

## THIRD DIVISION

[ G.R. No. 114398, October 24, 1997 ]

**CARMEN LIWANAG, PETITIONER, VS. THE HON. COURT OF  
APPEALS AND THE PEOPLE OF THE PHILIPPINES, REPRESENTED  
BY THE SOLICITOR GENERAL, RESPONDENTS.  
D E C I S I O N**

**ROMERO, J.:**

Petitioner was charged with the crime of *estafa* before the Regional Trial Court (RTC), Branch 93, Quezon City, in an information which reads as follows:

"That on or between the month of May 19, 1988 and August, 1988 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent of gain, with unfaithfulness, and abuse of confidence, did then and there, willfully, unlawfully and feloniously defraud one ISIDORA ROSALES, in the following manner, to wit: on the date and in the place aforementioned, said accused received in trust from the offended party cash money amounting to P536,650.00, Philippine Currency, with the express obligation involving the duty to act as complainant's agent in purchasing local cigarettes (Philip Morris and Marlboro cigarettes), to resell them to several stores, to give her commission corresponding to 40% of the profits; and to return the aforesaid amount of offended party, but said accused, far from complying her aforesaid obligation, and once in possession thereof, misapplied, misappropriated and converted the same to her personal use and benefit, despite repeated demands made upon her, accused failed and refused and still fails and refuses to deliver and/or return the same to the damage and prejudice of the said ISIDORA ROSALES, in the aforementioned amount and in such other amount as may be awarded under the provision of the Civil Code.

CONTRARY TO LAW."

The antecedent facts are as follows:

Petitioner Carmen Liwanag (Liwanag) and a certain Thelma Tabligan went to the house of complainant Isidora Rosales (Rosales) and asked her to join them in the business of buying and selling cigarettes. Convinced of the feasibility of the venture, Rosales readily agreed. Under their agreement, Rosales would give the money needed to buy the cigarettes while Liwanag and Tabligan would act as her agents, with a corresponding 40% commission to her if the goods are sold; otherwise the money would be returned to Rosales. Consequently, Rosales gave several cash advances to Liwanag and Tabligan amounting to P633,650.00.

During the first two months, Liwanag and Tabligan made periodic visits to Rosales to

report on the progress of the transactions. The visits, however, suddenly stopped, and all efforts by Rosales to obtain information regarding their business proved futile.

Alarmed by this development and believing that the amounts she advanced were being misappropriated, Rosales filed a case of estafa against Liwanag.

After trial on the merits, the trial court rendered a decision dated January 9, 1991, finding Liwanag guilty as charged. The dispositive portion of the decision reads thus:

"WHEREFORE, the Court holds, that the prosecution has established the guilt of the accused, beyond reasonable doubt, and therefore, imposes upon the accused, Carmen Liwanag, an Indeterminate Penalty of SIX (6) YEARS, EIGHT (8) MONTHS AND TWENTY ONE (21) DAYS OF PRISION CORRECCIONAL TO FOURTEEN (14) YEARS AND EIGHT (8) MONTHS OF PRISION MAYOR AS MAXIMUM, AND TO PAY THE COSTS.

The accused is likewise ordered to reimburse the private complainant the sum of P526,650.00, without subsidiary imprisonment, in case of insolvency.

SO ORDERED."

Said decision was affirmed with modification by the Court of Appeals in a decision dated November 29, 1993, the decretal portion of which reads:

"WHEREFORE, in view of the foregoing, the judgment appealed from is hereby affirmed with the correction of the nomenclature of the penalty which should be: SIX (6) YEARS, EIGHT (8) MONTHS and TWENTY ONE (21) DAYS of prision mayor, as minimum, to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of reclusion temporal, as maximum. In all other respects, the decision is AFFIRMED.

SO ORDERED."

Her motion for reconsideration having been denied in the resolution of March 16, 1994, Liwanag filed the instant petition, submitting the following assignment of errors:

"1. RESPONDENT APPELLATE COURT GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE ACCUSED-PETITIONER FOR THE CRIME OF ESTAFA, WHEN CLEARLY THE CONTRACT THAT EXIST (sic) BETWEEN THE ACCUSED-PETITIONER AND COMPLAINANT IS EITHER THAT OF A SIMPLE LOAN OR THAT OF A PARTNERSHIP OR JOINT VENTURE HENCE THE NON RETURN OF THE MONEY OF THE COMPLAINANT IS PURELY CIVIL IN NATURE AND NOT CRIMINAL.

2. RESPONDENT APPELLATE COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-PETITIONER ON GROUNDS OF REASONABLE DOUBT BY APPLYING THE 'EQUIPOISE RULE'."