



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**ZENAIDA LAYSON VDA. DE  
 MANJARES,**

Petitioner,

**G.R. No. 207249**

Present:

- versus -

GESMUNDO, C.J., Chairperson,  
 CAGUIOA,  
 CARANDANG,  
 ZALAMEDA,  
 GAERLAN, JJ.

**PEOPLE OF THE  
 PHILIPPINES,**

Respondent.

Promulgated:

**MAY 14 2021**

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**DECISION**

**CAGUIOA, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> filed by the petitioner Zenaida Layson Vda. de Manjares (Zenaida) assailing the Decision<sup>2</sup> dated November 12, 2012 and Resolution<sup>3</sup> dated May 20, 2013 of the Court of Appeals (CA) in CA-G.R. CR No. 33373, which affirmed the Judgment<sup>4</sup> dated March 18, 2010 of Branch 14, Regional Trial Court of Ligao City (RTC) in Criminal Case No. 3840 convicting Zenaida for *estafa*, penalized under Article 315(1)(b) of the Revised Penal Code (RPC).

**The Facts**

An Information for *estafa* was filed against Zenaida, the accusatory portion of which reads:

That sometime on September 12, 1996 up to and including October 4, 1998, in the Municipality of Polangui, Province of Albay, Philippines,

<sup>1</sup> *Rollo*, pp. 10-22.

<sup>2</sup> *Id.* at 84-98. Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court), with Associate Justices Mariflor P. Punzalan-Castillo and Angelita A. Gacutan concurring.

<sup>3</sup> *Id.* at 110.

<sup>4</sup> *Id.* at 35-63. Penned by Presiding Judge Edwin C. Ma-alat.

and within the jurisdiction of this Honorable Court, the above named accused, having received in trust or administration from PAULO P. BALLESTEROS JR. various appliances, furnitures, motorcycles, and other similar products with a total value of SEVEN HUNDRED THIRTY THOUSAND EIGHT HUNDRED ELEVEN PESOS and FIFTY NINE CENTAVOS (P730,811.59), for the purpose of selling the same on consignment basis, under the express obligation of turning over and/or deposit to the bank the next banking day the proceeds of the said items, if sold, or return them, if not sold, to the said Paulo P. Ballesteros Jr., but once in possession of the said items and far from complying with her obligation aforesaid, the said accused, with abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to her personal use and benefit and despite repeated demands to remit the proceeds of the sale, if any, and/or return the items, if unsold, failed, and refused and still fails and refuses to do so, to the damage and prejudice of said Paulo P. Ballesteros, Jr. in the sum of P730,811.59.

ALL ACTS CONTRARY TO LAW.<sup>5</sup>

During the arraignment, Zenaida pleaded not guilty. The private prosecutor then filed a manifestation, reserving the right of the complainant Paulo P. Ballesteros, Jr. (Ballesteros) to institute a separate civil action for damages.<sup>6</sup> Pre-trial and trial thereafter ensued.

The prosecution presented as witnesses the following: (1) Rafael Roderick Pan (Pan), the auditor who audited Alson's Polangui; (2) Rodilyn Repuyan (Repuyan), secretary and cashier at Alson's Polangui; (3) Pablo H. Mendoza (Mendoza), (4) Rodrigo Valenciano (Valenciano), and (5) Antonio Nobles,<sup>7</sup> former customers of Alson's Polangui; and (6) Ballesteros, the owner of Alson's Trading and Alson's Polangui. On the other hand, Zenaida was the only witness for the defense.

Based on the testimonies of both Zenaida and Ballesteros, the former was initially engaged in the business of buying-and-selling of appliances, furniture, and other products. She would buy from Ballesteros' business — Alson's Trading in Iriga City — around once a month. Because she had become a regular customer, she and Ballesteros had an agreement that her store would be used to establish Alson's Polangui and that she would be its branch manager.<sup>8</sup> According to Ballesteros, Zenaida had the following obligations as the branch manager: "1) receive the stocks; 2) sell and document them properly, following the standard pricing for cash or installment; 3) hire and terminate employees; 4) document and deposit collections in the bank the next banking day; and 5) be accountable for any shortages in the collection."<sup>9</sup> Meanwhile, Ballesteros' obligation was to pay the monthly salaries of Zenaida and the other employees. According to Zenaida, she assumed the payment of the rent and the telephone bills, while

<sup>5</sup> Id. at 85.

<sup>6</sup> Id. at 85-86.

<sup>7</sup> "Notes" in some parts of the record.

<sup>8</sup> *Rollo*, pp. 42, 49.

<sup>9</sup> Id. at 42.

