

FIRST DIVISION

[G.R. No. 130423, November 18, 2002]

**VIRGIE SERONA, PETITIONER, VS. HON. COURT OF APPEALS
AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

During the period from July 1992 to September 1992, Leonida Quilatan delivered pieces of jewelry to petitioner Virgie Serona to be sold on commission basis. By oral agreement of the parties, petitioner shall remit payment or return the pieces of jewelry if not sold to Quilatan, both within 30 days from receipt of the items.

Upon petitioner's failure to pay on September 24, 1992, Quilatan required her to execute an acknowledgment receipt (Exhibit B) indicating their agreement and the total amount due, to wit:

Ako, si Virginia Serona, nakatira sa Mother Earth Subd., Las Pinas, ay kumuha ng mga alahas kay Gng. Leonida Quilatan na may kabuohang halaga na P567,750.00 para ipagbili para ako magkakomisyon at ibibigay ang benta kung mabibili o ibabalik sa kanya ang mga nasabing alahas kung hindi mabibili sa loob ng 30 araw.

Las Pinas, September 24, 1992.^[1]

The receipt was signed by petitioner and a witness, Rufina G. Navarette.

Unknown to Quilatan, petitioner had earlier entrusted the jewelry to one Marichu Labrador for the latter to sell on commission basis. Petitioner was not able to collect payment from Labrador, which caused her to likewise fail to pay her obligation to Quilatan.

Subsequently, Quilatan, through counsel, sent a formal letter of demand^[2] to petitioner for failure to settle her obligation. Quilatan executed a complaint affidavit^[3] against petitioner before the Office of the Assistant Provincial Prosecutor. Thereafter, an information for *estafa* under Article 315, paragraph 1(b)^[4] of the Revised Penal Code was filed against petitioner, which was raffled to Branch 255 of the Regional Trial Court of Las Pinas. The information alleged:

That on or about and sometime during the period from July 1992 up to September 1992, in the Municipality of Las Pinas, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused received in trust from the complainant Leonida E. Quilatan various pieces of jewelry in the total value of P567,750.00 to be sold on commission basis under the express duty and obligation of remitting the proceeds thereof to the said complainant if sold or returning the same to

the latter if unsold but the said accused once in possession of said various pieces of jewelry, with unfaithfulness and abuse of confidence and with intent to defraud, did then and there willfully, unlawfully and feloniously misappropriate and convert the same for her own personal use and benefit and despite oral and written demands, she failed and refused to account for said jewelry or the proceeds of sale thereof, to the damage and prejudice of complainant Leonida E. Quilatan in the aforestated total amount of P567,750.00.

CONTRARY TO LAW.^[5]

Petitioner pleaded not guilty to the charge upon arraignment.^[6] Trial on the merits thereafter ensued.

Quilatan testified that petitioner was able to remit P100,000.00 and returned P43,000.00 worth of jewelry;^[7] that at the start, petitioner was prompt in settling her obligation; however, subsequently the payments were remitted late;^[8] that petitioner still owed her in the amount of P424,750.00.^[9]

On the other hand, petitioner admitted that she received several pieces of jewelry from Quilatan and that she indeed failed to pay for the same. She claimed that she entrusted the pieces of jewelry to Marichu Labrador who failed to pay for the same, thereby causing her to default in paying Quilatan.^[10] She presented handwritten receipts (Exhibits 1 & 2)^[11] evidencing payments made to Quilatan prior to the filing of the criminal case.

Marichu Labrador confirmed that she received pieces of jewelry from petitioner worth P441,035.00. She identified an acknowledgment receipt (Exhibit 3)^[12] signed by her dated July 5, 1992 and testified that she sold the jewelry to a person who absconded without paying her. Labrador also explained that in the past, she too had directly transacted with Quilatan for the sale of jewelry on commission basis; however, due to her outstanding account with the latter, she got jewelry from petitioner instead.^[13]

On November 17, 1994, the trial court rendered a decision finding petitioner guilty of *estafa*, the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, the court finds the accused Virgie Serona guilty beyond reasonable doubt, and as the amount misappropriated is P424,750.00 the penalty provided under the first paragraph of Article 315 of the Revised Penal Code has to be imposed which shall be in the maximum period plus one (1) year for every additional P10,000.00.

Applying the Indeterminate Sentence Law, the said accused is hereby sentenced to suffer the penalty of imprisonment ranging from FOUR (4) YEARS and ONE (1) DAY of *prision correccional* as minimum to TEN (10) YEARS and ONE (1) DAY of *prision mayor* as maximum; to pay the sum of P424,750.00 as cost for the unreturned jewelries; to suffer the accessory penalties provided by law; and to pay the costs.

