



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

LOURDES CHENG,
Petitioner,

G.R. No. 207373

Present:

GESMUNDO, C.J.,
Chairperson,
CAGUIOA,
INTING,
GAERLAN, and
DIMAAMPAO, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

MAR 23 2022

with order

X-----X

DECISION

GAERLAN, J.:

This resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by Lourdes Cheng (petitioner) praying for the reversal of the Decision² dated May 31, 2012 and Resolution³ dated May 6, 2013 of the Court of Appeals (CA) in CA-G.R. CR. No. 30784, which affirmed the February 9, 2007 Decision⁴ of the Regional Trial Court (RTC) of Quezon City, Branch 96 convicting her of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code (RPC).

Antecedents

On November 24, 2000, an Information⁵ was filed against petitioner for estafa under Article 315, paragraph 1(b) of the RPC, committed as follows:

¹ *Rollo*, pp. 13-37.

² *Id.* at 47-67; penned by Associate Justice Elihu A. Ybañez, with Associate Justices Celia C. Librea-Leagogo and Angelita A. Gacutan, concurring.

³ *Id.* at 7-8.

⁴ *Records*, pp. 466-472; penned by Presiding Judge Afaible E. Cajigal.

⁵ *Id.* at 1-3.

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That on or about the period comprised from 1994 to 1998, in Quezon City, Philippines, said accused, being then an employee of NAPOLCOM with office address at Francisco Gold Condominium, Edsa, this City did then and there willfully, unlawfully and feloniously defraud the following persons [(collectively, Private Complainants)] in the manner as follows:

| | |
|---------------------|---------------|
| Rafael Villadiego | Php 58,000.00 |
| Lourdes V. Garcia | 55,000.00 |
| Genaro V. Sevidal | 50,000.00 |
| Soledad DJ Buragay | 50,000.00 |
| Lorenzo Garcia | 50,000.00 |
| Regina Insigne | 50,000.00 |
| Thelma Enriquez | 48,000.00 |
| Cirila De Leon | 45,000.00 |
| Fernando Baria | 40,000.00 |
| Maribel Velasco | 40,000.00 |
| Demie D. Lising | 35,000.00 |
| Felicidad Saulo | 30,000.00 |
| Cresencia Cuba | 30,000.00 |
| Danilo R. Jasul | 25,000.00 |
| Florida A. Oliveros | 20,000.00 |
| Linda Gagarin | 20,000.00 |
| Casimira Acupan | 15,000.00 |
| Norma A. dela Cruz | 12,000.00 |
| Gerardo O. Agunos | 10,000.00 |
| Susan Sabado | 10,000.00 |
| Ciprino Talamayan | 10,000.00 |
| Elena C. Perez | 10,000.00 |
| Beng Ayalde | 10,000.00 |
| Lina Ricafort | 10,000.00 |
| Ana Paglinawan | 10,000.00 |
| Irene Navarro | 8,000.00 |
| Baby Aurora Bersosa | 7,000.00 |
| Lilia Torio | 5,000.00 |
| Henry Elmido | 5,000.00 |
| Daisy Bagtas | 5,000.00 |
| Carolina Martinez | 5,000.00 |
| Carmelita Doria | 5,000.00 |
| Amparo Arugay | 5,000.00 |
| Thelma Martin | 4,000.00 |
| Shiela del Rosario | 3,000.00 |
| Patrick Banzuelo | 5,000.00 |
| Shirley Villarín | 2,000.00 |
| Ricardo Miranda | 2,000.00 |
| Allen Talledo | 2,000.00 |
| Genalyn Barao | 2,000.00 |

said accused received in trust for administration said amounts from the aforementioned persons under the express obligation of refunding the same to them upon demand, but said accused once in possession of said amount, far from complying with her obligation with obvious unfaithfulness and grave

abuse of confidence, failed and refused and still fails and refuses to fulfill her aforesaid obligation and despite repeated demands, she willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to her own personal use and benefit, to the damages and prejudice of said complainants and the total amount of Php838,000.00, Philippine Currency.

CONTRARY TO LAW.⁶

Petitioner pleaded not guilty. After the termination of the pre-trial, trial on the merits ensued thereafter.⁷

Petitioner was a former employee of the National Police Commission (NAPOLCOM), National Capital Region (NCR). Sometime in January 1994, several employees of the NAPOLCOM, NCR formed an association which they named the "NAPOLCOM Employees Paluwagan" (*Paluwagan*). The members consisted of employees and non-employees of the NAPOLCOM. Each member of the *paluwagan* contributed money for the purpose of granting loans to other borrowers with interest. It was agreed that the contributions will be collected at the beginning of each year, and earn an interest of five percent (5%) per month. Thereafter, the dividends will be liquidated and returned at the end of the year.⁸

Petitioner was appointed as the secretary, treasurer and administrator of the *paluwagan*. She was in charge of loan disbursements, collection, accounting and liquidation.⁹

Initially, from 1994 to 1997, petitioner returned the contributions with interest at the close of each year. However, petitioner failed to return the contributions and interest in December 1998.¹⁰

Thus, on January 1999, the private complainants inquired about their contributions. Petitioner told them that she failed to collect the money borrowed by the residents of Dagat-dagatan, who were victims of a hold-up. Because of this, their funds were depleted. Petitioner undertook to return the contributions as soon as she can collect from the borrowers.¹¹

However, six months passed but petitioner still failed to return the contributions. Consequently, on July 31, 1999, the private complainants sent

⁶ Id. at 1-2.

⁷ *Rollo*, p. 51.

⁸ Id. at 52.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 52-53.

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petitioner a demand letter asking the return of their money in the total amount of ₱852,000.00. Unfortunately, petitioner failed to comply. Thus, the private complainants filed a complaint-affidavit against petitioner before the Office of the City Prosecutor of Quezon City.¹²

On the other hand, petitioner vehemently denied the charge leveled against her. She related that from 1994 to 1997, she returned the contributions of each member, with interest. She admitted that in 1998, she was unable to return the contributions because she experienced difficulties collecting from the borrowers, especially those from Dagat-dagatan. She likewise contended that there were also borrowers, who were employees of NAPOLCOM, who failed to pay their loan.¹³

Ruling of the RTC

On February 9, 2007, the RTC rendered a Decision¹⁴ convicting petitioner of Estafa under Article 315, paragraph 1(b) of the RPC. The RTC noted that the petitioner acquired material and juridical possession over the money given by the private complainants. It observed that the petitioner received the funds under the obligation to return them to the givers upon demand. However, petitioner used and disposed of the money as if it were hers. The RTC further held that petitioner committed abuse of confidence when she lent the money to non-members of the *paluwagan*.¹⁵ Thus, the RTC convicted petitioner as follows:

WHEREFORE, finding the accused LOURDES C. CHENG guilty beyond reasonable doubt of the crime of ESTAFA defined and penalized under Par. 1(b), Article 215 [sic] of the Revised Penal Code, and applying the Indeterminate Sentence Law, there being no modifying circumstance attending to the commission of the offense, the accused is hereby sentenced to suffer [sic] penalty of imprisonment of *eight (8) years and one (1) day of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum*, and to indemnify the offended parties in the following amounts, to wit:

| | | |
|--------------------|---|-----------|
| Rafael Villadiego | P | 58,000.00 |
| Lourdes V. Garcia | | 55,000.00 |
| Genaro V. Sevidal | | 50,000.00 |
| Soledad DJ Buragay | | 50,000.00 |
| Lorenzo Garcia | | 50,000.00 |
| Regina Insigne | | 50,000.00 |
| Thelma Enriquez | | 48,000.00 |
| Cirila V. de Leon | | 45,000.00 |

¹² Id. at 53.

¹³ Id. at 54-55.

¹⁴ Records, pp. 466-472.

¹⁵ Id. at 470.

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| | |
|---------------------|-----------|
| Fernando Baria | 40,000.00 |
| Maribel Velasco | 40,000.00 |
| Demie D. Lising | 35,000.00 |
| Felicidad Saulo | 30,000.00 |
| Cresencia Cuba | 30,000.00 |
| Danilo R. Jasul | 25,000.00 |
| Florida A. Oliveros | 20,000.00 |
| Linda Gagarin | 20,000.00 |
| Casimira Acupan | 15,000.00 |
| Norma A. dela Cruz | 12,000.00 |
| Gerardo O. Agunos | 10,000.00 |
| Susan Sabado | 10,000.00 |
| Ciprinao Talamayan | 10,000.00 |
| Elena C. Perez | 10,000.00 |
| Beng Ayalde | 10,000.00 |
| Lina Ricafort | 10,000.00 |
| Ana Paglinawan | 10,000.00 |
| Irene Navarro | 8,000.00 |
| Baby Aurora Bersosa | 7,000.00 |
| Lilia Torio | 5,000.00 |
| Henry Elmido | 5,000.00 |
| Daisy Bagtas | 5,000.00 |
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| Amparo Arugay | 5,000.00 |
| Thelma Martin | 4,000.00 |
| Shiela del Rosario | 3,000.00 |
| Patrick Banzuelo | 5,000.00 |
| Shirley Villarin | 2,000.00 |
| Ricardo Miranda | 2,000.00 |
| Allen Talledo | 2,000.00 |
| Genalyn Barao | 2,000.00 |

SO ORDERED.¹⁶

Dissatisfied with the ruling, petitioner filed a Notice of Appeal.¹⁷

Ruling of the CA

In a Decision¹⁸ dated May 31, 2012, the CA affirmed the RTC ruling. The CA held that all the elements of Estafa were proven to exist in the case at bar. It elucidated that the petitioner received the money in trust or for administration from the private complainants; she failed to return the money at the date agreed upon and failed to render an accounting thereof; her failure to return the money to private complainants caused prejudice and is

¹⁶ Id. at 471-472.

¹⁷ Id. at 474.

¹⁸ *Rollo*, pp. 47-67.

continuously causing prejudice to the latter; and, the private complainants made a demand against the petitioner.¹⁹

Anent the second element, the CA conceded that the prosecution failed to clearly establish whether petitioner was authorized to lend money to non-members. Nonetheless, the CA emphasized that it is undisputed that she failed to return the money of the private complainants at the date agreed upon, and failed to render an accounting despite demand.²⁰ Likewise, the CA noted that petitioner's failure to account for ₱691,912.81 of the funds she held in trust, is circumstantial evidence of misappropriation.²¹ The dispositive portion of the CA ruling states:

WHEREFORE, the appeal is **DENIED**. The Decision appealed from is hereby **AFFIRMED** with the modification that the indeterminate sentence to be imposed upon the appellant should be from four (4) years and two (2) months of *prision correccional medium*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

SO ORDERED.²²

Aggrieved, petitioner filed a Motion for Reconsideration, which the CA denied in its May 6, 2013 Resolution²³

Undeterred, petitioner filed the instant Petition for Review on *Certiorari*²⁴ under Rule 45.

Issue

The crux of the instant case is whether or not petitioner is guilty beyond reasonable doubt of Estafa under Article 315, par. 1(b) of the RPC.

Seeking her exoneration from the charge, the petitioner claims that the prosecution failed to prove all the elements of Estafa with unfaithfulness or abuse of confidence. First, she alleges that there was no misappropriation. She never cajoled or encouraged the members to invest or give their money. They gave their money with the knowledge that it will be lent to other persons so that their contributions will earn an interest of five percent (5%).²⁵ In fact, they even designated her as the secretary and treasurer of the *pahuwagan*.²⁶

¹⁹ Id. at 61-63.

²⁰ Id. at 60.

²¹ Id. at 61.

²² Id. at 66.

²³ Id. at 7-8.

²⁴ Id. at 13-37.

²⁵ Id. at 24.

²⁶ Id. at 25.