Ballesteros shouldered the electric bills.<sup>10</sup> Ballesteros claimed, however, that he was paying the rent for the space but that he paid it through Zenaida as she was the one who had the lease agreement with the lessor.<sup>11</sup>

Ballesteros narrated in his testimony that he visited Alson's Polangui one time and he did not find any cash there. He grew suspicious, so he asked Pan to conduct a preliminary audit. The preliminary audit revealed a shortage of around ₱65,000.00 per month of operation. He confronted Zenaida about this, and she allegedly promised to pay the shortages back within 15 days. Meanwhile, Ballesteros asked Pan to conduct an audit of the branch's entire operation from September 12, 1996 to October 4, 1998.<sup>12</sup> Based on Pan's audit, Zenaida's total accountability was allegedly ₱730,811.59, broken down as follows:<sup>13</sup>

Undeposited Net Collection for the Day	₱143,100.63
Net Short Deposit of Collection for the Day	32,853.26
Disallowed Payment of Salesman Commission	12,967.10
Unreplaced Bounced Check Used for Liquidation of Stocks	9,963.50
Unreceipted/Undeposited C.O.D. Sales	5,829.00
Customers with Remaining Balance but has ( <i>sic</i> ) Fully Paid	15,526.01
Current Cost of Unaccounted Stocks	466,108.25
Price Difference/Excess Payments for Unaccounted Stocks Confirmed to be Delivered to Customers	4,778.00
Charges for Unaccounted Repossessed Unit	13,172.84
Confirmed Short Remittance of C.O.D. Sales	23,474.50
Price Difference/Excess Payments for Confirmed Installment Sales but are Reported as C.O.D. Sales	61,362.00
TOTAL	₱730,811.59 <sup>14</sup>

“Undeposited Net Collection for the Day” refers to the total amount of the daily net collections of Alson's Polangui which were not deposited in the bank at all.<sup>15</sup> “Net Short Deposit of Collections” represents “short deposits,” meaning the amounts deposited to the bank account were less than the total collections for a given period.<sup>16</sup> Pan arrived at this by comparing the columnar logbooks — which contained the details of the sales made in Alson's Polangui — prepared by Repuyan, the cashier/secretary, *vis-à-vis* the bank statements containing the amounts that Zenaida deposited.<sup>17</sup>

<sup>10</sup> Id. at 52.

<sup>11</sup> Id. at 43.

<sup>12</sup> Id. at 42-43.

<sup>13</sup> Id. at 87.

<sup>14</sup> Total based on the summary of the CA and the Information filed against Zenaida, although the sum of the amounts as itemized is ₱789,135.09.

<sup>15</sup> *Rollo*, p. 57.

<sup>16</sup> Id.

<sup>17</sup> Id.

“Disallowed Payments of Salesman Commission” refers to amounts paid to supposed agents who solicited customers of Alson’s Polangui, but it was later on discovered that either the agents were fictitious, or the agents did not in fact receive said amounts.<sup>18</sup> “Unreplaced Bounced Check Used for Liquidation of Stocks” refers to the amount representing the payment of four customers who paid in cash, but instead of depositing the cash, Zenaida deposited a personal check covering the amount which was subsequently dishonored for insufficient funds.<sup>19</sup>

“Unreceipted/Undeposited C.O.D. Sales” refers to amounts representing items delivered to customers, proven through delivery receipts issued to them, but which were not recorded in the columnar logbook prepared by Repuyan.<sup>20</sup> “Customers with Remaining Balance but has (*sic*) Fully Paid” refers to installment payments by customers which were not recorded and also unremitted to Ballesteros’ bank account.<sup>21</sup> “Current Cost of Unaccounted Stocks” refers to the value of stocks delivered to Alson’s Polangui which can no longer be found or accounted for during the audit.<sup>22</sup> “Unaccounted Stocks Delivered to Customers” refers to the value of stocks delivered to customers which were not reported as sales.<sup>23</sup> “Charges for Unaccounted Repossessed Units” refers to the value of stocks repossessed by Alson’s Polangui for failure of the buyer to pay the installment payments, which stocks were unaccounted for during the audit.<sup>24</sup>

“Short Remittances for C.O.D. Sales” refers to the amounts representing the difference between the amount in the delivery receipts given to the customers, and the amount reflected in the office copy of such receipts. The office copies of the receipts, which were the bases of the remittances to Ballesteros’ bank account, reflected smaller amounts compared to the ones given to the customers.<sup>25</sup> Finally, “Price Difference/Excess Payments for Confirmed Installment Sales but are Reported as C.O.D. Sales” refers to installment sales which were reported as C.O.D. or cash-on-delivery sales. Reporting them as C.O.D. sales deprived Alson’s Polangui of the mark-up since the prices of stocks were higher when paid on installment instead of cash.<sup>26</sup>

The above audit conducted by Pan became the basis of Zenaida’s accountabilities, and subsequently, of the criminal charge against her.

Meanwhile, Repuyan, the cashier/secretary of Alson’s Polangui, testified that her main duties are: “issuance of receipts to customers; preparation of documents for delivery of stocks; and collection of remittances

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<sup>18</sup> Id. at 37, 58.

<sup>19</sup> Id. at 58-59.

<sup>20</sup> Id. at 59.

<sup>21</sup> Id. at 37, 59.

<sup>22</sup> Id. at 59.

<sup>23</sup> Id. at 60.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id. at 61.



from customers.”<sup>27</sup> She claimed that she religiously remitted the collections to Zenaida who, in turn, issued her acknowledgment receipts.<sup>28</sup> It would then be Zenaida’s duty to deposit the collections to Ballesteros’ bank account. When asked about the acknowledgment receipts that Zenaida supposedly executed, as well as the columnar logbook she prepared for Alson’s Polangui, Repuyan testified:

x x x She explained though, that she failed to produce the acknowledgment receipts during the audit because the original copies were borrowed by the daughter of [Zenaida], Swisa Manjares King sometime in September but who, upon demand, refused to return them until now. The photocopies of said acknowledgment receipts kept in the drawer of her table were also lost, hence, she had the incident recorded (Exhibit TT) in the police blotter. [Zenaida] had all the original keys in the office, while she had the duplicate. At the time of said loss, [Zenaida] was still reporting in the office. Only [Zenaida] deposits the collections in the bank, the Philippine National Bank, Polangui Branch, or Legazpi Savings Bank, [Polangui] Branch.

