

THIRD DIVISION

[G.R. No. 189077, November 16, 2016]

LINA M. BERNARDO, PETITIONER, VS. HONORABLE COURT OF APPEALS (FORMER FOURTH DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

JARDELEZA, J.:

This is a Petition for *Certiorari*^[1] of the September 22, 2008 Decision^[2] and May 13, 2009 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. CR No. 30290. The CA found petitioner Lina M. Bernardo (Bernardo) guilty beyond reasonable doubt in Criminal Case No. 02-120 for the crime of *estafa* by means of false pretenses or fraudulent acts penalized under paragraph 2(a) of Article 315 of the Revised Penal Code.^[4] For failure to file a motion for reconsideration within the reglementary period, Bernardo's conviction became final and was entered in the Book of Entries of Judgments by the CA. Bernardo now comes before us asking that the entry of judgment in the case be recalled.

Facts

Bernardo was charged with three counts of *estafa* in the Regional Trial Court (RTC) of Angeles City, Pampanga, Branch 61, dorketed as Criminal Case Nos. 02-120, 02-121 and 02-122.^[5] The accusatory portions of the three Informations read:

[Criminal Case No. 02-120]

That sometime in the month of September, 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses, fraudulent acts and misrepresentations, defrauded the complainant, LUCY R. TANCHIATCO, in the following manner, to wit: the accused falsely pretending to possess credit, indorsed and rediscounted a Consumer Bank Check No. 0788549 dated December 31, 2000, in the amount of P50,000.00, which appears to have been issued by one Marcial S. Sadie, Jr., the accused falsely pretending that the said check was duly funded in her favor, and which representation was merely intended to induce the complainant to rediscount the corresponding amount of the check, as in fact, complainant did rediscount said check, and accused, once in possession of the said corresponding amount and far from complying with her obligation, did then and there willfully, unlawfully, and feloniously misappropriate, misapply and convert the said amount to her own personal use and benefit, and despite demands made upon her to return or redeem the amount of the check, accused failed and refused and still fails and refuses to comply with her obligation, to the damage and

prejudice of said complainant, LUCY R. TANCHIATCO, in the aforementioned amount of FIFTY THOUSAND (P50,000.00) PESOS, Philippine Currency.

CONTRARY TO LAW.

[Criminal Case No. 02-121]

That sometime in the month of October, 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretense, fraudulent acts and misrepresentations, defrauded the complainant, LUCY R. TANCHIATCO, in the following manner, to wit: the accused obtained a loan from complainant, LUCY R. TANCHIATCO, in the total amount of P75,000.00, by falsely pretending to possess properties in an affidavit dated November 27, 2000, given to the complainant for security of said loan, which affidavit states that accused was the owner of the stall and that the same could be transferred to any assignee, when in truth and in fact, signatures of transferor were forged/falsified, and which representation was merely intended to induce the complainant to allow accused to obtain a loan in the amount of P75,000.00, as in fact, complainant gave the amount of P75,000.00 to accused as loan, and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to her own personal use and benefit, and despite demands made upon her to return the amount to complainant, accused failed and refused and still fails and refuses to comply with her obligation, to the damage and prejudice of said complainant, LUCY R. TANCHIATCO, in an aforementioned amount of SEVENTY FIVE THOUSAND (P75,000.00) PESOS, Philippine Currency.

CONTARARY TO LAW.

[Criminal Case No. 02-122]

That sometime in the month of November, 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses, fraudulent acts and misrepresentations, defrauded the complainant, LUCY R. TANCHIATCO, in the following manner, to wit: the accused obtained a loan from complainant LUCY R. TANCHIATCO, in the amount of P200,000.00, by falsely pretending to possess property in an affidavit dated November 27, 2000, given to the complainant for security of said loan, which affidavit states that accused was the owner of the stall and that the same could be transferred to any assignee, when in truth and in fact, the signature of transferor was forged/falsified, and which representation was merely intended to induce the complainant to allow accused to obtain a loan in the amount of P200,000.00, as in fact, complainant gave the amount of P200,000.00 to accused as a loan, and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to her own personal use and benefit, and despite demands made upon her to return

the amount to complainant, accused failed and refused and still fails and refuses to comply with her obligation, to the damage and prejudice of said complainant, LUCY R. TANCHIATCO, in an amount of TWO HUNDRED THOUSAND (P200,000.00) PESOS, Philippine Currency.

CONTRARY TO LAW.^[6]

Bernardo pleaded "not guilty" to the offenses charged.^[7] Trial then ensued. Four witnesses^[8] testified for the prosecution, while the defense waived its right to present evidence.^[9]

The testimony of the prosecution witnesses may be summarized as follows:

Complainant Lucy Tanchiatco (Tanchiatco) and Bernardo knew each other since 1982 or 1983, as they were neighbors. They became close friends sometime in the year 2000.^[10] Tanchiatco usually buys from Bernardo in the Pampang Public Market, while Bernardo visits Tanchiatco in the former's house twice or four times in a week.^[11]

On September 19, 2000, Bernardo went to the house of Tanchiatco to borrow money. As security for the loan, she offered the rediscounting of a Consumer Bank Check No. 00788549 in the amount of P50,000. The check dated December 31, 2000 was drawn from the account of a certain Marcial Sadie, Jr. (Sadie) and payable to the bearer. Tanchiatco did not personally know Sadie but upon the guarantee of Bernardo, she rediscounted the check and gave the money to Bernardo on the same day.^[12] Later on, Bernardo introduced Sadie to her, but she did not inquire about the check.^[13]

On October 10 and 12, 2000, Bernardo obtained loans from Tanchiatco, in the amount of P503000 and P25,000, respectively. As security, Bernardo gave Tanchiatco two affidavits of waiver of market stalls purportedly executed by her sister Carmelita Santos (Carmelita) and by Sadie. She promised Tanchiatco that in case she failed to pay her loan on December 31, 2000, the rights to the market stalls shall be transferred to the latter.^[14] Bernardo further assured Tanchiatco that she will take care of everything as one of the market administrators is her friend.^[15] Tanchiatco believed that Bernardo owns the market stalls although they were registered in the names of Sadie and Carmelita. There was a prohibition on owning more than one stall in the Pampang Public Market, hence, Bernardo has to put the stalls in the name of other persons.^[16]

Then on November 20, 21 and 22, 2000, Bernardo again borrowed money from Tanchiatco totaling to P200,000. For the P170,000, she promised Tanchiatco that she would produce an affidavit of waiver of market stall in the name of a certain Teresita Garcia (Teresita).^[17]

Bernardo defaulted in her loan obligations despite demands for her to pay. Expecting that the market stalls were already transferred in her name consistent with the affidavit of waivers given to her by Bernardo, Tanchiatco went to see the administrator of the Pampang Public Market. However, she learned that the market stalls were not transferred in her name. Sadie, Carmelita and Teresita also denied

the execution of the affidavits of waiver.^[18] Thus, Tanchiatco confronted Bernardo where the latter admitted that she was, in fact, the one who executed the affidavits.^[19]

Tanchiatco filed a complaint against Bernardo in their barangay. However, no settlement was reached. Hence, she filed the present criminal complaints.^[20]

During trial, Sadie testified that Bernardo was his co-vendor in the Pampang Public Market. He admitted that he owned the Consumer Bank check used as security for Bernardo's loan.^[21] However, he asserted that the signature appearing on the check does not belong to him. In fact, he does not know how Bernardo came into possession of the check.^[22] He added, that his account with Consumer Bank was already closed and that he did not issue the subject check.^[23]

RTC Ruling

In its Decision^[24] dated February 27, 2006, the RTC found that Bernardo never denied that the signature appearing at the dorsal side of the Consumer Bank check subject of Criminal Case No. 02-120 was hers.^[25] It held that Bernardo offered that check for rediscounting knowing that it was a falsified check. The RTC declared that the rediscounting of the falsified check was done simultaneously with the parting of P50,000. Bernardo's assurance that the check was genuine and was issued by Sadie in her favor, caused Tanchiatco to part with her money to her own damage and prejudice,^[26] which act constitutes *estafa* under Article 315, paragraph 2(a), of the Revised Penal Code.^[27] Thus, the RTC convicted Bernardo of *estafa* by means of false pretenses or fraudulent acts in Criminal Case No. 02-120.^[28]

As to Criminal Case Nos. 02-121 and 02-122, the RTC acquitted Bernardo after finding that the affidavits of waiver were not given prior to or simultaneous with the parting of the sums of money.^[29] It ruled that the liability incurred by Bernardo for non-payment of the loans secured by the affidavits of waiver was purely civil in nature.^[30]

Bernardo appealed her conviction to the CA. She took issue with the reliance of the RTC on the lone testimony of Sadie as regards the rediscounting of the Consumer Bank check.^[31] She maintained that in order to merit credence, the testimony of Sadie should have been corroborated by other witnesses.^[32] Bernardo also pleaded that rediscounting bills and notes is a legitimate transaction.^[33] She alleged that she could not be convicted of *estafa* by means of false pretenses or fraudulent acts because the element of deceit was not proven. The prosecution failed to prove that the check presented for rediscounting was spurious.^[34]

The Office of the Solicitor General (OSG) countered that the non-presentation of a corroborating witness is not fatal to the case because corroborative evidence is necessary only when there is a suspicion that the witness falsified the truth.^[35] However, there is no reason to suspect the veracity of Sadie's testimony as it is clear and straightforward and Sadie does not harbor any ill feelings towards Bernardo. Hence, his testimony deserves full credit and belief.^[36]

On the element of deceit, the OSG maintained that Bernardo's act of rediscounting a check that does not belong to her in order to get money from Tanchiatco is in itself pure and simple deceit.^[37] While rediscounting is a legal transaction, the presence of deceit makes the act of the author illegal.^[38]

CA Ruling

In its Decision dated September 22, 2008, the CA held that the uncorroborated testimony of Sadie is sufficient to sustain Bernardo's conviction. Citing relevant jurisprudence, it stated that the number of witnesses has nothing to do with the credibility of a witness.^[39] The CA ruled that Sadie is a credible witness having testified in a clear and straightforward manner, with no traces of ill motives against Bernardo.^[40] Further, it was proven that the signature appearing on the right bottom of the Consumer Bank check was not Sadie's signature as he even wrote his customary signature three times in open court for comparison.^[41] Thus, the CA affirmed the RTC's Decision *in toto* and adjudged that all the elements of *estafa* by means of false pretenses or fraudulent acts are present.

Bernardo, then represented by the Public Attorney's Office (PAO), received the notice of the CA Decision on September 25, 2008.^[42] However, no motion for reconsideration was filed within the reglementary period. Hence, the CA Decision became final and executory on October 11, 2008. The PAO received an Entry of Judgment of the CA Decision on March 12, 2009.^[43]

On April 9, 2009, Bernardo filed a Motion to Recall Entry of Judgment with attached Urgent Motion for Reconsideration^[44] in the CA. Atty. Benju V. Ardaña (Atty. Ardaña), the new PAO lawyer assigned to the case of Bernardo, pleaded that he never received a copy of the CA Decision although the same was duly stamped as received by PAO on September 25, 2008. Hence, he was surprised that an Entry of Judgment was issued. Atty. Ardaña blamed Herminia Polo (Polo), a receiving and filing clerk at the PAO Special and Appealed Cases Service, as well as the secretary^[45] of Atty. Joey Dolores Pontejos (Atty. Pontejos), the previous PAO lawyer handling the case, for taking upon herself to place a copy of the CA Decision inside its case folder without informing him that there was already a decision.^[46] He alleged that the omission was unintentional and was a simple inadvertence on the part of Polo as she was busy preparing for the official transfer of Atty. Pontejos, who was reassigned to the PAO-Tacloban District Office.^[47] Atty. Ardaña claimed that he relied on the status of the case reflected in the "Inventory of Cases" submitted by Atty. Pontejos, which showed that the case was "submitted for decision" in the CA. He asked for the CA's indulgence "in behalf of the erring staff."^[48]

Meanwhile, the attached Urgent Motion for Reconsideration merely reiterated the arguments that Bernardo raised in his Appellant's Brief.

In its Resolution dated May 13, 2009, the CA found that the Urgent Motion for Reconsideration was filed 194 days from the PAO's receipt of the CA Decision.^[49] The considerable lapse of time was attributable not only to the negligence of Polo, but also to Atty. Ardaña, whose duty included the proper disposition of the cases