

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADONIS GARGARITA Y GENITO, ACCUSED-APPELLANT.

Ponente: HERNANDO, J.

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HERNANDO, J.:

Accused-appellant Adonis Gargarita appeals the January 26, 2011 Judgment[1] of the Regional Trial Court (RTC), Branch 46 of Bacolod City, Negros Occidental in Crim. Case No. 04-27353, convicting him of the crime of Estafa, to wit:

“WHEREFORE, in view of the foregoing considerations, the Court hereby finds accused ADONIS G. GARGARITA GUILTY beyond reasonable doubt of the crime of Estafa penalized under Article 315-1(b) of the Revised Penal Code and sentences accused ADONIS G. GARGARITA to suffer the indeterminate penalty of imprisonment of [sic] from 6 years and 1 day of Prison Mayor, as minimum, to 14 years, 8 months and 1 day of Reclusion Temporal, as maximum, with all the accessory penalties attached by law.

Likewise, accused ADONIS G. GARGARITA is ordered to pay private complainant Negros Safe Lending Company actual damages in the amount of P1,668,770.00 plus legal interest at 12% per annum effective from the finality of this Judgment.

The Court directs the accused to pay the costs.

SO ORDERED.”[2]

FACTUAL ANTECEDENTS

On December 7, 2004, accused Adonis Gargarita was charged with the crime of Estafa under Article 315, par. 1(b) of the Revised Penal Code, allegedly committed as follows:

“That on or about the month of May, 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, being a government employee, was authorized by the herein offended party, Negros Safe Lending Company (NSLC), represented by its Manager Mary Valyn M. Vasquez, to collect and/or receive payment on behalf of said company thru salary deduction on extended loan contracted by government employees, with the obligation to remit said collections to the complainant, but said accused far from complying with his aforementioned obligation, having collected and received the total amount of One Million Six Hundred Sixty Eight Thousand Seven Hundred Seventy (P1,668,770.00) Pesos, Philippine Currency, from borrower government employees, once in possession of the said amount, with intent to gain and to defraud, with unfaithfulness or grave abuse of confidence, did, then and there willfully, unlawfully and feloniously fail and refuse to remit said collections up to the present time despite repeated demands, but instead misappropriated and/or converted the same to his own personal use and benefit, to the damage and prejudice of the herein offended party in the aforementioned amount.

Act contrary to law.”[3]

On arraignment, accused pleaded not guilty to the crime charged.[4] Thereafter, trial on the merits ensued with the

prosecution presenting Mary Valyn Vasquez as its witness. For his part, accused presented Ricardo Riofaco, Jr. and himself as defense witnesses.

The records reveal the following facts:

Ms. Vasquez is the managing partner of private complainant, Negros Safe Lending Company (NSLC), a general partnership engaged in lending activities.[5] Accused is an Operations Officer of the Department of Interior and Local Government (DILG) Negros Occidental Provincial Office in Bacolod City.[6] Sometime in July 2001, accused came to private complainant's office to facilitate a loan for DILG employees.[7] Thus, private complainant extended various loans to the said employees.

As part of the loan requirements, DILG borrowers were required to manifest their conformity to a Deed of Suretyship with Authority to Withhold and Deduct Salary for Payment of Loan (Deed of Suretyship) which gave accused the authority to deduct the amounts payable on the loan from the DILG borrowers' salaries, to wit:

"3.) In the event of maturity of the loans and credit facilities and/or none [sic] payment thereof, upon demand/request of NEGROS SAFE LENDING CO., said borrowers automatically and without need of further writing or formalities, collectively authorized and empower SANDRA HECHANOVA and ADONIS GARGARITA withhold [sic] and deduct their respective loans/accounts from their salaries and wages including all fringe benefits retirement arising from retirement, resignation & cessation/termination from work and deliver the withheld deduct [sic] portion as payment to NEGROS SAFE LENDING CO."[8]

Under the Deed of Suretyship, accused undertook to deliver the withheld payments to private complainant.[9] However, sometime in May 2003, accused stopped remitting the withheld payments to private complainant.[10] On July 23, 2003, accused admitted his failure to do so in a written "Acknowledgment," to wit:

"I HEREBY ACKNOWLEDGE THE FF (163) ONE HUNDRED SIXTY THREE ACCOUNTS AMOUNTING TO ONE MILLION SIX HUNDRED SIXTY EIGHT THOUSAND SEVEN HUNDRED SEVENTY (P 1,668,770.00) WHICH I [SIC] HAVE BEEN COLLECTED BY ME BUT NOT REMITTED TO NEGROS SAFE LENDING CORPORATION.

ADONIS G. GARGARITA

Signed

7/23/03"[11]

On the same date, accused executed a note (Promissory Note) wherein he undertook to pay the undelivered amounts, to wit:

"I PROMISE TO PAY THE UNREMMITED [SIC] AMOUNT OF ONE MILLION SIX HUNDRED SIXTY EIGHT THOUSAND SEVEN HUNDRED SEVENTY AS FFS: TO NEGROS SAFE LENDING CO.

- 1) I will pay FOUR THOUSAND (P4,000.00) a month starting August 2003.
- 2) Whatever BENEFITS DERIVE [SIC] FROM THE OFFICE it [sic] PAID TO NEGROS SAFE LENDING CO: of about 80 % OF THE SAID AMOUNT.
- 3) THAT I will be given ample time to look for my collateral until end of August 2003.

Respectfully yours,

Signed

ADONIS G. GARGARITA"[12]

Accused failed to live up to his promise. On October 10, 2003, private complainant made a written demand for accused to pay the undelivered amounts, which went unheeded.[13] Thus, private complainant filed a Complaint-Affidavit against accused on December 11, 2003 with the Office of the City Prosecutor of Bacolod

City.[14]

For his part, accused explained that he executed the handwritten Acknowledgment only as an accommodation to Ms. Vasquez so that “she would not be made accountable by the board.” [15] With respect to his execution of the Promissory Note, accused testified that it was to be “presented to the Board xxx so that she [Ms. Vasquez] will not be accounted [sic] for whatever accounts.”[16]

Accused also presented Ricardo Riofaco, Jr., a DILG driver, who was among those that availed of private complainant’s loan. He testified that loan payments were not automatically deducted from his salary; he personally gets his salary every pay day and usually, he gave his loan payments to Sandra Hechanova and the latter then issued him a receipt.[17] There was never any instance that accused collected payments from him.[18] Ricardo revealed that no employee of private complainant ever collected payments from him either.[19]

On cross examination, Ricardo revealed that sometimes he gave his loan payments to either accused or Sandra Hechanova for delivery to private complainant.[20]

In its January 26, 2011 Judgment, the RTC found accused guilty of the crime of Estafa.[21] Accused filed a timely notice of appeal therefrom.[22] In its February 18, 2011 Order, the RTC granted the request of accused to post bail pending the instant appeal.[23]

In his May 29, 2012 Appellant’s Brief, accused-appellant alleges a lone error:[24]

ISSUE

THE REGIONAL TRIAL COURT ERRED IN
CONVICTING THE ACCUSED.

THE COURT’S RULING

We deny this appeal.

I. The accused is guilty of Estafa.

The crime of Estafa is defined and penalized by Article 315 of the Revised Penal Code as follows:

“Art. 315. Swindling (estafa). – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1[st]. 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 shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be;

xxx

1. With unfaithfulness or abuse of confidence, namely:

(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;

xxx”

Estafa is committed when the following essential elements are present:[25]

- (a) That 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 make delivery of, or to return, the same;
- (b) That the offender misappropriated or converted such money, goods or other personal property, or denied his part in its receipt;
- (c) That the misappropriation or conversion or denial was to the prejudice of another; and
- (d) That the offended party made a demand on the offender for the delivery or return of such money, goods or other personal property.

Appellant essentially claims that the prosecution failed to prove an element – his collection and receipt of the loan payments of the DILG borrowers.

We find appellant’s argument untenable. The testimonial and documentary evidence adduced by the prosecution show that the essential elements of estafa were duly proven. Notably, appellant never disputed his duty to deliver the loan payments to private complainant. Such duty was established by the express undertaking that he made in the Deed of Surety[26]. Neither did appellant dispute the prior demand made by private complainant for him to deliver the loan payments. However, appellant denied that he ever received any loan payments to begin with, thereby rendering it impossible for him to misappropriate the same.

The Acknowledgment, the due execution of which was impliedly admitted by appellant, clearly proves his receipt of the loan payments from DILG borrowers.

To prove appellant’s receipt of the loan payments, appellee presented the Acknowledgment wherein appellant expressly stated in his own handwriting that the accounts amounting to PhP 1,668,770.00 have been collected by him but not remitted to private complainant.[27] Appellee also presented a Promissory Note wherein appellant undertook to pay the said amount.[28]

Appellant maintains that he executed the Acknowledgment only as an accommodation to Ms. Vasquez so that she would not be made accountable of the undelivered amounts by private complainant.[29]

We do not find appellant’s explanation to be credible. First, appellant never gave any reason as to why he would allegedly take the fall for Ms. Vasquez. Second, appellant gave no explanation as to what relationship he had with Ms. Vasquez such that he would take responsibility for a considerable amount of money just for her. Thus, the RTC cannot be faulted for not finding credence in appellant’s explanation. Appellant’s defense is nothing new. *Pucay v. People*[30], which also involved a case of estafa, had the opportunity to pass on the same, to wit:

“Pucay’s insistence that she merely executed the promissory note upon the request of Gochangco in order to account the corporation’s losses to his partners does not merit credence. It is inconceivable for a person to hold oneself liable for such a substantial amount just to please a friend. Pucay’s acts are inexcusable and her testimony in the witness stand is unconvincing. We agree with the Solicitor General that the only conclusion that may be derived from Pucay’s act of executing a promissory note in favor of Gochangco, is that a lawfully demandable obligation against her exists, and that, she precisely needed time to comply therewith.”[31] (underscoring supplied)

Similarly, this Court cannot give credence to appellant’s bare-faced and unsubstantiated explanation.

Appellant maintains that while the Deed of Suretyship gave him authority to deduct amounts from the salary of

the borrowers, the same could not be effected as there is no memorandum of agreement between private complainant and DILG for such deduction.[32] In support of his claim, appellant capitalizes on the testimony of Ricardo who testified that he stopped paying his loan since nobody from private complainant comes to his office to collect thereon.

Appellant's reliance on Ricardo's testimony is misplaced. To recall, Ricardo's cross-examination revealed that sometimes he gave his loan payments to either accused or Sandra Hechanova for delivery to private complainant.[33]

Clearly, the following have been duly established by appellee: (a) appellant collected and received loan payments from DILG borrowers; (b) appellant had the duty to deliver the loan payments; (c) despite demand, appellant refused to deliver the same; and (d) as a result thereof, private complainant suffered pecuniary prejudice in the amount of PhP 1,668,770.00.

In all criminal prosecutions, the accused is presumed innocent until the contrary is proved.[34] Thus, the prosecution has the burden to establish the guilt of the accused beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty.[35] Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[36] This moral certainty has been fully met by the evidence presented by the prosecution in the form of testimonial and documentary evidence. II. The RTC erred in its determination of the imposable penalty.

The RTC erred when it imposed an indeterminate penalty of imprisonment from six (6) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

The prison term should be should be within the range of six (6) months and one (1) day [but not exceeding four (4) years and two (2) months of prision correccional medium], as minimum to twenty (20) years of reclusion temporal, as maximum.

The penalty of estafa under Art. 315, par. 1 of the Revised Penal Code (RPC) is prision correccional in its maximum period to prision mayor in its minimum period if the amount of the fraud is over PhP 12,000.00 but does not exceed PhP 22,000.00. If the amount involved exceeds the latter sum, the penalty should be imposed in its maximum period with an incremental penalty of one (1) year imprisonment for every PhP 10,000.00 but in no case shall the total penalty exceed twenty (20) years of imprisonment.

