705 Phil. 640

THIRD DIVISION

[G.R. No. 201620, March 06, 2013]

RAMONCITA O. SENADOR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND CYNTHIA JAIME, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

This is a Petition for Review on Certiorari under Rule 45 seeking the reversal of the May 17, 2011 Decision[1] and March 30, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR. No. 00952

In an Information dated August 5, 2002, petitioner Ramoncita O. Senador (Senador) was charged before the Regional Trial Court (RTC), Branch 32 in Dumaguete City with the crime of Estafa under Article 315, par. 1(b) of the Revised Penal Code,[3] *viz*:

> That on or about the 10th day of September 2000 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said **accused, having obtained and received from one Cynthia Jaime various kinds of jewelry valued in the total amount of P705,685.00** for the purpose of selling the same on consignment basis with express obligation to account for and remit the entire proceeds of the sale if sold or to return the same if unsold within an agreed period of time and despite repeated demands therefor, did, then and there willfully, unlawfully and feloniously **fail to remit proceeds of the sale of said items or to return any of the items that may have been unsold to said Cynthia Jaime** but instead has willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to his/her own use and benefit **to the damage and prejudice of said Cynthia Jaime in the aforementioned amount of P705,685.00**.[4] (Emphasis supplied.)

Upon arraignment, petitioner pleaded "not guilty." Thereafter, trial on the merits ensued.

The prosecution's evidence sought to prove the following facts: Rita Jaime (Rita) and her daughter-in-law, Cynthia Jaime (Cynthia), were engaged in a jewelry business. Sometime in the first week of September 2000, Senador went to see Rita at her house in Guadalupe Heights, Cebu City, expressing her interest to see the pieces of jewelry that the latter was selling. On September 10, 2000, Rita's daughter-in-law and business partner, Cynthia, delivered to Senador several pieces of jewelry worth seven hundred five thousand six hundred eighty five pesos (PhP 705,685).[5]

In the covering Trust Receipt Agreement signed by Cynthia and Senador, the latter undertook to sell the jewelry thus delivered on commission basis and, thereafter, to remit the proceeds of the sale, or return the unsold items to Cynthia within fifteen (15) days from the delivery.[6] However, as events turned out, Senador failed to turn over the proceeds of the sale or return the unsold jewelry within the given period.[7]

Thus, in a letter dated October 4, 2001, Rita demanded from Senador the return of the unsold jewelry or the remittance of the proceeds from the sale of jewelry entrusted to her. The demand fell on deaf ears prompting Rita to file the instant criminal complaint against Senador.[8]

During the preliminary investigation, Senador tendered to Rita Keppel Bank Check No. 0003603 dated March 31, 2001 for the amount of PhP 705,685,[9] as settlement of her obligations. Nonetheless, the check was later dishonored as it was drawn against a closed account.[10]

Senador refused to testify and so failed to refute any of the foregoing evidence of the prosecution, and instead, she relied on the defense that the facts alleged in the Information and the facts proven and established during the trial differ. In particular, Senador asserted that the person named as the offended party in the Information is not the same person who made the demand and filed the complaint. According to Senador, the private complainant in the Information went by the name "Cynthia Jaime," whereas, during trial, the private complainant turned out to be "Rita Jaime." Further, Cynthia Jaime was never presented as witness. Hence, citing *People v. Uba,et al.* [11] (*Uba*) and *United States v. Lahoylahoy and Madanlog* (*Lahoylahoy*), [12] Senador would insist on her acquittal on the postulate that her constitutional right to be informed of the nature of the accusation against her has been violated.

Despite her argument, the trial court, by Decision dated June 30, 2008, found Senador guilty as charged and sentenced as follows:

> WHEREFORE, the Court finds RAMONCITA SENADOR guilty beyond reasonable doubt of the crime of ESTAFA under Par. 1 (b), Art. 315 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of four (4) years and one (1) day of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum and to indemnify the private complainants, RITA JA[I]ME and CYNTHIA JA[I]ME, the following: 1) Actual Damages in the amount of P695,685.00 with interest at the legal rate from the filing of the Information until fully paid; 2) Exemplary Damages in the amount of P100,000.00; and 3) the amount of P50,000 as Attorney's fees.