Cross-examined, witness explained that she reported the loss of the acknowledgment receipts only on October 12, 1998, despite their loss on September 26, 1998, because she thought Swisa Manjares King would still return them. She did not, however, require Swisa to sign any document to prove that she borrowed them nor was anybody present in the office when she lent them to her. She only made a verbal demand for the return of the acknowledgment receipts. Neither did she have Swisa summoned by the Barangay Captain or the police. She admitted that when the audit started in July, 1998, [Zenaida] was no longer “active” in the office.

On redirect, witness clarified that although [Zenaida] ceased to be branch manager from July, 1998, she was still reported (*sic*) to the office because she resigned only on October 19, 1998. Despite the loss of the [acknowledgment] receipts, the columnar books for the year 1997 (Exhibit D-52 up to D-70) and 1998 (Exhibit D-71 up to D-72) reflected the amounts of her remittances to [Zenaida] on a day-to-day basis. She started recording the amounts of her remittances [Zenaida] from December 18, 1996 (Exhibit D-18) up to July 21, 1998 (Exhibit D-73).

On re-cross examination, witness reiterated that [Zenaida] still reported to the office every day from July to October, 1998. She confirmed the signature of Marilou Manjares, daughter of [Zenaida] appearing in one entry (Exhibit D-45) in the columnar book. She admitted that the amounts for deposit as stated in the columnar books was no proof that they were received by [Zenaida]. She explained though, that [Zenaida] does not need to sign the columnar book because she instead issued [acknowledgment] receipts.

Clarified by the court, witness revealed that it was Mr. Ballesteros who required the audit when he suspected some irregularities committed by [Zenaida] in the management of the branch. She further explained that [Zenaida] owned the office table where the acknowledgment receipts were kept, hence, the latter has duplicate keys to the drawers. She admitted her mistake in having lent the original receipts to the daughter of [Zenaida] and

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<sup>27</sup> Id. at 40.

<sup>28</sup> Id.

keeping the photocopies in the drawer to which the [Zenaida] had a key. In the morning of September 25, Swisa borrowed the receipts upon request of [Zenaida], promising to return them the following morning. However, Swisa no longer returned them despite her demands. She agreed that without the receipts, she cannot prove that she remitted all the money that came to her. She informed the auditor of the loss of the photocopies on September 27, 1998. She added that per company procedure, a copy of the deposit slip is given to her (witness) for checking if the amount therein corresponded to the amount in the acknowledgment receipt. The deposit slips covering December 18, 1996 up to July, 1998 were already submitted to the main office in Iriga City. She was not promoted after that “fiasco” in 1998.<sup>29</sup>

As to the other witnesses from the prosecution, their testimonies were summarized by the RTC as follows:

**PABLO H. MENDOZA** x x x - He is one of the customers who bought a *Sharp karaoke*. He identified and affirmed the veracity of his Certification issued on September 16, 1998. His Certification was about the karaoke he bought which was not repaired and remained in his possession until now. [Zenaida] transacted the purchase of said item to him. Upon its delivery, he paid Php1,000.00 to [Zenaida] and in June, Php1,400.00. All in all, Php2,400.00 but [Zenaida] did not issue receipts to him. Alson's was able to locate this karaoke because of the signature of his wife in the blank Delivery Receipt (Exhibit DD-2). He also signed blank documents, such as the Warranty Card, Delivery Receipt, Sales Invoice, Credit Application Sheet, Promissory Note, Chattel Mortgage, Application for Credit (Exhibit DD-1 up to DD-7).

When clarified by the court, he claimed to have given [Php1,000.00] to a certain Amor, an agent of Alson's Trading, who delivered the karaoke in his house but [Zenaida] was not present during the delivery. He later gave an additional [Php1,400.00] to Amor. He made the purchase only through brochures shown by Amor, without going to Alson's Polangui. He recalled signing the Promissory Note and Delivery Receipt when the unit was delivered by Amor in his house. He only went to Alson's when the unit became defective, which [Zenaida] promised to replace. When it was not replaced, he no longer made any payments.

**RODRIGO VALENCIANO** x x x - He is the husband of Lina Valenciano, who bought a Sony VHS player on installment from Alson's Trading Polangui, but which had been fully paid. He identified his wife's signature (Exhibit JJ-1) in the delivery receipt dated September, 1997. Other than that, he has no personal knowledge regarding the purchase and delivery of aforesaid item.

**ANTONIO NOLES** x x x - He purchased a TV set from Alson's Polangui branch in 1997, wherein [Zenaida] was the one who attended to him. As direct buyer, he paid a discounted price of [Php5,300.00], from the original price of [Php6,000] but the receipt given to him was already lost. Witness admitted that all he could recall was that he paid [Php5,300.00] for said appliance, although the delivery receipt (Exhibit UUU) he signed dated February 14, 1997 indicated the amount of [Php5,000.00].<sup>30</sup>

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<sup>29</sup> Id. at 40-41.

<sup>30</sup> Id. at 41-42.



