

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELVIRA PETRALBA, APPELLANT.

G.R. No. 137512. September 27, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari assailing the decision,[1] promulgated by the Court of Appeals,[2] that affirmed the joint decision rendered by the Regional Trial Court, Branch 17, Cebu City[3] (RTC, for brevity), convicting appellant Elvira Petralba of violations of Sections 4, 19 and 29 of Batas Pambansa Bilang (B.P. Blg.) 178, otherwise known as The Revised Securities Act.

The factual background of the case is as follows:

Appellant and her co-accused Raymond Houscht, Jeff Gonzales and Richard Alcantara are charged in three separate Informations, docketed as CBU-29843, to wit:

That on or about the 2[nd] day of July, 1991 and for sometime prior and subsequent thereto – in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping one another, with deliberate intent, with intent of gain and of defrauding one Dr. Leoni L. Bailey, did then and there induce the latter to invest in securities trading, more particularly, in foreign exchange trading at Landsdale[4] (sic) Enterprises Ltd. using the facilities of Madura Management Corp., where accused Elvira Petralba claimed to be trader, Raymond Houscht as Sales Manager, Jeff Gonzales as Asst. Sales Manager, and Richard Alcantara as Executive Vice-President, thereby offering for sale to the public within the Philippines unregistered and unlicensed securities which are neither exempt securities nor exempt transactions under sections (5) and (6) of Batas Pambansa Blg. 178, which representations were only made to induce said Dr. Leoni L. Bailey to give and deliver and in fact he gave and delivered the amount of \$9,000.00 as capital investment, as the accused very well knew that the securities which they offered to sell and sold to the public within the Philippines were not registered in Violation of Section 4 of Batas Pambansa Blg. 178.[5] (Emphasis supplied)

CBU-29844, to wit:

That on or about the 2[nd] day of July, 1991, and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping one another, with deliberate intent, with deceit and misrepresentation, with intent of gain and of defrauding one Dr. Leoni L. Bailey, did then and there induce the latter to invest in foreign exchange trading with Landsdale (sic) Enterprises Ltd. using the facilities of Madura Management Corp., where accused Elvira Petralba claimed to be trader, Raymond Houscht as Sales Manager, Jeff Gonzales as Assistant Sales Manager, and Richard Alcantara as Executive Vice-President, assuring him that Landsdale (sic) Enterprises Ltd. and Madura Management Corp. are duly licensed to engage in foreign exchange trading when in truth and in fact, these companies do not have such license, and as a consequence of such deceit and misrepresentation said Dr. Leoni L. Bailey invested the total amount of \$9,000.00, the accused thereby engaging in fraudulent transactions in foreign exchange trading in Violation of Section 29 of Batas

Pambansa Blg. 178.[6] (Emphasis supplied)

and CBU-29845, to wit:

That on or about the 2[nd] day of July, 1991, and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping one another, with deliberate intent, with intent to gain and to defraud one Dr. Leoni L. Bailey, did then and there induce the latter to invest in foreign exchange trading with Landsdale (sic) Enterprises Ltd. using the facilities of Madura Management Corp., where accused Elvira Petralba claimed to be trader, Raymond Houscht as Sales Manager, Jeff Gonzales as Asst. Sales Manager, and Richard Alcantara as Executive Vice-Pres., assuring him of a high monthly interest and compounding of capital within a short period and the money can be withdrawn anytime, thereby acting and functioning as brokers, dealers or salesmen of securities, which representations were only made to induce said Dr. Leoni L. Bailey to give and deliver as in fact he gave and delivered the amount of \$9,000.00, as evidenced by receipts, without authority of law not having been registered with the Securities and Exchange Commission as brokers, dealers or salesmen of securities in Violation of Section 19 of Batas Pambansa Blg. 178.[7] (Emphasis supplied)

Only appellant was duly arraigned. She pleaded not guilty to the charges against her under the foregoing Informations, and joint trial ensued thereafter. All her co-accused remain at large.

The findings of fact of the trial court as affirmed in toto by the Court of Appeals, are as follows:

The evidence for the Prosecution as established thru the oral testimonies of Dr. Leoni Bailey and Atty. Rosalinda San Fontanosas and the documents they had identified substantially shows that Dr. Bailey was holding office in 1991 in her residence at 12 San Jose Street, Cebu City as clinical consultant.

Accused Elvira Petralba introduced herself as a representative of Lansdale Enterprises Limited showing the doctor her brochures (Exhibit "B") and told her the Lansdale has an office in Hongkong with its principal office in Tokyo. Accused gave Dr. Bailey some documents one of which is the customer's agreement (Exhibit "C"). Dr. Bailey gave the accused a check worth \$6,000.00 as her starting capital for foreign exchange trading to be handled by Mr. Richard Alcantara, the manager of Lansdale.

Accused Petralba assured Bailey that the business was protected by a foreign company in the amount of \$4,000,000.00. Four (4) persons, namely, Petralba, the manager, the assistant manager and another person were present. Petralba signed a receipt (Exhibit "A") wherein her confirmatory signature (Exhibit "A-2") appears.

Bailey demanded partial return of her investment from accused Petralba but the latter failed to do so. Bailey contacted the office of Lansdale, its officers including the manager and Petralba several times but these persons were always out. Finally, Bailey went to the Securities and Exchange Commission (SEC), filed a complaint and executed an affidavit (Exhibit "D", "D-1") before Atty. Cunanan (Exhibit "D-2"), the director, the original copy of which is with the SEC. She likewise submitted the original copy of the receipt with the SEC.

Dr. Bailey and Elvira Petralba knew each other as early as the first week of June 1991. Since accused wanted to see her about foreign currency trading, Bailey invited her to her office in July 1991. Petralba told her that she represents REATA, an investment company in foreign exchange.

Dr. Bailey was in this business before in the United States. There was no problem there because everything was taken care of by her financial adviser. The company also assumed the responsibility in case of loss, hence the investment was protected. In this particular case, the four (4) accused convinced her that her investment is protected.

Bailey gave the accused the check although the payee was Lansdale which traded her money without her

consent. Out of the amount in the check only \$300 was returned to her by the cashier of Lansdale.

During the first week of trading or on July 8, 1991, Bailey signed (Exhibit "A-1") the instruction of purchase (Exhibit "A") because she was asked to sign it. Bailey also signed other instructions of purchase (Exhibits "2" to "12") but before she signed them (Exhibits "13" to "23", "13-A" to "23-A") she read all of them. She also signed a form letter dated August 15, 1991 (Exhibits "24", "24-A" and "D") which she was asked to fill up as the company was changing its name to Tokyo Commonwealth Limited.

Bailey read the contract and the trading rules of Lansdale before she signed it. She understood all the stipulations contained therein. There is a provision in paragraph ten (10) thereof stating the risk of loss in trading but accused assured her that the company had a reserve fund in the amount of \$14 million as investor's protection fund.

When Bailey signed the check for investment, the persons present were Alcantara, Petralba and two others. Alcantara introduced himself as the Assistant Vice-President of Lansdale. The customer's agreement was signed by Bailey marked as Exhibit "A" and the receipt as Exhibit "E".

It was Atty. Rosalinda San Fontanosas of SEC's legal department who investigated Lansdale Enterprises in connection with the complaint of Dr. Leoni Bailey after a certain Felix Chan in their office resigned.

On July 2, 1991, all the accused were not yet licensed as traders when they presented to Dr. Bailey the investment proposal except Mr. Alcantara who has a license for the period from January 15, 1991 to December 31, 1991.

Lansdale Enterprises Ltd. has not been registered with the Securities and Exchange Commission (SEC) per first indorsement dated July 25, 1994 (Exhibits "F", "F-1" and "F-2") and another indorsement dated July 20, 1994 (Exhibits "G", "G-1" and "G-2").[8]

After trial on the merits, the RTC rendered judgment, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Court finds the accused Elvira Petralba guilty beyond reasonable doubt in three (3) counts of Violations of Sections 4, 19 and 29 of Batas Pambansa Bilang 178, otherwise known as The Revised Securities Act and accordingly, accused is hereby sentenced to serve an imprisonment of seven (7) years for each count or a total period of twenty-one (21) years; to indemnify private complainant Dr. Leoni Bailey the sum of Five Thousand Seven Hundred US Dollars (\$5,700.00) or its current Philippines Peso value with the legal rate of interest per annum from the time of the filing of these informations plus costs of the suits.

