same to Arrivas. The latter, however, was able to convince Bacotoc, and promised that she will return the ring if the buyer would not buy the same, or immediately deliver the amount if the buyer decides to purchase the ring. They then agreed to execute a trust receipt as they usually do whenever they transact business together.

A trust receipt was executed and personally signed by them on that same day, which provides:

Received from MANUELA BACOTOC the following items: 1pc of men's ring with 2K solo diamond at center and eight smaller diamonds around, in yellow Gold (14K) which cost Php 75,000.00. RECEIVED on Consignment from MANUELA the goods stated below. It is hereof understood that all the consigned goods listed hereunder remain the



property of BACOTOC on which goods I am also responsible as in their merchantable condition and quantity; and I am also responsible on the loss of any of this goods by theft or otherwise, and that I, upon order on demand will return all consigned goods on hand or otherwise turn over the proceeds of any of the consigned goods to the amount of the prices stated hereunder; and finally, I further agree to assume liability and expense for the safekeeping of these consigned goods. To be sold by me on commission basis and return the same if not sold within two (2) days from today. I am prohibited from giving the above items to sub-agents; signed by Diosa Arrivas on July 23, 2003.” (*sic*)

After the lapse of two days from July 23, 2003, however, Arrivas was not able to deliver the payment of the ring or return the same to Bacotoc. The latter tried to look for Arrivas in her usual place of business but she could not be found. It was only after two weeks that Bacotoc was able to finally meet with Arrivas.

During their said meeting, Arrivas told Bacotoc that the payment for the ring will be made in thirty days. However, the said thirty days lapsed and Arrivas still failed to make any payment to Bacotoc.

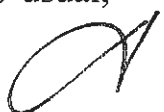
Thereafter, when Bacotoc again met Arrivas, the latter asked for reconsideration and pleaded that she be allowed to pay the price of the ring in installments as well as pay her old accounts, to which Bacotoc agreed. Nevertheless, no payment was made by Arrivas.

Thus, Bacotoc sent a demand letter dated November 3, 2004 to Arrivas, and demanded for the payment of the ring in the amount of ₱75,000.00. The said demand letter was sent through registered mail and was personally received by Arrivas on November 5, 2004. Arrivas then met with Bacotoc’s lawyer and promised to settle the amount in installments. However, Arrivas again failed to comply with her promise.

Version of Herein Petitioner

Arrivas and Bacotoc were long time acquaintances, and they were engaged in the same business of buying and selling jewelries. They had, likewise, entered into countless transactions where Bacotoc would also buy jewelries from Arrivas.

On July 23, 2003, Bacotoc and Arrivas, together with Virgie Valencia, Letty Espinosa, and Daphne Lopez, met at the stall of Arrivas because Valencia and Espinosa were looking for a men’s diamond ring. Bacotoc had an available stock of the ring which the two wanted, but she would not release the same unless Bacotoc sign a receipt for them. Thus, as usual,



Bacotoc released the men's diamond ring after Arrivas signed a trust receipt in the amount of Php75,000.00.

On August 8, 2003, or fifteen days from July 23, 2003, but prior to the filing of Bacotoc's complaint, Arrivas paid Bacotoc a partial amount of Php20,000.00 from her own pocket because Valencia and Espinosa did not appear after the lapse of the two days agreed in the trust receipt. Arrivas further made several payments even after the filing of the complaint.

Lopez testified for Arrivas that on July 23, 2003, Arrivas, Espinosa, and Valencia met with Bacotoc because Espinosa and Valencia were looking for a men's ring to sell. Lopez further testified that because Espinosa and Valencia had unsettled accounts with Bacotoc, the latter did not want to give it to them and instead asked Arrivas to sign the receipt for the two.

Ruling of the RTC

After trial on the merits, the trial court rendered judgment convicting Arrivas. Its decision read –

WHEREFORE, IN VIEW OF THE FOREGOING, the prosecution having established the guilt of the accused of the offense of Swindling as defined and penalized under Art. 315, par. 1(b), Revised Penal Code, JUDGMENT is hereby rendered finding said accused DIOSA ARRIVAS, GUILTY beyond reasonable doubt of said crime and hereby sentences her to suffer the indeterminate penalty of imprisonment consisting of six (6) months and one (1) day of *Prision Correccional*[,] as minimum[,], to six (6) years and (1) day of *Prision Mayor*[,] as maximum, to indemnify the offended party the amount of P75,000.00 by way of actual damages and to pay attorney's fees equivalent to 25% of the value of the ring, as well as to suffer all the accessory penalties provided by law.

SO ORDERED.⁴

The trial court held that the elements of *Estafa* under paragraph 1(b) of Article 315 had been established – a personal property, that is, one men's diamond ring, valued at ₱75,000.00 was delivered to and received by Arrivas on July 23, 2003 with the obligation to sell the same and deliver the proceeds thereof to Bacotoc; otherwise, if not sold, to return the said ring to Bacotoc within two days therefrom. The trial court further noted that Arrivas admitted the identity of the subject ring and that she understood the terms and conditions of the trust receipt when she signed the same.

