



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 September 2020** which reads as follows:*

“G.R. No. 250703 (*Gloria Elena E. Lagman v. People of the Philippines*) - After a judicious review of the records, the Court resolves to **DENY** the instant Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court for failure of Gloria Elena E. Lagman (petitioner) to show that the Court of Appeals (CA) committed any reversible error in dismissing its appeal.

The elements of Estafa under Article 315, paragraph 1 (b) of the Revised Penal Code (RPC) are as follows: (1) that money, goods, or other personal properties are 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 is a misappropriation or conversion of such money or property by the offender or a denial of the receipt thereof; (3) that the 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.²

As correctly ruled by the CA, all of the elements of Estafa under paragraph 1(b), Article 315 of the RPC are present in Criminal Case Nos. Q-02-111401 to Q-02-111405.

First, petitioner received from Virginia C. Hanreider (private complainant) pieces of jewelry on several dates, for sale on commission basis with the obligation to remit the proceeds of the sale immediately to

¹ *Rollo*, pp. 3-26.

² *Gamaro v. People*, 806 Phil. 483, 497 (2017).

private complainant, or to return the unsold pieces of jewelry immediately. *Second*, petitioner misappropriated the proceeds of the sold pieces of jewelry by failing to remit them despite demand through the formal demand letter dated July 2, 2001. *Third*, petitioner's misappropriation of the proceeds of the sold pieces of jewelry was to the prejudice of private complainant. *Fourth*, private complainant made the demand upon petitioner through the formal demand letter dated July 2, 2001 which petitioner acknowledged.³

Petitioner argues that in the required hearings for her to present her evidence, but failed to appear, her counsel had been very sickly and spending most of his time in the hospital. The predicament precluded her counsel from notifying her of the scheduled hearings of the case. Thus, if only she was allowed to present evidence, she would have been able to prove her theory of novation that converted her liability into civil only. She further argues that before any demand was made on her by private complainant, she had already persuaded private complainant to lend her the proceeds of the sale of the subject pieces of jewelry, including her share in the profits for two months.⁴

Petitioner's argument is not meritorious. As correctly pointed out by the Office of the Solicitor General, petitioner's failure to participate at the trial was attributable to her own negligence or omission. Assuming *arguendo* that her counsel had been indisposed, she should have acted to protect her interest knowing that her case was being tried in court. However, she failed to do so. Thus, the Regional Trial Court (RTC) rightfully deemed her to have waived her right to present evidence.

However, the Court deems it proper to modify the amount of actual damages awarded by the CA in Criminal Case No. Q-02-111404. The Court finds that based on the evidence of the prosecution, *i.e.*, post-dated checks issued by petitioner as payment to private complainant, the prosecution was only able to prove the amount of ₱31,020.00, the amount awarded by the RTC; and not ₱36,020.00, the amount awarded by the CA.⁵

Further, there is a need to modify the penalty imposed by the CA with respect to Criminal Case No. Q-02-111404. To reiterate, the CA imposed a straight penalty of imprisonment of two months and one day

³ *Rollo*, pp. 31-33.

⁴ *Id.* at 13.

⁵ RTC Records, vol. I, Exhibit "R" - "R-5."

to three months since the amount involved is less than ₱40,000.00, *i.e.*, ₱36,020.00. As discussed above, the correct amount involved is ₱31,020.00 while the CA described the penalty imposed as a straight penalty, what it actually imposed is a penalty consisting of a range.

In *Lumauig v. People*,⁶ the Court explained that the Indeterminate Sentence Law, under Section 2 thereof, is not applicable to, among others, cases where the maximum term of imprisonment does not exceed one year.⁷ Further, in determining whether an indeterminate sentence and not a straight penalty is proper, what is considered is the penalty actually imposed by the trial court, after considering the attendant circumstances, and not the impossible penalty.⁸

As provided under Section 85,⁹ Republic Act No. 10951, the corresponding penalty in case the amount involved in Estafa is less than ₱40,000.00 is *arresto mayor* in its medium and maximum periods (*i.e.* two (2) months and one (1) day to six (6) months). Since the penalty imposed does not exceed one (1) year, the Indeterminate Sentence Law does not apply.¹⁰ Thus, petitioner shall suffer a straight penalty of four (4) months and twenty (20) days.

WHEREFORE, the petition is **DENIED**. The Decision dated May 30, 2019 and Resolution dated November 26, 2019 of the Court of Appeals are **AFFIRMED** with **MODIFICATION** in that in Criminal Case No. Q-02-111404, petitioner Gloria Elena y Lagman is sentenced to suffer an imprisonment of four (4) months and twenty (20) days, and to pay the private complainant Virginia C. Hanreider the amount of ₱31,020.00. The monetary awards are subject to interest at the rate of

⁶ 738 Phil. 405 (2014).

⁷ *Id.* at 416.

⁸ *Id.*

⁹ SECTION 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

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

x x x x.

"4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (P40,000): Provided, That in the four cases mentioned, the fraud be committed by any of the following means:

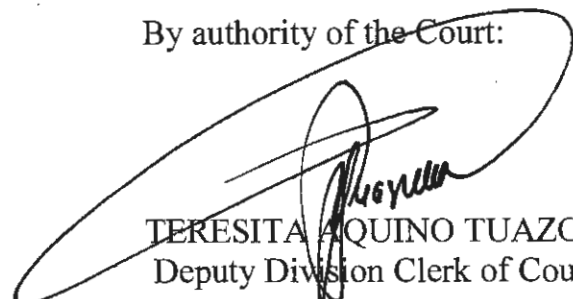
x x x x.

¹⁰ *People v. Racho*, 819 Phil. 137, 154 (2017).

twelve percent (12%) per *annum* from the filing of the Informations on until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until the finality of the Resolution, and the total amount of the foregoing shall, in turn, earn interest at the rate of 6% per *annum*, from finality of the Resolution until full payment thereof.

SO ORDERED.” (BALTAZAR-PADILLA, J., on leave.)

By authority of the Court:



TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *p. 11/5*
05 NOV 2020

*ATTY. MARC TERRY C. PEREZ (reg)
Counsel for Petitioner
No. 611 (near V. Mapa St.), 7th Avenue
East Grace Park, Caloocan City

*OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

*ATTY. ASTERIA BALAGAT FELICEN (reg)
Unit 303 FSS Building 1
No. 20 Scout Tuazon cor. Scout Castor Sts.
Laging Handa, Quezon City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 220
Quezon City
(Crim. Case Nos. Q-02-111401 - 05)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR No. 38863

*with copies of CA Decision dated 30 May 2019 and
Resolution dated 26 November 2019.
Please notify the Court of any change in your address.
GR250703. 9/02/2020A(197)URES