Second, petitioner contends that she did not gain or receive any personal benefit from the money, which was loaned to other persons with the consent of the private complainants. She maintains that her failure to collect payments from the borrowers is not tantamount to misappropriation.²⁷ She insists that her failure to return the money was for reasons beyond her control, namely, the non-payment of the borrowers.²⁸ She likewise argues that she did not commit conversion when she lent the money to non-members. She avows that the members knew that the money was being lent out to non-members since 1994.²⁹

Third, petitioner bewails that the allegation that the crime was committed from 1994 to 1998 has no leg to stand on, considering that it was only in 1998 that she failed to return the contributions.³⁰

Fourth, petitioner points out that most of the private complainants who claimed to have uncollected investments are indebted to the *paluwagan*.³¹ She further alleges that they even overstated the actual amount of their investments. She laments that the RTC disregarded the evidence she presented showing the actual amount due to each private complainant.

Finally, petitioner urges that her failure to return the private complainants' money does not constitute Estafa, and at best, only amounts to civil liability.³²

On the other hand, the People of the Philippines, through the Office of the Solicitor General (OSG) counters that petitioner received the money in trust or for administration as the NAPOLCOM *paluwagan*'s secretary and treasurer. She failed to return the private complainants' money despite repeated demands. She misappropriated the money she received in trust or for administration. Her failure to account, upon demand is circumstantial evidence of misappropriation. Likewise, her act of loaning money to non-members renders her guilty of devoting the money for a purpose different from what was originally agreed upon. Overall, her acts resulted to the damage and prejudice of the private complainants.³³

²⁷ Id. at 28.

²⁸ Id. at 35.

²⁹ Id. at 29.

³⁰ Id. at 26.

³¹ Id. at 31-32.

³² Id. at 34.

³³ Id. at 92-93.

Ruling of the Court

The petition is impressed with merit.

Petitioner is not criminally liable for Estafa under Article 315, paragraph 1(b)

All criminal prosecutions are governed by the Constitutional precept that a person is innocent until proven guilty beyond reasonable doubt.³⁴ Consequently, every conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense.³⁵ The prosecution bears the *onus probandi* of establishing the guilt of the accused.³⁶

In line with this, to ensure a conviction for Estafa under Article 315, paragraph 1(b), the prosecution must prove that (i) 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 deliver, or to return, the same; (ii) he/she misappropriated or converted the money or property received, or denies the receipt of the money or property; (iii) such misappropriation, conversion or denial is to the prejudice of another; and (iv) the offended party made a demand for the return of the money or property given to the offender.³⁷

The prosecution failed to prove the second element.

Notably, the essence of estafa committed with abuse of confidence is the misappropriation or conversion of money or property received to the prejudice of the person/entity to whom it should be returned. To "convert" or "misappropriate" connotes the act of using or disposing of another person'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."³⁸ The law abhors the act of defrauding another person through abuse of trust and/or deceit, and thus, criminalizes this kind of fraud.³⁹

³⁴ *Franco v. People*, 780 Phil. 36, 38 (2016).

³⁵ *People v. Ansano*, G.R. No. 232455, December 2, 2020.

³⁶ *Franco v. People*, supra at 34.

³⁷ *Benabaye v. People*, 755 Phil. 144, 154 (2015), citing *Serona v. CA*, 440 Phil. 508, 517 (2002).

³⁸ *Khitri v. People*, 789 Phil. 109, 120 (2016), citing *Pamintuan v. People*, 635 Phil. 514, 522 (2010).

³⁹ *Dy v. People*, 792 Phil. 672, 686 (2016).

It must be noted at the outset that petitioner did not commit abuse of confidence or misrepresentation to dupe the private complainants into giving her their money. Rather, the private complainants, along with the petitioner mutually created the *paluwagan* for the purpose of extending loans to other borrowers, and charging interest thereon. Each member willingly gave their money, knowing that it will be lent to others. More so, the members of the *paluwagan* appointed the petitioner as their secretary and treasurer, and authorized her to lend their money and collect it from the borrowers.

In line with the *paluwagan's* nature and purpose, petitioner lent the private complainants' money to interested borrowers. Clearly, petitioner did not misappropriate the funds as if they were her own, or gain any personal advantage from said funds. Her failure to return the money upon demand was due to the fact that the borrowers failed to pay their loans.

Interestingly, when the prosecution failed to prove the element of misappropriation, it alternatively argued that petitioner is liable for conversion because she lent the funds to non-members, allegedly in violation of the *paluwagan's* rules.

Unfortunately, the prosecution miserably failed to prove the said allegation. It could not point to a specific rule prohibiting the lending of funds to non-members. On the contrary, the evidence shows that the members agreed that the funds may be lent to non-members, as long as a member guarantees the loan.⁴⁰ In fact, the records show that since 1994, the group had lent funds to non-members. One example is Rex Santos from Dagat-dagatan, who had been borrowing from the group since 1994. His loans were recorded in the *paluwagan's* books, which were readily accessible to all members.⁴¹ For almost four (4) years, not a single member complained against this practice, thereby proving that petitioner was allowed to lend money to non-members.⁴²

Likewise, private complainant Casimira Acupan recognized petitioner's authority to lend the funds to non-members, as proven from her testimony, to wit:

Atty. De Leon:

Q: The loan is not limited to members of the group. There were none [sic] members or private person granted a loan?

Atty. Duano:

Objection, Your Honor, there is no testimony on direct that outsiders can loan.

⁴⁰ See TSN dated July 14, 2004, p. 9.

⁴¹ See TSN dated November 7, 2005, pp. 94-95.

⁴² *Rollo*, p. 29.

Atty. De Leon:
There is, Your Honor.

Court:
Witness may answer.

A: She is the administrator-treasurer so it depends on her.

Atty. De Leon:
Q: If you know?

A: It depends and it is recorded.⁴³ (Emphasis supplied)

Moreover, private complainant Genaro Sevidal failed to point to a specific rule prohibiting the lending of funds to non-members and admitted that said rule was at best, a generally accepted principle:

Atty. De Leon:
Q: No other persons, not an employee or not a member, can obtain loan from the accused?

A: I did not know with the treasurer/administrator of the funds because she is the one handling the funds, if she lent it to anybody who is not a member of NCR Napolcom.

Q: That is what you know?

A: Yes sir.⁴⁴

x x x x

Q: And when they gave the money, they knew before hand that the money will be lent to other persons?

A: To the employees of Napolcom NCR only, that was the general accepted principle for that paluwagan, for NCR Napolcom employees only.⁴⁵

However, this alleged “generally accepted principle” was controverted by actual practice. To reiterate, since 1994, petitioner had been lending funds to non-members with the knowledge and consent of the members. Hence, petitioner’s act of extending loans to the fishermen of Dagat-dagatan does not render her liable for conversion.

It is interesting to note that even the CA recognized that “it was not clearly established whether [petitioner] was authorized to lend the money to

⁴³ TSN dated July 1, 2003, p. 3.

⁴⁴ TSN dated September 23, 2003, p. 4.

⁴⁵ Id. at 5.

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non-members of the group x x x.”⁴⁶ However, instead of acknowledging the absence of direct proof of misappropriation and conversion of the funds, the CA erroneously concluded that petitioner’s failure to return the funds or render an accounting thereof, constituted circumstantial evidence of misappropriation and/or conversion.

Significantly, Rule 133, Section 4 of the Revised Rules of Evidence states that “circumstantial evidence is sufficient for conviction if: “(i) [t]here is more than one [(1)] circumstance; (ii) the facts from which the inferences are derived are proven; and (iii) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. x x x.”

In this case, the prosecution failed to show more than one circumstance that may lead to an inference of guilt. The prosecution relied solely on the fact that petitioner was unable to return the money upon demand and render an accounting thereof. This however, was sufficiently disproven by the defense.

Petitioner related that when the private complainants inquired about their money, she showed them the records of their accounts, to wit:

Atty. Duano:

Q: Madam Witness, when did you prepare these entries appearing on this logbook marked as Exhibit “T” and the notebooks as Exhibits “J” and “K”?

A: After the testimony, which is 1997 transactions, sir.

Q: But when the private complainants were demanding the return of their contributions, you never showed these to them?

A: I showed them, sir. It is open and accessible to them sir.

Q: In the year 1998, when they demanded the return of their contributions you showed these to them?

A: Yes, they saw it, sir.

Q: All these receipts in 1998 you showed these to the private complainants?

A: Yes, sir.⁴⁷

Furthermore, petitioner satisfactorily rendered an accounting of the *pahuwagan’s* funds. Each member’s investment was duly recorded in the record book/logbook, which contained their signatures.⁴⁸ It is well to note that

⁴⁶ *Rollo*, p. 60.

⁴⁷ TSN dated November 7, 2005, pp. 78-79.

⁴⁸ *Rollo*, p. 32.

based on the logbook, some of the private complainants not only inflated the amount of their investments, but were even indebted to the *paluwagan* when they filed their complaint.⁴⁹

As per the Records, the total unsettled amount was ₱377,000.00, while the receivables were in the aggregate amount of ₱173,637.19, or a difference of ₱203,362.81.⁵⁰ Meanwhile, the uncollected amount from the borrowers from Dagat-dagatan is ₱416,550.00,⁵¹ thereby resulting to ₱691,912.81.

It is clearly apparent that the prosecution failed to prove beyond reasonable doubt that petitioner misappropriated or converted the private complainants' funds with abuse of confidence or misrepresentation. Where the inculpatory facts and circumstances are susceptible of two or more interpretations, one consistent with the accused's innocence, while the other compatible with a finding of guilt, this Court must acquit the accused because the evidence fails to fulfill the test of moral certainty required for conviction.⁵²

In sum, petitioner's mere failure to return the entrusted funds does not *ipso facto* constitute Estafa absent clear proof of the elements of misappropriation and conversion. Accordingly, petitioner should be acquitted of the charge of Estafa.

Petitioner's liability is only civil in nature

Every person criminally liable for a felony is also civilly liable.⁵³ The extinction of the penal action does not carry with it the extinction of the civil liability where: (i) **the acquittal is based on reasonable doubt as only preponderance of evidence is required**; (ii) the court declares that the liability of the accused is only civil; and (iii) the civil liability of the accused does not arise from or is not based upon the crime in which the accused is acquitted.⁵⁴

Remarkably, in *Balerta v. People*,⁵⁵ this Court, citing the seminal case of *Manantan v. Court of Appeals*,⁵⁶ elucidated on the two kinds of acquittal recognized by law and its corresponding effects on the civil liability of the accused:

⁴⁹ Id. at 31-32.

⁵⁰ Id. at 34; Records, pp. 194-195 and 219.

⁵¹ Id.; Records, p. 197 and 232.

⁵² *Khitri v. People*, supra note 38 at 122 citing *Aricheta v. People*, 560 Phil. 170, 184 (2007).

⁵³ *Dr. Lumantas v. Sps. Calapiz*, 724 Phil. 248, 253 (2014).

⁵⁴ *Rimando v. Spouses Winston and Elenita Aldaba and People*, 745 Phil. 358, 362-363 (2014).

⁵⁵ 748 Phil. 806 (2014).

⁵⁶ 484 Phil. 87 (2007).

x x x. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no delict, civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the delict complained of. This is the situation contemplated in Rule 111 of the Rules of Court. **The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. This is the situation contemplated in Article 29 of the Civil Code, x x x.**

In the case now under consideration, the Court acquits the petitioner not because she is found absolutely innocent of the crime charged. The Court acquits merely because reasonable doubt exists anent her guilt. Hence, the petitioner can still be held civilly liable to BABMPC if preponderant evidence exist to prove the same.

Rule 133, Section 1 of the Rules of Court indicates how preponderance of evidence shall be determined, viz:

Section 1. Preponderance of evidence, how determined. — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.⁵⁷ (Emphasis supplied; citations omitted)

More specifically, in *Gloria Dy v. People*,⁵⁸ this Court painstakingly explained the effect of an acquittal in estafa on the accused's civil liability:

In this kind of estafa, the fraud which the law considers as criminal is the act of misappropriation or conversion. When the element of misappropriation or conversion is missing, there can be no estafa. In such case, applying the foregoing discussions on civil liability *ex delicto*, there can be no civil liability as there is no act or omission from which any civil liability may be sourced. **However, when an accused is acquitted because a reasonable doubt exists as to the existence of misappropriation or conversion, then civil liability may still be awarded. This means that, while there is evidence to prove fraud, such evidence does not suffice to convince the court to the point of moral certainty that the act of fraud**

⁵⁷ *Balerta v. People*, supra note 55 at 823-824.

