

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPS. VICTORIANO AND MA. VICTORIA SARABIA, ACCUSED,

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

Borne of confederation with co-accused Ma. Victoria Sarabia,[1] who is at large, co-accused Victoriano Sarabia is before Us on appeal from his perdition for Estafa as adjudged by the court a quo.[2]

On January 21, 2008, indictments were hurled against accused-appellant and co-accused Ma. Victoria Sarabia, a bank employee at Baguio City, for deception of Soledad J. Go, who infused sums of money for alleged investments with Philippine National Bank at Baguio:[3]

In Criminal Case No. 27937-R[4]

“That on or about the 9[th] day of November 2004 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, by fraudulent representations and false pretenses executed prior to or simultaneously with the commission of the fraud, did then and there willfully, unlawfully and feloniously defraud one SOLEDAD J. GO, in the following manner, to wit: the accused MA. VICTORIA R. SARABIA, being then an employee of the Philippine National Bank, Baguio City and pretending that Philippine National Bank was engaged in a trust fund investment, enticed the offended party whom she knew to be her benefactor to invest her money in the said investment assuring the latter that her investment will earn a guaranteed interest by the said bank, and the complainant misled and convinced into believing the said fraudulent representations and false pretenses couple with the fact that the complainant also totally reposed her trust and confidence to the accused, being a benefactor of the latter, and that the accused was acting for and in behalf of Philippine National Bank, being an employee of the latter, gave accused the amount of Php3,250,000.00 as her investment, and the accused once in a possession of the said amount of Php3,250,000.00 misappropriated, misapplied, converted and absconded with the said amount, to the damage and prejudice of SOLEDAD J. GO, in the aforementioned amount of THREE MILLION TWO HUNDRED FIFTY THOUSAND PESOS (Php3,250,000.00), Philippine Currency.

CONTRARY TO LAW.”

In Criminal Case No. 28025-R[5]

“xxx xxx

xxx xxx

xxx xxx gave accused the amount of Php2,450,000.00 as her investment, and the accused once in a possession of the said amount of Php2,450,000.00 misappropriated, misapplied, converted and absconded with the said amount, to the damage and prejudice of SOLEDAD J. GO, in the aforementioned amount of TWO MILLION FOUR HUNDRED FIFTY THOUSAND PESOS (Php2,450,000.00), Philippine Currency.

CONTRARY TO LAW.”

In Criminal Case No. 28554-R[6]

“xxx xxx

xxx xxx

xxx xxx gave accused the amount of Php5,700,000.00 as her investment, and the accused once in possession of the said amount of Php5,700,000.00 misappropriated, misapplied, converted and absconded with the said amount, to the damage and prejudice of SOLEDAD J. GO, in the aforementioned amount of FIVE MILLION SEVEN HUNDRED THOUSAND PESOS (Php5,700,000.00), Philippine Currency.

CONTRARY TO LAW.”

At his arraignment, accused-appellant pleaded not guilty[7] and upon conclusion of pre-trial conference, trial then ensued.[8]

Inculpatory facts were lifted from the Office of the Solicitor General’s paper on appeal:[9]

“Private complainant Soledad Go was a long-standing and valued client of the Philippine National Bank (PNB) Baguio Branch since 1983. Because of her frequent trips to PNB, Soledad came to know most of its officers and staff, particularly accused Marivic Sarabia who handled most of Soledad's transactions with the bank. Over time, she became close to Marivic and a friendship started, to the extent that Soledad was one of the sponsors when Marivic wed appellant in 1992.

Sometime in 1992, Marivic informed Soledad that she is part of a roving team that makes rounds every morning to pick up deposits especially from senior citizens who cannot go to the bank. Because of this, Soledad would no longer personally go to the bank as Marivic and appellant facilitated Soledad's transactions. This arrangement continued from 1992-2007.

When Marivic was promoted in 2000, she wrote Soledad requesting for help in soliciting additional deposits for the bank to enable her to retain her position. Because Soledad trusted Marivic, she obliged the latter's request and deposited the bulk of her funds with PNB.

In 2001, Marivic and appellant visited Soledad at home to promote PNB's new financial product known as PNB Big Savings and Trust Fund which pays a higher rate of interest which was supposedly guaranteed by PNB. Together with her husband, private complainant Marquez Go, Soledad opened PNB Big Account No. 61310000169943, terminated their various savings accounts with other banks, consolidated the funds, and gave appellant and Marivic P7,000,100.00 as the first tranche of their deposits. Thereafter, from 2001-2005, private complainant made additional deposits amounting to approximately P124,000,000.00. For each transaction, Marivic and appellant would go to private complainants' home and pick up the checks to be deposited in the latter's account. Marivic and appellant would then return all the deposit slips as well as the updated passbook to private complainants. By October 2, 2007, to the knowledge of private complainants, they had a balance of approximately P176,000,000.00 in their account.

On January 3, 2008, private complainants informed Marivic and appellant that they intend to withdraw P26 million from their account and simply maintain the balance of P150,000,000.00 to be eligible for the higher interest rate. Marivic and appellant informed private complainants that they would have to go to the PNB Financial Center in Manila to withdraw the P26,000,000.00.

On January 7, 2008, private complainants went to the PNB Financial Center. Marivic and appellant informed them that their appointment was scheduled for 10:00 a.m. This was reset to 11:00 a.m., and again to 2:00 p.m. By 4:00 p.m., private complainants sought Bong Austero, a PNB official and a colleague of Marquez. They informed Bong about their supposed appointment with Marivic and appellant, and provided him with a copy of their PNB passbook for verification. When Bong checked the PNB database regarding the status of their accounts, he discovered that several deposits of private complainants were not entered in the bank ledgers. He instructed private complainants to go to PNB Baguio.

The following day, on January 8, 2008, private complainants proceeded to PNB Baguio and met with its bank officials. They were shocked to learn that their passbook had been tampered with, and several entries therein were spurious, particularly the amount of P3,250,000.00 made on November 9, 2004, P5,700,000.00 on October 28, 2004, and P2,450,000.00 on November 2, 2004.”

To exculpate himself from liability, the defendant’s narrative was premised on denial:[10]

“... Victoriano first met the Go spouses in 1992 during his wedding with Marivic. He never transacted with the Gos before, during or after the marriage ceremony.

He last saw his wife Marivic during lunchtime on 7 January 2008. That evening, Marivic did not return home. Worried, Victoriano searched for his wife the following day when he was summoned by Christine Rillera of PNB Baguio for a meeting. When he arrived, he met the Go spouses and was informed of the transactions they had with Marivic. Victoriano denied having knowledge of these transactions. Later, he received a memorandum from the bank pertaining to the investigation that happened, which memorandum was addressed solely to Marivic.

As if his problem with the Gos was not enough, sometime in the last week of January 2008, the Labrador Spouses came to his house looking for Marivic to inquire about the checks she issued to them. They then asked Victoriano to sign a real estate mortgage but when he asked why he should when he has not given any titles to them, they presented to him the deed of his family home in La Union which they received from Marivic without Victoriano’s consent. He has never heard anything about his wife since 8 January 2008. He also denies that he was in Manila to see his wife leave for Los Angeles, California on 10-12 January 2008. He also claims that the money in his PNB Magsaysay account came from the winnings of his mother in a casino in Angeles City.”

On November 5, 2009, the RTC passed judgment against the accused for Estafa:[11]

“WHEREFORE, accused Victoriano Sarabia is hereby found GUILTY beyond reasonable doubt for the crime of ESTAFA in Criminal Case No. 27937-R and he is hereby sentenced to suffer the penalty of Imprisonment from Twelve (12) Years of Prison Mayor, as Minimum to Thirty (30) Years of Reclusion Perpetua, as Maximum. Also, accused Victoriano Sarabia is hereby found GUILTY beyond reasonable doubt for the crime of ESTAFA in Criminal Case No. 28025-R and he is hereby sentenced to suffer the penalty of Imprisonment from Twelve (12) Years of Prison Mayor, as Minimum to Thirty (30) Years of Reclusion Perpetua, as Maximum. Similarly in Criminal Case No. 28554-R, he is hereby found guilty beyond reasonable doubt for the crime of Estafa, and he is hereby sentenced to suffer the penalty of Imprisonment from Twelve (12) Years of Prison Mayor, as Minimum to Thirty (30) Years of Reclusion Perpetua, as Maximum or a Total Maximum penalty of Imprisonment of Ninety (90) Years to be served at the National Bilibid Prisons, Muntinlupa City, Metro Manila

