

## FIRST DIVISION

[ G.R. No. 145872, February 04, 2002 ]

**GLORIA OCAMPO-PAULE, PETITIONER, VS. HONORABLE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**KAPUNAN, J.:**

This is a petition for review of the Decision dated October 26, 2000 of the Court of Appeals in CA-G.R. CR No. 22437<sup>[1]</sup> affirming petitioner Gloria Ocampo-Paule's conviction for the crime of estafa by the Regional Trial Court of Guagua, Pampanga, Branch 49.

During the period August, 1991 to April, 1993, petitioner received from private complainant Felicitas M. Calilung several pieces of jewelry with a total value of One hundred Sixty Three Thousand One hundred Sixty Seven Pesos and Ninety Five Centavos (P163,167.95). The agreement between private complainant and petitioner was that the latter would sell the same and thereafter turn over and account for the proceeds of the sale, or otherwise return to private complainant the unsold pieces of jewelry within two months from receipt thereof. Since private complainant and petitioner are relatives, the former no longer required petitioner to issue a receipt acknowledging her receipt of the jewelry.

When petitioner failed to remit the proceeds of the sale of the jewelry or to return the unsold pieces to private complainant, the latter sent petitioner a demand letter. Notwithstanding receipt of the demand letter, petitioner failed to turn over the proceeds of the sale or to return the unsold pieces of jewelry. Private complainant was constrained to refer the matter to the barangay captain of Sta. Monica, Lubao, Pampanga.

During the barangay conciliation proceedings, petitioner acknowledge having received from private complainant several pieces of jewelry worth P163,167.95. Both parties eventually executed an agreement entitled "*Kasunduan sa Bayaran*," whereby petitioner promised to pay private complainant P3,000.00 every month to answer for the jewelry which she received from the latter.

When petitioner failed to comply with the terms of the *Kasunduan sa Bayaran*, private complainant sent her another demand letter dated March 9, 1994 but she still failed to comply with her obligation.

Private complainant then filed a criminal complaint against petitioner in the Office of the Provincial Prosecutor. The Provincial Prosecutor recommended the filing of a criminal case against petitioner. Consequently, an information charging petitioner with estafa was filed in the Regional Trial Court of Guagua, Pampanga. The information stated:

That in or about the period comprised from August 1991 to April 1993, in the Municipality of Lubao, province of Pampanga, Philippines and within the jurisdiction of this honorable Court, the above-named accused GLORIA OCAMPO-PAULE received from Felicita[s] M. Calilung various pieces of jewelry with a total value of ONE HUNDRED SIXTY FIVE (sic) THOUSAND THREE HUNDRED FORTY SEVEN (P163,347.00) PESOS, Philippine Currency for purposes of selling the same under the express obligation of turning over and accounting for the proceeds of said jewelry if not sold, to the said Felicita[s] U. Calilung within two (2) months from receipt hereof, once in possession of the said jewelry and far from complying with her obligation aforesaid, the said accused, did then and there willfully, unlawfully and feloniously, misappropriate, misapply and convert the said amount to her own personal use and benefit to the damage and prejudice of said complainant in the total sum of P163,347.00, Philippine currency.

All contrary to law.<sup>[2]</sup>

Petitioner pleaded Not Guilty to the charge. After trial, the lower court rendered a Decision on August 17, 1998 finding petitioner guilty of estafa.

Petitioner appealed the lower court's decision to the Court of Appeals, but the latter dismissed the appeal for lack of merit in its Decision dated October 26, 2000.<sup>[3]</sup> The dispositive portion thereof reads:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED and the assailed decision is hereby AFFIRMED in toto.

SO ORDERED.<sup>[4]</sup>

Hence, the instant petition.

Petitioner contends that the appellate court erred in finding that petitioner had converted or misappropriated the proceeds of the sale of the jewelry, since the persons to whom she delivered the pieces of jewelry had not yet paid for the same. Petitioner insists that not having received the payment for said pieces of jewelry, she had nothing to misappropriate.<sup>[5]</sup>

Petitioner further argues that the *Kasunduan* executed by her and private complainant, which stipulate that she was to pay for the pieces of jewelry received by her in monthly installments of P3,000.00 resulted in the novation of her obligation and extinguished her criminal liability.<sup>[6]</sup>

In his Comment, the Solicitor General argues that during the trial of the criminal case for estafa, it was established beyond reasonable doubt that petitioner had committed the crime charged, and that her criminal liability was not extinguished by the execution of the *Kasunduan sa Bayaran*. It is further contended that the petition raises questions of fact which may not be reviewed in a petition for review on certiorari.<sup>[7]</sup>

There is no merit in petitioner's arguments.

Art. 315, paragraph 1(b) of the Revised Penal Code provides:

Art. 315. Swindling. (estafa).—any person who shall defraud another by any of the means mentioned herein below shall be punished by:

xxx

1. With unfaithfulness or abuse of confidence, namely:

(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 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.

The elements of estafa with abuse of confidence under this paragraph are: (1) 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; (2) that there be misappropriation or conversion of such money or property of the offender; or denial on his part of such receipt; (3) that such misappropriation or conversion or denial to the prejudice of another; and (4) that there is a demand made by the offended party to the offender.  
[8]

Both the trial court and the Court of Appeals found that all the elements of estafa under Article 315, paragraph 1(b) are present in this case. In its Decision, the appellate court affirmed the finding of the trial court stating that:

These elements were amply and clearly established in this case, First, accused received the jewelry for the purpose of selling the same under an express obligation to remit to complainant the proceeds thereof or to return those she is unable to sell thereby creating a fiduciary relationship between the[m]. Second, accused misappropriated the jewelry as shown by the fact that she failed to return the same or the proceeds thereof despite demand and Third, the misappropriation prejudiced the private complainant.[9]

The rule is that factual findings of the Court of Appeals are conclusive on the parties on and this Court, and carry even more weight when the appellate court affirms the factual findings of the trial court.[10] The Court finds no reason to depart from the foregoing rule, considering that the evidence on record supports the conclusion of both the trial and the appellate courts that petitioner is liable for estafa with abuse of confidence under Article 315, paragraph 1(b) of the Revised Penal Code.

Likewise untenable is petitioner's argument that there was a novation of her criminal liability when she and private complainant executed the *Kasunduan sa Bayaran*. It is well-settled that the following requisites must be present for novation to take place: (1) a previous valid obligation; (2) agreement of all the parties to the new