



Republic of the Philippines
Supreme Court
 Manila

WILSON D. VILLAPUTAN
 Division Clerk of Court
 Third Division
 AUG 10 2016

THIRD DIVISION

**ROSALINDA S. KHITRI and
 FERNANDO S. KHITRI,**

Petitioners,

G.R. No. 210192

Present:

VELASCO, JR., J.,
Chairperson,

PERALTA,

PEREZ,

MENDOZA,* and

REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

July 4, 2016

Wilson D. Villaputan

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DECISION

REYES, J.:

Before this Court is a petition for review on *certiorari*¹ filed by Rosalinda S. Khitri (Rosalinda) and Fernando S. Khitri (Fernando) (collectively, the petitioners) assailing the Decision² of the Court of Appeals (CA) rendered on June 27, 2013 in CA-G.R. CR No. 33961, which affirmed the Decision³ dated December 9, 2009 of the Regional Trial Court (RTC) of Las Piñas City, Branch 253, in Criminal Case No. 00-1023, convicting the petitioners of the crime of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code (RPC).

* Designated Additional Member per Raffle dated October 27, 2014 *vice* Associate Justice Francis H. Jardeleza.

¹ *Rollo*, pp. 3-14.

² Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Isaias P. Dicanan and Michael P. Elbinas concurring; *id.* at 20-32.

³ Rendered by Presiding Judge Salvador V. Timbang, Jr.; *id.* at 77-84.

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The Information indicting the petitioners reads:

That on or about the 25 January, 1991 and sometime thereafter, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the [petitioners], *conspiring and confederating together and both of them mutually helping and aiding one another*, received in trust from the said complainants the amount of P400,000.00 to be used in the construction of a factory building to be built on the one[-]half portion of the [petitioners'] lot located at Monte Vista Park Subd., Sto. Nino, Cainta, Rizal but [the petitioners] once in possession of the said amount of money and far from complying with their obligation, with abuse of confidence and with intent to defraud said complainants[,] did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to their own personal use and benefits said amount of P400,000.00 and despite repeated demands made by the complainants[,] [the petitioners] failed and refused and still fails [sic] and refuses [sic] to return the said amount of P400,000.00 to the damage and prejudice of the said complainants in the aforementioned amount of P400,000.00.

CONTRARY TO LAW.⁴ (Italics ours)

Antecedents

Rosalinda is Fernando's mother. In their joint Counter-Affidavit,⁵ they admitted that they received the amount of Four Hundred Thousand Pesos (P400,000.00) from Spouses Hiroshi (Hiroshi) and Belen (Belen) Fukami (collectively, the private complainants). However, the petitioners claimed that the money they received was the private complainants' contribution in their joint venture to construct and operate a garments factory. The petitioners further alleged that they had substantially complied with their obligation by constructing a two-door studio-type apartment in their lot in Cainta, Rizal, half of which was to be devoted for the operation of the garments factory.

On March 28, 2001, the petitioners were arraigned and pleaded "not guilty" to the charge. Since their primary defense was in the nature of an affirmative allegation, the RTC reversed the order of trial.⁶

In her testimony,⁷ Rosalinda stated that she manufactures and exports ladies' lingerie and wear. Hiroshi, on the other hand, is an exporter of locally-manufactured women's wear to Japan. They were introduced to each other in 1986 by Hiroshi's agent, who used to source lingerie items from Rosalinda. In 1989, Hiroshi proposed a venture for them to jointly

⁴ Id. at 21-22.

⁵ Id. at 48-52.

⁶ Id. at 22.

⁷ Id. at 78.

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manufacture and export women's wear to United States of America and other countries. The venture required the construction of a factory, with Hiroshi contributing ₱400,000.00 therefor. Initially, Hiroshi wanted the factory to be constructed in Cubao, Quezon City beside Rosalinda's warehouse. However, Rosalinda offered her lot in Monte Vista Park Subdivision, Cainta, Rizal and Hiroshi acceded. The parties' agreement was merely verbal. The construction started in 1991. Half of the lot was reserved for the factory, with the remaining half as Rosalinda's residence. Rosalinda presented a supposed plan for the factory entitled "*Construction of Two-Unit Studio-type Apartments*," prepared for "*Rosalinda P. Subido*."

On cross-examination, Rosalinda clarified that the parties verbally agreed that one-half of the building would be used as factory while the other half would be her residence. However, there was no approved plan for a two-storey factory but only for two units of studio-type apartment. Hiroshi signified his acceptance of the factory building as constructed when he had caused the delivery and installation of five sewing machines in the apartment units albeit no government permit was obtained to operate the factory. Two weeks after, Hiroshi directed the machines to be pulled out for needed repairs.⁸

In his testimony,⁹ Fernando stated that he is also engaged in garments manufacturing since 1979. He is the sole proprietor of Allure Garments and owns an interest in Venus Fashion Apparel Corporation. Rosalinda, on the other hand, solely owns Nandy's Enterprises, another business entity involved in garments manufacturing. Hiroshi first purchased garments from him in 1988. Later, Hiroshi proposed a joint venture to manufacture garments and agreed to contribute money for a factory to be constructed in their lot in Cubao. Hiroshi eventually agreed to have the factory be built instead in their lot in Cainta, Rizal.

In her testimony,¹⁰ Belen confirmed that she and her husband Hiroshi used to source some women's wear and lingerie items, which they export to Japan, from the petitioners in their Cubao factory from 1988 to 1992. Sometime in 1990, when the petitioners were running low on capital, they approached the private complainants to form a corporation to manufacture and export women's clothes and lingerie. Initially, the private complainants hesitated because the project entailed a huge amount for the construction of a two-storey factory. The private complainants at first suggested to have the factory be built in the petitioners' lot in Cubao. However, the Cubao area is congested. Further, after visiting the petitioners' lot in Cainta, and having been shown a sketch of the two-storey factory to be constructed, they agreed

⁸ Id.

⁹ Id. at 79.

¹⁰ Id. at 79-80.

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to build thereat. The factory was intended to occupy one-half of the lot, while the other half thereof would be reserved for the petitioners' residence. The private complainants gave their ₱400,000.00 contribution to the petitioners and this amount was used to open a Boston Bank joint account in Belen and Rosalinda's names. The private complainants were eventually shocked to discover instead a two-door studio-type apartment, the plan for which was never shown to them. In their disappointment, they demanded the return of their money, but the petitioners avoided their calls and even changed their phone numbers. Through counsel, the private complainants wrote a demand letter for the petitioners to return their money. In response, the petitioners offered one apartment unit, with the cost of the lot where it stands to be paid for separately. The private complainants outrightly rejected the offer.

Hiroshi testified that he had been coming back and forth from Japan to the Philippines for 30 years purchasing and exporting locally manufactured women's clothes. The petitioners were referred to him by a Japanese friend, and he soon began buying merchandise from them in 1988. The petitioners subsequently broached the idea of a joint venture to manufacture women's clothes, with the private complainants contributing to the cost of constructing a two-storey factory building. Since the petitioners' shop in Cubao is too small, they showed him a rough sketch of a two-storey factory on a white board, and brought him to see their lot in Cainta where the factory would be built. The petitioners explained to him that one-half of the lot would be used for the two-storey factory. Later, he asked Belen to check the state of the factory because the petitioners had been rejecting his phone calls. Belen saw a two-door studio-type apartment, instead of a two-storey factory, and took pictures of the same. Hiroshi was never shown the plan for a two-door studio-type apartments, which Rosalinda presented in court. The private complainants tried to contact the petitioners but they could no longer be reached. They felt deceived because their agreement was not complied with.¹¹

On cross-examination, Hiroshi admitted that the negotiations for the joint venture were done in his Elizabeth Mansions office in Quezon City. He recalled having seen the petitioners in Las Piñas City only once or twice. There was no written contract anent the joint venture because he trusted the petitioners.¹²

¹¹ Id. at 81-82.

¹² Id. at 81.

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Ruling of the RTC

The RTC, in its Decision¹³ dated December 9, 2009, convicted the petitioners, the *fallo* of which reads:

WHEREFORE, premises considered, the Court finds [the petitioners], **GUILTY** beyond reasonable doubt of the crime of *Estafa* punishable under *Article 315*, paragraph 1 (b) of the [RPC]. Consequently, [the petitioners] are sentenced to suffer the indeterminate prison term of four (4) years and two (2) months of *Prision Correccional* maximum as MINIMUM to twenty (20) years of *Reclusion Temporal* as MAXIMUM.