While Arrivas claimed that payments were made, the trial court found that none of the receipts evidencing the alleged payments referred to the July

⁴

Id. at 30-31.

23, 2003 transaction involving the subject ring. The trial court added that the receipts showed that these were payments made to Arrivas's previous accounts with Bacotoc. The trial court, however, considered the payments made by Arrivas as a manifestation of her lack of intent to commit so grave a wrong, a mitigating circumstance, and imposed the minimum penalty.

Aggrieved, Arrivas filed an appeal before the Court of Appeals.

Ruling of the CA

In its Decision dated May 26, 2016, the CA denied Arrivas's appeal and affirmed, with modifications, the ruling of the trial court.

It held that all the elements of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code were established by the prosecution.

A motion for reconsideration was filed by Arrivas, but the same was denied by the CA in its Resolution dated September 30, 2016.

Thus, this petition for review.

Issues

The petitioner raises the following issues:

- I. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT CONSIDERING THAT THE PHP20,000.00 PAYMENT MADE BEFORE THE LETTER OF DEMAND WAS FOR THE VALUE OF THE DIAMOND RING AND THIS CONVERTED THE TRUST RELATIONSHIP INTO DEBTOR-CREDITOR RELATIONSHIP.
- II. WHETHER OR NOT THERE WAS NOVATION OF THE PRINCIPAL OBLIGATION OF TRUST

Petitioner Arrivas contends that there was no demand made by Bacotoc prior to the partial payment of ₱20,000.00, and that this partial payment was for the principal of ₱75,000.00, or the amount of the subject men's ring. Thus, the trust relationship between them was novated, and it was converted into one between a debtor and a creditor.

Basing on this premise, Arrivas contends that Article 1292 of the Civil Code should have been applied since a contract of sale novated the principal

obligation of trust, and this was before the consummation of the crime of *Estafa*.

Our Ruling

The petition lacks merit.

The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45.⁵ This Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"⁶ when supported by substantial evidence.⁷ Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.⁸

However, these rules do admit of exceptions. Over time, the exceptions to these rules have expanded. At present, there are ten (10) recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:⁹

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

These exceptions similarly apply in petitions for review filed before this court involving civil,¹⁰ labor,¹¹ tax,¹² or criminal cases.¹³

⁵ Rules of Court, Rule 45, Sec. I.

⁶ *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999) [Per J. Pardo, First Division].

⁷ *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per J. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per J. Bellosillo, First Division]; and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per J. Paras, Second Division].

⁸ *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per J. Ynares-Santiago, Special First Division].

⁹ 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

¹⁰ *Dichoso, Jr., et al. v. Marcos*, 663 Phil. 48 (2011) [Per J. Nachura, Second Division] and *Spouses Caoili v. Court of Appeals*, 373 Phil. 122, 132 (1999) [Per J. Gonzaga-Reyes, Third Division].

¹¹ *Go v. Court of Appeals*, 474 Phil. 404, 411 (2004) [Per J. Ynares-Santiago, First Division] and *Arriola v. Filipino Star Ngayon, Inc., et al.*, 741 Phil. 171 (2014) [Per J. Leonen, Third Division].

¹² *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546-547 (1999) [Per J. Pardo, First Division].

A question of fact requires this Court to review the truthfulness or falsity of the allegations of the parties.¹⁴ This review includes assessment of the "probative value of the evidence presented."¹⁵ There is also a question of fact when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties.¹⁶

In this case, the issues raised by the petitioner are essentially encapsulated by the first issue outlined above, which obviously asks this Court to review the evidence presented during the trial. Clearly, this is not the role of this Court, because the issue presented is factual in nature. Thus, the present petition must fail.

Nevertheless, We shall discuss the substantial matters for the guidance of the bar and the bench.

The elements of *Estafa* under Article 315, paragraph 1(b) are: (1) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (3) the misappropriation, conversion or denial is to the prejudice of another; and (4) demand by the offended party that the offender return the money or property received.

As aptly ruled by the Court of Appeals, all of the elements were established by the prosecution.

First. The trust receipt covering the July 23, 2003 transaction unequivocally shows the fiduciary relationship between the parties. Arrivas was entrusted with the diamond ring with the specific authority to sell the same, and the corresponding duty to return it, or the proceeds thereof should it be sold, within two days from the time of the execution of the receipt. These matters were admitted by Arrivas during trial.

Second. Arrivas failed to return the ring, or the proceeds thereof, within the period agreed upon in the trust receipt, and even after a written

¹³ *Macayan, Jr. v. People*, 756 Phil. 202 (2015) [Per J. Leonen, Second Division]; *Benito v. People*, 753 Phil. 616 (2015) [Per J. Leonen, Second Division].

¹⁴ *Republic v. Ortigas and Company Limited Partnership*, 728 Phil. 277, 287-288 (2014) [Per J. Leonen, Third Division] and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 788 (2011) [Per J. Carpio Morales, Third Division].

¹⁵ *Republic v. Ortigas and Company Limited Partnership*, *supra*, at 287. [Per J. Leonen, Third Division].

¹⁶ *Pascual v. Burgos, et al.*, 776 Phil. 167, 183 (2016). [Per J. Leonen, Second Division]

demand. The failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation.¹⁷

Third. Arrivas's failure to return the subject ring or its value, despite demand, resulted to the damage and prejudice of Bacotoc.

Lastly. Oral and written demands were made by Bacotoc to the petitioner.

It is in this last element that petitioner anchors her case – that there was no demand prior to the partial payment of the ₱20,000.00.

Even assuming that the ₱20,000.00 payment is for the value of the diamond ring, which it is not as ruled by the trial court and the CA, failure to account, upon demand for funds or property held in trust, is circumstantial evidence of misappropriation.¹⁸

Likewise, novation will not apply even if the ₱20,000.00 was made before demand.

Novation is defined as the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or subrogating a third person in the rights of the creditor.

Article 1292 of the Civil Code on novation further provides:

Article 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

It is well settled that novation is never presumed – *novatio non praesumitur*. As the party alleging novation, the onus of showing clearly and unequivocally that novation had indeed taken place rests on the petitioner. This, however, she failed to do.

¹⁷ *D'Aigle v. People*, 689 Phil. 480, 481 (2012). [Per J. Del Castillo, First Division]

¹⁸ *Asejo v. People*, 555 Phil. 106, 114 (2007). [Per J. Velasco, Jr., Second Division], citing *Tubb v. People*, 101 Phil. 114, 119 (1957). [Per J. Concepcion, En Banc]

Penalty

The decisive factor in determining the criminal and civil liabilities for the crime of *Estafa* depends on the value of the thing or the amount defrauded. In this case, records will show that the value of the diamond ring is ₱75,000.00.

By virtue of Republic Act No. 10951,¹⁹ the amounts which a penalty is based under the Revised Penal Code were adjusted. Section 85 thereof provides:

Section 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

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

x x x

3rd. The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

x x x. (Emphasis supplied)

Thus, the penalty must be accordingly modified in line with the settled rule on the retroactive effectivity of laws. For as long as it is favorable to the accused, said recent legislation shall find application. The accused shall be entitled to the benefits of the new law warranting him to serve a lesser sentence.²⁰

There being no mitigating and aggravating circumstance, the maximum penalty should be one (1) year and one (1) day of *prisión correccional*. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, the range of which is one (1) month and one (1) day to four (4) months. Thus, the indeterminate penalty should be modified to a prison term of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prisión correccional*, as maximum.

¹⁹ An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based and the Fines Imposed Under the Revised Penal Code Amending for the Purpose Act No. 3815 Otherwise Known as the "Revised Penal Code" as Amended.

²⁰ *Hernan v. Sandiganbayan*, G.R. No. 217874, December 5, 2017.

In addition, an interest rate of six percent (6%) *per annum* is, likewise, imposed on all the monetary awards for damages from the date of finality of this Decision until full payment.

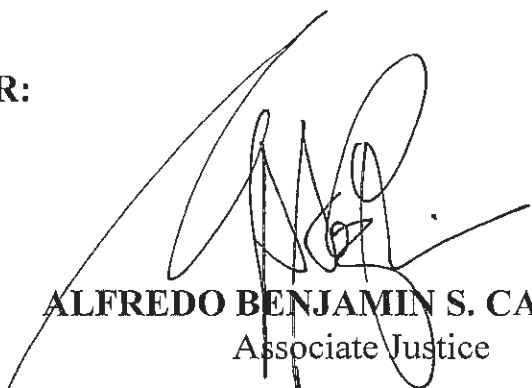
WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision dated May 26, 2016 and the Resolution dated September 30, 2016 of the Court of Appeals in CA-G.R. CR No. 01596 are hereby **AFFIRMED** with **MODIFICATION**. Petitioner is hereby sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum. In addition, an interest rate of six percent (6%) *per annum* is, likewise, imposed on all the monetary awards for damages from the date of finality of this Decision until full payment.

SO ORDERED.



DIOSDADO M. PERALTA
Chief Justice

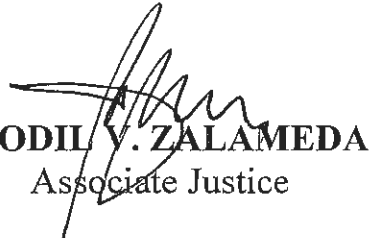
WE CONCUR:



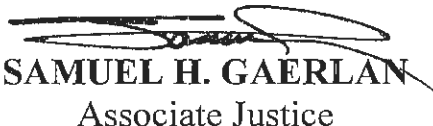
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ROSMARI D. CARANDANG
Associate Justice



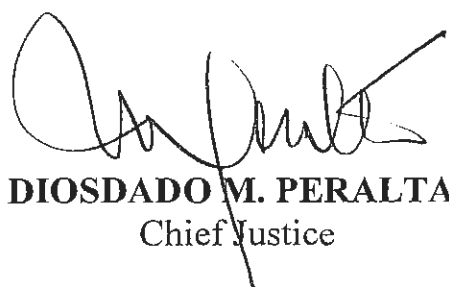
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice