ROBERTO ERQUIAGA, AND GLENN OROSCO, PETITIONERS, VS. HON. COURT OF APPEALS, REGIONAL TRIAL COURT, BRANCH 24, NAGA CITY, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 124513. October 17, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review is the decision[1] dated August 30, 1995, of the Court of Appeals in CA-GR No. 14904 affirming with modification the judgment of the Regional Trial Court of Naga City, Branch 24, dated March 31, 1993. The RTC of Naga City had found appellants guilty of estafa.

The facts of this case are as follows:

Honesta Bal is a businesswoman who owned a bookstore. Sometime in May 1989, she was contacted by Manuel Dayandante @ Manny Cruz who offered to buy her land in Pili, Camarines Sur. He told Honesta that the company he represented was interested in purchasing her property. On May 5, 1989, Honesta's daughter, Josephine Tapang, received a telegram from Dayandante informing Honesta that the sale had been approved and that he would arrive with the inspection team on May 12, 1989.[2] On May 19, 1989, Honesta received a call from Dayandante. Her daughter and she met Dayandante and a certain Lawas @ Rodolfo Sevilla at the Aristocrat Hotel. Dayandante and Lawas said they were field purchasing representative and field purchasing head, respectively, of the Taiwanese Marine Products. They persuaded Honesta to purchase cans of a marine preservative which, could be bought for P1,500 each from a certain peddler. In turn, they would buy these cans from her at P2,000 each.

The following day, May 20, 1989[3] Glenn Orosco, one of herein petitioners, appeared at Honesta's store and introduced himself as an agent, a.k.a. "Rey," who sold said marine preservative. Like a fish going after a bait, Honesta purchased a can which she sold to Dayandante for P1,900. The following day, May 21, Orosco brought five more cans which Honesta bought and eventually sold to Lawas. It was during this transaction that petitioner Roberto Erquiaga, a.k.a. "Mr. Guerrerro," was introduced to Honesta to ascertain whether the cans of marine preservative were genuine or not.[4]

On May 24, Orosco delivered 215 cans to Honesta. Encouraged by the huge profits from her previous transactions, she purchased all 215 cans for P322,500. She borrowed the money from a Jose Bichara at 10% interest on the advice of Erquiaga who lent her P5,000.00 as deposit or earnest money and who promised to shoulder the 10% interest of her loan. Soon after the payment, Lawas, Dayandante, Erquiaga, and Orosco vanished. Realizing that she was conned, Honesta reported the incident to the National Bureau of Investigation (NBI) which, upon examination of the contents of the cans, discovered that these were nothing more than starch. The NBI likewise uncovered that the modus operandi and sting operation perpetrated on Honesta had been going on in other parts of the country, in particular, Cebu, Batangas, Dagupan, Baguio and Olongapo.[5]

On December 4, 1989, an Information for Estafa under Article 315, paragraph 2 (a) of the Revised Penal Code, was filed against Roberto Erquiaga, Glenn Orosco, Pastor Lawas and Manuel Dayandante. Said information

reads:

> That on or about May 24, 1989, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating, conspiring and helping one another, under a common design or scheme, did then and there, by means of misrepresentation and deceit, wilfully, unlawfully and feloniously defraud herein complaining witness HONESTA P. BAL, in the following manner, to wit: accused above-named, well knowing that the two hundred fifteen (215) sealed tins they are selling contain only starch, misrepresented to the complaining witness that the same is made in Singapore as marine product preservative and relying on said deceitful misrepresentation, the latter paid the value of the two hundred fifteen (215) tins of said item at a unit price of P1,500.00 per can or for a total price of P322,500.00, which turned out to be only starch with no significant commercial value after the same were examined at the NBI Forensic Chemistry Examination Division, Manila, thereby defrauding said complaining witness in the aforesaid sum of THREE HUNDRED TWENTY TWO THOUSAND FIVE HUNDRED (P322,500.00) PESOS, Philippine Currency, to her damage and prejudice.
>
> CONTRARY TO LAW.[6]

Upon arraignment, Erquiaga and Orosco pleaded not guilty to the offense charged. Dayandante was apprehended only during the latter part of 1992 and was tried separately, while Lawas is still at-large.

On March 31, 1993, the RTC promulgated its decision finding the petitioners guilty of estafa. The dispositive portion of said decision reads:

> WHEREFORE, for all the foregoing, the Court finds accused Roberto Erquiaga, a.k.a. "Mr. Guerrero" and Glenn Orosco, a.k.a. "Rey" guilty of the offense of estafa as defined and penalized under Article 315, paragraph 2 (a) of the Revised Penal Code, beyond reasonable doubt and, in accordance with the provisions of the Indeterminate Sentence Law, hereby sentences them to suffer the penalty of ten (10) years of prision mayor in its medium period, as minimum penalty to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum penalty. The said accused are ordered to indemnify jointly and severally Honesta P. Bal, the herein offended party, the sum of Three Hundred Twenty Two Thousand and Five Hundred (P322,500.00) Pesos, plus interest thereon at the rate of twelve (12%) percent per annum computed from May 24, 1989 up to the time the said amount shall have been paid in full, and to pay the costs.
>
> SO ORDERED.[7]

The Court of Appeals affirmed the decision of the trial court but modified the penalty imposed. The dispositive portion of the appellate court's decision reads:

> THE FOREGOING CONSIDERED, the appealed Decision, while affirmed, should be MODIFIED. The penalty should instead be FOUR (4) YEARS and TWO (2) MONTHS of prision correccional as the minimum, to TWENTY (20) YEARS of reclusion temporal as maximum; to indemnify, jointly and severally, Honesta Bal, the amount of P322,500.00 with interest at 12% per annum starting May 24, 1989 until full payment; and to pay the costs.
>
> SO ORDERED.[8]

Petitioners filed their separate motions for reconsideration[9] which the appellate court denied "for lack of merit".[10] Petitioners now raise before us the following questions of law:

> (1) Can the court validly render judgment of conviction based on mere conjectures, surmises that there was conspiracy to commit the offense, if the evidence presented by the prosecution is not strong enough to stand the test of reason?
>
> (2) Can the legal maxim "flight is an evidence of guilt" prevail over the constitutional presumption of

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innocence accorded to all accused in criminal case?

(2.1) Are the petitioners duty bound to prove their innocence?

(3) Can the loss in a consummated sale be converted to damages in a criminal case for estafa without violating the maxim of "caveat emptor?"[11]

Petitioners contend that the trial court based its decision on mere conjectures and surmises and that it was biased against them. They likewise assail the finding of conspiracy.[12] Finally, they opine that private complainant should bear her losses under the doctrine of caveat emptor.[13]

The Office of the Solicitor General (OSG), for the State, dismisses the issues raised by petitioners as mere "rehash" of their previous arguments before the Court of Appeals, hence redundant.[14] In our view, the pertinent issue in this case is whether conspiracy to commit estafa and estafa itself had been adequately established. That petitioners had conspired with each other must be viewed not in isolation from but in relation to an alleged plot, a sting, or "con operation" known as "negosyo" of their group. Further, whether such a well-planned confidence operation resulted in the consummated crime of estafa, however, must be established by the prosecution beyond reasonable doubt.

Conspiracy, as a rule, has to be established with the same quantum of proof as the crime itself. It has to be shown as clearly as the commission of the offense.[15] 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.[16] 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.[17]

We find that the following circumstances together, conclusively show petitioner Glenn Orosco's role in defrauding Honesta: (1) Glenn a.k.a. "Rey" acted as salesman of the marine preservative. (2) He providentially surfaced after Dayandante and Lawas had already primed up Honesta regarding profits she would make buying and selling the product. (3) He conveniently had available a can of the marine preservative after Dayandante and Lawas told her of the business possibility. (4) He led Honesta to believe that the contents of the cans were indeed marine preservatives. At the very least, he kept silent on the real contents of the cans. (5) He pretended to refuse the P5,000 down payment from Honesta while inducing her to borrow the larger sum of P322,500. (6) He assured Honesta he still had 50 cans and convinced her to shell out another P1,000 for him to deliver them. (7) He disappeared with the other accused after their nefarious designs had been unearthed.

Petitioner Roberto Erquiaga, for his part, actively connived with Orosco. He did the following: (1) He posed as "Mr. Guerrero", a "verifier" of the contents of the cans allegedly containing marine preservative. (2) He also induced complainant to borrow more money and to hold on to the 215 cans. (3) He offered the P5,000 as down payment for the 215 cans. (4) He made the deal more enticing for Honesta by promising to pay the 10% interest rate on the loan himself.

Patently, each petitioner played a key role in their devious scheme to sell a useless product, alleged to be a marine preservative, for which they got a substantial amount from Honesta Bal.

But did the acts of petitioners constitute estafa?

The elements of estafa or swindling under paragraph 2 (a) of Article 315 of the Revised Penal Code[18] are the following:

1. That there must be a false pretense, fraudulent act or fraudulent means.

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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.

4. That as a result thereof, the offended party suffered damage.[19]

As earlier discussed, Erquiaga misrepresented himself as a "verifier" of the contents of the cans. He encouraged Honesta to borrow money. Petitioner Orosco misrepresented himself as a seller of marine preservative. They used aliases, Erquiaga as "Mr. Guerrero"; and Orosco as "Rey". Honesta fell for these misrepresentations and the lure of profits offered by petitioners made her borrow money upon their inducement, and then petitioners disappeared from the scene after taking the money from her.

Petitioners contend that the starch is a kind of marine preservative and that the failure of the prosecution to prove otherwise should be enough reason to acquit them.[20] This argument deserves no serious consideration by the Court. Note that what was being offered to Honesta was a preservative from "Taiwanese Marine Products." What was delivered was ordinary starch in sealed cans. The scam is quite obvious, though suckers still fall for it.

Petitioners suggest that damages should not be awarded because Honesta was forewarned to buy at her own risk and because the doctrine of caveat emptor placed her on guard. Petitioners apparently misapply the doctrine. A basic premise of the doctrine of "Let the buyer beware" is that there be no false representation by the seller. As discussed earlier, petitioners' scheme involves a well-planned scenario to entice the buyer to pay for the bogus marine preservative. Even the initial buy-and-sell transactions involving one and then five cans were intended for confidence building before the big transaction when they clinched the deal involving P322,500. Thereafter, they vanished from the scene. These circumstances clearly show that petitioners' Orosco and Erquiaga were in on the plot to defraud Honesta. Honesta could hardly be blamed for not examining the goods. She was made to depend on petitioners' supposed expertise. She said she did not open the cans as there was a label in each with a warning that the seal should not be broken.[21] That Honesta Bal thought the buy-and-sell business would result in a profit for her is no indictment of her good faith in dealing with petitioners. The ancient defense of caveat emptor belongs to a by-gone age, and has no place in contemporary business ethics.

It is not true that Honesta did not suffer any damage because she merely borrowed the money, and that she showed no proof that she issued a check to pay said debt.[22] The prosecution clearly showed that Bichara had sent a demand letter to Honesta asking for payment.[23] Honesta had borrowed P322,500 from Bichara for which she assuredly must repay. This constitutes business loses to her and, in our view, actual damages as contemplated under Article 315, par. 2 (a).[24]

Given the facts established in this case, we are convinced that estafa had been consummated by petitioners who had conspired with each other, and the guilt of petitioners had been adequately proved beyond reasonable doubt.

WHEREFORE, the instant petition is DENIED. The appealed decision of the Regional Trial Court as modified by the Court of Appeals is AFFIRMED. Petitioners Roberto Erquiaga and Glenn Orosco are found guilty of estafa under Article 315, paragraph 2 (a) of the Revised Penal Code. They are sentenced to suffer the penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional as minimum, and TWENTY (20) YEARS of reclusion temporal as maximum. Further, they are also ordered to pay jointly and severally as indemnity to Honesta Bal the sum of P322,500 with interest of 12% per annum until fully paid.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] CA Rollo, pp. 154-169.

[2] TSN, February 19, 1991, pp. 4-6; Exhibit "B".

[3] It was May 21, 1989, as per Josephine's testimony, TSN, February 5, 1991, p. 11, but she denied this during her cross-examination, TSN, February 5, 1991, pp. 40-41.

[4] TSN, February 19, 1991, p. 16.

[5] Rollo, pp. 44-46; TSN, October 10, 1991, pp. 9-10.

[6] Records, p. 1.

[7] Rollo, pp. 50-51.

[8] Id. at 40-41.

[9] CA Rollo, pp. 172-197.

[10] Id. at 212.

[11] Rollo, p. 10.

[12] Id. at 13-17.

[13] Id. at 20-21.

[14] Id. at 74.

[15] People vs. Legaspi, G.R. No. 117802, 331 SCRA 95, 125 (2000).

[16] Ibid.

[17] People vs. Mendoza, G.R. No. 128890, 332 SCRA 485, 496 (2000), citing People vs. Parungao, G.R. No. 125812, 265 SCRA 140, 149 (1996).

[18] Art. 315. Swindling (estafa).- Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

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:

(a) By using a 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

[19] Luis B. Reyes, Revised Penal Code, Book 2, 14[th] Edition, p. 763.

[20] Rollo, pp. 160-161.

[21] TSN, March 5, 1991, p. 10.

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[22] Rollo, pp. 163-165.

[23] Records, Exhibit "B".

[24] Supra, note 18.

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