

# FIRST DIVISION

[ G.R. No. 210318, July 28, 2020 ]

## JANICE RESIDE Y TAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

### DECISION

**REYES, J. JR., J.:**

The present Petition for Review on *Certiorari*<sup>[1]</sup> filed under Rule 45 of the Rules of Court assails the June 28, 2013 Decision<sup>[2]</sup> and the November 26, 2013 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 34634, which affirmed with modification the April 8, 2011 Decision<sup>[4]</sup> of the Regional Trial Court (RTC) of Las Piñas City, Branch 201 in Criminal Case No. 06-0052 convicting petitioner Janice Reside y Tan (petitioner) for the crime of estafa penalized under paragraph 1(b), Article 315 of the Revised Penal Code (RPC).

### The Facts

Petitioner was tried in the RTC under the following Information:

That on various dates from 2001 to 2005, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with unfaithful and abuse of confidence did then and there willfully, unlawfully, [and] feloniously defraud complainant school TREASURY OF THE GOLDEN WORD SCHOOL, INC. herein represented by its President Carmelita C. De Dios in the amount of [P]1,721,010.82 in the following manner, to wit: the accused then employed as a Pre-School and Grade School Principal in complainant school authorized to collect and receive tuition and other school payments of students with the express obligation to remit said collection to the school, received a total collection from tuition and other school payments of preschool and grade school students in the amount of [P]1,721,010.82 but said accused, once in possession of the amount and far from complying with her obligation, misappropriated, misapplied and converted to her own use the amount of [P]1,721,010.82 and despite repeated demands made by the complainant school accused failed and refused and still fails and refuses to return said amount to the damage and prejudice of said complainant school.

CONTRARY TO LAW.<sup>[5]</sup>

During her arraignment on September 1, 2006, petitioner pleaded "not guilty" to the charge.<sup>[6]</sup>

The prosecution alleged that from 2001-2005, petitioner was the pre-school and grade school principal of Treasury of the Golden Word School, Inc. (TGWSI). As

such, she was entrusted by the President of TGWSI Carmelita C. De Dios (De Dios) to: *one*, collect the tuition fees from the parents and students; *two*, issue official receipts therefor; and *three*, to remit the same to the school.<sup>[7]</sup> Sometime in 2005, Marie Gil Padilla (Padilla), Treasurer of TGWSI, noticed that petitioner stopped reporting for work.<sup>[8]</sup> This prompted De Dios to review the books of TGWSI and she discovered the non-remittance of some tuition fees received by petitioner.<sup>[9]</sup> Further investigation revealed that petitioner has been issuing temporary receipts which was against the policy of TGWSI.<sup>[10]</sup> De Dios then tried to meet with petitioner to discuss the matter, but to no avail.<sup>[11]</sup> Thus, De Dios sought the assistance of the *barangay* where petitioner resided.<sup>[12]</sup> At the *barangay* hall, petitioner admitted that De Dios' allegations were true.<sup>[13]</sup> Thereafter, the parties agreed to settle and a promissory note was signed by petitioner undertaking to pay De Dios within three months.<sup>[14]</sup> Due to petitioner's failure to pay upon maturity of the promissory note and despite demand, De Dios filed a criminal complaint for estafa.<sup>[15]</sup>

In defense, petitioner averred that, aside from Padilla, she was allowed to acknowledge payments from the students for which she issued the necessary receipts.<sup>[16]</sup> She denied the allegation that she failed to remit the tuition fees and claimed that prior to the filing of the case, De Dios examined the receipts and informed her that no discrepancy was found.<sup>[17]</sup> Lastly, petitioner posited that she signed the promissory note under duress.<sup>[18]</sup>

In its April 8, 2011 Decision, the RTC held that (1) all the statements of account, official receipts, as well as temporary receipts contained the signature of petitioner, thus, signifying that she received certain amounts of money; (2) there was misappropriation when petitioner failed to remit to the school the entire amount of tuition fees received by her as shown by the discrepancy between the official receipts issued to the students and the remittance voucher slips; and (3) as to the requirement of demand, petitioner admitted in her Counter-Affidavit that a demand letter was mailed to her on November 3, 2005.<sup>[19]</sup> The dispositive portion of which, states:

WHEREFORE, premises considered, the Court hereby finds [petitioner] GUILTY beyond reasonable doubt of the crime of estafa defined and penalized under Article 315, paragraph 1(b) of the [RPC] and taking into consideration the Indeterminate Sentence Law, [petitioner] is sentenced to suffer an indeterminate penalty of imprisonment of EIGHT (8) YEARS of [*prision mayor*] in its medium period as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS and ONE (1) DAY of [*reclusion temporal*] as maximum with all the accessory penalties provided for by law and to indemnify the private complainant the sum of [P]1,721,010.82, and to pay ten percent (10%) attorney's fees x x x[.]

SO ORDERED.<sup>[20]</sup>

Upon appeal, the CA agreed with the RTC that petitioner was guilty of estafa. However, the CA found that, per the documentary evidence presented, the total sum that petitioner failed to remit to the school amounts only to P134,462.90.<sup>[21]</sup> Hence, the CA modified the penalty imposed, *viz.*:

WHEREFORE, the *Decision* dated 8 April 2011 of the [RTC] of Las Piñas City, Branch 201, in Criminal Case No. 06-0052 is AFFIRMED with MODIFICATIONS. [Petitioner] is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. [Petitioner] is ordered to indemnify private complainant [De Dios] the sum of [P]134,462.90, plus ten percent (10%) thereof as attorney's fees.

SO ORDERED.<sup>[22]</sup>

Aggrieved, petitioner moved for the CA to reconsider its Decision, but the same was denied in a Resolution<sup>[23]</sup> dated November 26, 2013.

Hence, this petition.

### **The Court's Ruling**

The Court finds that petitioner is guilty, not of estafa, but of **qualified theft**.

The RTC and the CA rulings are both predicated on their finding that all the elements of estafa under paragraph 1(b), Article 315 of the RPC have been sufficiently established by the prosecution.

We disagree.

Article 315 of the RPC punishes criminal fraud resulting to damage capable of pecuniary estimation.<sup>[24]</sup> The elements of estafa through misappropriation under paragraph 1(b), Article 315<sup>[25]</sup> of the RPC are:

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 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.

<sup>[26]</sup>

Contrary to the identical ruling of the courts *a quo*, the first element of the crime charged is absent. Verily, when the money, goods, or any other personal property *is received* by the offender from the offended party (1) in *trust*, or (2) on *commission*, or (3) for *administration*, the offender acquires both material or physical possession and *juridical possession* of the thing received.<sup>[27]</sup> Stated plainly, mere receipt of the money, goods, or personal property does not suffice, it is also essential that the accused acquired both material or physical possession and juridical possession of the thing received.<sup>[28]</sup> Juridical possession refers to a possession which gives the

transferee a right over the thing transferred and this, he may set up even against the owner.<sup>[29]</sup>

As early as 1956, the Court, in *Guzman v. Court of Appeals*,<sup>[30]</sup> already demarcated the line between possession by an employee who receives funds in behalf of the company and possession of an agent, thus:

There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his principal. In the former case, payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous, right to retain the money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault[.]

Therefore, as it now stands, a sum of money received by an employee in behalf of an employer is considered to be **only in the material possession** of the employee. Notably, such material possession of an employee is adjunct, by reason of his employment, to a recognition of the juridical possession of the employer. As long as the juridical possession of the thing appropriated did not pass to the employee, the offense committed is theft, qualified or otherwise.<sup>[31]</sup>

The foregoing principle is illustrated in *Chua-Burce v. Court of Appeals*<sup>[32]</sup> where the manager of a bank located in Calapan, Mindoro discovered a shortage in their cash-in-vault amounting to P150,000.00. After due investigation, a criminal complaint was filed against the person primarily responsible, *i.e.*, the bank's Cash Custodian. The RTC and the CA both found the cash custodian guilty of estafa under paragraph 1(b), Article 315 of the RPC. This Court, however, acquitted the accused ratiocinating that, being a mere cash custodian, the latter had no juridical possession over the missing funds and, thus, cannot be convicted of estafa.

Likewise, in *Roque v. People*,<sup>[33]</sup> where it involved possession of money in the capacity of a bank teller, the Court said:

In *People v. Locson*, x x x [we] considered deposits received by a teller in behalf of a bank as being only in the material possession of the teller. This interpretation applies with equal force to money received by a bank teller at the beginning of a business day for the purpose of servicing withdrawals. Such is only material possession. Juridical possession remains with the bank. In line with x x x with *People v. De Vera*, if the teller appropriates the money for personal gain then the felony committed is theft and not *estafa*. (Citations omitted)

Similarly, in *Benabaye v. People*,<sup>[34]</sup> a loans bookkeeper of a bank authorized to collect and/or accept loan payment from the bank's clients and issue provisional receipts therefore, and remit such payments to her supervisor was found to have no juridical possession, but only a physical or material possession of the cash payments she receives.

In the case at bench, it cannot be gainsaid that petitioner, in addition to her duties as principal, was authorized to receive or collect matriculation fees from the parents and/or students enrolled in TGWSI. Per a verbal agreement with De Dios, petitioner shall forward all payments received together with the remittance voucher slips to the school.<sup>[35]</sup> As it happens, the money merely passes into petitioner's hands and her custody thereof is only until the same is remitted to the school. Consequently, petitioner, as principal and temporary cash custodian of TGWSI, acquires only physical or material possession over the unremitted funds. Thus, being a mere custodian of the unremitted tuition fees and not, in any manner, an agent who could have asserted a right against TGWSI over the same, petitioner had only acquired material and not juridical possession of such funds and consequently, cannot be convicted of the crime of estafa as charged.

Nevertheless, a reading of the information and an appreciation of the evidence show qualified theft. Applying the variance doctrine under Section 4<sup>[36]</sup> in relation to Section 5,<sup>[37]</sup> Rule 120 of the Revised Rules on Criminal Procedure, it is proper to hold petitioner guilty of qualified theft because the latter crime was necessarily included in the crime charged in the information.

In gist, the Information alleged that petitioner, as principal of TGWSI, authorized to collect and receive tuition and other school payments of students, misappropriated, misapplied and converted to her own use the amount she received and failed and refused to return the money to TGWSI despite repeated demands to the damage and prejudice of TGWSI.

Theft is defined under Article 308 of the RPC, *viz.*:

ART. 308. *Who are liable for theft.* — Theft is committed by any person who, with intent to gain but without violence, against, or intimidation of neither persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and
3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

While Article 310 of the RPC reads:

ART. 310. *Qualified Theft.* — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, **or with grave abuse of confidence**, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if