

SPECIAL ELEVENTH DIVISION

[CA-G.R. CR No. 34172, December 11, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME LABARDA, ACCUSED-APPELLANT.

DECISION

PAREDES, J.:

THE CASE

THIS IS ON THE APPEAL filed by accused-appellant Jaime Labarda (accused-appellant) from the Decision^[1] dated October 15, 2009 of the Regional Trial Court (RTC), Branch 40, Dagupan City, in Criminal Case No. 99-02731-D finding accused-appellant guilty beyond reasonable of *Estafa*, the dispositive portion of which reads:

WHEREFORE, premises considered, the accused JAIME LABARDA is hereby found guilty beyond reasonable doubt of the felony of *Estafa* under Paragraph 1 (b), Article 315 of the Revised Penal Code, and hereby sentenced to suffer the indeterminate prison term of seven (7) years and one (1) day of *prision mayor*, as minimum, to thirteen (13) years of *reclusion temporal*, as maximum.

Further, the accused is ordered to pay Manuel Garcia the amount of FORTY-ONE THOUSAND Pesos (Php41,000.00), plus legal interest thereof at the rate of twelve percent (12%) per annum, to be computed from the filing of this case or from March 4, 1999, until fully paid.

SO ORDERED^[2].

THE ANTECEDENTS

On March 4, 1999, an Information^[3] was filed against accused-appellant, charging him with *Estafa*, defined and penalized under Article 315, paragraph 1 (b) of the Revised Penal Code (RPC), as follows:

That on or about July 27, 1998 in barangay Macabito, municipality of Calasiao, province of Pangasinan, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused JAIME LABARDA took and received in trust and confidence assorted furnitures and fixtures worth FORTY ONE THOUSAND PESOS (P41,000.00) Philippine Currency

from complainant Manuel C. Garcia with the agreement that said accused shall sell the same under the express obligation to remit the proceeds if sold or to return the articles if unsold within a reasonable period but instead of complying with the said agreement and despite several demands made to deliver and/or account for the same, the said accused, with intent to gain and with abuse of confidence, did then and there, wilfully (sic), unlawfully and feloniously fail and refuse to do so to the present, thereby misappropriating and converting the same for his own personal use and benefit, to the damage and prejudice of the herein complainant, Manuel C. Garcia[,] in the aforesaid amount of P41,000.00 plus other consequential damages relative thereto.

CONTRARY to Art. 315, par. 1 (b) of the Revised Penal Code.

On November 23, 2000, accused pleaded^[4] not guilty to the charge and trial of the case ensued.

Private complainant Manuel Garcia (Garcia) testified^[5] that he is a businessman engaged in the business of selling furniture and had in his employ two sales agents, one of which was the accused. On July 27, 1998, accused got from Garcia the following pieces of furniture with their respective prices:

Description	Quantity	Price/piece
<i>Aparadors</i> (cabinets)	29	Php1,000.00
<i>Platera</i>	3	Php1,000.00
Dividers	6	Php700.00
Bed	2	Php700.00
Casa	1	Php3,500.00

Accused was to sell the said pieces of furniture for a 5% commission. If accused will be able to sell the items, he will remit the proceeds to Garcia. When the delivery truck used for the transport of the furniture arrived, Garcia found that all the items have been disposed. However, accused failed to remit the proceeds to Garcia so the latter looked for him. In September 1998, Garcia found accused-appellant in Mariveles, Bataan and demanded payment, but accused-appellant did not pay. However, accused-appellant signed a document^[6] acknowledging his obligation towards Garcia.

Accused-appellant affirmed his signature in the document but claimed^[7] that the subject pieces of furniture were loaned to him by Garcia, and that the agreement between them was whether or not he sells the furniture items, he will pay Garcia. Accused-appellant also admitted that he had already sold the items but has not yet paid Garcia.

Manuel Jorio likewise stated^[8] that the furnitures were loaned by Garcia to accused-

appellant and that these had been sold.

After trial, on October 15, 2009, the RTC issued the assailed decision; hence, this appeal^[9].

Accused-appellant ascribes^[10] the following errors to the RTC:

a) That the Honorable Lower Court erred in holding that the accused-appellant is guilty beyond reasonable doubt for the crime of Estafa as charged in the Information.

b) That the Honorable Lower Court erred in holding that the accused-appellant [is] liable to pay plaintiff-appellee the amount of P41,000 plus 12% interest.

THE ISSUE

The main and only issue in this case is whether or not accused-appellant is guilty beyond reasonable doubt of *Estafa* under Article 315, paragraph 1 (b) of the RPC.

THE COURT'S RULING

The appeal is without merit.

Accused-appellant posits^[11] out that the document which he signed does not contain anything about the return of the proceeds of sale to Garcia but only states the fact that accused-appellant will pay him upon the sale of the furniture. He also contends^[12] that the goods he received from Garcia were not in trust or on commission, with the duty to make delivery of, or to return, the same. Finally, accused-appellant claims^[13] that there should be no interest due for Garcia's failure to give a demand letter or any form of demand to accused-appellant. *We are not persuaded.*

Article 315, paragraph 1 (b) of the RPC provides, that:

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

xxx

1. With unfaithfulness or abuse of confidence, namely:

xxx

(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.

xxx

The elements of *estafa* under Article 315, paragraph 1 (b) of the RPC are, as follows: (a) That the offender received money, goods or other personal property 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; (b) That the offender misappropriated or converted such money, goods or other personal property, or denied his part in its receipt; (c) That the misappropriation or conversion or denial was to the prejudice of another; and (d) That the offended party made a demand on the offender for the delivery or return of such money, goods or other personal property^[14].

The essence of this kind of *estafa* is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words "convert" and "misappropriate" connote the 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. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts^[15].

In the instant case, we find that all the elements have been sufficiently proven by the prosecution. The first element of the crime was proven through the testimony of Garcia who related^[16] that he gave accused-appellant the pieces of furniture for sale. Garcia's testimony was corroborated by the terms of the document^[17] which accused-appellant affirmed^[18] to have signed. The unequivocal terms of the document showed that accused-appellant acquired the furniture items from Garcia in order to sell them and, thereafter, to pay Garcia their worth and in case he fails to sell them, accused-appellant had the duty to return the same to Garcia. As to the second element, accused-appellant claims^[19] that the driver of the truck used for transport was never presented to prove that the goods were delivered, sold and misappropriated by him. However, even without the testimony of the truck driver, the legal presumption of misappropriation arose because accused-appellant admitted^[20] to have sold the items and yet failed to give the proceeds to Garcia. Prejudice to Garcia, the third element, is apparent when he failed to receive the proceeds from the sale of the furniture he released to accused-appellant. Finally, on the matter of demand, while it has not been clearly shown that Garcia demanded the value of the furniture, it has nevertheless been held that demand is not an element of the felony or a condition precedent to the filing of a criminal complaint for *estafa*. Indeed, the accused may be convicted of the felony under Article 315, paragraph 1 (b) of the RPC if the prosecution proved misappropriation or conversion by the accused of the money or property subject of the Information. In a prosecution for *estafa*, demand is not necessary where there is evidence of