

THIRD DIVISION

[G.R. No. 205144, November 26, 2014]

**MARGIE BALERTA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

REYES, J.:

The instant petition for review on *certiorari*^[1] assails the Decision^[2] rendered by the Court of Appeals (CA) on October 31, 2012 in CA-G.R. CR No. 00693 affirming, albeit with modification as to the penalty imposed, the Decision^[3] dated November 15, 2006 of the Regional Trial Court (RTC) of Barotac Viejo, Iloilo, Branch 66, in Criminal Case No. 99-1103, convicting Margie Balerta (petitioner) of *Estafa*.

Antecedents

The Information, dated October 27, 1999, filed against the petitioner before the RTC partially reads as follows:

That on or about May 31, 1999 until June 17, 1999, in the Municipality of Balasan, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then an employee/cashier of Balasan Associated Barangays Multi-Purpose Cooperative (BABMPC)[,] was in[-]charge of collecting and keeping the collections turned over to her by the collectors of the cooperative [and of] account[ing] for and deposit[ing] the collected amount to the depository bank which is the Balasan Rural Bank, Balasan, Iloilo, but said accused, far from complying with her obligation, with unfaithfulness and/or abuse of confidence, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert to her personal use and benefit the total collection of One Hundred Eighty[-]Five Thousand Five Hundred Eighty[-]Four Pesos and 06/100 (P185,584.06) Philippine Currency and despite repeated demands, the said accused failed and still fails, to liquidate or render formal accounting of her collections or return the aforesaid amount to the Balasan Associated Barangays Multi-Purpose Cooperative, to its damage and prejudice in the aforesaid amount of ? 185,584.06.

CONTRARY TO LAW.^[4]

During arraignment, the petitioner entered a "not guilty" plea.^[5] Pre-trial then ensued. The parties stipulated on the following: (a) the identity and existence of Balasan Associated Barangays Multi-Purpose Cooperative (BABMPC); (b) the identity

of the petitioner and her position as a cashier in BABMPC; (c) the petitioner “cannot withdraw from the bank account of [BABMPC] alone;” and (d) the criminal complaint against the petitioner was filed on the basis of the findings of an internal auditor and not of an independent accountant.^[6]

Version of the Prosecution

During the pre-trial, the prosecution manifested that BABMPC’s Manager, Napoleon Timonera (Timonera), and Internal Auditor, Ruben Ambros (Ambros), would take the witness stand. Timonera would testify on the function of BABMPC and the duties of the petitioner, while Ambros’ testimony would revolve on the facts and circumstances leading to the filing of the complaint. The prosecution intended to offer before the RTC no other documentary evidence except the affidavits of Timonera and Ambros.^[7]

In the course of the trial, only Timonera appeared to testify. When the proceedings before the RTC was concluded, both the prosecution and the defense did not formally offer any documentary evidence.^[8]

In Timonera’s testimony, he stated that BABMPC is registered with the Cooperative Development Authority and is engaged in micro-lending, trading and equipment rental.^[9] At the time he took the witness stand, Timonera was BABMPC’s Manager, and he was authorized through a board resolution to represent the cooperative in pursuing the criminal complaint against the petitioner.^[10]

According to Timonera, the petitioner worked as one of the three cashiers in BABMPC.^[11] She used to receive daily remittances, deposit to the bank, withdraw and issue loans^[12] specifically in connection with Care Philippines’ account involving an amount of P1,250,000.00.^[13] Care Philippines entrusted the sum to BABMPC, which in turn can release to borrowers loans ranging from P500.00 to P50,000.00.^[14]

The petitioner neither resigned nor was terminated from employment, but she stopped reporting for work from June 19, 1999 onwards after BABMPC discovered discrepancies and fraud in her records.^[15] Bank records showed that there was a variance of ₱40.00 indicated in BABMPC’s passbook, on one hand, and in the deposit slip, on the other.^[16] This prompted BABMPC’s bookkeeper, Rose De Asis (De Asis) to request the Internal Auditor, Ambros, to verify with the bank, which in turn disowned the entries and signatures in the passbook made and affixed between March 12, 1999 and June 15, 1999.^[17] BABMPC also found out from the bank teller that the petitioner declared the cooperative’s passbook as missing since March 1999, hence, a new one was issued on May 6, 1999.^[18] The petitioner used the new passbook in making actual transactions with the bank, but she kept the old passbook, upon which she made falsified entries to prevent BABMPC from discovering the discrepancies.^[19] The court asked Timonera how he knew that the signatures in the old passbook were affixed by the petitioner herself. Timonera replied that it was the petitioner who kept the passbook,^[20] and collected, remitted and withdrew money from the bank.^[21] BABMPC’s bookkeeper, De Asis, on the other hand, merely controlled the vouchers and the records of the transactions.^[22]

The petitioner and De Asis were the two authorized signatories of BABMPC as regards the passbook kept with the bank.^[23]

Upon audit, BABMPC found that "there was a discrepancy of some P185,000.00," P90,000.00 of which in the passbook, while the rest of the amount related to the records of the cooperative kept by the petitioner. When asked by the petitioner's counsel about where exactly was the discrepancy shown in the copy of the bank's ledger and pages of a passbook, which were part of BABMPC's records, Timonera answered that he is not an accountant and Ambros knew more about the matter.^[24]

Timonera also stated that BABMPC had sent the petitioners three letters, dated June 22, 1999, June 24, 1999 and August 30, 1999. The first letter requested the petitioner to report to the office to explain the discrepancies. The second letter requested the petitioner to pay BABMPC. The first two letters were brought to the petitioner's house by BABMPC's secretary, Marilyn Mombay (Mombay). Both times, the petitioner was not at home, and it was Estela Balerta, the former's sister-in-law, who received the letters. The last letter was sent by mail, but the petitioner refused to receive it as well.^[25]

Timonera also testified that without the petitioner's presence and permission, the latter's table and drawers were opened through the use of duplicate keys kept by De Asis. The use of the duplicate keys to open each other's office drawers was however a common practice between the petitioner and De Asis.^[26]

Version of the Defense

The defense, on its part, offered the testimony of the petitioner.

The petitioner testified that the last day she reported for work as a cashier in BABMPC was on June 17, 1999. Timonera got angry that day when the petitioner reminded him of his cash advances, which were already equivalent to his salaries for five months. The petitioner emphasized that Timonera had exceeded the allowable cash advance amount of one month salary.^[27]

On June 18, 1999, the petitioner suffered from migraine and was advised by her doctor to rest for two weeks. The day after, Timonera visited the petitioner's house, instructed her to rest, and informed her that she will be notified in case a necessity for her to report for work arises. On June 25, 1999, the petitioner received a letter requiring her to go to BABMPC's office. She complied with the directive on the same day. Timonera then presented to the petitioner the result of Ambros' audit showing that she incurred a shortage of P80,000.00. She was not however furnished a copy thereof. The petitioner also protested that the audit was conducted in her absence, but Timonera informed her that they would just thresh the matter up in court.^[28]

The petitioner likewise stated that she can no longer find the receipts, vouchers and books in her drawers showing the cash advances of Timonera. Her plea for the conduct of an independent audit also fell on deaf ears.^[29]

On July 7, 1999, the petitioner proceeded to the Balasan Police Station to report about the forced opening of her table and drawers which occurred on June 25, 1999.

She also informed the police that the amount of P5,000.00 kept in the drawers was missing. She confronted BABMPC about the missing cash. Ambros admitted that he and De Asis opened the drawers, but made no mention of any cash found thereon.
[30]

The petitioner alleged that Timonera was ill motivated when he initiated the filing of the criminal complaint against her. Timonera intended to evade his financial liabilities from BABMPC relative to his cash advances and the money which he had diverted to other projects in violation of the rules of the cooperative. The petitioner also suspected that Timonera must have speculated that the former had money as she then had plans to go abroad.
[31]

Prior to the petitioner's reminder to Timonera about the latter's cash advances, there was no untoward incident whatsoever between them. She admitted though that she did not report Timonera's cash advances to BABMPC's board.
[32]

The petitioner testified that the only shortage she was aware of involved the amount of P1,896.00, which was reflected in a past monthly audit. To date, the amount remains unsettled.
[33]

Ruling of the RTC

On November 15, 2006, the RTC rendered a Decision,
[34] the dispositive portion of which reads:

WHEREFORE, the Court hereby finds the [petitioner] guilty beyond reasonable doubt of the crime of Estafa by misappropriation and hereby sentences [the petitioner to] five (5) years, five (5) months and eleven (11) days of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum, together with the accessory penalty provided by law, to pay [BABMPC] P185,584.06 without subsidiary imprisonment in case of insolvency and to pay the costs.

SO ORDERED.
[35]

The RTC's reasons are quoted below:

According to the [petitioner], the internal audit wherein she has a shortage of P185,584.06 was false. However, she failed to prove and explain to the Court the exact figure or amount of money she is accountable of. She failed to cause an audit of her own to show that no shortage was incurred by her. Her testimony was not corroborated by any witness or other documentary evidence. What she did was simply to deny her shortage and pointed to [Timonera] as one responsible for the filing of charges against her. But the [petitioner] alone, being the one keeping the passbook of the cooperative, was able to misrepresent with the Rural Bank of Balasan that the passbook was lost and thereafter, she secured a new passbook. After she secured a new passbook, she used both the old passbook and new passbook and falsified the entries in the old passbook

making it appear that the old passbook was presented and transactions were made using the old passbook with the bank. With this scheme, it is clear that the accused has all the intention to defraud. For what is the purpose of using the old passbook when it was already cancelled and of no legal use? Worst is that, by means of falsification, she made false entries in the old passbook to mislead the officers of [BABMPC] to believe that the money entrusted to her is safely kept, when in truth[,] there were already shortages.

The Court believes that the evidence of the prosecution is overwhelming to point out the [petitioner's] criminal liability to the offense charged.^[36]

Ruling of the CA

The petitioner challenged the above ruling before the CA raising the factual issues of whether or not, as claimed by BABMPC, she had (a) falsified the entries in the passbook, (b) received collections for remittance to the bank, (c) misappropriated BABMPC's money, and (d) committed *estafa*.^[37]

On October 31, 2012, the CA rendered the herein assailed Decision, the decretal portion of which states:

WHEREFORE, the Court **AFFIRMS** the Decision dated November 15, 2006 of the Regional Trial Court, Branch 66, Barotac Viejo, Iloilo in Criminal Case No. 99-1103 with modifications with respect to the indeterminate penalties imposed. The [petitioner] is hereby sentenced to four (4) years and one (1) day of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum and to pay [BABMPC] the amount of Php185,584.06.

SO ORDERED.^[38]

The CA based its disposition on the following:

The elements of *estafa* through conversion or misappropriation under subsection 1 (b) of Art. 315 of the Revised Penal Code are as follows:

- I. That money, goods, or other personal property be 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 the obligation is guaranteed by a bond;
- II. That there be misappropriation or conversion of such money or property by the person who received it, or a denial on his part that he received it;
- III. That such misappropriation or conversion or denial is to the prejudice of another; and