For her defense, Zenaida took the witness stand and disclaimed liability over the amounts charged to her based on Pan's audit. According to her, Ballesteros told her to focus her attention outside the store to increase the sale of items in order to achieve the monthly sales quota. Hence, the transactions in the office were delegated to Repuyan, who was also tasked to issue receipts for payments made by the buyers.<sup>31</sup> She also claimed to have deposited in Ballesteros' bank accounts all the collections remitted to her by Repuyan. She narrated that she did not sign or prepare any document for said amounts received for deposit, but she prepared three copies of deposit slips — one for the bank, one for Repuyan, and another for her own copy.<sup>32</sup> Other than this, Repuyan had the duty of attending to the necessary documentation of sales in the office.<sup>33</sup>

The case was then submitted for decision.

### RULING OF THE RTC

The RTC issued the Judgment dated March 18, 2010, the dispositive portion of which states:

**WHEREFORE**, under the foregoing premises, judgment is hereby rendered:

a. Finding accused, ZENAIDA [LAYSON VDA. DE MANJARES], GUILTY beyond reasonable doubt of the crime of **ESTAFA**, defined and penalized under par. 1(b), Article 315, Revised Penal Code, for having misappropriated for her personal benefit and by means of deceit and/or abuse of confidence, the total amount of Six Hundred Ninety-Four Thousand Six Hundred Sixty-Seven Pesos and Nine Centavos [(Php694,667.09)], from Alson's Trading, Polangui Branch, owned by Mr. Paulo Ballesteros, Jr.; thereby, sentencing accused to suffer the indeterminate penalty of imprisonment ranging from TEN (10) YEARS of *prision mayor* as minimum, to FIFTEEN (15) YEARS of *reclusion temporal* as maximum, with the accessory penalties therewith, as provided by law.

b. On account of the express reservation and institution by complainant of a separate civil action for the crime herein charged, no finding or award of civil damages is made.

**SO ORDERED.**<sup>34</sup>

The RTC convicted Zenaida, ruling that the evidence established by the prosecution established all the elements of the crime of *estafa*. The RTC, however, held that the amount misappropriated by Zenaida was only ₱694,667.09 based on the evidence presented by the prosecution.

<sup>31</sup> Id. at 49.

<sup>32</sup> Id. at 49-50.

<sup>33</sup> Id. at 50.

<sup>34</sup> Id. at 62-63.



Aggrieved, Zenaida appealed to the CA.

### RULING OF THE CA

In the Decision dated November 12, 2012, the CA affirmed Zenaida's conviction *in toto*. The CA also found that all the elements of *estafa* were present. Zenaida sought reconsideration, but the CA denied this in the Resolution dated May 20, 2013.

Hence, the instant appeal.

### ISSUE

For resolution of the Court is whether the CA erred in affirming Zenaida's conviction for *estafa*.

### THE COURT'S RULING

The appeal is meritorious. The Court reverses Zenaida's conviction for *estafa*.

The elements of *estafa* through conversion or misappropriation, punished under Article 315(1)(b) of the RPC are:

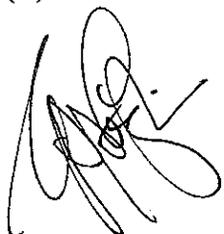
- (1) that personal property is received in trust, on commission, for administration or under any other circumstance involving the duty to make delivery of or to return the same, even though the obligation is guaranteed by a bond;
- (2) that there is conversion or diversion of such property by the person who has so received it or a denial on his part that he received it;
- (3) that such conversion, diversion or denial is to the injury of another; and
- (4) that there be demand for the return of the property.<sup>35</sup>

In the case at bar, the Court finds that not all the elements of *estafa* are present. Particularly, the first two elements of *estafa* were not established.

***First element: That personal property is received in trust, on commission, for administration, or under any other circumstance involving the duty to make delivery of or to return the same***

Anent the first element, when "the money, goods, or any other personal property is received by the offender from the offended party (1) in trust or (2)

<sup>35</sup> *Chua-Burce v. Court of Appeals*, G.R. No. 109595, April 27, 2000, 331 SCRA 1, 12-13.



on commission or (3) for administration, the offender acquires both material or physical possession and juridical possession of the thing received.<sup>36</sup>

The RTC, in explaining the existence of the first element, explained:

Finally, when [Zenaida] received the stocks delivered, she acquired not only the physical but also the juridical possession thereof. This is so because upon receipt of the stocks, a fiduciary relationship was created whereby [Zenaida] had the duty to sell the stocks and remit the proceeds thereof to Alson's bank account or, to return/account those not sold, upon demand. [Zenaida] herself acknowledged such juridical possession when she admitted on cross-examination, that it was her obligation to sell the products and remit their proceeds to Mr. Ballesteros.<sup>37</sup> (Underscoring supplied)

The CA, in its Decision, simply affirmed the RTC and concluded that Zenaida received the goods "in trust" from Ballesteros but did not elaborate as to its basis.

The Court, however, finds that Zenaida only had material possession, and not juridical possession, of the goods delivered to her for sale in Alson's Polangui.