⁵⁸ Supra note 39 (2016).

amounts to estafa. As the act was nevertheless proven, albeit without sufficient proof justifying the imposition of any criminal penalty, civil liability exists.⁵⁹ (Emphasis and underscoring supplied)

In the foregoing case, petitioner Dy was charged with Estafa under Article 315, paragraph 1(b) of the RPC. However, after trial on the merits, Dy was acquitted due to the prosecution's failure to prove the element of misappropriation or conversion since it appeared that the parties entered into a loan agreement. Accordingly, the RTC acquitted Dy due to the prosecution's failure to establish her guilt beyond reasonable doubt, but declared her civilly liable to pay the private complainant.

This Court disagreed with the RTC's disposition holding Dy civilly liable in the same criminal case. Rather, this Court declared an exception to the general rule, and stated that civil liability *ex delicto* may not be recovered in the same criminal case if the source of the obligation is a contract:

The situation envisioned in the foregoing cases, as in this case, is civil liability *ex contractu* where the civil liability arises from an entirely different source of obligation. Therefore, it is not the type of civil action deemed instituted in the criminal case, and consequently must be filed separately. This is necessarily so because whenever the court makes a finding that the elements of *estafa* do not exist, it effectively says that there is no crime. There is no act or omission that constitutes criminal fraud. Civil liability *ex delicto* cannot be awarded as it cannot be sourced from something that does not exist.

When the court finds that the source of obligation is in fact, a contract, as in a contract of loan, it takes a position completely inconsistent with the presence of *estafa*. In *estafa*, a person parts with his money because of abuse of confidence or deceit. In a contract, a person willingly binds himself or herself to give something or to render some service. In *estafa*, the accused's failure to account for the property received amounts to criminal fraud. In a contract, a party's failure to comply with his obligation is only a contractual breach. Thus, any finding that the source of obligation is a contract negates *estafa*. The finding, in turn, means that there is no civil liability *ex delicto*. Thus, the rulings in the foregoing cases are consistent with the concept of fused civil and criminal actions, and the different sources of obligations under our laws.

We apply this doctrine to the facts of this case. Petitioner was acquitted by the RTC Manila because of the absence of the element of misappropriation or conversion. The RTC Manila, as affirmed by the CA, found that Mandy delivered the checks to petitioner pursuant to a loan agreement. Clearly, there is no crime of *estafa*. There is no proof of the presence of any act or omission constituting criminal fraud. Thus, civil liability *ex delicto* cannot be awarded because there is no act or omission

⁵⁹ Id. at 686.

punished by law which can serve as the source of obligation. Any civil liability arising from the loan takes the nature of a civil liability *ex contractu*. It does not pertain to the civil action deemed instituted with the criminal case.

In *Manantan*, this Court explained the effects of this result on the civil liability deemed instituted with the criminal case. At the risk of repetition, *Manantan* held that when there is no delict, “civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the *delict* complained of.” In Dy’s case, the civil liability arises out of contract—a different source of obligation apart from an act or omission punished by law — and must be claimed in a separate civil action.⁶⁰ (Citations omitted)

In addition, this Court held that to award civil liability in the same criminal case would violate Dy’s right to due process, since the evidence on record never fully established the terms of the loan contract. It elucidated that the trial before the RTC was focused on proving estafa, while the loan contract was only tangentially considered. Hence, a civil action for collection of sum of money filed before the proper court will serve as a better venue where the terms of the loan and other relevant details may be fully threshed out.

A similar ruling was rendered in the cases of *People v. Pantig*,⁶¹ *People v. Singson*,⁶² and *Estate of Honorio Poblador, Jr. v. Manzano*,⁶³ where this Court declared that the civil liability may not be recovered in the same criminal case, since the delivery of personal property was made pursuant to a contract. Particularly, the sources of obligation were a loan in *Pantig*;⁶⁴ a contract of sale in *Singson*; and an obligation to pay in *Estate of Honorio Poblador, Jr.*

Summarizing the rules relative to the instant case, when an accused is acquitted due to the prosecution’s failure to establish his/her guilt beyond reasonable doubt, the civil liability *ex delicto* may be recovered in the same criminal case, **except** if the source of the obligation stems from a contract.

