

FIRST DIVISION

[G.R. No. 174113, January 13, 2016]

**PAZ CHENG Y CHU, PETITIONER, VS. PEOPLE OF PHILIPPINES,
THE RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated March 28, 2006 and the Resolution^[3] dated June 26, 2006 of the Court of Appeals (CA) in CA-G.R. CR No. 24871, which affirmed the conviction of petitioner Paz Cheng y Chu (Cheng) for three (3) counts of the crime of *Estafa* defined and penalized under Article 315 (1) (b) of the Revised Penal Code (RPC).

The Facts

The instant case arose from the filing of three (3) separate Informations^[4] charging Cheng of the crime of *Estafa* defined and penalized under Article 315 (1) (b) of the RPC before the Regional Trial Court of Quezon City, Branch 226 (RTC), docketed as Criminal Case Nos. Q-98-75440, Q-98-75441, and Q-98-75442. According to the prosecution, private complainant Rowena Rodriguez (Rodriguez) and Cheng entered into an agreement whereby Rodriguez shall deliver pieces of jewelry to Cheng for the latter to sell on commission basis. After one month, Cheng is obliged to either: (a) remit the proceeds of the sold jewelry; or (b) return the unsold jewelry to the former. On different dates (*i.e.*, July 12, 1997, July 16, 1997, and August 12, 1997), Rodriguez delivered various sets of jewelry to Cheng in the respective amounts of P18,000.00, P36,000.00, and P257,950.00. Upon delivery of the last batch of jewelry, Cheng issued a check worth P120,000.00 as foil security for the first two (2) deliveries and as partial security for the last. When Cheng failed to remit the proceeds or to return the unsold jewelry on due date, Rodriguez presented the check to the bank for encashment, but was dishonored due to insufficient funds. Upon assurance of Cheng, Rodriguez re-deposited the check, but again, the same was dishonored because the drawee account had been closed. Rodriguez then decided to confront Cheng, who then uttered "*Akala mo, babayaran pa kita?*" Thus, Rodriguez was constrained to file the instant charges.^[5]

In defense, Cheng denied receiving any jewelry from Rodriguez or signing any document purporting to be contracts of sale of jewelry, asserting that Rodriguez is a usurious moneylender. She then admitted having an unpaid loan with Rodriguez and that she issued a check to serve as security for the same, but was nevertheless surprised of her arrest due to the latter's filing of *Estafa* charges against her.^[6]

The RTC Ruling

In a Decision^[7] dated December 7, 2000, the RTC found Cheng guilty beyond reasonable doubt of three (3) counts of *Estafa* and, accordingly, sentenced her as follows: (a) for the first count, Cheng is sentenced to an indeterminate penalty ranging from four (4) years, two (2) months, and one (1) day to six (6) years, eight (8) months, and twenty-one (21) days to eight (8) years of *prision correccional* in its maximum period to *prision mayor* in its minimum period (maximum); (b) for the second count, Cheng is sentenced to an indeterminate penalty ranging from six (6) months and one (1) day to one (1) year, eight (8) months, and twenty (20) days of *prision correccional* in its minimum and medium periods to six (6) years, eight (8) months, and twenty-one (21) days to eight (8) years of *prision correccional* in its maximum period to *prision mayor* in its minimum period (maximum); and (c) for the third count, Cheng is sentenced to an indeterminate penalty ranging from six (6) months and one (1) day to one (1) year, eight (8) months, and twenty (20) days of *prision correccional* in its minimum and medium periods to four (4) years, two (2) months, and one (1) day to five (5) years, five (5) months, and ten (10) days of *prision correccional* in its maximum period to *prision mayor* in its minimum period (minimum).^[8]

The RTC found that the prosecution has sufficiently proven through documentary and testimonial evidence that: (a) Rodriguez indeed gave Cheng several pieces of jewelry for the latter to either sell and remit the proceeds or to return said jewelry if unsold to the former; and (b) Cheng neither returned the jewelry nor remitted their proceeds to Rodriguez within the specified period despite the latter's demands. In contrast, Cheng failed to substantiate her claims through the documentary evidence she presented while her testimony was deemed to be incredible and not worthy of belief.^[9]

Aggrieved, Cheng appealed^[10] to the CA.