Here, the prescribed penalty is prision correccional in its maximum period to prision mayor in its minimum period.[37] The term of prision correccional in its maximum period is four (4) years, two (2) months and one (1) day to six (6) years while prision mayor in its minimum period is six (6) years and one (1) day to eight (8) years.[38]

The amount defrauded being in excess of PhP 22,000.00, the imposable penalty should be the maximum period of six (6) years and one (1) day to eight (8) years of prision mayor. However, Art. 315 of the RPC provides for an additional penalty of one (1) year imprisonment for every PhP 10,000.00 in excess of PhP 22,000.00. The amount of the fraud involved here, which is PhP 1,668,770.00, is in excess of PhP 22,000.00. Thus, 165 years should be added to the maximum term of the penalty. Since the same exceeds twenty years, the maximum term should be pegged[39] at twenty (20) years of reclusion temporal.

Applying the Indeterminate Sentence Law, the penalty next lower than that prescribed by law, which is prision correccional maximum, is prision correccional in its medium and minimum periods. Thus, the minimum term of the penalty should be six (6) months and one (1) day of prision correccional minimum but not exceeding four (4)

years and two (2) months of prision correccional medium.

In summary, the RTC erred in its determination of the prison term of appellant, which it set at six (6) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. The correct indeterminate prison term is six (6) months and one (1) day but not exceeding four (4) years and two (2) months of prision correccional medium as minimum, to twenty (20) years of reclusion temporal as maximum. Accordingly, appellant is sentenced 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 appeal is DENIED. The January 26, 2011 Judgment of the Regional Trial Court, Branch 46 of Bacolod City, Negros Occidental in Crim. Case No. 04-27353 is AFFIRMED with MODIFICATION that accused-appellant Adonis Gargarita is sentenced to suffer an indeterminate penalty of imprisonment of four (4) years and two (2) months of prision correccional as minimum, to twenty (20) years of reclusion temporal as maximum. Costs on accused-appellant.

SO ORDERED.

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

[1] Penned by Judge George S. Patriarca.

[2] Record, pp. 169.

[3] Id. at p. 1.

[4] Id. at p. 38.

[5] Record, pp. 3, 196, 284.

[6] September 28, 2007 Transcript of Stenographic Notes (TSN), pp. 3, 10.

[7] November 10, 2006 TSN, p. 8.

[8] Record, p. 203.

[9] Ibid.

[10] Record, p. 7.

[11] Record, p. 191.

[12] Id. at p. 194.

[13] Id. at p. 195.

[14] Id. at pp. 7-8.

[15] September 28, 2007 TSN, p. 19.

[16] Id. at p. 22.

[17] June 30, 2008 TSN, pp. 14-15.

[18] June 30, 2008 TSN, p. 16.

[19] Id. at p. 17.

[20] November 24, 2008 TSN, pp. 19-20.

[21] Record, p. 169.

[22] Id. at p. 174.

[23] Id. at p. 176.

[24] Rollo, p. 32.

[25] Patula v. People, G.R. No. 164457, April 11, 2012.

[26] Record, p. 203.

[27] Id. at p. 191.

[28] Id. at p. 194.

[29] Id. at p. 34.

[30] G.R. No. 167084, October 31, 2006.

[31] Pucay v. People, G.R. No. 167084, October 31, 2006, 506 SCRA 423.

[32] Record, p. 34

[33] November 24, 2008 TSN, pp. 19-20.

[34] Constitution, Art. III, Sec. 14(2).

[35] Rules of Court, Rule 133, Sec. 2.

[36] Ibid.

[37] See Sy v. People, G.R. No. 183879, April 14, 2010.

[38] Ibid.

[39] Jandusay v. People, G.R. No. 185129, June 17, 2013; D' Aigle v. People, G.R. No. 174181, June 27, 2012; Art. 315 of the Revised Penal Code states: “ 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 xxx. In such cases xxx the penalty shall be termed prision mayor or reclusion temporal, as the case may be; xxx” (underscoring supplied)

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