PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARINO BABAO Y TORRES AND FELIPE MENDOZA Y CAGADAS, ACCUSED-APPELLANTS.

Ponente: ROXAS, J.

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ROXAS, J.:

Legal Principles in this Case:

Spontaneous desistance could not prosper as a defense in a criminal case when it was established that the accused was present and he played a crucial role in the commission of the crime.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose. All the perpetrators in a conspiracy will be liable as principals.

The Case

The accused were able to persuade the victim to invest P150,000.00 in their supposed business called “Double Your Money.” According to the accused, they would make money through a chemical process whereby a bill of any denomination could be multiplied just by injecting a certain chemical on blank pieces of paper which would miraculously turn into money. The process was demonstrated to the victim by the accused who was assisted by three (3) companions, and after they got the money of the victim which was intended as investment, they left ostensibly to get a dryer and promised to return afterwards, but they never returned and the victim’s money was gone.

All the accused alleged that they spontaneously desisted from the commission of the crime before its execution. The accused were convicted of Estafa, as charged. The accused interposed this appeal.

The Facts

This is an appeal from the February 28, 2001 Decision[1] of the Regional Trial Court (RTC) of Muntinlupa City, Branch 256, in Criminal Case No. 96-612, which convicted accused-appellants Marino Babao y Torres (BABAO) and Felipe Mendoza y Cagadas (MENDOZA) of the crime, Estafa.

On October 28, 1996, State Prosecutor Caroline Rivera-Colasito filed an Information[2] with the RTC of Muntinlupa City, Branch 256, docketed as Criminal Case No. 96-612, charging accused-appellants BABAO and MENDOZA with the crime of Estafa, committed as follows:

> “That on or about the 9th day of September, 1996 to the 21st day of October, 1996 in the City of Muntinlupa, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with other persons whose identities and present whereabouts are still unknown and mutually helping and aiding one another, by means of deceit and false pretenses, made or executed prior to or

> simultaneous with the commission of the fraud, did then and there willfully, unlawfully and feloniously represent to one Lovelyn Baja y Villanueva that they have the capacity to double one's money by the use of a chemical applied to a paper bill and induce her to invest in their Double your money deal, which representations were false as the same were only to induce the complainant to part, as she indeed part with her money in the amount of P150,000.00 and accused, once in possession of said amount, willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to their own use and benefit and despite demands made upon them to return the aforesaid amount, they failed and refused and still fail and refuse to do so, to the damage and prejudice of the said Lovelyn Baja y Villanueva in the amount of P150,000.00.
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> CONTRARY TO LAW."

When arraigned on April 8, 1997, accused-appellants BABAO and MENDOZA, with the assistance of their counsel de parte, pleaded not guilty to the charge.[3]

The prosecution established that on September 9, 1996, accused-appellant BABAO together with accused-appellant MENDOZA went to the bakery of his nephew, Agripino Babao (AGRIPINO), at No. 45 San Guillermo Street, Bayanan, Muntinlupa City for the purpose of meeting private complainant Lovelyn V. Baja (BAJA) to encourage her to invest in a business called "Double Your Money." Accused-appellant BABAO is the uncle-in-law of private complainant BAJA, the former being the first cousin of the latter's mother-in-law.

During that meeting, accused-appellant BABAO explained to the victim that in the proposed business, he would actually make money through a chemical process. Under this process, a bill of any denomination could be multiplied just by injecting a certain chemical on blank pieces of paper which would miraculously turn into money. Accused-appellant BABAO said that if he wanted to invest in the business, he had to give the accused the sum of P150,000.00 before he could join the business.

Thereafter, accused-appellants BABAO and MENDOZA met private complainant BAJA again in AGRIPINO's bakery to persuade her to invest. Accused-appellant BABAO even offered to invest P25,000.00, and accused-appellant MENDOZA offered to invest P10,000.00.

When accused-appellants BABAO and MENDOZA once again met private complainant BAJA on October 15, 1996, they were accompanied by 3 men: Rommel, Al and another whom they called "Engineer." At AGRIPINO's bakery, these 3 men demonstrated the said process, where a P10 bill, a P20 bill and a P100 bill were allegedly doubled. Accused-appellant paid for the beer and pulutan. At that point, the victim, private complainant BAJA, agreed to invest his own P150,000.00 into the business.

On October 21, 1996, accused-appellants BABAO and MENDOZA and their 3 companions returned and private complainant BAJA gave the P150,000.00 to them. Accuseda-appellants began the "Double Your Money" process inside one of the rooms of the victim's house. Accused-appellants BABAO and MENDOZA alleged to the victim that they were not able to contribute because the wife of theaccused-appellant BABAO did not agree to the investment, while the accused-appellant MENDOZA said that he was not able to invest because he used his money for the investment, to help somebody who died in the province.

The process they alleged worked like this: accused-appellants first cleaned the bills, inserted them in between bill-sized papers and then placed them inside the glass. Another glass was used to cover the first glass. It was later sealed by a masking tape. Since accused-appellants said that at this time they had to have a break and wait a while, accused-appellant went to the adjoining room to eat breakfast. While they were eating, accused-appellant Rommel informed everyone that his necklace was missing and that he had to return to the room where the process was being conducted to look for it. Accused-appellants BABAO and MENDOZA and his 2 other companions followed. Alarmed, private complainant BAJA rushed to the other room and saw Al injecting chemicals on the

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money and wrapping it with a towel. Accused-appellant BABAO handed the towel to private complainant BAJA and told her to put it in her bag before the chemical could evaporate. Accused-appellants BABAO and MENDOZA and their 3 companions left for Manila to get a money dryer and they promised to return at 10:00 in the morning. The victim realized that the afternoon had passed and it was already evening but accused-appellants BABAO and MENDOZA and their 3 companions had not yet returned. When private complainant BAJA opened the bag and unwrapped the glass, she was shocked to find only blank pieces of paper and her money was gone.

For their defense, accused-appellants BABAO and MENDOZA alleged that the "Double Your Money" scheme was the plan of Rommel and that they were also victims of Rommel because Rommel approached them to invest and accused-appellant BABAO said that maybe his relatives in Alabang would be interested. Thus, they went to Alabang to convince AGRIPINO and private complainant BAJA to invest. Accused-appellants BABAO and MENDOZA, however, later withdrew, because they did not have enough money to join.

Accused-appellants BABAO and MENDOZA also interposed the defense of alibi. Accused-appellant BABAO alleged that he was in Guinyungan, Quezon from October 20, 1996 to October 22, 1996 to attend a wedding, while accused-appellant MENDOZA claimed that he was at his home in Guadalupe the whole day of October 21, 1996. Moreover, accused-appellants BABAO and MENDOZA averred that they visited AGRIPINO and private complainant BAJA only once and they did not return to convince them.

Assailed Decision of the RTC

On February 28, 2001, the Regional Trial Court of Muntinlupa City, Branch 256, rendered the assailed Decision[4] in Criminal Case No. 96-612, convicting accused-appellants BABAO and MENDOZA of the crime of Estafa, the dispositive portion of which provides as follows:

> "WHEREFORE, the court thereby renders judgment:
>
> 1) Finding the accused MARINO BABAO Y TORRES and FELIPE MENDOZA Y CADAGAS guilty beyond reasonable doubt for the crime of Estafa as principals with no aggravating not mitigating circumstances;
>
> 2) Sentencing the said accused to serve the penalty of imprisonment for the minimum term of Four (4) years and Two (2) months prision correccional to a maximum term of Twenty (20) years of reclusion temporal.
>
> 3) For the accused to restore the One Hundred Fifty Thousand Pesos (PHP150,000.00) to the complainant Lovelyn V. Baja, and
>
> 4) For the accused to bear cost of suit.
>
> SO ORDERED."

Accused-appellants BABAO and MENDOZA filed a motion for reconsideration[5] on June 27, 2001. Meanwhile, they filed a notice of appeal[6] on July 11, 2001, which was given due course by the trial court in its Order[7] dated July 30, 2001.

On August 10, 2001, accused-appellants BABAO and MENDOZA filed a supplement to their motion for reconsideration.[8] The said motions were denied by the trial court in its Order[9] dated September 19, 2001.

Assignment of Error

In their Brief,[10] accused-appellants BABAO and MENDOZA assigned this lone error:

> THE HONORABLE COURT A QUO ERRED IN NOT TAKING COGNIZANCE OF AND GIVING CREDENCE TO THE DEFENSE OF SPONTANEOUS DESISTANCE OF THE ACCUSED PRIOR TO THE ACTUAL COMMISSION OF THE CRIME CHARGED.

The Ruling of this Court

Appeal is bereft of merit.

There was desistance on the part of accused-appellants BABAO and MENDOZA in the commission of the crime because, if ever there was any desistance, it was merely desistance in making monetary investments because they did not have enough money.