Senador questioned the RTC Decision before the CA. However, on May 17, 2011, the appellate court rendered a Decision upholding the finding of the RTC that the prosecution satisfactorily established the guilt of Senador beyond reasonable doubt. The CA opined that the prosecution was able to establish beyond reasonable doubt the following undisputed facts, to wit: (1) Senador received the pieces of jewelry in

trust under the obligation or duty to return them; (2) Senador misappropriated or converted the pieces of jewelry to her benefit but to the prejudice of business partners, Rita and Cynthia; and (3) Senador failed to return the pieces of jewelry despite demand made by Rita.

Further, the CA––finding that *Uba*[13] is not applicable since Senador is charged with estafa, a crime against property and not oral defamation, as in Uba––ruled:

> WHEREFORE, the June 30, 2008 Judgment of the Regional Trial Court, Branch 32, Dumaguete City, in Criminal Case No. 16010, finding accused appellant guilty beyond reasonable doubt of Estafa is hereby AFFIRMED in toto.
>
> SO ORDERED.

Senador filed a Motion for Reconsideration but it was denied in a Resolution dated March 30, 2012. Hence, the present petition of Senador.

The sole issue involved in the instant case is whether or not an error in the designation in the Information of the offended party violates, as petitioner argues, the accused's constitutional right to be informed of the nature and cause of the accusation against her, thus, entitling her to an acquittal.

The petition is without merit.

At the outset, it must be emphasized that variance between the allegations of the information and the evidence offered by the prosecution does **not** of itself entitle the accused to an acquittal,[14] more so if the variance relates to the designation of the offended party, a mere formal defect, which does not prejudice the substantial rights of the accused.[15]

As correctly held by the appellate court, Senador's reliance on Uba is misplaced. In *Uba*, the appellant was charged with oral defamation, a crime against honor, wherein the identity of the person against whom the defamatory words were directed is a material element. Thus, an erroneous designation of the person injured is material. On the contrary, in the instant case, Senador was charged with estafa, a crime against property that does not absolutely require as indispensable the proper designation of the name of the offended party. Rather, what is absolutely necessary is the correct identification of the **criminal act charged in the information.**[16] Thus, in case of an error in the designation of the offended party in crimes against property, Rule 110, Sec. 12 of the Rules of Court mandates the correction of the information, not its dismissal:

> SEC. 12. *Name of the offended party.*—The complaint or information must state the name and surname of the person against whom or against whose property the offense was committed, or any appellation or nickname by which such person has been or is known. If there is no better way of identifying him, he must be described under a fictitious name.

> (a) **In offenses against property, if the name of the offended party is unknown, the property must be described with such particularity as to properly identify the offense charged**.
>
> (b) If the true name of the person against whom or against whose property the offense was committed is thereafter disclosed or ascertained, **the court must cause such true name to be inserted in the complaint or information and the record**. x x x (Emphasis supplied.)

It is clear from the above provision that in offenses against property, the materiality of the erroneous designation of the offended party would depend on whether or not the subject matter of the offense was sufficiently described and identified.

Lahoylahoy cited by Senador supports the doctrine that if the subject matter of the offense is **generic** or one which is not described with such particularity as to properly identify the offense charged, then an erroneous designation of the offended party is material and would result in the violation of the accused's constitutional right to be informed of the nature and cause of the accusation against her. Such error, *Lahoylahoy* teaches, **would result in the acquittal** of the accused, viz:

> The second sentence of section 7 of General Orders No. 58 declares that when an offense shall have been described with sufficient certainty to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial. **We are of the opinion that this provision can have no application to a case where the name of the person injured is matter of essential description as in the case at bar; and at any rate, supposing the allegation of ownership to be eliminated, the robbery charged in this case would not be sufficiently identified.** A complaint stating, as does the one now before us, that the defendants "took and appropriated to themselves with intent of gain and against the will of the owner thereof the sum of P100" could scarcely be sustained in any jurisdiction as a sufficient description either of the act of robbery or of the subject of the robbery. There is a saying to the effect that **money has no earmarks; and generally speaking the only way money, which has been the subject of a robbery, can be described or identified in a complaint is by connecting it with the individual who was robbed as its owner or possessor**. And clearly, when the offense has been so identified in the complaint, the proof must correspond upon this point with the allegation, or there can be no conviction.[17] (Emphasis supplied.)

In *Lahoylahoy*, the subject matter of the offense was money in the total sum of PhP 100. Since money is **generic** and has no earmarks that could properly identify it, the only way that it (money) could be described and identified in a complaint is by connecting it to the offended party or the individual who was robbed as its owner or possessor. Thus, the identity of the offended party is material and necessary for the proper identification of the offense charged. Corollary, the erroneous designation of