In this case, the general rule still applies. Accordingly, petitioner may be adjudged civilly liable.

Petitioner received the private complainants’ money as an investment. She held the same in trust and for administration, and thus had material and juridical possession thereof. Likewise, she enjoyed full authority to handle

⁶⁰ Id. at 690-691.

⁶¹ 97 Phil. 748 (1955).

⁶² 290 Phil. 9 (2015).

⁶³ 811 Phil. 66 (2017).

⁶⁴ The trial court found as a fact that the sum of ₱1,200.00, ordered to be paid in the judgment of acquittal, was received by the defendant-appellant as loan.

and dispose of the funds in the most lucrative manner for the investors to earn dividend. Indeed, the transaction involved in this case is not a simple contract of loan or sale, which bars the award of civil liability in the same criminal case.

Moreover, in stark contrast with the facts in *Dy*,⁶⁵ the parties in the instant case were sufficiently given the opportunity to present evidence regarding the amounts owed by petitioner. The parties testified lengthily on the matter, and presented voluminous evidence. Petitioner showed and admitted that she is still accountable for the amount of ₱691,912.81,⁶⁶ which private complainants did not sufficiently rebut, despite the opportunity to do so. Verily, a preponderance of evidence exists to hold petitioner civilly liable.

Additionally, this Court echoes its pronouncement in *Khitri v. People*,⁶⁷ where We ordered the return of the private complainants' money to prevent unjust enrichment:

While the petitioners cannot be made criminally liable on the grounds of absence of some of the elements of estafa, and of reasonable doubt, it is undisputed that they received the amount of P400,000.00 from the private complainants. Lest unjust enrichment results, reimbursement of the amount is in order. x x x⁶⁸

Considering that petitioner admitted her liability and obligation to return the private complainants' money,⁶⁹ and to prevent unjust enrichment, this Court orders her to pay the amount of ₱691,912.81. Said amount shall be subject to an interest of twelve percent (12%) *per annum* from the filing of the Information until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until the finality of this Decision. The total amount due shall earn a legal interest of six percent (6%) *per annum* from the finality of this Court's Decision until full payment.

In fine, petitioner is acquitted of the charge because reasonable doubt exists as to her guilt, specifically with respect to the elements of misappropriation or conversion. Nonetheless, there exists preponderant evidence to hold her civilly liable.

WHEREFORE, premises considered, the May 31, 2012 Decision and the May 6, 2013 Resolution of the Court of Appeals in CA-G.R. CR. No. 30784 are hereby **REVERSED and SET ASIDE**. Petitioner Lourdes Cheng

⁶⁵ *Dy v. People*, supra note 39.

⁶⁶ See TSN dated November 7, 2005, pp. 35-37

⁶⁷ *Khitri v. People*, supra note 38.

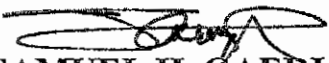
⁶⁸ *Id.* at 123.

⁶⁹ See TSN dated November 7, 2005, pp. 35-37.

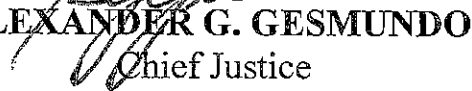
is **ACQUITTED** of the charge of Estafa as defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code due to the prosecution's failure to prove her guilt beyond reasonable doubt.

Lourdes Cheng is **ORDERED** to **PAY** the private complainants ₱691,912.81, subject to an interest of twelve percent (12%) *per annum* from the filing of the Information until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until the finality of this Decision. The total amount due shall earn an interest of six percent (6%) *per annum* from the finality of this Decision until full payment.


SO ORDERED.


SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

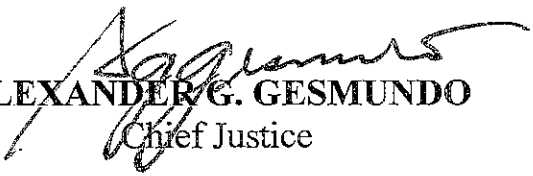

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


JAPAR B. DIMAAMPAO
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