SO ORDERED.

Cebu City, Philippines.

February 16, 1996.[9]

On appeal to the Court of Appeals, the appellate court affirmed in full the RTC judgment.

Hence, the present petition, appellant raising the following Assignment of Errors, thus:

I

THE COURT OF APPEALS ERRED IN AFFIRMING IN FULL THE JUDGMENT OF THE COURT A QUO THEREBY ALSO CONCLUDING THAT ACCUSED-APPELLANT, WHO IS A MERE EMPLOYEE, CONNIVED AND CONFEDERATED WITH HER CO-ACCUSED, AND REPRESENTED HERSELF AS TRADER THUS ALLEGEDLY VIOLATING SECTIONS 4 AND 19 OF BATAS PAMBANSA BILANG 178, OTHERWISE KNOWN AS THE REVISED SECURITIES ACT, WHEN NO PROOF WAS PRESENTED TO PROVE BEYOND REASONABLE DOUBT THAT ACCUSED-APPELLANT IS

GUILTY OF SAID ALLEGED VIOLATIONS.

II

THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTION OF THE ACCUSED-APPELLANT BY THE COURT A QUO FOR VIOLATION OF SEC. 4, 19, AND 29 OF BATAS PAMBANSA BLG. 178, OTHERWISE KNOWN AS THE REVISED SECURITIES ACT, UPON EVIDENCE WHICH FAILED TO ESTABLISH THE IDENTITY OF THE REAL SELLER FROM AMONG THE MANY ACCUSED IN THIS CASE.

III

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE COURT A QUO BY DISREGARDING THE FACT THAT ANOTHER CO-ACCUSED AND ALLEGED CO-CONSPIRATOR IN THIS CASE WHO HAS NOT BEEN BROUGHT TO COURT WAS LICENSED TO TRANSACT BUSINESS WITH THE PRIVATE COMPLAINANT.

IV

THE COURT OF APPEALS ERRED IN CONCLUDING THAT A CUSTOMER'S CONTRACT FALLS WITHIN THE TERM "SECURITIES".

V

THE COURT OF APPEALS ERRED IN AFFIRMING THE JUDGMENT OF THE COURT A QUO IN SENTENCING THE ACCUSED-APPELLANT TO SERVE AN IMPRISONMENT OF SEVEN (7) YEARS FOR EACH COUNT OR FOR A TOTAL PERIOD OF TWENTY-ONE (21) YEARS WHEN ACCUSED-APPELLANT'S ACTUATIONS WERE THAT MERELY OF AN EMPLOYEE AND HAS NOT BENEFITED WHATSOEVER FROM THE TRANSACTION COMPLAINED OF NOR DID SHE DEFRAUD PRIVATE COMPLAINANT OF HER MONEY AS THE SAME WAS DIRECTLY GIVEN TO HER EMPLOYER.[10]

On the basis thereof, the following questions arise: (1) whether the contract between complainant Dr. Leoni Bailey and Lansdale Enterprises Ltd. falls within the term "securities" contemplated by the Revised Securities Act; (2) whether the prosecution had established that appellant represented herself as a broker, dealer or trader in conspiracy with her co-accused; (3) whether the prosecution evidence established the identity of the real seller from among the four accused including herein appellant; (4) whether the established fact that her co-accused, Richard Alcantara, executive vice-president of Lansdale was duly licensed to trade exonerates appellant from liability under The Revised Securities Act; and (5) whether appellant should be held criminally liable considering that she was a mere employee of Lansdale and she has neither benefited from the subject transaction nor defrauded private complainant of her money as the same was directly given to her employer.

These five questions boil down to the principal issue of whether or not the Court of Appeals erred in affirming the conviction of appellant; or stated differently, whether or not the prosecution has established the guilt of appellant beyond reasonable doubt for violating Sections 4, 19 and 29 of B.P. Blg. 178.

We are constrained to look into the evidence presented before the trial court so as to resolve the herein appeal. It is settled that as a rule, our jurisdiction in cases brought to us from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive and we are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[11] However, we have consistently enunciated that we may review the findings of fact of the Court of Appeals: (a) where there is grave abuse of discretion; (b) when the finding is grounded entirely on

speculations, surmises or conjectures; (c) when the inference made is manifestly mistaken, absurd or impossible; (d) when the judgment of the Court of Appeals, in making its findings, is conflicting; (e) when the factual findings are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; (g) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[12]

After a careful examination of the prosecution evidence, we find that the findings of both lower courts were grounded on mere surmises or conjectures; the inferences they made were manifestly mistaken, bordering on absurdity; and the judgment of the appellate court was based on misapprehension of facts or mere conclusions without citation of specific, competent evidence.

Under the three Informations, appellant is charged with conniving and confederating together with her three co-accused, and mutually helping one another, with deliberate intent to gain and defraud complainant by: (1) offering for sale, together with her co-accused, securities which were not registered in violation of Section 4 of the law; (2) representing and acting as broker or dealer to induce complainant as in fact she delivered the subject amount, not having been registered with the Securities and Exchange Commission, in violation of Section 19 of the same law; and (3) assuring the complainant that Lansdale is duly licensed to engage in foreign exchange trading when in fact said company is not duly-licensed, as a consequence of which complainant invested the amount of \$6,000.00, thereby engaging in fraudulent transactions in foreign exchange trading, in violation of Section 29 of the law.

The Court of Appeals erred in affirming the RTC's decision. The prosecution failed to establish the guilt of appellant beyond reasonable doubt.

Appellant claims that the transaction that transpired between complainant and her employer Lansdale was a mere foreign exchange trading which is not covered by the term "securities" of B.P. Blg. 178,[13] the prevailing law at the time of the commission of the alleged crimes.

Section 2 of B.P. Blg. 178 provides:

Section 2. Definitions. – For purposes of this Act:

(a) "Securities" shall include bonds, debentures, notes, evidences of indebtedness, shares in a company, preorganization certificates or subscription, investment contracts, certificates of interest or participation in a profit sharing agreement, collateral trust certificates, equipment trust certificates (including conditional sale contracts or similar interests or instruments serving the same purpose), voting trust certificates, certificates of deposit for a security, or fractional undivided interests in oil, gas, or other mineral rights, or in general, interest or instruments commonly considered to be "securities", or certificates of interests or participation, in temporary or interim certificates for, receipts for, guarantees of, or warrants or rights to subscribe to or buy or sell any of the foregoing; or commercial papers evidencing indebtedness of any person, financial or non-financial entity, irrespective of maturity, issued, endorsed, sold transferred or in any manner conveyed to another with or without recourse, such as promissory notes, repurchase agreements, certificates of assignments, certificates of participation, trust certificates or similar instruments; or proprietary or non-proprietary membership certificates, commodity futures contracts, transferable stock options, pre-need plans, pension plans, life plans, joint ventures contracts, and similar contracts and investments where there is no tangible return on investments plus profits but an appreciation of capital as well as enjoyments of particular privileges

and services.

... [Emphasis supplied]

Clearly therefrom, as pointed out by the Office of the Solicitor General, the foreign exchange trading transaction that transpired between complainant and Lansdale appears to be an investment contract or participation in a profit sharing agreement that falls within the definition of the law. When the investor is relatively uninformed and turns over his money to others, essentially depending upon their representations and their honesty and skill in managing it, the transaction generally is considered to be an investment contract.[14] The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.[15] Dr. Bailey testified on this matter[16] but no contract was submitted by the prosecution. The prosecution failed to prove by sufficient evidence that indeed, the amount delivered by Dr. Bailey to Lansdale, through appellant, is an investment contemplated by the Revised Securities Act and not a mere act of buying and selling foreign exchange. The Customer's Agreement, marked as Exhibit "C" during the hearing of the case, was not offered in evidence by the prosecution. The fundamental rule is that upon him who alleges rests the burden of proof.[17]

Moreover, the receipt, marked as Exhibit "A," merely shows that Dr. Bailey remitted the amount of US\$6,000.00 to Lansdale through appellant, as account executive. It contained a request for appellant to follow-up proper remittance and credit of her trading account as well as the issuance of the receipt of said amount[18] which is confirmed by appellant as shown by her signature, marked as Exhibit "A-2." Exhibit "A" did not prove that appellant committed any of the offenses charged against her. The receipt merely established that appellant received the amount from Dr. Bailey for the purpose of remitting the same to Lansdale and to follow-up the crediting thereof to her trading account. The brochure, Exhibit "B," given by appellant to Dr. Bailey, does not prove appellant's guilt beyond reasonable doubt in the absence of direct and specific proof on the (1) actual participation of appellant in the alleged offer and sale of securities to the public within the Philippines which were not registered in violation of Section 4 of B.P. Blg. 178; (2) manner by which appellant misrepresented to Dr. Bailey that Lansdale is duly licensed to engage in foreign exchange trading in violation of Section 29 of said law; and (3) manner by which appellant misrepresented to Dr. Bailey that she was a licensed broker, dealer or salesperson of securities when in fact she was not, thereby inducing Dr. Bailey to invest and deliver the amount of US\$6,000.00, in violation of Section 19 of said law.

Furthermore, while it is established by the prosecution that Lansdale was not duly registered[19] and appellant was not licensed as a broker,[20] the manner by which appellant connived with her co-accused and induced her to invest her \$6,000.00,[21] not \$9,000.00 as erroneously stated in the Informations, are too sketchy, devoid of any certainty as to the actual participation of appellant in the commission of the offenses charged against her. A simple perusal of the direct testimony of complainant as quoted verbatim hereunder, readily supports our findings, viz:

Q - Do you remember what transaction did you enter with the accused on July 2, 1991?

A - On July 2, 1991, I turned over to her a check for \$6,000.00.

Q - What was your purpose in turning over to her the check for \$6,000.00?

A - That was to start my investment with the foreign currency trading.

Q - Do you know who will take care of the foreign exchange trading?

A - It was supposed to be handled by the manager, Mr. Richard Alcantara.

Q - You said you were gypped by Elvira Petralba?

A - Yes, sir.

Q - What happened to your transaction, if you can remember?

A - They got my money.

Q - Will you please tell this Honorable Court how they got your money?

A - I do not know how they manage the trading. They only give me hope but that hope was never realized.

Q - Before you meet Elvira Petralba the accused in this case and considering that you wanted to be involved in an investment business, did you take steps to verify if really the foreign exchange trading is good?

A - There were lots of businessmen I know who got involved in this foreign exchange trading and because of this, I would like to be enlightened. Whether or not the business is authenticated, it is very difficult for a private person to understand.

Q - Are you telling the court that you merely relied on the promises of Elvira Petralba because you don't understand fully the business venture?

A - There were four of them who enticed me to invest in the business. The manager, assistant manager, Elvira Petralba, and another person.

Q - So you met Elvira Petralba who was responsible in your investing in the business?

A - Yes, sir, she said I have nothing to lose in that kind of business because we are protected by a company abroad in the amount of 4 million dollars, if ever something happened to our investment or to the company. The four of them were very positive in convincing me. However, those promises and assurance did not turn out good.

Q - So you invested in the business?

A - Yes, sir.

Q - What happened to those promises?

A - Not a single promise came out to be supported by any action. They refused and failed to return my money when I demanded for a partial return of my investment.

Q - What was then your reaction when you were not able to withdraw your money upon your demand?

A - I bombarded the office with telephone calls but nobody would answer the phone. I tried to contact Elvira Petralba and other officers but they could not be contacted. So I tried turning over my complaint to Social Securities Commission. (sic)

Q - Could you tell us what other benefits could you derive from investing with foreign currency trading?

A - They told me I could communicate with them anytime I want to clarify something but it turned out not to be true. It is very difficult to contact them and it is also very difficult to get inside the office because there are so many requirements you have to accomplish before you can get inside. All that I can do is to call them thru telephone but nobody will answer the calls.

Q - Let us go step by step. First is the benefit. How much are you suppose to get as benefit by investing your \$6,000.00

A - There are no definite benefits fixed in foreign currency exchange. The rate goes up and down anytime.

However, we were primarily protected from any losses. There are many businessmen like Mr. Clavano who also joined this kind of business venture.

Q - You said you will be protected from any losses of your investment.

A - Yes, sir.

Q - How?

A - At first they will let you know and convince you of their expertise and will present to you all the benefits you can derive if you invest with them, and they have also defense if over the price will go down or up. They said they could freeze it but they did not fully explain what will be frozen and how the freezing will be done. They just ate and ate our interest until everything has been eaten. May be that is what they mean by freezing. When I invested my \$6,000.00 they were already the ones controlling it. They decide what to sell and what to buy, and if you entertain any doubt, they will cure your doubts. They will insist that they are doing the best for you. They said we have nothing to lose. But if you demand for clarification they could not explain.[22]

As one would readily observe therefrom, the testimony of the complainant insofar as appellant is concerned, is comprised merely of generalities and conclusions that would not hold in court to justify the conviction of herein appellant. In *People vs. Mariano*, [23] we held that the evidence, taken in its entirety, must be clear and convincing to prove an accused's guilt beyond reasonable doubt, otherwise, he is entitled to an acquittal.[24] And so must herein appellant be acquitted in the present three criminal cases.

No less than the Constitution mandates that an accused shall be presumed innocent until the contrary is proved.[25] Section 14 (2), Article III of the Constitution provides that in criminal cases, the quantum of evidence required to overturn this presumption is proof beyond reasonable doubt, which, under Section 2, Rule 133 of the Revised Rules of Court, is that proof which produces moral certainty in an unprejudiced mind. In *People vs. Saturno*, [26] we held:

It is a basic rule that the guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there must be moral certainty of guilt – a certainty that convinces and satisfies the reason and conscience of those who are to act upon it that he is guilty of the crime charged. Under our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.

The task of the prosecution is two-fold: first, to prove that a crime has been committed, and second, that the accused is the person responsible therefor. Thus, the prosecution must be able to overcome the constitutional presumption of innocence with evidence beyond reasonable doubt to justify the conviction of the accused.

The prosecution and both lower courts merely depended on the wholesale self-serving declarations of complainant. Complainant failed to specify what appellant said and did so as to support the conclusion that appellant connived with her co-accused in defrauding her. There is nothing in the records to show how appellant offered or induced complainant to buy unregistered securities as required under Section 4 of B.P. Blg. 178, to wit:

Section 4. Requirements of registration of securities. – (a) No securities, except of a class exempt under any of the provisions of Section five hereof or unless sold in any transaction exempt under any of the provisions of Section six hereof, shall be sold or offered for sale or distribution to the public within the Philippines unless such securities shall have been registered and permitted to be sold as hereinafter provided.

(b) Notwithstanding the provisions of paragraph (a) of this Section and of the succeeding Sections regarding exemptions, no commercial paper as defined in Section two hereof shall be issued, endorsed, sold, transferred or in any manner conveyed to the public, unless registered in accordance with the rules and regulations that shall be promulgated in the public interest and for the protection of investors by the Commission. ...

(c) A record of the registration of securities shall be kept in a Register of Securities in which shall be recorded orders entered by the Commission with respect to such securities. Such register and all documents or information with respect to the securities registered therein shall be open to public inspection at reasonable hours on business days.

Under Section 19 of B.P. Blg. 178, no broker, dealer or salesman shall engage in business in the Philippines as such broker, dealer or salesman or sell any securities, including securities exempted under this Act, except in exempt transactions, unless he has been registered as a broker, dealer or salesman. True, there is undisputed evidence that appellant is not a licensed broker at the time of the subject transaction with complainant. However, as already discussed above, there is no evidence whatsoever how exactly appellant misrepresented herself as a broker or dealer thereby inducing complainant into investing her money with Lansdale.