Moreover, this Court hereby orders [the petitioners] to reimburse private complainants the sum of x x x FOUR HUNDRED THOUSAND PESOS (Php400,000.00), plus interest of twelve percent (12%) per annum, from January 21, 1991, until fully paid, as actual damages, and ONE HUNDRED THOUSAND PESOS (Php100,000.00), as litigation expenses and attorney[']s fees.

SO ORDERED.¹⁴

Unfazed by the above, the petitioners appealed to the CA.

Ruling of the CA

In its Decision¹⁵ dated June 27, 2013, the CA affirmed *in toto* the RTC decision. The CA agreed with the RTC that it had jurisdiction over the crime charged. All the elements of the crime of estafa are present, and that the petitioners conspired in committing the crime. The evidence of the prosecution showed that the parties agreed to form a joint venture to manufacture women's wear, with the petitioners contributing the use of one half of their lot in Cainta to build a two-storey garments factory, while the private complainants would contribute ₱400,000.00 for the construction thereof. On January 25, 1991, the private complainants gave the amount of ₱400,000.00, with which Belen and Rosalinda opened a joint account in Boston Bank, San Juan City. On different dates, four checks, each bearing the amount of ₱100,000.00, were issued by Belen to Rosalinda. The petitioners' messenger picked up the checks from the private complainants' residence in Las Piñas City and thereafter, the amounts indicated therein were withdrawn from Boston Bank joint account. After the entire amount of ₱400,000.00 had been withdrawn, the petitioners could no longer be contacted by phone. This prompted Belen to visit the construction site. She discovered that what was constructed was not a two-storey factory building

¹³ Id. at 77-84.

¹⁴ Id. at 84.

¹⁵ Id. at 20-32.

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but a residential duplex apartment. Belen took pictures of the apartment and showed them to Hiroshi, who then decided to withdraw from the joint venture and demanded the return of their money. The private complainants consulted a lawyer, who sent demand letters, but they received no reply from the petitioners.

The petitioners filed a motion for reconsideration, which was denied by the CA in its Resolution¹⁶ dated November 21, 2013.

Hence, this petition raising the following errors:

- I. THE CA GRAVELY ERRED IN MAINTAINING THAT THE RTC OF LAS PIÑAS CITY HAD JURISDICTION OVER THE CASE.**
- II. THE CA GRAVELY ERRED IN UPHOLDING THE CONVICTION OF THE PETITIONERS INSTEAD OF FINDING THAT THEIR LIABILITY, IF ANY, IS ONLY CIVIL IN NATURE.**
- III. THE CA GRAVELY ERRED IN FINDING THAT CONSPIRACY EXISTED BETWEEN THE PETITIONERS.¹⁷**

The Issues

Essentially, the issues for resolution are the following: (1) whether the evidence submitted is sufficient to establish guilt of the petitioners beyond reasonable doubt; and (2) whether the evidence submitted establishes conspiracy between the petitioners.¹⁸

In this petition, the petitioners reiterate their contention that the crime for which they were indicted was committed in Quezon City, San Juan City and Cainta, Rizal, and not in Las Piñas City. Moreover, no conspiracy between the petitioners was established. They point out that Belen herself admitted that the amount of ₱400,000.00 was deposited in a joint account, which Belen and Rosalinda opened in a bank in San Juan City. Moreover, there was no criminal intent to swindle the private complainants. It was Hiroshi himself who approached the petitioners to propose a joint venture. In fact, as agreed, a structure was erected on the lot of the petitioners, which, although not exactly what the private complainants had in mind, is suitable

¹⁶ Id. at 35-36.

¹⁷ Id. at 6.

¹⁸ Id. at 5-6.

for the operation of a garments factory. Hiroshi even delivered and installed sewing machines in the building. After two weeks, he pulled out the sewing machines for the purpose of having them repaired. The petitioners also point out that they never stopped communicating with the private complainants. Besides, 10 years had elapsed from the time the factory was constructed before the private complainants decided to file a criminal complaint.

On the other hand, the Office of the Solicitor General (OSG) maintains that the RTC of Las Piñas City had jurisdiction over the case. The delivery of the checks and acceptance thereof by the petitioners through their authorized representatives connote not merely the transfer of money but also marked the creation of a fiduciary relation between the parties. Hence, in legal contemplation, the petitioners received the amount of ₱400,000.00 in the private complainants' residence in Las Piñas City. The OSG further insists that all the elements of the crime and the fact of conspiracy are present.¹⁹

Ruling of the Court

The instant petition is meritorious.