It is undisputed that Zenaida was the "branch manager" of Alson's Polangui. Unfortunately, Ballesteros and Zenaida did not have a written agreement as to what Zenaida's responsibilities were; thus, the evidence in this case hinged altogether on testimonial evidence. The prosecution's own evidence, presented through the testimony of Ballesteros, is as follows:

Asked by the court, complainant maintained that from the time [Zenaida] started managing Alson's Polangui branch, he had an employer-employee relationship with her. As his employee, she was paid a monthly salary of [Php5,000.00], plus additional benefits if she meets the sales quota of almost half a million pesos in a month, at that time. He was the one who paid the salaries of the secretary/cashier and utility and the monthly rental of [Php2,000.00] for the store space, which rental was paid through [Zenaida] because it was she who had a (lease) contract with the Bichara family.

Cross-examined, Mr. Ballesteros averred that when Alson's Polangui started its operation, he already prevented [Zenaida] from continuing with her previous business of buying and selling appliances, because it was incompatible to his business. There was no written employment contract with [Zenaida] and all instructions to her were also verbal. [Zenaida] directly reported to him about the operation of the business. While he delegated to [Zenaida] the selection of a Secretary-Cashier and Utility, he was the one who explained to the latter their duties and functions in the office.<sup>38</sup> (Emphasis and underscoring supplied)

<sup>36</sup> Id. at 13.

<sup>37</sup> *Rollo*, p. 54.

<sup>38</sup> Id. at 43-44.

The foregoing testimony was corroborated by Zenaida and Repuyan, both of whom essentially testified that Ballesteros had control over the operations of Alson's Polangui through his verbal instructions. To the mind of the Court, these testimonies establish that Zenaida was a mere employee — *not an agent* — of Ballesteros and Alson's Polangui.

In *Chua-Burce v. Court of Appeals*,<sup>39</sup> the Court, citing *People v. Locson*<sup>40</sup> and *Guzman v. Court of Appeals*,<sup>41</sup> emphasized that “[j]uridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner.”<sup>42</sup> The Court held that the cash custodian of a bank who misappropriated the bank's funds was not guilty of *estafa* for she only had material possession of the missing funds. The Court explained the distinction between material possession and juridical possession in this wise:

There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his principal. In the former case, payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. **An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous, right to retain money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault.**<sup>43</sup> (Emphasis supplied)

In the present case, the records are bereft of any evidence pointing to an existence of agency between Zenaida and Ballesteros. There is likewise no proof that Zenaida received the items delivered to Alson's Polangui on consignment basis, or that any title passed to her by virtue of the said delivery. The Court cannot find anything which indicates that Zenaida would have independent title over the goods as against Ballesteros. Ballesteros had (1) the power to control the operations of Alson's Polangui, (2) the power to control what Zenaida could and could not do, and (3) the responsibility to pay the salaries of all Alson's Polangui's employees, including Zenaida. The foregoing indicates the existence of employer-employee relationship between Ballesteros and Zenaida. Thus, the Court holds that Zenaida did not have juridical possession of the goods delivered to her.

The first element of *estafa* is therefore absent. On this ground alone, Zenaida should already be acquitted. The Court deems it prudent, however, to discuss the absence of the second element to further bolster the fact that there is reasonable doubt on Zenaida's criminal liability.

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<sup>39</sup> Supra note 35.

<sup>40</sup> 57 Phil. 325 (1932).

<sup>41</sup> 99 Phil. 703 (1956).

<sup>42</sup> Supra note 35, at 13.

<sup>43</sup> Id. at 14



***Second element: conversion or diversion of such property by the person who has so received it***

As to the second element,

the words “convert” and “misappropriate” 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 to 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.<sup>44</sup>

After a review of the evidence, the Court finds that the prosecution failed to establish the existence of misappropriation beyond reasonable doubt. On this score, the Court deems it proper to illustrate the failure of the evidence to establish Zenaida’s guilt through each of the items in Pan’s audit:

**A. “Undeposited Net Collection for the Day”**

**B. “Net Short Deposit of Collection for the Day”**

For these two items, Zenaida’s liability was determined by comparing the amounts in Repuyan’s columnar logbook *vis-à-vis* the amounts deposited by Zenaida to Ballesteros’ bank accounts as indicated in the deposit slips. The difference in the amounts were held to be misappropriated by Zenaida. The RTC gave credence to the columnar logbooks because they were “entries in the course of business” following the Rule 130, Section 43 of the 1989 Rules on Evidence.<sup>45</sup>

The RTC and the CA erred in anchoring Zenaida’s criminal liability on the entries in Repuyan’s columnar logbook. To recall, Repuyan herself testified that she was in charge of “issuance of receipts to customers; preparation of documents for delivery of stocks; and collection of remittances from customers.”<sup>46</sup> In addition, Ballesteros testified that although he authorized Zenaida to hire a utility and secretary/cashier, **he specifically instructed Repuyan to be the one to receive the payments and deposit the collections in the bank.** But since he seldom visited the branch, he later discovered that Zenaida was the one depositing the collections in the bank.<sup>47</sup>

From the testimonies of Repuyan, Ballesteros, and Zenaida, it appears that it was Repuyan who transacted with the buyers. Repuyan was the one in charge of receiving the payment from buyers and issuing the corresponding receipts. She would then make an entry into the columnar logbook, and remit the collections to Zenaida, who would then deposit the money in Ballesteros’ bank accounts. Accomplishing the columnar logbooks and making entries

<sup>44</sup> *Saddul, Jr. v. Court of Appeals*, G.R. No. 91041, December 10, 1990, 192 SCRA 277, 285-286.

