

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICO Z. PUERTO AND PALMY B. TIBAYAN, ACCUSED-APPELLANTS.

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

On appeal is the decision[1] dated August 10, 2012 of the Regional Trial Court (RTC) of Las Piñas City, Branch 198, in Criminal Case No. 11-0087, finding the accused-appellants guilty beyond reasonable doubt of the crime of estafa in relation to Presidential Decree (P.D.) No. 1689.

The antecedents of the case are as follows:

Rico Z. Puerto and Palmy B. Tibayan (accused-appellants), together with five other co-accused who are at-large were charged with the crime of estafa under Article 315, paragraph 2(a) of the Revised Penal Code in relation to P.D. No. 1689 in an Information which reads:

“That on or about and during the period comprised between June 2002 and November 2002 or on dates prior and subsequent thereto, in Las Piñas City, Philippines, within the jurisdiction of this Honorable Court, the above-named accused being the owners/ operators/ officers/ directors/ stockholders/ employees and/or agents of Tibayan Group Investment Co., Inc. (“TIBAYAN”) and/or its affiliates/subsidiaries Matcor Holdings Co., Ltd. (MATCOR), formed with the intention of carrying out unlawful or illegal acts, transaction, enterprise, or scheme of soliciting finds (sic) from the general public by way of investments, conspiring, confederating and mutually helping one another, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud that they have the power, influence, qualifications, property, credit, agency, business or imaginary transactions to solicit and accept investments from the general public and by means of other deceits or similar import, did then and there willfully, unalwfully and feloniously induce, lure and convince the following, namely:

INVESTOR'S NAME

AMOUNT INVESTED

1. EVANGELINE T. SISON

Php 1,000,000.00

2. RAQUEL I. CACHOLA

100,000.00

3. LORNA C. SINGCA

200,000.00

4. CATALINA C. BURGOS

100,000.00

5. REMEDIOS R. MALICSE

100,000.00

6. ARNEL BEQUILLO

200,000.00

7. GLORIA N. LASTRA

300,000.00

8. ILDEFONSO LASTRA

100,000.00

9. RONALDO JOVERO

150,000.00

10. AGUSTINA Q. NANA

100,000.00

11. ANGELINA R. MORAL

100,000.00

12. ALLAN A. ROSALIN

100,000.00

13. CHERYL R. FRANCA

200,000.00

14. RODOLFO BUENAVISTA

100,000.00

15. HERNANDO T. RASCO

1,200,000.00

16. JOCELYN C. FELICIANO

150,000.00

17. MARCELINA V. TEVES

100,000.00

18. SONIA B. DURAN

700,000.00

19. VICTOR VILLAGRACIA

ROSA VILLAGRACIA

100,000.00

20. ANTONIO A. GARCIA

2,000,000.00

Total Amount

Php 5,300,000.00

With a promise of huge interest, to invest, give and deliver, as in fact, they invested, gave and delivered to the said accused, the amounts opposite their names which reached the total amount of FIVE MILLION THREE HUNDRED THOUSAND PESOS (Php5,300,000.00), but the said accused once in possession of such amount, fraudulently misapplied, misappropriated and converted the same, to their own personal use and benefit, and despite repeated demands failed to return such amount together with the promised interests thereon, said accused failed and refused, and still fail and refused to return the same, to the damage and prejudice of the aforementioned investors/persons.

CONTRARY TO LAW.”[2]

During their arraignment, the accused-appellants pleaded not guilty to the offense charged in the Information.[3] After the pre-trial order[4] was issued on March 10, 2011, trial ensued.

The prosecution presented the following witnesses, to wit: private complainants Hernando T. Rasco, Sonia B. Duran, Arnel A. Bequillo and Lorna C. Singca and adopted the testimony[5] of Atty. Loeulla Jacob-Mella of the Securities and Exchange Commission (SEC) who was presented in another Criminal Case No. 03-0523 involving the said corporation.

1) Hernando T. Rasco (Mr. Rasco) testified that he was introduced to Ms. Myla Sales, an account officer of the Tibayan Group Investment, Co. (TGIC) by his co-manager, Mr. Villamor; that Ms. Sales called him up several times about making an investment in TGIC; that, upon verification from the SEC, he learned that TGIC is an existing corporation; that he was eventually convinced by Ms. Sales to make an investment with TGIC because the latter offered 3% interest per month and some kind of a bonus; and that he invested Php1,000,000.00 and another Php200,000.00 with TGIC as evidenced by the a) Pre-Transactional Business Partner's Data[6] dated July 2, 2002 issued by Matcor Holdings, Co. Ltd. (MHCL), which was signed by Rico Z. Puerto, MHCL's Manager, and the b) Certificate of Share[7] dated September 16, 2002, respectively.[8]

Mr. Rasco further testified that he was issued 6 checks in the amount of Php30,000.00 and another check for Php1,000,000.00; and that the first five checks with nos. 92685-92689 were honored by the drawee bank, but the Prudential Bank Check No. 92691[9] dated January 3, 2003 in the amount of Php1,000,000.00, and Prudential Bank Check No. 92690[10] dated January 3, 2003 in the amount of Php30,000.00 were dishonored for the reason of “Account Closed”. [11]

Mr. Rasco likewise testified that the Prudential Bank Check No. 42916[12] dated March 30, 2003 in the amount of Php200,000.00, Prudential Bank Check No. 42914[13] dated February 18, 2003 in the amount of Php11,000.00, and Prudential Bank Check No. 42915[14] dated March 20, 2003 in the amount of Php11,000.00 were also dishonored by reason of “Account Closed”; that he called the account officer who told him that something went wrong; that he called MHCL in its office in Alabang which assured Mr. Rasco that he will be paid, however, MHCL failed to return his investment; and so he went to the Department of Justice to file a complaint against the accused-appellants.[15]

2) Sonia B. Duran testified that his husband's friend asked her if she and her husband wanted to invest for a higher

income; that she and her husband, Antonio Duran, went to TGIC's office where they met Ms. Melin Cagastian, a financial adviser, who told them about the high interest offered by TGIC; that they agreed to invest the following amounts, to wit: a) Php100,000.00, as evidenced by the TGIC Mutual Fund Certificate of Share[16] dated August 28, 2002, b) Php500,000.00, as evidenced by the TGIC Mutual Fund Certificate of Share[17] dated September 25, 2002, and c) Php100,000.00, as evidenced by the TGIC Mutual Fund Certificate of Share[18] dated November 5, 2002; that TGIC issued several checks to pay for the principal investment and interests, i.e. a) Prudential Bank Check No. 25015[19] dated March 1, 2003 in the amount of Php100,000.00, b) Prudential Bank Check No. 50842[20] dated May 12, 2003 in the amount of Php100,000.00, and c) Prudential Bank Check No. 49949 dated March 29, 2003 in the amount of Php500,000.00; that the said checks were dishonored for the reason of "Account Closed"; that she went to the office of Tibayan to inquire as to what happened to their investments; and that she went to the Department of Justice (DOJ) to file a case.[21]

3) Arnel Bequillo testified that he came to know about the TGIC from a neighbor who invested in TGIC; that, upon learning that TGIC was giving high interest for every investment, he invested the amount of Php200,000.00, which was evidenced by a TGIC Certificate of Share[22] dated August 19, 2002; that he was not able to recover his investment as covered by Prudential Check No. 00317[23] dated February 10, 2003 in the amount of Php200,000.00 and the interests for two months in the amount of Php6,000.00 each as covered by Prudential Check Nos. 00315-16[24] dated January 11, 2003 and February 10, 2003; and that he went to the National Bureau of Investigation (NBI) to seek help in filing a case.[25]

4) Lorna Singca testified that she came to know about TGIC from her neighbor, Catalina Burgos, who told about TGIC giving high interest of 3% a month for six months; that she was convinced to invest the amount of P200,000.00 with TGIC for which she was issued a Pre-Transactional Business Partner's Data[26] dated July 5, 2002 to January 2003; that she was issued seven checks; that the first four checks were honored by the bank; that the original checks covering the principal and interests were taken from them by TGIC who simply gave them a photocopy[27] of Prudential Bank Check No. 91901 dated January 6, 2003 in the amount of Php200,000.00 and Prudential Bank Check No. 91900 dated January 6, 2003 in the amount of Php6,000.00.; and that she filed a complaint against TGIC.[28]

On the other hand, the accused-appellants testified in their behalf.

1) Rico Z. Puerto testified that he was assigned as the president of the Rural Bank of San Pablo by TGIC; that he does not know the private complainants in the case; that he did not have any personal dealing with the private complainants; and that his duty was merely to run and manage the operation of the bank in San Pablo.[29]

2) Palmy Tibayan testified that she was not involved in the solicitation of the investments from the private complainants because her duty was merely to monitor the business under the name of Tibayan; that she has no participation with MHCL; that she did not have any transaction with the private complainants; and that she would not be able to identify the private complainants because she really does not know them; that, only Jesus Tibayan is involved in this case.[30]

On August 10, 2012, the RTC rendered a decision finding the accused-appellants guilty beyond reasonable doubt of the crime of estafa, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds accused PALMY TIBAYAN and RICO PUERTO GUILTY of the crime of Estafa in relation to Presidential Decree No. 1689 for defrauding private complainants Hernando T. Rasco and Sonia B. Duran in the amounts of One Million Two Hundred Thousand Pesos (Php1,200,000.00) and Seven Hundred Thousand Pesos (Php700,000.00), respectively, or a total of One Million Nine Hundred Thousand Pesos (Php1,900,000.00), and both accused are hereby sentenced to the

penalty of life imprisonment, pursuant to Section 1, PD 1689.

The accused are also ordered to reimburse and to pay the private complainants the amounts of their unrecovered investments to wit:

1. To Hernando T. Rasco, the amount of One Million Two Hundred Thousand Pesos (Php1,200,000.00); and
2. To Sonia B. Duran, the amount of Seven Hundred Thousand Pesos (Php700,000.00).

Considering that the other accused in this case, namely: JESUS V. TIBAYAN, EZEKIEL D. MARTINEZ, LIBORIO E. ELACIO, JIMMY C. CATIGAN and NELDA BARAN are still at-large, let alias warrants of arrest issue against them and let this case be placed in the ARCHIVES so as not to clog the docket of the court, subject to revival upon the arrest of the said accused.

SO ORDERED.”[31]

Aggrieved, the accused-appellants interposed the instant appeal raising the following Assignment of Errors, to wit:

“I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF SYNDICATED ESTAFA UNDER PRESIDENTIAL DECREE NO. 1689.

III. THE TRIAL COURT SERIOUSLY ERRED IN THE IMPOSITION OF THE PROPER PENALTY.”[32]

THE APPEAL IS NOT MERITORIOUS.

The accused-appellants basically allege that the prosecution failed to show the specific positions that they held in TGIC; that the accused-appellants have never met the complainants; that they did not induce the complainants to invest in TGIC; and that it was not shown that they were the ones who received the money from the investors. Thus, the accused-appellants contend that the prosecution failed to prove the element of deceit and conspiracy with the other co-accused to commit the crime of syndicated estafa.

We are not convinced.

The elements of Estafa by means of deceit as defined under Article 315(2)(a) of the Revised Penal Code are as follows: (1) that there must be a false pretense, fraudulent act or fraudulent means; (2) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) that the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (4) that as a result thereof, the offended party suffered damage.[33]

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. On the other hand, deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by

concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.[34]

In the case at bench, the testimonial and documentary evidence from the prosecution's witnesses completely proved the elements of fraud and deceit perpetrated by the accused-appellants.

As found by this Court, all of the private complainants were lured into investing with TGIC and/or MHCL because of the latter's promises of high interests if they would invest in their company. Once the investments were made, TGIC and/or MHCL issued post dated checks to cover the interests that the private complainants were supposed to earn and the principal amounts of their investment. The checks that were issued for the interests which had earlier maturity dates were honored by the drawee bank. However, the rest of the checks, especially those that were supposed to pay for the private complainants' principal investments, were dishonored, thus, depriving the private complainants of their money.

As it turned out, TGIC and/or MHCL were not authorized to sell securities to the public or issue investment certificates or contracts.[35] This fact was confirmed by Atty. Louella Jacob, securities counsel of the SEC, who testified that TGIC and/or MHCL did not comply with Sections 8, 12 and 28 of the Securities Regulation Code (SRC).[36] The said SRC sections provide:

“SEC. 8. Requirement of Registration of Securities. – 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

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SEC. 12. Procedure for Registration of Securities. -

12.1. All securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4.

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SEC. 28. Registration of Brokers, Dealers, Salesmen and Associated Persons. - 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.”

Apparently, TGIC and/or MHCL were not authorized to engage in the business of buying or selling securities. Likewise, the securities that were cleverly termed as TGIC Mutual Fund Certificates of Shares do not appear to be registered with the SEC. These findings create doubt as to the legitimacy of TGIC and/ or MHCL's business.

What is more, when the SEC conducted an investigation of the Tibayan Group of Companies and discovered the irregularities in its operations, a cease and desist order[37] dated December 23, 2002 was issued by the SEC prohibiting the Tibayan Group of Companies from further “offering, issuing, receiving any amount in whatever form, negotiating, distributing or otherwise dealing in securities using the private investment in mutual fund and capital contributions or of her instruments”. It was around that time when the private complainants' problems started when they could no longer encash their checks because they were dishonored by the drawee bank by reason of “Account Closed”.

Eventually, TGIC and/or MHCL reneged in their promise of paying the interests. Worse, TGCI and/or MHCL could not even return the principal investments of the private complainants. The reason was obvious. The companies under the umbrella of the Tibayan Group of Companies, including MHCL, have not yet started their commercial operations.[38] Evidently, TGIC and/or MHCL were only financing the checks which they previously issued from the new investments that were coming in. Considering that a cease and desist order was issued by the SEC against TGCI and/or MHCL, the influx of new investment stopped and TGCI and/or MHCL could no longer pay the private complainants' checks.

To the mind of this Court, the investment contracts, which accused-appellants offered to the private complainants was a form of a "Ponzi scheme", which was sufficiently explained by the Supreme Court in the case of *People of the Philippines vs. Menil*[39] where it held:

"It has been held that where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that there will be none, or that they will be substantially less than he represents, the statements constitute an actionable fraud where the hearer believes him and relies on the statement to his injury. xxx

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In other words, accused-appellant merely paid the returns of maturing investments from the remittances of succeeding investors. What accused-appellant actually offered to the public was a 'Ponzi Scheme,' an unsustainable investment program that offers extravagantly high returns and pays these returns to early investors out of the capital contributed by later investors. In *People vs. Balasa*, we had occasion to describe the workings of the 'Ponzi Scheme' as follows:

"Named after Charles Ponzi who promoted the scheme in the 1920's, the original scheme involved the issuance of bonds which offered 50% interest in 45 days or a 100% profit if held for 90 days. Basically, Ponzi used the money he received from later investors to pay extravagant rates of return to early investors, thereby inducing more investors to place their money with him in the false hope of realizing this same extravagant rate of return themselves. This was the very scheme practiced by the Panata Foundation.

However, the Ponzi scheme works only as long as there is an ever-increasing number of new investors joining the scheme. To pay off the 50% bonds Ponzi had to come up with one-and-a-half times increase with each round. To pay 100% profit, he had to double the number of investors at each stage, and this is the reason why a Ponzi scheme is a scheme and not an investment strategy. The progression it depends upon is unsustainable. The pattern of increase in the number of participants in the system explains how it is able to succeed in the short run and, at the same time, why it must fail in the long run. This game is difficult to sustain over a long period of time because to continue paying the promised profits to early investors, the operator needs an ever larger pool of later investors. The idea behind this type of swindle is that the 'conman' collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, these schemes only last weeks, or months at most."

Verily, the private complainants were deceived into investing their money with TGIC and/or MHCL. The failure of the partners, incorporators or officers of TGIC and/or MHCL to account for the private complainant's money certainly constitutes the crime of estafa by means of deceit.