Section 29 of the same law provides:

Section 29. Fraudulent transactions. – (a) It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities –

(1) To employ any device, scheme, or artifice to defraud, or

(2) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) To engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) It shall be unlawful for any person to describe a security to a second person, without purporting to offer it, for a consideration received or to be received directly or indirectly from the issuer, any other person interested in buying or selling the security, an underwriter, broker, dealer, or investment adviser, or a controlling, controlled, or commonly controlled person of any such person, unless (1) he concurrently discloses the source of the consideration or the nature of or reason for his employment or (2) if the second person or his agent in the transaction is identified, that information is known to the second person.

...

The testimony of complainant read in its entirety does not sufficiently establish that appellant herself had uttered any words of assurance or committed a particular act as specified under the aforequoted provision of law. Neither did complainant's testimony show her specific participation in the alleged conspiracy to defraud complainant. Dr. Bailey's testimony did not prove the guilt of appellant beyond reasonable doubt.

To repeat, the only prosecution evidence that shows the participation of appellant is the document[27] marked as Exhibits "A," "A-1" to "A-3," whereby complainant is remitting to appellant, as account executive, the amount of \$6,000.00, duly confirmed by the signature of appellant; and instructing appellant to follow-up and ensure proper remittance and credit of her (complainant's) trading account with Lansdale. How and why complainant entrusted to appellant said amount is not demonstrated by complainant's testimony.

Moreover, the RTC made mention of a brochure, marked as Exhibit "B" but the same is not offered as evidence by the prosecution as shown by its Written Offer of Evidence.[28] Section 34, Rule 132 of the Rules of Court mandates that the Court should not consider any evidence which has not been formally offered. Even the "Customer's Agreement," marked as Exhibit "C," was not offered in evidence by the prosecution.

Let it be stated that the fact that her co-accused Alcantara was licensed would not exonerate appellant because the license is personal to Alcantara. Neither would the fact that appellant did not receive the amount of \$6,000.00

personally exonerate her if she were found guilty of the charges against her.

Nevertheless, as discussed earlier, there is no proof beyond reasonable doubt to hold appellant guilty of all the offenses charged against her under the three Informations.

WHEREFORE, the appealed decision of the Court of Appeals, together with that of the Regional Trial Court, is REVERSED. Appellant ELVIRA PETRALBA is ACQUITTED of the crimes charged in Criminal Cases Nos. CBU-29843 to 29845.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Penned by Justice Jorge S. Imperial and concurred in by Justices Godardo A. Jacinto and Roberto A. Barrios.

[2] In CA-G.R. No. 20194.

[3] In Crim. Cases Nos. CBU-29843, 29844 and 29845.

[4] Should be “Lansdale,” per receipt marked as Exhibit “A”; Records, p. 5.

[5] Records, pp. 1-2.

[6] Records, pp. 129-130.

[7] Records, pp. 197-198.

[8] Records, pp. 374-375.

[9] Id., p. 379.

[10] Rollo, pp. 4 to 6.

[11] Twin Towers Condominium Corp. vs. Court of Appeals, 398 SCRA 203, 222 (2003).

[12] Tugade, Sr. vs. Court of Appeals, 407 SCRA 497, 507 (2003).

[13] Amended by R.A. No. 8799, entitled “The Securities Regulation Code” enacted on July 19, 2000.

[14] 69 Am Jur 2d, p. 112.

[15] Id., p. 108.

[16] Infra, pp. 13-14 of herein decision.

[17] People vs. Villar, 322 SCRA 393, 403 (2001).

[18] Records, p. 10.

[19] Exhibit “G-1,” p. 343, Records.

[20] Exhibit “F,” p. 340, Records.

[21] Exhibit “C-2-A,” p. 5, Records.

[22] TSN, July 12, 1994, pp. 4 to 9.

[23] 359 SCRA 648 (2001).

[24] *Id.*, p. 655.

[25] *Id.*, p. 652.

[26] 355 SCRA 578, 587 (2001).

[27] *Records*, p. 7.

[28] *Records*, pp. 337-338.

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