

## THIRD DIVISION

[ G.R. NO. 150443, January 20, 2006 ]

**SYLVIA PEREZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

Before the Court is a petition for review<sup>[1]</sup> assailing the Decision<sup>[2]</sup> promulgated on 16 October 2001 in CA-G.R. CR No. 20845. The Court of Appeals dismissed the appeal from the Decision of the Regional Trial Court of Pasig City, Branch 267 ("trial court") in Criminal Case No. 107070 finding Sylvia Perez ("Perez") guilty of the crime of estafa under paragraph 1(b), Article 315 of the Revised Penal Code.

#### The Charge

Perez was the Accounts Receivable and Recording Clerk of Storck Products, Inc. ("Storck") from 1984 to 1993. On 17 October 1994, Assistant Provincial Prosecutor Christopher C. Garvida filed an Information<sup>[3]</sup> against Perez for violation of paragraph 1(b), Article 315 of the Revised Penal Code. On 26 October 1995, State Prosecutor Raymunda A. Cruz-Apolo amended the Information, as follows:

The undersigned State Prosecutor, accuses Sylvia Perez of the crime of estafa, penalized under article 315, par. 1(b) of the Revised Penal Code, committed as follows:

Sometime and during the period in October 1990 to September 1993, Pasig City, and within the jurisdiction of this Honorable Court, the accused, being then employed as accounts receivable and recording clerk of Storck Products, Inc., and as such having received in cash the amount of P148,160.35 a[s] collection from the company's salesmen, with the express obligation on the part of the said accused to immediately turn over and remit said P148,160.35, and the accused, once in possession of the said amount, with intent to defraud said Storck Products, Inc., with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same to her own personal use and benefit, and despite demands to turn over and remit the said amount of P148,160.35, she failed and refused, to the damage and prejudice of Storck Products, Inc. in the total amount of P148,160.35, Philippine currency.

Contrary to Law.<sup>[4]</sup>

Upon arraignment, Perez entered a plea of not guilty and waived the pre-trial proceedings.

### **The Evidence for the Prosecution**

The prosecution's evidence consists of the testimonies of Storck's National Sales Manager Ricardo Barreto ("Barreto"), Storck's Head of the Auditing Department Julita Ventonilla ("Ventonilla"), Storck's Cashier and Assistant Treasurer Estrella Santiago ("Santiago"), and Storck's salesman Jessie Sincero<sup>[5]</sup> ("Sincero").

Sometime in September 1993, Barreto learned that Perez failed to turn over to Storck's treasurer cash collections amounting to P148,160.35. He confronted Perez who admitted that she used the money "for her intention." Later, Barreto received a promissory note from Perez's husband<sup>[6]</sup> requesting that Storck allow Perez to return the money on installment. Barreto advised Perez and her husband to execute an affidavit of undertaking that she would return the money to Storck. Perez and her husband executed an affidavit of undertaking in December 1993. However, the affidavit was not notarized when Perez gave the affidavit to Barreto. Barreto returned the affidavit to Perez for notarization. After a month, Perez submitted the notarized affidavit of undertaking to Barreto.<sup>[7]</sup> Perez also paid P20,000.00 as initial payment. However, Perez did not make any further payment prompting Storck to file the criminal complaint for estafa against Perez.

Ventonilla was responsible for auditing the employees' accountabilities. Under Storck's company procedure, a salesman who collects a check from a customer gives the check to the treasurer for deposit. If the check bounces, the treasurer returns it to the salesman for replacement with another check or with cash. A salesman turns over the cash replacement to the accounts receivable clerk who notes on the customer's ledger the date of receipt of the cash replacement. The accounts receivable clerk then turns over the cash replacement to the treasurer.

Santiago was responsible for receiving remittances. The salesmen would directly remit to Santiago initial cash payments from customers. Santiago did not record these remittances on the accounting ledger. However, the salesmen did not remit to Santiago cash replacements of bounced checks. The salesmen remitted cash replacements to Perez who would then turn over the cash replacements to Santiago. Every time Perez remitted cash replacements to Santiago, Santiago would sign on the accounting ledger.

Sincero was one of Storck's salesmen. If a customer's check bounces, the check is returned for replacement either with cash or with another check. Cash replacements were remitted to Perez. When a salesman remitted a cash replacement to Perez, she was supposed to record the cash replacement on the remittance slip and turn over the cash to Santiago.

### **The Evidence for the Defense**

Perez testified as her own lone witness.

