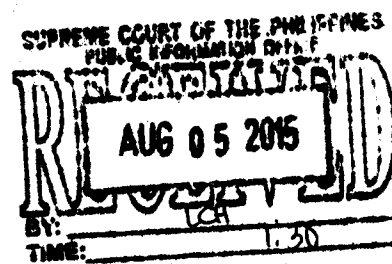




Republic of the Philippines
Supreme Court
Manila
FIRST DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **June 17, 2015** which reads as follows:

“G.R. No. 173874 – ROWENA MIGUEL, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

For review is the decision promulgated on July 11, 2006,¹ whereby the Court of Appeals (CA) affirmed the judgment rendered on February 18, 2005 by the Regional Trial Court, Branch 64, in Tarlac City (RTC) finding the petitioner guilty beyond reasonable doubt of *estafa* by misappropriation as defined and punished by Article 315 (1)(b) of the *Revised Penal Code*.²

The CA summarized the antecedents as follows:

Philenita Salviejo-Bermal is the daughter of Spouses Placido Salviejo and Anita Salviejo. The accused-appellant, Rowena Miguel, is a friend of Philenita and who was then connected as an employee in the Municipal Treasurer’s Office of the Municipal Government of La Paz, Tarlac (*Complaint-Affidavit, Id., p. 3*).

Sometime in June 2001, the private-complainants conceived the idea of establishing a lending business in La Paz, Tarlac. To carry out the said plan or objective, private complainant Philenita sought the advice and assistance of her friend, the accused-appellant. The latter proposed and offered her services to be their agent in the money lending

- over - eight (8) pages

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¹ *Rollo*, pp. 16-26; penned by Associate Justice Bienvenido L. Reyes (now a Member of this Court), with the concurrence of Associate Justice Regalado E. Maambong (retired/deceased) and Associate Justice Enrico A. Lanzanas (retired).

² *Id.* at 8-15.

operations. Thus, it was agreed upon by the private complainants and accused-appellant that the latter would look for clientele-borrowers and would act as a collector at the same time. In return, the accused-appellant would be entitled to a ten (10%) percent commission fee from the interests that will be collected from the borrowers. With full faith and credence, the private-complainants acceded to the accused-appellant's proposal (*Id.*, p. 3).

Meanwhile, the accused-appellant presented a list of her co-employees as among the alleged borrowers. Initially, on 02 July 2001, the amount of Fifty thousand (₱50,000.00) Pesos (marked as Exhibit "A", Complaint-Affidavit) was released by the private-complainants and the same was given to the accused-appellant by virtue of the latter's representation that her co-employees, being the prospective borrowers, needed such amount (*Id.*, p. 6).

The same scenario happened in their subsequent transactions on different dates involving different amounts which were all evidenced by the acknowledgment receipts (*Exhibits "B", "C", "D", "E", "F", "G", and "H", Complaint-Affidavit*) that were obtained by the accused-appellant from the private-complainants for lending purposes (*Id.*, p. 6-11). A list (*Exhibit "I", Complaint-Affidavit*) containing the names of the supposed borrowers as well as the amounts which corresponds to each allegedly lent to them by the accused-appellant was also given to the private-complainants (*Id.*, p. 12).

When the obligations became due and demandable, the private-complainants asked the accused-appellant about the payments regarding their agreement whether the latter has collected the amount due from the borrowers and to remit the same to the former. However, the accused-appellant told them that she was not able to collect as yet but requested, in behalf of the borrowers, for an extension of time until their salaries are released, which excuse was accepted by the private complainants (*Id.*, p. 4).

However, in one instance, the private-complainant Philenita chance (sic) upon one of their borrowers and were (sic) told that the said borrower already paid her loan to the accused-appellant. Upon learning of this, she confronted the accused-appellant, who admitted that she used the money that was paid to her and committed herself to reimburse the amount together with the other collections within a reasonable time. Despite repeated demands by the private-complainants, the accused-appellant gave numerous excuses to avoid her obligation to remit the payments due them, as no clear indication thereof was forthcoming (*Id.*, p. 4).

The private-complainants personally went to see the supposed list of their debtors and were surprised to be informed that most of them did not borrow the amount allegedly due them as stated in the list either from the accused-appellant or from the private-complainants. This prompted the private-complainants to confront the accused-appellant, who again

made the same excuses and promised to pay her obligation. As a result thereof, the private-complainants were defrauded in the amount of Three Hundred Sixty Eight Thousand (₱368,000.00) Pesos considering that the said amount was misappropriated by the accused-appellant for her own benefit and to the prejudice and damage of the former (*Id.*, p. 4). The private-complainants sent a demand Letter (*Exhibit "L"*) to the accused-appellant informing her to remit and return the amount of ₱368,000.00 which she received from the former.³

In her defense, the petitioner claimed that she agreed to solicit clients-borrowers for the complainant's money lending business with the understanding that she would remit the interest from the principal amount lent on a monthly basis; that she gave the complainant the list of borrowers, indicating the corresponding amounts borrowed by them; that she admitted her failure to remit the sum of money given to her by the complainants in trust for the purpose of lending the money to borrowers with an express obligation to collect the sum when they fall due; and that she undertook to pay ₱100,000.00 to the complainants, which amount would be raised by her family.⁴

In its decision of February 18, 2005, the RTC disposed:

WHEREFORE, this Court sentences Rowena Miguel to suffer the indeterminate prison term of six (6) months of Arresto Mayor, (one degree lower to prision correctional imposed by the Law to twenty years as maximum (1 year for every ₱10,000.00) in view of the excess of the amount from ₱22,000.00 should be 40 years but the law limits only the maximum of 20 years as defined and penalized by Article 315 2nd paragraph of the Revised Penal Code as amended. The guilt of the accused was established beyond the penumbra of doubt. Accused is ordered to return or reimbursed (sic) the sum of ₱368,000.00 to the complainant with legal interest counted from the filing of this Court (sic) until fully paid.

Costs against the accused.

SO ORDERED.⁵

The petitioner appealed, but the CA affirmed the conviction on July 11, 2006, holding thusly:

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³ *Id.* at 17-19.

⁴ *Id.* at 19.

⁵ *Id.* at 15.

WHEREFORE, the foregoing premises considered, the decision dated 18 February 2005 of the Regional Trial Court [Branch 64] of Tarlac City, convicting the accused-appellant beyond the penumbra of doubt of the crime of ESTAFA defined and punished under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, is hereby **AFFIRMED IN TOTO**.

Costs against the accused-appellant.

SO ORDERED.⁶

The petitioner insists that her liability was only civil in nature because the agreement between her and the complainants was a money-market transaction that was in the nature of a loan (*mutuum*),⁷ the transactions being intended for the purpose of earning interest on the complainants' money invested in the business;⁸ and that she was made to sign receipts stating the purpose for which the money was given, and accepts that she was liable to pay the money back to the complainants.⁹

The Court is not convinced.

Article 315, paragraph 1(b) of the *Revised Penal Code* under which herein petitioner was charged with *estafa* through misappropriation or with abuse of confidence reads:

Article 315. *Swindling (estafa)*. – Any person who shall defraud another by any means mentioned herein below shall be punished by:

x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x

(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.

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⁶ Id. at 26.

⁷ Id. at 21.

⁸ Id. at 52.

⁹ Id.

The elements of *estafa* through conversion or misappropriation under subsection 1(b) of Art. 315 of the *Revised Penal Code* are as follows:

- I. That money, goods, or other personal property be 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 the obligation is guaranteed by a bond;
- II. That there be misappropriation or conversion of such money or property by the person who received it, or a denial on his part that he received it;
- III. That such misappropriation or conversion or denial is to the prejudice of another; and
- IV. That there be demand for the return of the property.¹⁰

The essence of this kind of *estafa* is the appropriation or conversion of money or property received to the prejudice of the complainant to whom the 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.¹¹

All the elements of the crime charged were established here. It was clear that the petitioner received ₱368,000.00 for the purpose of lending the money to third persons, and then remit the same amount to the complainants plus the corresponding interest earned. The latter entrusted their money to her for a particular purpose. By receiving the money from the complainants, she assumed the obligation to make delivery of or to return the same to the complainants.

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¹⁰ *Balerta v. People*, G.R. No. 205144, November 26, 2014; *People v. Go*, G.R. No. 191015, August 6, 2014, 732 SCRA 216, 240-241.

¹¹ *Pamintuan v. People*, G.R. No. 172820, June 23, 2010, 621 SCRA 538, 547.

Anent the misappropriation, the petitioner admitted on cross-examination that she had misappropriated and did not remit the money.¹² She further admitted to having prepared and given to the complainants the list of her supposed borrowers. Clearly, she misappropriated the complainants' money to their prejudice.

Finally, as regards the last element of the crime charged, the complainants demanded the return of the money on several occasions, including sending the demand letter for the return of the ₱368,000.00 but the petitioner did not comply with the demands.¹³

In fine, the CA committed no reversible error in affirming the conviction of the petitioner for *estafa* by misappropriation under Art. 315 (1)(b) of the *Revised Penal Code*.

However, the penalty imposed on the petitioner must be corrected. The CA prescribed the indeterminate prison term of six months of *arresto mayor* to 20 years as maximum.¹⁴

In computing the penalty for this type of *estafa*, reference is made to the ruling in *Cosme, Jr. v. People*,¹⁵ which has been the precedent of other similar rulings,¹⁶ to wit:

With respect to the imposable penalty, Article 315 of the Revised Penal Code provides:

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

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional

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¹² *Rollo*, p. 24.

¹³ *Id.* at 63, 72-73.

¹⁴ *Supra* note 6.

¹⁵ G.R. No. 149753, November 27, 2006, 508 SCRA 190.

¹⁶ *Tria v. People*, G.R. No. 204755, September 17, 2004; *Corpuz v. People*, G.R. No. 180016, April 29, 2014; *Ceniza-Manantan v. People*, G.R. No. 156248, August 28, 2007, 531 SCRA 364, 382-383.

10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

The penalty prescribed by Article 315 is composed of only two, not three, periods, in which case, Article 65 of the same Code requires the division of the time included in the penalty into three equal portions of time included in the penalty prescribed, forming one period of each of the three portions. Applying the latter provisions, the maximum, medium and minimum periods of the penalty prescribed are:

Maximum - 6 years, 8 months, 21 days to 8 years,
Medium - 5 years, 5 months, 11 days to 6 years, 8
months, 20 days
Minimum - 4 years, 2 months, 1 day to 5 years, 5
months, 10 days¹⁷

Considering that the amount involved totaled ₱368,000.00, and thus exceeded ₱22,000.00, the maximum imposable penalty should be within the maximum period of six years, eight months, and 21 days to eight years of *prision mayor*. Under Article 315, *Revised Penal Code*, a period of one year should be added to the penalty for every additional ₱10,000.00 defrauded in excess of ₱22,000.00. Hence, the maximum period should be increased to 34 years, except that the same provision limits the total of the penalty to 20 years, which then becomes the maximum of the indeterminate penalty. With the penalty prescribed on the petitioner being *prision correccional* maximum to *prision mayor* minimum, the minimum of her indeterminate sentence should be within the penalty next lower, or *prision correccional* in its minimum and medium periods. Accordingly, the minimum term of the indeterminate sentence is anywhere from six months and one day to four years and two months.¹⁸

WHEREFORE, the Court **AFFIRMS** the decision promulgated on July 11, 2006, subject to the **MODIFICATION** that the indeterminate penalty imposed shall have a minimum of six months and one day of *prision correccional* and a maximum of 20 years of *reclusion temporal*.

The petitioner shall pay the costs of suit.

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
¹⁷ Supra note 15, at 211-212.

¹⁸ *Corpuz v. People*, supra note 16.

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA

Division Clerk of Court 

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Atty. Senen R. Saguyod
SAGUYOD & SAGUYOD
LAW OFFICE
Counsel for Petitioner
Victoria 2313 Tarlac

Court of Appeals (x)
Manila
(CA-G.R. CR No. 29292)

The Solicitor General (x)
Makati City

Mr. Placido S. Salviejo
Complainant
Tagumpay Street
San Roque, La Paz
2314 Tarlac

The Hon. Presiding Judge
Regional Trial Court, Br. 64
Tarlac City 2300 Tarlac
(Crim. Case No. 12455)

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