Accused-appellants BABAO and MENDOZA are liable as principals in the commission of Estafa because there was conspiracy proven to defraud private complainant BAJA. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[11] In this case at bench, accused-appellants BABAO and MENDOZA visited private complainant BAJA, not once, but several times to show that they actively participated as a group to defraud the private complainant BAJA into investing P150,000.00 in their "Double Your Money" business. Accused-appellants BABAO and MENDOZA were all in on the fraud together with Rommel because they were even the ones who introduced Rommel, Al and "Engineer" to private complainant BAJA and they were also present on October 21, 1996 when the actual "Double Your Money" process was conducted using the P150,000.00 of private complainant BAJA. Accused-appellants BABAO and MENDOZA personally received the P150,000.00 from private complainant BAJA because private complainant BAJA wanted to give the money only to people she knew, namely the Accused-appellants BABAO and MENDOZA. Afterwards, accused-appellants BABAO and MENDOZA and Rommel, Al and "Engineer" all left together carrying the P150,000.00 and leaving only pieces of blank paper. These acts taken together manifest a unity of purpose and a common design to deceive private complainant BAJA so that private complainant BAJA would invest in their "Double Your Money" scheme. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[12]

Accused-appellants BABAO and MENDOZA could not have desisted from the commission of the crime because they were present during its execution and they played a crucial role in convincing private complainant BAJA to part with her money. On this point, we agree with the following findings of the trial court:

> "The contention of the complainant and her witnesses show that indeed the accused played a pivotal part in convincing the complainant to part with her money. The complainant was not in the financial position to easily part with a One Hundred Fifty Thousand Pesos (PHP150,000.00) without the prodding of her uncle who repetitively persuaded the complainant that as her uncle, he would not fool her. The affirmative averments of the prosecution witnesses dictate that the accused were present during the said transaction and that they persistently visited the complainant. This court finds no reason why the complainant and her witnesses would unjustly charge the accused of a crime they did not commit."[13]

Settled is the rule that findings of fact of the trial court should not be disturbed on appeal unless the trial court has ignored or overlooked certain facts or circumstances of weight and significance which, if considered, would alter the result of the case, for trial judges are in the best position of weighing conflicting declarations of witnesses in the light of the court's opportunity to observe and examine the witnesses' conduct and attitude at the trial and in the witness chair.[14] This Court finds no reason to depart from this rule.

The elements of Estafa are as follows: (1) that the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third party.[15] In this case, all the said elements are present. Accused-appellants BABAO and MENDOZA made private complainant BAJA believe that her money would be doubled by injecting a certain chemical in blank pieces of paper. Since her money did not double but was taken away instead by accused-appellants BABAO

and MENDOZA and their 3 companions, there is no doubt that private complainant BAJA suffered damage equivalent to the amount of her investment, which is P150,000.00.

In view of the foregoing, the trial court committed no error in convicting accused-appellants BABAO and MENDOZA of the crime of Estafa.

The Fallo

WHEREFORE, premises considered, the February 28, 2001 Decision of the Regional Trial Court of Muntinlupa City, Branch 256, in Criminal Case No. 96-612, is hereby AFFIRMED.

SO ORDERED.

Reyes, (Chairman) and De Guia-Salvador, JJ., concur.

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[1] Original Records, p. 244.

[2] Original Records, p. 1.

[3] Original Records, p. 64.

[4] Original Records, p. 244.

[5] Original Records, p. 253.

[6] Original Records, p. 275.

[7] Original Records, p. 284.

[8] Original Records, p. 276.

[9] Original Records, p. 281.

[10] Rollo, p. 75.

[11] People vs. Silva, G.R. No. 140871, August 8, 2002, 387 SCRA 77 citing People vs. Recones, G.R. No. 129535, July 20, 1999, 310 SCRA 809; People vs. Patalin, Jr., G.R. No. 125539, July 27, 1999, 311 SCRA 186; and People vs.Perez, G.R. No. 130501, September 2, 1999, 313 SCRA 544.

[12] People vs. Silva, G.R. No. 140871, August 8, 2002, 387 SCRA 77 citing People vs. Antonio, G.R. No. 118311, February 19, 1999, 303 SCRA 414.

[13] Original Records, p. 247.

[14] Far East Bank & Trust Company vs. Court of Appeals, G.R. No. 123569, April 1, 1996, 256 SCRA 15.

[15] De la Cruz vs. Court of Appeals, G.R. No. 105213, December 4, 1996, 265 SCRA 299 citing People vs. Bautista, G.R. No. 113547, February 9, 1995, 241 SCRA 216.

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