Perez was responsible for the account receivables of the accounting department. It was her duty to record on the accounting ledger the sales reports forwarded by the

salesmen. Every time Perez received a sales report, she would post the report on the accounting ledger of the customer. Perez would then submit the accounting ledger to the sales manager. Perez would also return a bounced check to the salesman who in turn would return it to the customer for replacement with another check or its cash value.

Perez testified that once the customer issued a cash replacement, the salesman would get the accounting ledger from her. She would record the cash replacement and give the accounting ledger to the salesman. The salesman then would turn over the cash replacement to the cashier or the treasurer. The cashier would sign the accounting ledger as proof of receipt of the cash replacement. The salesman would then return the accounting ledger to Perez. However, sometimes, it would take days before the salesman would return the accounting ledger to Perez. Upon receipt of the accounting ledger, Perez would verify if the cashier had initialed the accounting ledger. Sometimes, the cashier's signature does not appear on the accounting ledger.

Perez testified that she saw for the first time during the trial the affidavit of undertaking she and her husband supposedly signed. However, Perez claimed she signed another document handed to her by Barreto, not the affidavit of undertaking. Perez could not remember the contents of the original document she signed. Perez denied appearing before the notary public who notarized the affidavit of undertaking. Perez admitted that the community tax certificates indicated in the affidavit belonged to her and her husband.

Perez further stated that her husband was forced to execute the promissory note so Storck would not terminate her employment. For the same reason, she paid the initial P20,000. However, Storck still terminated her employment.

### **The Ruling of the Trial Court**

In its Decision<sup>[8]</sup> dated 14 April 1997, the trial court found Perez guilty beyond reasonable doubt of the crime of estafa. However, the trial court ruled that the amount misappropriated was only P83,755.50. The trial court ordered Perez to pay Storck P63,755.50, the balance of the amount misappropriated after deducting the P20,000 that Perez had already paid to Storck. The dispositive portion of the decision reads:

IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered finding accused SYLVIA PEREZ guilty beyond reasonable doubt of the crime of estafa penalized under Article 315, par. 1 (b) of the Revised Penal Code, without any aggravating or mitigating circumstance, and is accordingly sentenced to suffer the indeterminate penalty of imprisonment ranging from 4 years and 2 months of prission (sic) correccional to 12 years, 8 months and 21 days of reclusion temporal and to indemnify complainant company Storck Products, Inc. in the amount of Php63,755.50 as well as to pay the costs.

SO ORDERED.<sup>[9]</sup>

Perez appealed to the Court of Appeals.

## **The Decision of the Court of Appeals**

In its 16 October 2001 Decision, the Court of Appeals dismissed the appeal. The Court of Appeals ruled that the prosecution proved beyond reasonable doubt that Perez received the cash replacements from Storck salesmen and that she failed to turn over the money to Storck's treasurer. Perez's failure to turn over the money she received constituted misappropriation of the money for her own benefit to Storck's damage and prejudice.

Hence, this petition.

## **The Issues**

Petitioner raises the following issues:

1. Whether the Court of Appeals erred in affirming the judgment of conviction despite the lack of evidence, direct or circumstantial, that petitioner committed estafa under paragraph 1(b), Article 315 of the Revised Penal Code;
2. Whether the Court of Appeals erred in affirming the judgment of conviction despite the failure of the prosecution to prove the first element of estafa under paragraph 1(b), Article 315 of the Revised Penal Code.<sup>[10]</sup>

In her petition, Perez asserts that the prosecution failed to prove that she received the money she supposedly misappropriated. Perez further asserts that the trial court convicted her based on circumstantial evidence consisting of the affidavit of undertaking she allegedly executed. Perez disputes the genuineness of the affidavit of undertaking. She insists that the affidavit of undertaking presented by the prosecution was not the same document she signed. She also insists that the promissory note executed by her husband should not be interpreted as an admission of guilt.

## **The Ruling of this Court**

The petition has no merit.

## ***Elements of the Crime***

Perez is accused of committing the crime of estafa under paragraph 1(b), Article 315 of the Revised Penal Code, which provides:

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* to reclusion temporal, as the case may be;

*2nd.* The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

*3rd.* The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

*4th.* By *arresto mayor* in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

(a) By altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration;

(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

The elements of estafa under paragraph 1(b), Article 315 of the Revised Penal Code are:

(1) the offender receives the 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) the offender misappropriates or converts such money or property or denies receiving such money or property;

(3) the misappropriation or conversion or denial is to the prejudice of another; and

(4) the offended party demands that the offender return the money or property.<sup>[11]</sup>

In this case, Perez asserts that the prosecution failed to prove the first element of estafa under paragraph 1(b) of Article 315. Perez insists that the prosecution has no proof that she received money from the salesmen.