<sup>45</sup> “Commercial Lists and the Like” under the 2019 RULES ON EVIDENCE, Rule 130, Section 47.

<sup>46</sup> *Rollo*, p. 40.

<sup>47</sup> *Id.* at 44.

therein were, therefore, **solely** under Repuyan's control. Zenaida had no hand in their preparation, and neither were they ever signed by her.

Instead, Repuyan claimed that when she would remit money to Zenaida, the latter would issue acknowledgement receipts to her. When asked to present these acknowledgment receipts to prove that Zenaida indeed received the exact amounts reflected in the columnar logbooks, she stated that Zenaida's daughter, Swisa Manjares King (Swisa), had borrowed and had never returned the originals. She also stated that she had photocopies of these acknowledgment receipts, but they were also lost because she kept them in a drawer that Zenaida had access to. All of these claims, however, were uncorroborated. Zenaida denied executing acknowledgement receipts, and claimed to only execute three deposit slips each time Repuyan would remit money to her for deposit. No one also witnessed that Swisa indeed borrowed the originals, if they even really existed.

Given the foregoing, the columnar logbooks are worthless in proving that Zenaida received more than what she deposited in Ballesteros' bank accounts. That the columnar logbooks were "entries in the course of business" is immaterial, for such evidentiary rule only determines the admissibility of the logbooks, not their evidentiary weight. The prosecution was not able to prove that the amounts in the columnar logbooks exactly reflects what Zenaida received. Repuyan herself "admitted that amounts for deposit as stated in the columnar books was no proof that they were received by [Zenaida]."<sup>48</sup>

To emphasize, the preparation and accomplishment of the columnar logbooks was under the responsibility and control of Repuyan alone. Under the rule on *res inter alios acta*, "the rights of a party cannot be prejudiced by an act, declaration, or omission of another."<sup>49</sup> Hence, the columnar logbooks, accomplished completely by a third person, cannot prejudice Zenaida. Simply put, the columnar logbooks, by themselves, cannot be used as the basis to determine her liability.

Considering that the evidence to rebut her innocence were the columnar logbooks — basically self-serving documents by Repuyan — then it was error for the RTC and the CA that Zenaida's guilt was proven beyond reasonable doubt.

At this juncture, it is important to point out a glaring fact which both the RTC and the CA missed. In her testimony, Repuyan admitted that "per company procedure, **a copy of the deposit slip is given to her x x x for checking if the amount therein corresponded to the amount in the [acknowledgment] receipt.**"<sup>50</sup> If Zenaida truly did not deposit certain amounts, or she deposited less than what she received from Repuyan, then the latter would have been easily alerted of the same. A simple comparison

<sup>48</sup> Id. at 41.

<sup>49</sup> *Tamargo v. Awingan*, G.R. No. 177727, January 19, 2010, 610 SCRA 316, 331.

<sup>50</sup> *Rollo*, p. 41. Emphasis supplied.

between her copy of the deposit slips, on the one hand, and the columnar logbooks and the acknowledgment receipts, on the other, would have enabled her to notice that Zenaida was pocketing money that rightfully belonged to Ballesteros. Yet, she alerted no one, and it was not until Ballesteros asked Pan to conduct an audit of Alson's Polangui that the irregularities were supposedly discovered. This glaring fact all the more points to the plausibility of Zenaida's defense: that she was depositing in Ballesteros' bank accounts all the collections that Repuyan remitted to her.

### **C. "Disallowed Payment of Salesman Commission"**

To recall, these refer to amounts which were paid to fictitious agents, or the agents themselves claimed to have not received the amounts as stated. The amounts paid were culled by Pan from "receivable cards" of customers. Meanwhile, Zenaida disclaimed any knowledge of such payments, pointing out that agents transacted directly with Repuyan.<sup>51</sup>

Similar to the first two items, these "receivable cards" cannot be made a basis for Zenaida's criminal liability. The prosecution did not present any evidence that Zenaida had any participation in making entries in the said "receivable cards." It is well to remember that, based on the testimonies of Zenaida, Ballesteros, and Repuyan, it was Repuyan who was in charge of preparing documents relative to the payments of customers. There is no evidence on record that Zenaida dealt with the agents themselves. Moreover, there is also doubt on whether there were agents who did not receive their commissions. The prosecution only presented Pan to testify to this fact in the course of testifying on his audit findings. The agents who claimed that they did not receive anything, however, were never presented in court. They were therefore not cross-examined regarding their claims. Thus, the finding that these agents did not receive their commissions is supported by mere hearsay evidence which has no probative weight.

### **D. "Unreplaced Bounced Check Used for Liquidation of Stocks"**

For this item, it was alleged that there was a check for ₱10,000.00 that was returned for insufficient funds. The allegation was that Zenaida transacted with four customers, all of whom paid in cash for a total of ₱9,991.00. Instead of depositing it directly into Ballesteros' bank account, she deposited the check into said bank account, which check was returned for insufficient funds.

Once again, this cannot be used to adjudge Zenaida guilty of the charge. First of all, the prosecution did not present anything to prove this allegation apart from Pan's testimony. The prosecution did not present the check itself or any other document from the bank proving that the check bounced.

As well, it is worth to recall that based on the testimonial evidence in this case, it was Repuyan who was transacting with customers. In fact, as

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<sup>51</sup> Id. at 50.