SO ORDERED.^[14]

Petitioner appealed to the Court of Appeals, which affirmed the judgment of conviction but modified the penalty as follows:

WHEREFORE, the appealed decision finding the accused-appellant guilty beyond reasonable doubt of the crime of estafa is hereby AFFIRMED with the following MODIFICATION:

Considering that the amount involved is P424,750.00, the penalty should be imposed in its maximum period adding one (1) year for each additional P10,000.00 albeit the total penalty should not exceed Twenty (20) Years (Art. 315). Hence, accused-appellant is hereby SENTENCED to suffer the penalty of imprisonment ranging from Four (4) Years and One (1) Day of Prision Correccional as minimum to Twenty (20) Years of Reclusion Temporal.

SO ORDERED.^[15]

Upon denial of her motion for reconsideration,^[16] petitioner filed the instant petition under Rule 45, alleging that:

I

RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN CONCLUDING THAT THERE WAS AN ABUSE OF CONFIDENCE ON THE PART OF PETITIONER IN ENTRUSTING THE SUBJECT JEWELRIES (*sic*) TO HER SUB-AGENT FOR SALE ON COMMISSION TO PROSPECTIVE BUYERS.

II

RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN CONCLUDING THAT THERE WAS MISAPPROPRIATION OR CONVERSION ON THE PART OF PETITIONER WHEN SHE FAILED TO RETURN THE SUBJECT JEWELRIES (*sic*) TO PRIVATE COMPLAINANT.^[17]

Petitioner argues that the prosecution failed to establish the elements of *estafa* as penalized under Article 315, par. 1(b) of the Revised Penal Code. In particular, she submits that she neither abused the confidence reposed upon her by Quilatan nor converted or misappropriated the subject jewelry; that her giving the pieces of jewelry to a sub-agent for sale on commission basis did not violate her undertaking with Quilatan. Moreover, petitioner delivered the jewelry to Labrador under the same terms upon which it was originally entrusted to her. It was established that petitioner had not derived any personal benefit from the loss of the jewelry. Consequently, it cannot be said that she misappropriated or converted the same.

We find merit in the petition.

The elements of *estafa* through misappropriation or conversion as defined in Article 315, par. 1(b) of the Revised Penal Code are: (1) that the money, good or other personal property is 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 by the offender or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender.^[18] While the

first, third and fourth elements are concededly present, we find the second element of misappropriation or conversion to be lacking in the case at bar.

Petitioner did not *ipso facto* commit the crime of *estafa* through conversion or misappropriation by delivering the jewelry to a sub-agent for sale on commission basis. We are unable to agree with the lower courts' conclusion that this fact alone is sufficient ground for holding that petitioner disposed of the jewelry "as if it were hers, thereby committing conversion and a clear breach of trust."^[19]

It must be pointed out that the law on agency in our jurisdiction allows the appointment by an agent of a substitute or sub-agent in the absence of an express agreement to the contrary between the agent and the principal.^[20] In the case at bar, the appointment of Labrador as petitioner's sub-agent was not expressly prohibited by Quilatan, as the acknowledgment receipt, Exhibit B, does not contain any such limitation. Neither does it appear that petitioner was verbally forbidden by Quilatan from passing on the jewelry to another person before the acknowledgment receipt was executed or at any other time. Thus, it cannot be said that petitioner's act of entrusting the jewelry to Labrador is characterized by abuse of confidence because such an act was not proscribed and is, in fact, legally sanctioned.

The essence of *estafa* under Article 315, par. 1(b) is the appropriation or conversion of money or property received to the prejudice of the owner. The words "convert" and "misappropriated" connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.^[21]

In the case at bar, it was established that the inability of petitioner as agent to comply with her duty to return either the pieces of jewelry or the proceeds of its sale to her principal Quilatan was due, in turn, to the failure of Labrador to abide by her agreement with petitioner. Notably, Labrador testified that she obligated herself to sell the jewelry in behalf of petitioner also on commission basis or to return the same if not sold. In other words, the pieces of jewelry were given by petitioner to Labrador to achieve the very same end for which they were delivered to her in the first place. Consequently, there is no conversion since the pieces of jewelry were not devoted to a purpose or use different from that agreed upon.

Similarly, it cannot be said that petitioner misappropriated the jewelry or delivered them to Labrador "without right." Aside from the fact that no condition or limitation was imposed on the mode or manner by which petitioner was to effect the sale, it is also consistent with usual practice for the seller to necessarily part with the valuables in order to find a buyer and allow inspection of the items for sale.

In *People v. Nepomuceno*,^[22] the accused-appellant was acquitted of *estafa* on facts similar to the instant case. Accused-appellant therein undertook to sell two diamond rings in behalf of the complainant on commission basis, with the obligation to return the same in a few days if not sold. However, by reason of the fact that the rings were delivered also for sale on commission to sub-agents who failed to account for the rings or the proceeds of its sale, accused-appellant likewise failed to make good his obligation to the complainant thereby giving rise to the charge of *estafa*. In absolving the accused-appellant of the crime charged, we held: