

SECOND DIVISION

[G.R. No. 199907, February 27, 2017]

**ANITA CAPULONG, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to annul the November 12, 2010 Decision^[1] and December 22, 2011 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CR No. 28713, the dispositive portion of which states:

WHEREFORE, premises considered, the Decision dated August 1, 2003 of the Regional Trial Court (RTC), Third Judicial Region, Branch 86 of Cabanatuan City, convicting Appellant Anita Capulong of the crime of Estafa as defined and penalized under Article 315, par. 3(c) of the Revised Penal Code is hereby **AFFIRMED with MODIFICATION**, in that the Appellant is sentenced to an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty years (20) of *reclusion temporal*, as maximum.

SO ORDERED.^[3]

In an Information filed on February 28, 1995, petitioner Anita Capulong (*Anita*) and her husband, Fernando Capulong (*Fernando*), (*Spouses Capulong*) were accused of the crime of Estafa, committed as follows:

That on or about the 10th day of December, 1990, in Cabanatuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Spouses Fernando Capulong and Anita M. Capulong, having previously chattel mortgaged their Isuzu truck with Plate No. PLV-227 in the amount of P700,000.00 in favor of one FRANCISCA P. DE GUZMAN, with grave abuse of confidence, with intent to defraud and in conspiracy with each other, did then and there willfully, unlawfully and feloniously induce, thru false representation, said Francisca P. de Guzman to lend back to them the Registration Certificate and the Official Receipt of Payment of registration fees of the above mortgaged truck under the pretext that they would use said documents in applying for additional loan and/or show said documents to somebody interested to buy said truck, but said accused once in possession of said documents, instead of doing so and with intent to cause damage, concealed or destroyed the above-described registration certificate and the official receipt, thereby preventing Francisca P. de Guzman from registering said chattel mortgage with the Land Transportation Office;

that thereafter, herein accused even replaced the motor of subject truck with a different one, to the damage and prejudice of Francisca P. de Guzman in the aforestated amount of P700,000.00 as she was unable to register, much less foreclose, said chattel mortgage with the LTO because the motor number of the mortgaged truck indicated in the chattel mortgage was already different from the number of the new motor installed in said truck.

CONTRARY TO LAW.^[4]

The Spouses Capulong pleaded not guilty in their arraignment.^[5] Trial on the merits ensued.

Private complainant Francisca P. de Guzman (*De Guzman*), who was a relative^[6] and neighbor of the Spouses Capulong, was presented as the lone witness for the prosecution. She testified that, on August 7, 1990, the accused obtained from her an amount of P700,000.00. As stipulated in the Promissory Note,^[7] said amount, plus an agreed interest of 3% per month, would be paid by June 7, 1991. As a security for the loan, the Spouses Capulong executed a Chattel Mortgage with Power of Attorney^[8] over their ten-wheeler Isuzu cargo truck, the original Official Receipt and Certificate of Registration (OR-CR)^[9] of which were likewise delivered to De Guzman. On December 10, 1990, Anita requested to borrow the OR-CR for a week, excusing that she would apply for the amendment of the registration certificate to increase the weight or load capacity of the truck and show it to a prospective buyer. De Guzman was hesitant at first since the chattel mortgage was not yet registered, but she later on acceded. She gave the OR-CR in Cabanatuan City, where the same were being kept in a bank's safety deposit box. As proof of receipt, Anita issued a handwritten note.^[10] Despite the expiration of the one-week period and De Guzman's repeated demands, the documents were not returned by Anita who countered that the loaned amount was already paid.

On the other hand, Anita admitted that she and her husband received from De Guzman the amount of P700,000.00; that they executed a chattel mortgage over their Isuzu cargo truck and delivered its OR-CR; and, that she borrowed the OR-CR and issued a handwritten receipt therefor. However, she claimed that the OR-CR were borrowed in De Guzman's house in Talavera, Nueva Ecija; that the words "*Cab. City*" and "*12/10/90*" in the upper righthand corner of the receipt were not written by her; and, that the OR-CR were returned to De Guzman a week after.

Due to the repeated absence of counsel for the defense, Anita did not finish her testimony and was not cross-examined. The case was submitted for decision based on evidence on record.^[11]

On August 1, 2003, only Anita was convicted of the crime charged. Applying the Indeterminate Sentence Law, she was sentenced to suffer the penalty of *prision mayor* in its minimum period which has a range of six (6) years and one (1) day to 8 years imprisonment. In addition, she and Fernando were held jointly and severally liable to pay De Guzman the sum. of Php700,000.00, plus 12% interest per annum from the date of its maturity until fully paid.

The trial court opined:

The defense interposed by the accused is a mere denial. They are denying the allegation of the private complainant that the documents were never returned. Accused Anita Capulong, when asked during [her] direct examination testified:

"Question: It says here, 'to be returned after one week from date,' were you able to return the said Registration Certificate and Official Receipt as promised by you in accordance with this document?

Answer: Yes, sir.

Question: To whom did you return?

Answer: To Tia Pacing, sir."^[12]

The denial of the accused cannot overcome the positive assertion of the complainant, coupled with a document which was even in the own handwriting of accused Anita Capulong. If it is true that the documents were returned, herein accused should have asked for the document evidencing her receipt of the Certificate of Registration and Official Receipt. Furthermore, it is highly improbable that herein private complainant would undergo the expense, trouble and inconvenience of prosecuting the instant case, which lasted for several years, if her allegation is a mere fabrication.

The denials interposed by the accused are shallow and incredible. It is proven that accused Anita Capulong failed to comply with her obligation to return the borrowed documents, as promised. She concealed the documents after she received them from herein private [complainant]. Now the accused are even concealing the cargo truck subject of the chattel mortgage despite orders from this Court to give information about the truck. These facts established the first essential [element] of the crime charged.

The Certificate of Registration and Official Receipt were delivered to herein private complainant as security to the indebtedness of the two accused. Meaning, if in case the accused fail to pay their obligation, the private complainant is assured that she will recover what was loaned after foreclosing on the mortgaged truck. Without the aforementioned documents, the chattel mortgage is of no effect considering that the evidence of ownership of the accused over the cargo truck were no longer in the possession of Mrs. De Guzman. The concealment of the Certificate of Registration and Official Receipt caused a positive injury to herein private complainant considering that she could not register the chattel mortgage with the Land Transportation Office and neither could she exercise her right to foreclose the truck because of what the accused did. Clearly, herein private complainant was deprived of a means to collect from the accused. The accused made it difficult for the private

complainant to collect the obligation from them. The second element, is therefore, fully proven.

As to the words "Cab. City" written in the document marked as Exhibit D for the prosecution, the private complainant admitted that she wrote the same and she was able to explain why she did that. She testified during her direct examination:

"Question: On the uppermost right portion of this document, there appears two words 'Cab. City', do you know who wrote this?

Answer: Yes, sir.

Question: Who?

Answer: Me, sir.

Question: Why did you write these words, 'Cab. City'?

Answer: Because such place was not written, so I wrote it, sir."

As to the extent of the injury, it was held by the Supreme Court in the case of *United States vs. Tan Jenjua*, 1 Phil. Rep. 38, "must be based upon the amount which such a note represents without regard to whether or not the amount is actually collected subsequent to the destruction."^[13]

Anita moved for a new trial on the alleged ground of incompetence and negligence of her former counsel.^[14] It was denied in the Order^[15] dated February 26, 2004. In her motion for reconsideration, she added that a new and material evidence, particularly Solidbank Check No. PA074896 dated September 8, 1992 in the amount of P700,000.00, had been discovered as proof of payment of the amount subject of this case.^[16] However, in its Order dated May 17, 2004, the trial court denied the motion reasoning that the check is actually a forgotten, not a newly discovered, evidence "as it was all along readily available to [the] accused."^[17] Consequently, a Notice of Appeal^[18] was filed.

On November 12, 2010, the CA affirmed Anita's conviction, but modified her sentence to an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

We paraphrase the CA's pronouncements:

Contrary to Anita's interpretation, the documents or papers referred to in Article 315, Paragraph 3 (c) of the RPC are not limited to those emanating from the courts or government offices. Based on the rulings in *United States v. Tan Jenjua*,^[19] *United States v. Kilayko*,^[20] and *People v. Dizon*,^[21] it is clear that the OR-CR fall within the purview of said article. The fact that the motor vehicle is nowhere to be

found only leads to the conclusion that Anita concealed the borrowed documents. Besides, if she really returned the same, she should have caused the cancellation of the note when she borrowed the OR-CR or, at the very least, made an entry therein of the date of return of the documents. With the concealment of the OR-CR, Anita clearly had the intention to defraud De Guzman, who was effectively deprived of the convenient way of foreclosing the chattel mortgage absent the evidence of ownership of the chattel itself.

Further, Anita was not denied of her constitutional right to due process. While her counsel failed to object to the prosecution's verbal motion to strike out her testimonies from the records, which was granted on May 23, 2002, her counsel filed a petition to lift the trial court's Order. The petition was granted per Order dated October 17, 2002, which likewise allowed Anita to testify at the next scheduled hearing. Despite due notice, Anita's counsel, however, again failed to appear at the March 21, 2003 hearing scheduled for the presentation of further evidence. Prior thereto, the trial court, in its Order dated January 31, 2003, already warned that the case would be deemed submitted for resolution if Anita and her counsel fail to appear on March 21, 2003.

Finally, Solidbank Check No. PA074896 dated September 8, 1992 does not satisfy the requisites of a newly-discovered evidence as it already existed long before the filing of the Information on February 28, 1995. Had Anita exercised reasonable diligence, she could have produced said check during the trial. It is too unbelievable for her not to have searched and produced the check considering that it was for the payment of a P700,000.00 indebtedness. Even if the check qualifies as a newly-discovered evidence, the same would still be inconsequential since reimbursement or belated payment does not extinguish criminal liability in *estafa*.

Anita filed a motion for reconsideration of the CA Decision, but it was denied.

Before Us, Anita pleads for an acquittal or, in the alternative, the remand of the case to the court *a quo* for new trial. The following issues are raised:

I. WHETHER OR NOT THE COURT OF APPEALS COMMITTED SUCH A SEVERE DEGREE OF SERIOUS REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION THAT WARRANTS THE RELAXATION OF THE RESTRICTION OF RAISING ONLY QUESTIONS OF LAW IN PETITIONS FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT;

II. WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVELY ABUSED ITS DISCRETION IN NOT ACQUITTING THE PETITIONER OUTRIGHT ON ACCOUNT OF THE FACT THAT THE ELEMENTS OF ESTAFA UNDER ARTICLE 315, PARAGRAPH 3 (C), PERTAINING TO PREJUDICE ARE MARKEDLY ABSENT;

III. WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVELY ABUSED ITS DISCRETION IN NOT ACQUITTING THE PETITIONER OUTRIGHT DESPITE THE FACT THAT IT WAS SUFFICIENTLY ESTABLISHED THAT SITE HAD ALREADY PAID HER OBLIGATIONS IN FULL; AND

IV. WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS