

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. JUANCHO A. CUENCA, HIROFUMI TOSHIMITSU, ACCUSED, HIROFUMI TOSHIMITSU Y IKEDA, ACCUSED-APPELLANT.

Ponente: CRUZ, S. C., J.

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CRUZ, S. C., J.:

Before Us is an appeal filed under Rule 122 of the Rules of Court by accused-appellant Hirofumi Toshimitsu y Ikeda relative to the June 08, 2011 Decision[1] of the Regional Trial Court (RTC) of Las Piñas City, Branch 253, in Criminal Case No. 07-0551, entitled "People of the Philippines vs. Juancho A. Cuenca and Hirofumi Toshimitsu," finding accused-appellant Hirofumi Toshimitsu guilty beyond reasonable doubt of the crime of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code. The fallo is quoted below, viz:

"WHEREFORE, from the foregoing, the Court finds the accused HIROFUMI TOSHIMITSU GUILTY beyond reasonable doubt of Estafa under Art. 315, par. 2(a) of the Revised Penal Code, as charged in the Information.

Accordingly, he is sentenced to suffer the indeterminate prison term of four (4) years and two (2) months of prison correccional maximum as MINIMUM to eleven (11) years of prison mayor maximum as MAXIMUM.

SO ORDERED."[2]

THE CASE

Accused-appellant stands charged for the crime of Estafa as defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code, under an Information[3], the accusatory portion of which, reads:

"That on or about the 12[th] day of September, 2007, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring confederating together and both of them mutually helping and aiding each other, by means of false pretenses and fraudulent acts executed prior to or simultaneously with the commission of fraud, that is, by falsely pretending that they possess power, influence, agency or business and as such they could secure employment for one HERMINIO P. BAÑAS as worker in Japan; or by means of other similar deceit, knowing fully well that such representations were false and fraudulent, and were made only to obtain, as in fact they did obtain, from said Herminio P. Bañas a total amount of P100,000.00 and the said accused, once in possession of the said amount, did then and there misapply, misappropriate and convert the same to their own personal use and benefit and despite repeated demands, failed and refused to pay the said amount of P100,000.00, to the damage and prejudice of Herminio P. Bañas in the aforementioned amount.

CONTRARY TO LAW."

When co-accused Juancho Cuenca was arraigned on August 09, 2007, he voluntarily entered a plea of not guilty. Following said arraignment, private complainant presented an Affidavit of Desistance. Hence, the case against Cuenca was dismissed by the trial court on the same date.

Meanwhile, upon arraignment on February 26, 2008, accused-appellant Hirofumi Toshimitsu pleaded NOT GUILTY to the offense charged.

The pre-trial conference was conducted on February 10, 2010. Thereafter, trial on the merits ensued.

THE FACTS

The prosecution presented private complainant Herminio P. Bañas[4] as its sole witness to establish its case.

The inculpatory facts, as unveiled by the prosecution in its evidence given during the trial, are synthesized by the Office of the Solicitor General (OSG)[5], as follows:

"xxx xxx xxx

Between the months of August and September 2006, private complainant Herminio Bañas was introduced by his long time friend Juancho Cuenca to appellant[6], who will assist Herminio in going to Japan.[7]

In the course of their conversation, appellant and Juancho told Herminio that appellant can assist and facilitate his deployment to Japan for work within three months for a fee of P100,000.00.[8] On the basis of appellant's assurance and representation, Herminio was convinced of appellant's capacity to facilitate his deployment to Japan, however, Herminio informed appellant and Juancho that he cannot pay the full amount right away.[9]

On September 12, 2006, at the residence of Juancho at Centreza Village, Las Piñas City, appellant and Herminio executed a written agreement which reads as follows:

Terms of Agreement

I am Mr. Herminio P. Bañas, legal age of Purok V # 064 Talaba, Bacoar, Cavite, has been recruited to Japan by Mr. Hirofumi Toshimitsu reside (sic) in (sic)) #110-Niog Ibaba, Brgy. Niog, Bacoar, Cavite in (sic) this day of Sept. 12-06. Mr. Hirofumi Toshimitsu receive (sic) my initial down payment for processing of my papers to Japan of P60,000.00 pesos in cash, sixty thousand pesos in words and in our agreement if I cannot deployed (sic) in (sic) the time that he receive (sic) my money for 3 months all my placement fee will return to me intact. But when the time that my papers be process (sic) and I was backout (sic) all my money will be forfeited. This agreement was done in the house of Mr. Juancho A. Cuenca as my principal witness, in Centreza Subdivision in Pamplona, Las Piñas City Met. Mla.

Hirofumi Toshimitsu
Receiver (sgd)

Juancho Cuenca
Witness (sgd)

Herminio P. Bañas
Credator[sic] (sgd)

Based on appellant and Herminio's agreement, appellant will secure and facilitate Herminio's deployment to Japan for a Fee of P100,000.00, and in the event that Herminio cannot be deployed within three months from full payment of the agreed price, Juancho and appellant will return all payments made by Herminio.[10]

Pursuant to said agreement, Herminio made the following payments to appellant totaling P100,000.00, to wit:

- 1) September 12, 2006 - P60,000.00;
- 2) September 20, 2006 - P20,000.00

3) October 3, 2006 - P20,000.00; and

4) October 16, 2006 - P10,000.00

(Exhibits 'E', 'F' and 'G')

Three months from Herminio's last payment had passed, Herminio was not deployed to Japan as promised by appellant, prompting the former to inquire on the apparent delay of his departure for Japan.[11]

For sometime, appellant and Juancho would dodge Herminio's inquiry on the latter's failed deployment to Japan by giving alibis and excuses.[12]

Appellant informed Herminio that the reason why the latter cannot leave for Japan was the alleged death of the Japanese national who was supposed to facilitate Herminio's employment in Japan.[13]

Consequently, on January 27, 2007, Herminio demanded for the return of the amount he paid to appellant (Exhibit 'C'). At the time Herminio sent his demand letter (sic) to appellant's residence, he found that the latter already transferred residence.[14]

Herminio likewise inquired and found out that Hirofumi was not licensed by the Department of Labor and Employment to recruit workers for overseas employment as per Certification by the Philippine Overseas and Employment Administration (Exhibit 'D')."

On the other hand, the defense presented only one witness, accused-appellant Hirofumi Toshimitsu[15].

The defense version of facts[16] is synthesized by the Public Attorney's Office (PAO), as follows:

"x x x x x x x x

Juancho, a long-time friend, introduced Herminio to him (Hirofumi Toshimitsu) in the Bacoar cockpit arena. But prior to that acquaintance, he recalled being asked by Juancho if he could help his friend, Herminio, to go back to Japan since the latter was deported. He replied that he is not a recruiter and has no recruitment agency. Juancho asked him to seek help from his Japanese friends which he eventually did. His friends advised him that it would be difficult for Herminio to go back to Japan because the latter has already been deported.

When he and Herminio finally met two (2) or three (3) weeks thereafter, the latter told him that he only needs help on securing his visa since someone will accommodate him once he entered Japan.

Consequently, he spoke with a certain Mr. Sakamoto sometime in September 2006 and was advised that he could help Herminio, the cost of which is One Hundred Fifty Thousand Pesos (P150,000.00) and the processing will take three (3) months. He immediately informed Juancho about this. A few days later, the three (3) met at the house of Juancho. Herminio asked if he could give One Hundred Thousand Pesos (P100,000.00) first then the balance of Fifty Thousand Pesos (P50,000.00) upon the release of his visa. He then informed Mr. Sakamoto, who agreed about the payment proposal.

Initially, he brought Sixty Thousand Pesos (P60,000.00) to Mr. Sakamoto, since Herminio paid the agreed amount in installments. Mr. Sakamoto, on the other hand, gathered the requirements given by Herminio. After the latter paid the One Hundred Thousand Pesos (P100,000.00) in full, he again went to the house of Mr. Sakamoto in San Lorenzo Village, Makati and delivered the money together with the visa application form.

After the lapse of three (3) months, he can no longer contact Mr. Sakamoto. Thus, in January 2007, he and Herminio went to the house of Mr. Sakamoto in January 2007 (sic) where they learned that the latter suffered a fatal heart attack. Upset of what happened, Herminio got angry and demanded his money back.

The amount of One Hundred Thousand Pesos (P100,000.00) was returned. Herminio, however, did not execute

an Affidavit of Desistance in his favor because the former is demanding damages worth One Million Pesos (P1,000,000.00) from him (TSN, October 19, 2010, pp. 5-44)."

On June 08, 2011, the RTC rendered its Decision finding accused-appellant GUILTY beyond reasonable doubt of the crime charged.

Hence, this appeal.

Now dealing with the instant appeal, accused-appellant assails the following assigned errors for the consideration of this Court:

THE ISSUES

"I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE ALL THE ELEMENTS OF THE CRIME OF ESTAFA."[17]

THE COURT'S RULING

We AFFIRM accused-appellant's conviction.

DISCUSSION

We shall resolve the appeal by determining this pivotal issue:

WHETHER ALL THE ELEMENTS OF ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(A) OF THE REVISED PENAL CODE, WERE SUFFICIENTLY ESTABLISHED IN THE CASE AT BAR.

The two (2) issues raised by accused-appellant, being interrelated, are discussed jointly.

Accused-appellant argues: (i) that the prosecution did not meet the quantum of proof necessary to establish accused-appellant's guilt because it failed to prove beyond reasonable doubt the existence of the first element – that the accused made false pretenses or false representations; (ii) that private complainant parted with his money, not because he was deceived in doing so by accused-appellant, but because he trusted his childhood friend; and, finally, (iii) that his defense of denial/alibi deserves merit considering that the evidence of the prosecution is clouded with uncertainties;

These contentions are untenable.

Article 315, paragraph 2(a) of the Revised Penal Code, provides:

"Art. 315. Swindling (Estafa) – Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x x x x x

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

x x x x x x x x"

The elements of the crime of estafa under the foregoing provision are: (1) there must be a false pretense, fraudulent act or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage.[18]

Re: the first element. As borne by the records, the false pretenses or the fraudulent acts involved in the case consist of falsely pretending that accused-appellant possesses power, influence, agency or business and, as such, he could secure employment for private complainant as worker in Japan, knowing fully well that such representations were false and fraudulent, and were made only to obtain from said private complainant a certain fee. The accused-appellant even admitted that he was not a recruiter[19]. Yet knowing that he had no capacity, the accused-appellant still accepted payments from Bañas for the processing of his visa.

This fraudulent act is evident in the Terms of Agreement executed between the private complainant and accused-appellant wherein the latter promised to secure the deployment of the private-complainant to Japan for a certain amount of money, to wit:

"Terms of Agreement

I am Mr. Herminio P. Bañas, legal age of Purok V # 064 Talaba, Bacoar, Cavite, has been recruited to Japan by Mr. Hirofumi Toshimitsu reside (sic) in #110-Niog Ibaba, Brgy. Niog, Bacoar, Cavite in (sic) this day of Sept. 12-06. Mr. Hirofumi Toshimitsu receive (sic) my initial down payment for processing of my papers to Japan of P60,000.00 pesos in cash, sixty thousand pesos in words and in our agreement if I cannot deployed (sic) in the time that he receive (sic) my money for 3 months all my placement fee will return to me intact. But when the time that my papers be process (sic) and I was backout (sic) all my money will be forfeited. This agreement was done in the house of Mr. Juancho A. Cuenca as my principal witness, in Centreza Subdivision in Pamplona, Las Piñas City Met. Mla.

Hirofumi Toshimitsu
Receiver (sgd)

Juancho Cuenca
Witness (sgd)

Herminio P. Bañas
Credator[sic] (sgd)"[20]

Furthermore, contrary to the allegation of accused-appellant, Juancho Cuenca was not the one who convinced private complainant to go to Japan. Cuenca merely asked private complainant if he wanted to go to Japan, and nothing else. He only served as the instrument through whom private complainant and accused-appellant met each other. This is very clear from the testimony of private complainant, where he answered the following:

"Pros. Mangrobang

Q:

Mr. Witness, under what circumstances did you come to know the accused in this case Hirofumi Toshimitsu?

Witness

A:

I came to know him through my childhood friend Juancho Cuenca, sir.

Q:

Do you remember when your friend introduce (sic) to you this Mr. Toshimitsu, if you remember?

A:

August or September 2006, sir.

Q:

What was the reason why your friend introduced the accused to you?

A:

He asked me if I want to go to Japan, sir.

Q:

Who asked you if you want to go to Japan?

A:

Mr. Juancho Cuenca, sir.

Q:

And what was your reply?

A:

My answer is, 'I like to go there', sir.

Q:

What happened next after you told your friend that you wanted to go to Japan?

A:

He told me that his companion Toshimitsu will be the one to assist me, sir.

Q:

After this Mr. Toshimitsu was introduced to you by your friend, what happened next?

A:

I talked to them and he told me to give them money in the amount of One Hundred Thousand (P100,000.00), sir.

Q:

To whom were (sic) you referring to, who told you to give One Hundred Thousand Pesos (P100,000.00)?

A:

Juancho Cuenca and Hirofumi Toshimitsu, sir."[21]

Documentary evidence[22] also show that, although Juancho also did induce private complainant to rely on accused-appellant's assurances that he can be sent to Japan, accused-appellant was the one who made the false assurances and the one who actually received the payments.

Re: the second element. In the case of *People vs. Romero*,[23] the Supreme Court gave an exhaustive discussion on fraud, to wit:

"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 confidences 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 device, 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.

Deceit is a specie of fraud. It is actual fraud, and consists in any false representation or contrivance whereby one person overreaches and misleads another, to his hurt. There is deceit when one is misled, either by guile or trickery or by other means, to believe to be true what is really false." (Emphasis ours.)

The fraudulent acts and/or the false pretenses by means of deceit committed by accused-appellant, that is, the misrepresentation that he can secure the deployment of private complainant, while in truth and in fact, he knew that such commitment will not materialize for he has no capacity to do so; that was made by the accused-appellant prior to and simultaneously with the perfection of the contract and/or execution of the agreement.

Re: the third element. Such fraud/misrepresentation was relied upon by private complainant and it induced him to part with his money in favor of accused-appellant for had accused-appellant made no misrepresentations, private complainant Bañas would not have entered into an agreement with the accused-appellant. This is obvious in private complainant's testimony, hence:

"Pros. Mangrobang

Q:

What happened next after you told your friend that you wanted to go to Japan?

Witness

A:

He told me that his companion Toshimitsu will be the one to assist me, sir.

Q:

After this Mr. Toshimitsu was introduced to you by your friend, what happened next?

A:

I talked to them and he told me to give them money in the amount of One Hundred Thousand (P100,00.00), sir."[24]

Furthermore, the prosecution's documentary evidence, particularly Exhibits "E", "F" and "G"[25], also proved that

accused-appellant received amounts of money from private complainant in view of the former's assurance that he will secure the deployment of private complainant to Japan.

Re: the fourth element. Damage to private complainant is also present considering that private complainant had already paid a total amount of One Hundred Thousand Pesos (P100,000.00) to accused-appellant. Accused-appellant even admitted that he received the money from private complainant, although he alleged in his testimony during direct-examination that the money was for a certain Mr. Sakamoto.

We, however, are not convinced that the money paid by private complainant is for Mr. Sakamoto. Accused-appellant failed to prove this allegation. Furthermore, he himself, during his cross-examination betrayed his very own allegation; hence:

"Pros. Mangrobang

Q:

And because of this assistance that you were going to give or extend to the complainant, you required the complainant to give some money, is that correct?

Witness

A:

Para sa akin po?

Q:

Whether it's for you or not, to give you some money.

xxx xxx xxx

A:

Yes, Sir.

Q:

As a matter of fact, you received some money in the total amount of One Hundred Thousand Pesos (P100,000.00) from the complainant in this case?

A:

Yes, Sir.

Q:

Here in Las Piñas City in the house of Cuenca, is that correct?

A:

Yes, Sir.

Q:

As a matter of fact, you issued receipts after receiving that amount from complainant, is that correct?

A:

I signed as agreement as a contract.

xxx xxx xxx

Q:

Upon receiving this money, where did you keep them or place them?

A:

I gave it to Mr. Sakamoto.

Q:

Do you have any proof that you really gave this money to Mr. Sakamoto?

A:

None, sir."[26]

We also affirm the trial court's findings that the fact that the One Hundred Thousand Pesos (P100,000.00) paid to accused-appellant was returned by Juancho Cuenca to private complainant when the case for illegal recruitment was filed, is of no moment. The damage had already been done. In the case of Joy Lee Recuerdo vs. People of the Philippines[27], the Honorable Supreme Court explained, that:

"The reimbursement or restitution to the offended party of the sums swindled by the petitioner does not extinguish the criminal liability of the latter. It only extinguishes pro tanto the civil liability. Moreover, estafa is a public offense which must be prosecuted and punished by the State on its own motion even though complete reparation had been made for the loss or damage suffered by the offended party."

Lastly, We are not persuaded to believe and give credence to accused-appellant's alibi that it was a certain Mr. Sakamoto who would have facilitated the processing of the visa application, had he not died; and that Mr. Sakamoto was the one who asked for One Hundred Fifty Thousand Pesos (P150,000.00).

An alibi to be effective must be proved by positive, clear and satisfactory evidence which reasonably satisfies the Court of its truth.[28] In the instant case, however, accused-appellant was not able to prove that Mr. Sakamoto really existed. Neither did he present any documentary evidence such as Mr. Sakamoto's birth certificate or death certificate nor any witness for that matter, who would have testified on the existence of Mr. Sakamoto. Hence, even the mere existence of Mr. Sakamoto is doubtful.

All told, We hold and so rule that there is no cogent reason to disturb the ruling of the trial court because the prosecution has proven the guilt of accused-appellant by proof beyond reasonable doubt.

WHEREFORE, the instant appeal is hereby DENIED. The Decision dated June 08, 2011 of the Regional Trial Court (RTC), Branch 253, Las Piñas City, in Criminal Case No. 07-0551, finding accused-appellant Hirofumi Toshimitsu guilty beyond reasonable doubt of the crime of Estafa as penalized under Article 315, paragraph 2(a) of the Revised Penal Code, is hereby AFFIRMED in toto.

SO ORDERED.

De Leon (Chairperson) and Peralta, Jr., JJ., concur.

[1] Penned by Judge Salvador V. Timbang, Jr., Records, pp. 166-172.

[2] Id., p. 172.

[3] Id., p. 1.

[4] Private Complainant, 51 years old, single, electrician and residing at No. 064 Purok 5, Talaba, Bacoor, Cavite.

[5] As culled from the Appellee's Brief, pp. 3-5; Rollo, 60-62.

[6] TSN, April 22, 2010, pp. 7-8.

[7] Ibid, p. 8.

[8] Ibid, p.10.

[9] Ibid, p.10.

[10] Ibid.

[11] TSN, April 22, 2010, pp.14-15.

[12] Ibid, p. 15.

[13] Ibid.

[14] Ibid.

[15] Accused-appellant, 46 years old, married, farmer, and a resident of Barrio Maleeg, Lubang, Occidental Mindoro.

[16] As culled from the Appellant's Brief, Rollo, pp. 33-34.

[17] As culled from the Appellant's Brief, Rollo, p. 30.

[18] RCL Feeders PTE, Ltd. vs. Hon. Hernando Perez, G.R. No. 162126, 09 December 2004

[19] Records, p.135, Exhibit "D" of the Accused.

[20] Records, p.10.

[21] TSN dated 22 April 2010, pp. 7-10.

[22] Records, pp.136-138, Exhibits "E", "F" and "G".

[23] G.R. No. 112985, April 21, 1999.

[24] TSN dated 22 April 2010, p. 9.

[25] Records, pp.136-138

[26] TSN dated 18 January 2011, pp. 94-99.

[27] G.R. No. 168217, 27 June 2006

[28] People vs. Dion, 76 Phil., 265

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