Zenaida pointed out, the delivery receipts issued to the four customers were not signed by her.<sup>52</sup> Moreover, there is a discrepancy, albeit minimal, between the amounts allegedly collected as compared to the one Zenaida tried to deposit. Why would Zenaida deposit try to deposit ₱10,000, when what was supposedly given to her was merely ₱9,991.00?

Given the foregoing, the Court finds that there is very serious doubt as to Zenaida's accountability on this item.

#### **E. "Unreceipted/Undeposited C.O.D. Sales"**

The amounts charged against Zenaida on this item were again obtained from the columnar logbooks. These refer to items which were traced to have been delivered to customers but there were no entries in the columnar logbooks representing said sales.

To prove that Zenaida had a general practice of receiving money without issuing receipts, the prosecution presented Mendoza, a customer, on the witness stand. However, his testimony did not prove anything considering that upon clarification during cross-examination, it was revealed that Mendoza never personally gave money to Zenaida. As narrated in the facts above, his testimony was that in the two instances when he paid money to Alson's Polangui but was not issued any receipt, he handed the money to a certain "Amor," not to Zenaida.

It is clear from the foregoing alone that the evidence was utterly wanting as regards Zenaida's liability under this item. It is worth to reiterate that Zenaida did not have any participation in the preparation of the logbooks. Repuyan was in charge of "preparation of documents for delivery of stocks"<sup>53</sup> and was in full control of what was entered into the logbooks. Zenaida cannot be adjudged criminally liable based on the acts of another person, unless there is a finding of conspiracy between them. There being none in this case, Zenaida must be absolved of criminal liability in this item.

#### **F. "Customers with Remaining Balance but has (sic) Fully Paid"**

These refer to installment sales wherein the customers claimed to have already paid a larger amount than what was reflected in Alson's Polangui's records. For instance, there was one customer who claimed to have already paid ₱17,000.00, but the "index card" in the store's records, as well as the official receipts issued to the customer only reflected payments totaling ₱13,829.00.<sup>54</sup>

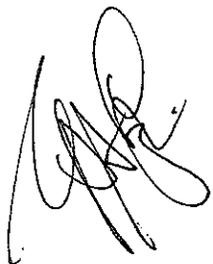
These cannot also be charged to Zenaida. Apart from the lack of clear evidence of Zenaida's participation in the preparation of the "index cards,"

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<sup>52</sup> Id.

<sup>53</sup> Id. at 40.

<sup>54</sup> Id. at 59.



none of the customers alleged to have paid larger amounts were presented in court to testify on these allegations. The only evidence that these customers indeed paid a larger amount than what was reflected in the store's records was Pan's testimony as regards his investigation in connection to the audit he conducted. Similar to the alleged unpaid commissions of agents in item C, the testimony of Pan on this item is hearsay; therefore, devoid of any evidentiary weight even if it was admitted into evidence.

**G. "Current Cost of Unaccounted Stocks"**

**H. "Charges for Unaccounted Repossessed Unit"**

The amounts under these items represent the cost of goods that were confirmed to have been delivered to Alson's Polangui, or repossessed from customers by Alson's Polangui, all of which could no longer be accounted for when Pan was auditing the store. While Zenaida denied any liability for the goods under this item as the deliveries were handled by other employees of the store, the lower courts declared that Zenaida was liable because she was the store's branch manager. The RTC, in particular, held that Zenaida exercised control and supervision over the work of Repuyan and the other employees. Hence, she was ultimately liable for the loss of the goods.

The Court disagrees.

While Zenaida may be responsible for the goods as branch manager of the store, she may only, at most, be made liable *civilly* for the value of the goods based on the facts of this case. Zenaida cannot be made *criminally* liable for the loss of the goods, absent any proof that she converted, or misappropriated them. As earlier mentioned, Zenaida did not have juridical possession of the items. Thus, the legal presumption of misappropriation "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"<sup>55</sup> does not arise in this case. In other words, to make her *criminally* liable for the loss of the goods, it was incumbent upon the prosecution to offer evidence that it was she who took or misappropriated the goods — and not someone else who had access to the store. The reasoning of the lower courts effectively convicts Zenaida of *estafa* for her negligence as a branch manager which cannot be countenanced by the Court.

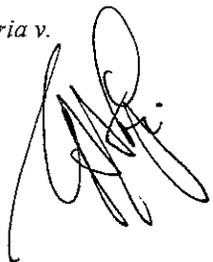
**I. "Price Difference/Excess Payments for Unaccounted Stocks Confirmed to be Delivered to Customers"**

For this item, the Court simply affirms the RTC's finding,<sup>56</sup> as upheld by the CA, that the prosecution failed to offer any evidence to support this alleged accountability.

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<sup>55</sup> *Legaspi v. People*, G.R. Nos. 225753 & 225799, October 15, 2018, 883 SCRA 245, 259, citing *Tria v. People*, 743 Phil. 441 (2014).

<sup>56</sup> *Rollo*, p. 60.



**J. “Confirmed Short Remittance of C.O.D. Sales”****K. “Price Difference/Excess Payments for Confirmed Installment Sales but are Reported as C.O.D. Sales”**

For these items, Zenaida’s defense was that there was an agreement between her and Ballesteros that the amount of “overprice” would be given to her.<sup>57</sup> She explained that she was allowed to get additional remuneration from the “overprice in the cash sales of appliances.”<sup>58</sup> She also explained that the customer copies of delivery receipts for cash transactions would reflect the “overprice” — the price as advertised — so that the buyer would not suspect that there was an “overprice.”<sup>59</sup> What was reflected in the office copy of the delivery receipts was the “listed company price” of the stocks being purchased.<sup>60</sup>

The Court rules that there is also reasonable doubt on Zenaida’s liability on this item.