In addition, accused Victoriano Sarabia shall pay private complainants-spouses Marquez Go and Soledad Go the following amounts: In Criminal Case No. 27937-R the amount of Three Million Two Hundred Fifty Thousand Pesos (P3,250,000.00), with legal interest from November 9, 2004, until the amount is fully paid. Also, in Criminal Case No. 28025-R, accused Victoriano Sarabia shall pay private complainants-spouses Marquez Go and Soledad Go, the amount of Two Million Four Hundred Fifty Thousand Pesos (P2,450,000.00), with legal interest from November 2, 2004, until the amount is fully paid, and in Criminal Case No. 28554-R, accused Victoriano Sarabia shall pay private complainants-spouses Marquez Go and Soledad Go the amount of Five Million Seven Hundred Thousand Pesos (P5,700,000.00), with legal interest from October 28, 2004 until the amount is fully paid. Furthermore, accused Victoriano Sarabia shall pay private complainants-spouses Marquez Go and Soledad Go, One Hundred Thousand Pesos (P100,000.00) Each (sic) as moral damages and Fifty Thousand Pesos (P50,000.00) Each (sic) as Exemplary Damages, and Attorney’s Fees of One Hundred Thousand Pesos (P100,000.00). So that, all in all, accused Victoriano Sarabia shall pay private complainants-spouses Marquez Go and Soledad Go the total amount of Eleven Million Eight

Hundred Thousand Pesos (P11,800,000.00), exclusive of legal interest, plus costs of the suit.

IT IS SO ORDERED.”

Hence, the instant appeal[12] was interposed for Us to focus on the supposed error of the court below in:[13]

... FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

According to appellant, the People's evidence anent conspiracy was inadequate and his exoneration must thus ensue.[14]

After due consideration, no cogent reason was advanced by appellant for Us to arrive at a different conclusion.

Conspiracy, as a rule, has to be established with the same quantum of proof as the crime itself.[15] It has to be shown as clearly as the commission of the offense. It need not be by direct evidence, but may take the form of circumstances which, if taken together, would conclusively show that the accused came to an agreement to commit a crime and decided to carry it out with their full cooperation and participation. It may be deduced from the acts of the perpetrators before, during and after the commission of the crime, which are indicative of a common design, concerted action and concurrence of sentiments.[16]

Evidence on record sufficiently indicated the existence of collusion between appellant and his co-accused. Verily, open-court declarations from Spouses Go[17] were awash with instances of appellant's involvement, viz: (a) both spouses persuaded complainant and her spouse to invest in the new product of PNB and actively made representations on behalf of PNB; (b) and Spouses Sarabia collected and received deposits of the private complainant. Evidently, these acts were in relation to the attainment of a common objective. Both defendants' cajolery caused the private complainant to part with hard-earned money in exchange for a higher interest rate, which the felons failed to produce upon demand therefor.

We cannot lend credence to Victoriano's naked assertion that he was not aware of Marivic's[18] fraudulent scheme and that Victoriano was merely driving to accompany Ma. Victoria to private complainant's residence.

Certainly, the shifting of blame is common among conspirators in their attempt to extricate from culpability. It is a desperate strategy to compensate for their weak defense.[19] The acts of appellant Victoriano, as testified to by private complainant, transcend mere knowledge. As aptly underscored by the trial court:[20]

“Both private complainants-spouses Marquez and Soledad Go, were emphatic in their testimonies that both accused-spouses Victoriano Sarabia and Maria Victoria or Marivic were the ones who persuaded and induced them, fraudulently and in picking up their money deposits or monies from their house at No. 8 Leonard Wood Road, Baguio City. Although denied by accused Victoriano Sarabia, the categorical testimonies of the private complainants were positive as to the identity of accused Victoriano Sarabia and his wife especially that they were their godchildren in their wedding.”(Emphasis Ours)

Indubitably, appellant's disclaimer shattered amidst positive identification from the prosecution which displayed the role of appellant as co-perpetrator of the crime. It is well-settled in this jurisdiction that greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime.[21]

With respect to his criminal liability, the evidence showed that the amount of money remitted by the private complainant to appellant all exceeded the amount of P22,000.00. In this regard, the first paragraph of Article 315 of the Revised Penal Code, as amended, provides the appropriate penalty if the value of the thing or the amount defrauded exceeds P22,000.00:

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 pesos 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 10,000 pesos; but the total penalty which may be imposed should not exceed twenty years. x x x

As provided by law, the maximum indeterminate penalty when the amount defrauded exceeds P22,000.00 is pegged at prision mayor in its minimum period or anywhere within the range of six (6) years and one (1) day to eight (8) years, plus one year for every P10,000.00 in excess of P22,000.00 of the amount defrauded but not to exceed twenty years. In turn, the minimum indeterminate penalty shall be one degree lower from the prescribed penalty for Estafa, which in this case is anywhere within the range of prision correccional in its minimum and medium periods or six (6) months and one (1) day to four (4) years and two (2) months.

