

SECOND DIVISION

[G.R. NO. 153198, July 11, 2006]

**CRISANTA B. BONIFACIO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CORONA, J.:

This is a petition for review on certiorari^[1] seeking to reverse the decision^[2] and the resolution^[3] of the Court of Appeals in CA-G.R. No. 24614 entitled *People of the Philippines v. Crisanta B. Bonifacio*.

Private complainant Ofelia Santos was a businesswoman and a buy-and-sell agent of jewelry. Sometime in March 1996, petitioner Crisanta Bonifacio was introduced to her. She expressed interest to see the pieces of jewelry Santos was selling.

On March 21, 1996, petitioner received several pieces of jewelry from Santos. She signed a document acknowledging receipt of the jewelry and agreeing to sell these items on commission basis. She also promised to remit the proceeds of the sale or return the unsold items to Santos within 15 days.

Petitioner failed to turn over the proceeds of the sale within the given period. She, however, returned some of the unsold items at a later date. The value of the pieces unaccounted for amounted to P154,000.

On March 28, 1996, petitioner asked Santos for new sets of jewelry to sell under the same terms and conditions. Again, on due date, petitioner failed to account. This time, the value of the unpaid and unreturned items amounted to P91,500.

On April 3, 1996, petitioner once more accepted several pieces of jewelry and signed an acknowledgment receipt under the same terms and conditions. On due date, petitioner again failed to pay. The pieces of jewelry left unpaid and unreturned amounted to P38,500.

In a letter dated July 25, 1996, Santos demanded from petitioner the payment of the total amount of P244,500. Petitioner gave her two checks amounting to P30,000 as partial payment. The checks, however, bounced for being drawn against insufficient funds and being drawn against a closed account, respectively.

Petitioner was thereafter charged with the crime of estafa under Article 315 (1)(b) ^[4] of the Revised Penal Code (RPC) in an Information filed before the Regional Trial Court (RTC), Branch 258, National Capital Judicial Region, Parañaque City:

That on or about the 21st and 28th of March 1996, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this

Honorable Court, the above-named accused, received in trust from the complainant Ofelia Santos, sets of jewelries worth P244,000.00 for the purpose of selling the same with the express obligation to remit the proceeds thereof, if sold, and return if not sold, but the accused once in possession of said sets of jewelries, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate and convert the same for her own personal use and benefit and despite several demands to return and/or account for the same, she fails and refuses to the damage and prejudice of the complainant therein, in the aforesaid amount of P244,000.00.

CONTRARY TO LAW.^[5]

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

After trial, the court a quo rendered a decision, the dispositive portion of which read:

WHEREFORE, finding accused CRISANTA B. BONIFACIO guilty beyond reasonable doubt of the crime of ESTAFA under Par. 1 (b), Art. 315 of the Revised Penal Code, accused CRISANTA B. BONIFACIO is hereby sentenced to suffer the penalty of twenty (20) years of *RECLUSION TEMPORAL*, with all the accessory penalties provided by law; to indemnify private complainant, Ofelia Santos, the amount of P284,000.00, as actual damages with interest at the legal rate from the filing of the Information until fully paid, and to pay the costs of suit.

SO ORDERED.^[6]

Dissatisfied, petitioner appealed to the Court of Appeals. The appellate court affirmed the RTC decision but modified the penalty:

WHEREFORE, the appealed Decision finding the accused-appellant Crisanta B. Bonifacio guilty beyond reasonable doubt of the crime of Estafa under Article 315(1) par. b of the Revised Penal Code is hereby **AFFIRMED** with the **modification** that the accused-appellant is sentenced to suffer the penalty of four (4) years and one (1) day of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum and to indemnify the private complainant, Ofelia Santos, the amount of P244,000.00 as actual damages with interest at the legal rate from the filing of the Information until fully paid, and to pay the costs of suit.

SO ORDERED.^[7]

Petitioner's motion for reconsideration was denied.^[8]

Hence, this petition.

Petitioner contends that the Court of Appeals erred in affirming the decision of the trial court finding her guilty of estafa under article 315 (1)(b), RPC. She maintains

that the element^[9] of misappropriation or conversion was not proved, thus her liability should only be civil in nature. Petitioner likewise contends that the indeterminate sentence (four years and one day of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum) imposed on her by the appellate court was excessive.

There is no merit in the petition.

The essence of estafa under Article 315 (1)(b), RPC is the appropriation or conversion of money or property received, to the prejudice of the owner. The words "convert" and "misappropriate" 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.^[10]

In an agency for the sale of jewelry, it is the agent's duty to return the jewelry on demand of the owner. The demand for the return of the thing delivered in trust and the failure of the accused-agent to account for it are circumstantial evidence of misappropriation.^[11]

Here, petitioner admitted that she received the pieces of jewelry on commission. She likewise admitted that she failed to return the items or their value on Santos' demand. On the other hand, the testimony of her lone witness, Lilia Pascual, failed to rebut the prosecution's evidence that she misappropriated the items or their corresponding value. She also never appeared in the trial court to refute the charge against her. Hence, the trial and appellate courts' conclusion of guilt by misappropriation was a logical consequence of the established facts.

Besides, evidentiary matters or matters of fact raised in the court below are not proper in petitions for certiorari.^[12] The findings of fact of the Court of Appeals, affirming those of the trial court, are conclusive and binding on the parties and are not reviewable by the Supreme Court^[13] which is not a trier of facts.^[14]

We now discuss the propriety of the indeterminate sentence imposed by the appellate court.

The penalty for estafa with abuse of confidence is provided in paragraph 1, Article 315, RPC:

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 and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

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