The Court has, time and again, declared that if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction.<sup>61</sup>

In this case, the inculpatory acts could be interpreted as evidence of *estafa*, on the one hand, or could be perfectly explained by the agreement between Zenaida and Ballesteros, on the other. While Zenaida’s defense appears like a convenient excuse, it is important to note that, as mentioned, Ballesteros and Zenaida did not have a written memorandum of their agreements. The Court, and even the lower courts, have had to rely only on the testimonies of the both of them to establish what their agreements were.

For this item, Zenaida insists that Ballesteros allowed her by agreement to charge an “overprice” as additional compensation. Meanwhile, Ballesteros did not have any testimony regarding the existence of such agreement. Neither has he denied its existence. Ballesteros only testified that he has prohibited Zenaida from further engaging in her buy-and-sell business when she started as his branch manager as he deemed it inconsistent with his business. To the mind of the Court, this further bolsters the possibility that Zenaida and Ballesteros indeed had an agreement so that the former could have additional compensation on top of her ₱5,000.00 monthly salary as his branch manager.

In sum, the Court rules that for this particular alleged accountability, there is reasonable doubt as to the guilt of Zenaida. To reiterate for emphasis,

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<sup>57</sup> Id. at 60-61.

<sup>58</sup> Id. at 49.

<sup>59</sup> Id. at 52.

<sup>60</sup> Id.

<sup>61</sup> *Franco v. People*, 780 Phil. 36, 50 (2016).



“[i]f the evidence is susceptible of two interpretations, one consistent with the innocence of the accused and the other consistent with his guilt, the accused must be acquitted.”<sup>62</sup> “The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.”<sup>63</sup>

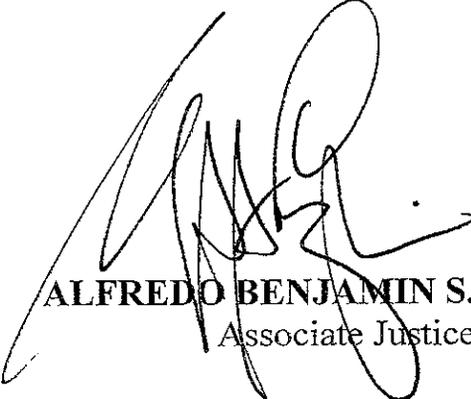
### *Conclusion*

It must be clarified that the Court is not saying that Zenaida is, or should be, completely free from liability. The Court recognizes that Zenaida may be said to have been remiss in performing her duties as branch manager. Nevertheless, this only makes her possibly *civilly* liable to Ballesteros or Alson’s Polangui. The Court, however, would not pronounce any civil liability in this case yet because Ballesteros properly reserved his right to file a separate civil action against Zenaida on the same set of facts.

The Court’s pronouncement in this case is only limited to Zenaida’s criminal liability for *estafa* — and from the foregoing discussions, it is clear that two of the elements of *estafa* were either not present or not sufficiently proven by the prosecution. As a result, Zenaida must perforce be acquitted.

**WHEREFORE**, in view of the foregoing, the Decision dated November 12, 2012 and Resolution dated May 20, 2013 of the Court of Appeals (CA) in CA-G.R. CR No. 33373 is hereby **REVERSED and SET ASIDE**. Accordingly, petitioner Zenaida Layson Vda. de Manjares is **ACQUITTED** of the crime charged on the ground of reasonable doubt. Let an entry of final judgment be issued immediately.

**SO ORDERED.**

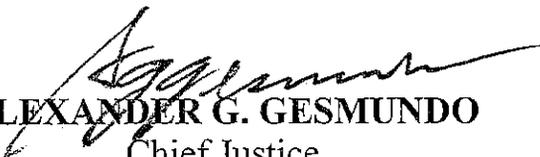


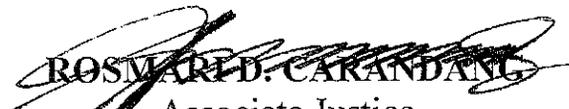
ALFREDO BENJAMIN S. CAGUIOA  
Associate Justice

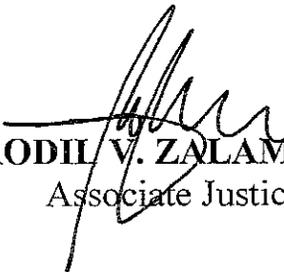
<sup>62</sup> *People v. Salidaga y Quintano*, G.R. No. 172323, January 29, 2007, 513 SCRA 306, 319. Emphasis supplied.

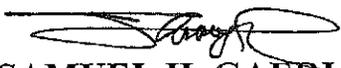
<sup>63</sup> *Id.*

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
Chief Justice  
Chairperson

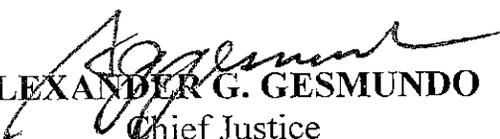
  
**ROSMARE D. CARANDANG**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