The CA Ruling

In a Decision^[11] dated March 28, 2006, the CA affirmed Cheng's conviction for three (3) counts of *Estafa*, with modification as to the penalties, as follows: (a) for the first count of *Estafa* where the amount misappropriated is P257,950.00, Cheng is sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum; (b) for the second count of *Estafa* where the amount misappropriated is P36,000.00, Cheng is sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years and two (2) months of *prision correccional*, as minimum, to nine (9) years of *prision mayor*, as maximum; and (c) for the third count of *Estafa* where the amount misappropriated is P18,000.00, Cheng is sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years and two (2) months of *prision correccional*, as minimum, to six (6) years, eight (8) months, and twenty (20) days of *prision mayor*, as maximum.^[12]

The CA agreed with the RTC's findings that the prosecution had sufficiently established Cheng's guilt beyond reasonable doubt, pointing out that Rodriguez's testimony was "more candid, credible and straightforward" and that "her demeanor in the witness stand is worthy of belief" as opposed to that of Cheng which is highly

self-serving and uncorroborated.^[13] Further, the CA found that a modification of Cheng's penalties is in order to conform with prevailing law and jurisprudence on the matter.^[14]

Undaunted, Cheng moved for reconsideration^[15] but was denied in a Resolution^[16] dated June 26, 2006; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly affirmed Cheng's conviction for three counts of *Estafa* defined and penalized under Article 315 (1) (b) of the RPC.

The Court's Ruling

The petition is without merit.

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:

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[.]

x x x x

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;

x x x x

The elements of *Estafa* under this provision are as follows: (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.^[17] In the case of *Pamintuan v. People*,^[18] the Court had the opportunity to elucidate further on the essence of the aforesaid crime, as well as the proof needed to sustain a conviction for the same, to wit:

The essence of this kind of [E]stafa is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words "convert" and "misappropriate" connote the 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. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. **In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.**^[19] (Emphases and underscoring supplied)

In this case, a judicious review of the case records reveals that the elements of *Estafa*, as defined and penalized by the afore-cited provision, are present, considering that: (a) Rodriguez delivered the jewelry to Cheng for the purpose of selling them on commission basis; (b) Cheng was required to either remit the proceeds of the sale or to return the jewelry after one month from delivery; (c) Cheng failed to do what was required of her despite the lapse of the aforesaid period; (d) Rodriguez attempted to encash the check given by Cheng as security, but such check was dishonored twice for being drawn against insufficient funds and against a closed account; (e) Rodriguez demanded that Cheng comply with her undertaking, but the latter disregarded such demand; (f) Cheng's acts clearly prejudiced Rodriguez who lost the jewelry and/or its value.

In a desperate attempt to absolve herself from liability, Cheng insists that Rodriguez admitted in her own testimony that the transaction between them is not an agency on commission basis, but a plain sale of jewelry with Rodriguez as the seller and Cheng as the buyer. As such, Cheng's nonpayment of the purchase price of the jewelry would only give rise to civil liability and not criminal liability.^[20] The pertinent portion of Rodriguez's testimony is as follows:

Q. After the delivery of these several items totaling P257,950.00, what happened next?

A. She issued a check worth P120,000.00.

Q. What check is that?

A. PDCP Bank, sir.

Q. What is this check for, Ms. Witness?

A. As payment for the first and second transactions, sir, for P18,000.00 and P36,000.00 and the excess amount is applied for the third transaction.

x x x x

Q. So, all in all, you have sixty (60) days period with respect to this item, and the first delivery expired I am referring to July 12, 1997 worth P18,000.00 which will mature on September 11, so, from September 11, what happened?

A. **These were considered paid because she issued me a check for the period of August 13, so I was expecting that.**^[21] (Emphases and underscoring supplied)

Essentially, Cheng posits that since Rodriguez "admitted" in her testimony that the check issued by the former in the amount of P120,000.00 constituted full payment for the first and second batch of jewelry and partial payment for the last batch, the transactions entered into by the parties should be deemed in the nature of a sale.

Cheng is sadly mistaken.

The foregoing "admission" on the part of Rodriguez did not change the fact that her transactions with Cheng should be properly deemed as an agency on a commission basis whereby Rodriguez, as the owner of the jewelry, is the principal, while Cheng is the agent who is tasked to sell the same on commission. In the eyes of the Court, Rodriguez merely accepted the check as full security for the first and second batches of jewelry and as partial security for the last batch. It was only when Cheng defaulted in her undertaking pursuant to their agreement that Rodriguez was constrained to treat the check as the former's remittance of the proceeds of the sale of jewelry - albeit deficient - by presenting it for encashment on October 20, 1997, or more than two (2) months after the delivery of the last batch of jewelry.^[22] However, the check was dishonored for being drawn against insufficient funds.^[23] This notwithstanding and with the assurance from Cheng that the check will be cleared, Rodriguez presented such check for the second time on November 4, 1997; but it was again dishonored - this time for being drawn against a closed account.^[24] As such, the fact that Rodriguez loosely used the words "payment" and "paid" should not be taken against her and should not in any way change the nature of her transactions with Rodriguez from an agency on a commission basis to a full-fledged sale. Moreover, even Cheng does not consider such check as payment for the jewelry, but rather, as security for the loan she allegedly obtained from Rodriguez.

Indisputably, there is no reason to deviate from the findings of the RTC and the CA as they have fully considered the evidence presented by the prosecution and the defense, and they have adequately explained the legal and evidentiary reasons in concluding that Cheng is indeed guilty beyond reasonable doubt of three (3) counts