The RTC of Las Piñas City had jurisdiction over the case.

The Court agrees that the RTC of Las Piñas City had territorial jurisdiction over the case. Although the bank account for the joint venture was set up in San Juan City, in which the ₱400,000.00 capital contribution of the private complainants was deposited and eventually withdrawn, Belen issued four checks from her residence in Las Piñas City. These checks were picked up by the messenger sent by the petitioners.

The Court has ruled in the case of *Tan v. People*²⁰ that “[t]he delivery by the private complainant of the check and its acceptance by [the accused] signified not merely the transfer to the accused of the money belonging to private complainant, [but] it also marked the creation of a fiduciary relation between the parties.”²¹

¹⁹ Id. at 90-104.

²⁰ 542 Phil. 188 (2007).

²¹ Id. at 198, citing Reyes, *The Revised Penal Code Criminal Law Book Two* 736 (2001).



Not all the elements of the crime of estafa are present.

However, the CA erred in affirming the ruling of the RTC, which convicted the petitioners of estafa as the prosecution failed to prove all the elements of the crime charged.

Under Article 315, paragraph 1(b) of the RPC,²² the elements of estafa with abuse of confidence are as follows: (1) that the money, goods or other personal property is 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 be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is demand by the offended party to the offender.²³

In the case at bar, the presence of the first and last elements is undisputed. The petitioners received money in trust or for administration to build a factory in Cainta, and that the private complainants, through counsel, demanded the return of their ₱400,000.00 *via* letters dated December 13, 1999 and January 25, 2000, which were received on December 28, 1999, and January 5, 2000, respectively.²⁴ However, the elements of misappropriation and prejudice were not sufficiently established.

The essence of estafa committed with abuse of confidence is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words “*convert*” and “*misappropriate*” connote the act of using or disposing of another’s property as if it were one’s own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one’s own use includes not only conversion to one’s personal advantage, but also every attempt to dispose of the property of another without right.²⁵

²² Art. 315. *Swindling (estafa)*. – Any person who shall defraud another by any of the means mentioned hereinbelow x x x:

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;

x x x x

²³ *Jandusay v. People*, 711 Phil. 305, 310-311 (2013).

²⁴ *Rollo*, pp. 29-30.

²⁵ *Pamintuan v. People*, 635 Phil. 514, 522 (2010).

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Here, Rosalinda received ₱400,000.000 for the purpose of constructing a garments factory inside the Monte Vista Park Subdivision, Cainta, Rizal. True to their agreement, she caused the erection of a two-door studio-type apartment, one of which would serve as the garments factory. The private complainants however posit that the structure was not in compliance with their agreed plan. Nonetheless, the purpose of the money had been complied with by the petitioners, albeit modified. The Court believes that the ends sought to be achieved by the money have not been rendered illusory by the modification. In fact, after the construction, the private complainants sent five sewing machines for use in the garments factory, but these were subsequently pulled out after two weeks for repairs.

“Not to be overlooked is that this felony falls under the category of *mala in se* offenses that require the attendance of criminal intent. Evil intent must unite with an unlawful act for it to be a felony. *Actus non facit reum, nisi mens sit rea.*”²⁶

The element of intent – on which the Court shall focus – is described as the state of mind accompanying an act, especially a forbidden act.²⁷ It refers to the purpose of the mind and the resolve with which a person proceeds.²⁸ It does not refer to mere will, for the latter pertains to the act, while intent concerns the result of the act.²⁹ While motive is the “moving power” that impels one to action for a definite result, intent is the “*purpose*” of using a particular means to produce the result.³⁰ On the other hand, the term “felonious” means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose.³¹ With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act. Stated otherwise, intentional felony requires the existence of *dolus malus* – that the act or omission be done “willfully,” “maliciously,” “with deliberate evil intent,” and “with malice aforethought.”³² The maxim is *actus non facit reum, nisi mens sit rea* – a crime is not committed if the mind of the person performing the act complained of is innocent.³³ As is required of the other elements of a felony, the existence of malicious intent must be proven beyond reasonable doubt.³⁴

²⁶ *Manahan, Jr. v. CA*, 325 Phil. 484, 499 (1996).

²⁷ Black’s Law Dictionary 670 (8th abr. ed. 2005); see *People v. Regato, et al.*, 212 Phil. 268 (1984).

²⁸ *Guevarra v. Hon. Almodovar*, 251 Phil. 427, 432 (1989), citing 46 CJS Intent, p. 1103.

²⁹ Albert, The Revised Penal Code (Act No. 3815) 23 (1946).

³⁰ *People v. Ballesteros*, 349 Phil. 366, 374 (1998).

³¹ Black’s Law Dictionary 520 (8th abr. ed. 2005).

³² Albert, The Revised Penal Code (Act No. 3815) 23-25 (1946).

³³ *United States v. Catolico*, 18 Phil. 504, 507 (1911).

³⁴ See *United States v. Barnes*, 8 Phil. 59 (1907).

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In the instant petition, the records do not show that the prosecution was able to prove the existence of malicious intent when the petitioners used the money they received to construct two-door studio-type apartments, one of which would serve as the garments factory. To reiterate, the purpose of the money was achieved. Furthermore, the factual precedents of the case do not sufficiently warrant conviction for the crime of estafa, much less deserve deprivation of liberty. At best, the petitioners could be held liable for damages for violating the tenor of their agreement.

Ultimately, the amount of ₱400,000.00 given to the petitioners could hardly be considered as the damage sustained by the private complainants. Damage, as an element of estafa, may consist in: (1) the offended party being deprived of his money or property as a result of the defraudation; (2) disturbance in property right; or (3) temporary prejudice.³⁵ In this case, the amount was voluntarily given pursuant to a joint venture agreement for the construction of a garments factory, and with which the petitioners complied. Absent the element of misappropriation, the private complainants could not have been deprived of their money through defraudation. Moreover, the allegation of lost profits, which could have arisen from the aborted joint venture, is conjectural in nature and could barely be contemplated as prejudice suffered.

Where the inculpatory facts and circumstances are susceptible of two or more interpretations, one of which is consistent with the innocence of the accused while the other may be compatible with the finding of guilt, the Court must acquit the accused because the evidence does not fulfill the test of moral certainty required for conviction.³⁶

Consequently, the Court is constrained to uphold the presumption of innocence in the petitioners' favor and acquit them.

Anent the allegation of conspiracy, the Court deems it proper not to discuss the same in view of the fact that the prosecution failed to establish the existence of all the elements of the crime charged.

³⁵ *Brokmann v. People*, 681 Phil. 84, 87 (2012).

³⁶ *Aricheta v. People*, 560 Phil. 170, 184 (2007).

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Reimbursement of the amount given to the petitioners, plus interests, are due.

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 ₱400,000.00 from the private complainants. Lest unjust enrichment results, reimbursement of the amount is in order. An additional annual interest of six percent (6%) shall be imposed from the finality of this Decision until full payment thereof.³⁷

WHEREFORE, premises considered, the Decision dated June 27, 2013 of the Court of Appeals, in CA-G.R. CR No. 33961, affirming the Decision rendered on December 9, 2009 by the Regional Trial Court of Las Piñas City, Branch 253, in Criminal Case No. 00-1023, is hereby **REVERSED** and **SET ASIDE**. Rosalinda S. Khitri and Fernando S. Khitri are hereby **ACQUITTED** of the crime of Estafa. However, they are **DIRECTED to REIMBURSE** the private complainants, Spouses Hiroshi and Belen Fukami, of the amount of FOUR HUNDRED THOUSAND PESOS (₱400,000.00), subject to an annual interest of six percent (6%) from the finality of this Decision until full satisfaction thereof.

SO ORDERED.

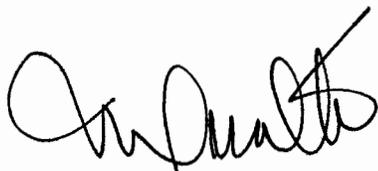

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

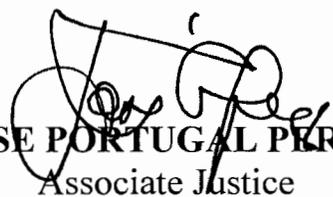

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

³⁷ *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

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DIOSDADO M. PERALTA
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest 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.



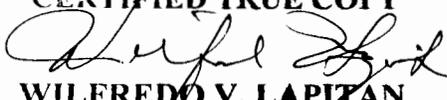
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
AUG 16 2016