In retrospect, the amounts involved in this case ranged from P3,250,000.00, P2,450,000.00 and P5,700,000.00. These amounts transcended P22,000.00 and the penalty imposable should be within the maximum term of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of prision mayor, adding one (1) year for each additional P10,000.00. Considering the amounts involved, the additional penalty of one (1) year for each additional P10,000.00 would surely exceed the maximum limitation provided under Article 315, which is twenty (20) years.[22]

As correctly observed by the OSG,[23] modification of the penalties imposed by the court a quo is warranted. For each count, the trial court imposed the indeterminate penalty of imprisonment from twelve (12) years of prision mayor, as minimum to thirty (30) years of reclusion perpetua, as maximum which is beyond the lawful range. Thus, appellant is therefore sentenced in each case to suffer the indeterminate penalty of four (4) years and two (2) months of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum.

WHEREFORE, the instant APPEAL is hereby DENIED and the Decision dated November 5, 2009 of RTC, Branch 3, Baguio City is hereby AFFIRMED with MODIFICATION only insofar as the principal penalty for each count which should be four (4) years and two (2) months of prision correccional, as minimum to twenty (20) years of reclusion temporal as maximum.

SO ORDERED.

Reyes, Jr., J.C., Chairperson, and Acosta, F.P., JJ., concur.

[*]Per Office Order No. 15-15-ABR dated January 20, 2015 effective February 2, 2015.

[1] Warrant of Arrest, February 11, 2008, Record, page 48; Order dated February 6, 2008, Crim. Case No. 27937-R, Record, page 41; Decision, page 4, Crim. Case No. 27937-R, Record, page 279.

[2] Joint Decision dated November 5, 2009, Record, pp.276-310, penned by RTC Judge Fernando Vil Pamintuan; Notice of Appeal dated January 16, 2010, Record, page 337.

[3] Decision, Record, pp. 276-278.

[4] Criminal Case No. 27937-R Record, page 2.

[5] Criminal Case No. 28025-R Record, page 1.

[6] Criminal Case No. 28554-R, Record, page 1.

- [7] Order dated May 2, 2008, Criminal Case No. 27937-R, Record, page 57.
- [8] Order dated June 11, 2008, Criminal Case No. 27937-R, Record, pp. 65-66.
- [9] Appellee's Brief, pp. 6-9, Rollo, pp. 149-152.
- [10] Appellant's Brief, page 8, Rollo, page 73.
- [11] Decision, Records, pp. 309-310.
- [12] Notice of Appeal dated January 16, 2010, Record, page 337.
- [13] Appellant's Brief, pp. 1-2, Rollo, page 66.
- [14] Appellant's Brief, pp. 12-14, Rollo, pp. 77-79.
- [15] Erquiaga, et al, v. CA, G.R. No. 124513, October 17, 2001 citing People v. Legaspi, G.R. No. 117802, April 27, 2000
- [16] Id.; Franco v. People, G.R. No. 171328, February 16, 2011 citing Preferred Home Specialties, Inc. v. CA, G. R. No. 163593, December 16, 2005.
- [17] TSN dated August 1, 2008, pp. 11-16; TSN dated August 4, 2008, pp. 5-14, 17; TSN dated October 21, 2008, pp. 3-5, 7-8; TSN dated November 4, 2008, pp. 2-3; TSN dated January 9, 2009, page 4; TSN dated February 20, 2009, pp. 5-11; TSN dated March 3, 2009, page 13.
- [18] Co-accused Ma. Victoria is also known as Marivic, Decision, page 4, Crim Case No. 27937-R, Record, page 279; TSN, dated August 1, 2008, page 3 (Direct Examination of Soledad Go).
- [19] Franco v. People, G.R. No. 171328, February 16, 2011 citing People v. Macaliag, 392 Phil. 284, 299 (2000).
- [20] Decision, page 30, Record, page 305.
- [21] People v. Ochoa, G.R. No. 173792, August 31, 2011; People v. Ocdan, G.R. No. 173198, June 1, 2011 citing People v. Bulfango, 438 Phil. 651, 657 (2002)
- [22] Tanenggee v. People, G.R. No.179448, June 26, 2013.
- [23] Appellee's Brief, pp. 16-17, Rollo, pp. 159-160.

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