However, the accused-appellants allege that their positions with regard to TGIC and/or MHCL were not established, and that they did not personally negotiate with the private complainants. The accused-appellants are clutching at straws.

The record shows that the accused-appellants are involved in several corporations of the Tibayan Group of Companies. The testimony of Atty. Louella Jacob reveals that the accused-appellants are partners in the Tibayan

Management Group International Holdings (TMGIH). Atty. Jacob's testimony reads:

“Q:

Do you know who are the partners of this Tibayan Management Group International Holdings?

A:

They are Jesus V. Tibayan, Palmy Tibayan, Rico Z. Puerto, Luis Lepardo, Zoraida Enerio xxx as stated in the Articles of Partnership, sir.”[40] (Emphasis supplied.)

Further, the record shows that the accused-appellants are incorporators of the marketing arm of MHCL. Atty. Jacob's testimony reads:

“PROS. ALMERO:

Q:

You said that Rico Puerto and Palmy Tibayan are not partners of Matcor Holdings. If you know, what is their relation with Matcor Holdings?

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A:

Rico Puerto and Palmy Tibayan are incorporators of the marketing subsidiary of Matcor Holdings Company, sir.

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Q:

And based on the investigation that you conducted what is the relation of the accused Rico Puerto and Palmy Tibayan with Las Piñas Global Management?

ATTY. BAÑARES:

I will object now. That is not within the scope of the cross examination. I conducted only very few, Your Honor.

THE COURT:

Overruled. Let the witness answer.

A:

Las Piñas Global Marketing is the marketing subsidiary of Matcor Holdings which does the soliciting of investment contracts from the public and in some of the investment contracts we have noted that Rico Puerto is one of the signatories in said contracts, sir.” (TSN January 24, 2006, pp. 5-8)[41]

Clearly, the accused-appellants were involved in the marketing or promotion of the investments contracts of MHCL to the public. Thus, the accused-appellants cannot feign ignorance of their participation in the illicit operations.

All told, this Court is fully convinced that the accused-appellants' guilt was proven beyond reasonable doubt.

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED.

SO ORDERED.

Sorongon[*] and Corales[**], JJ., concur.

[*] Vice Justice Ricardo R. Rosario, per Raffle conducted on May 20, 2014.

[**] Vice Justice Leoncia R. Dimagiba, per Raffle conducted on May 20, 2014.

[1] Record pp. 1172-1183

[2] Record pp. 17-18

[3] Record p. 323

[4] Record pp. 383-384

[5] Record pp. 1025-1073

[6] Record p. 868

[7] Record p. 873

[8] TSN May 17, 2011, pp. 2-8

[9] Record p. 869

[10] Record p. 869

[11] TSN May 17, 2011, p. 9

[12] Record p. 874

[13] Record p. 874

[14] Record p. 874

[15] TSN May 17, 2011, pp. 9-10

[16] Record p. 883

[17] Record p. 886

[18] Record p. 889

[19] Record p. 884

- [20] Record p. 869
- [21] TSN May 17, 2011, pp. 13-19
- [22] Record p. 875
- [23] Record p. 876
- [24] Record p. 876
- [25] TSN June 7, 2011, pp. 2-7
- [26] Record p. 879
- [27] Record p. 880
- [28] TSN June 7, 2011, pp. 9-14
- [29] TSN May 8, 2012, pp. 2-5
- [30] TSN May 29, 2012, pp. 3-6
- [31] Rollo p. 105-106.
- [32] Rollo p. 81
- [33] Aricheta vs. People of the Philippines, G.R. NO. 172500, September 21, 2007
- [34] People of the Philippines vs. Menil, G.R. No. 115054-66, September 12, 2000
- [35] Record p. 1039
- [36] Record pp, 1041-1043
- [37] Record p. 1048; Note: The cease and desist order became permanent on February 24, 2003.
- [38] Record p. 1051
- [39] G.R. No. 115054-66, September 12, 2000
- [40] Record p. 1067
- [41] Record pp. 1078-1081

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