

PABLITO MURAO AND NELIO HUERTAZUELA, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 141485. June 30, 2005*

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-141485/>**CHICO-NAZARIO, J.:**

In this Petition for Review on Certiorari under Rule 45 of the Rules of Court, petitioners pray for the reversal of the Decision of the Court of Appeals in CA-G.R. CR No. 21134, dated 31 May 1999,[1] affirming with modification the Judgment of the Regional Trial Court (RTC) of Puerto Princesa City, Palawan, in Criminal Case No. 11943, dated 05 May 1997,[2] finding petitioners guilty beyond reasonable doubt of the crime of estafa under Article 315(1)(b) of the Revised Penal Code.

Petitioner Pablito Murao is the sole owner of Lorna Murao Industrial Commercial Enterprises (LMICE), a company engaged in the business of selling and refilling fire extinguishers, with branches in Palawan, Naga, Legaspi, Mindoro, Aurora, Quezon, Isabela, and Laguna. Petitioner Nelio Huertazuela is the Branch Manager of LMICE in Puerto Princesa City, Palawan.[3]

On 01 September 1994, petitioner Murao and private complainant Chito Federico entered into a Dealership Agreement for the marketing, distribution, and refilling of fire extinguishers within Puerto Princesa City.[4] According to the Dealership Agreement, private complainant Federico, as a dealer for LMICE, could obtain fire extinguishers from LMICE at a 50% discount, provided that he sets up his own sales force, acquires and issues his own sales invoice, and posts a bond with LMICE as security for the credit line extended to him by LMICE. Failing to comply with the conditions under the said Dealership Agreement, private complainant Federico, nonetheless, was still allowed to act as a part-time sales agent for LMICE entitled to a percentage commission from the sales of fire extinguishers.[5]

The amount of private complainant Federico's commission as sales agent for LMICE was under contention. Private complainant Federico claimed that he was entitled to a commission equivalent to 50% of the gross sales he had made on behalf of LMICE,[6] while petitioners maintained that he should receive only 30% of the net sales. Petitioners even contended that as company policy, part-time sales agents were entitled to a commission of only 25% of the net sales, but since private complainant Federico helped in establishing the LMICE branch office in Puerto Princesa City, he was to receive the same commission as the full-time sales agents of LMICE, which was 30% of the net sales.[7]

Private complainant Federico's first successful transaction as sales agent of LMICE involved two fire extinguishers sold to Landbank of the Philippines (Landbank), Puerto Princesa City Branch, for the price of P7,200.00. Landbank issued a check, dated 08 November 1993, pay to the order of "L.M. Industrial Comm'l. Enterprises c/o Chito Federico," for the amount of P5,936.40,[8] after deducting from the original sales price the 15% discount granted by private complainant Federico to Landbank and the 3% withholding tax. Private complainant Federico encashed the check at Landbank and remitted only P2,436.40 to LMICE, while he kept

P3,500.00 for himself as his commission from the sale.[9]

Petitioners alleged that it was contrary to the standard operating procedure of LMICE that private complainant Federico was named payee of the Landbank check on behalf of LMICE, and that private complainant Federico was not authorized to encash the said check. Despite the supposed irregularities committed by private complainant Federico in the collection of the payment from Landbank and in the premature withholding of his commission from the said payment, petitioners forgave private complainant Federico because the latter promised to make-up for his misdeeds in the next transaction.[10]

Private complainant Federico, on behalf of LMICE, subsequently facilitated a transaction with the City Government of Puerto Princesa for the refill of 202 fire extinguishers. Because of the considerable cost, the City Government of Puerto Princesa requested that the transaction be split into two purchase orders, and the City Government of Puerto Princesa shall pay for each of the purchase orders separately.[11] Pursuant to the two purchase orders, LMICE refilled and delivered all 202 fire extinguishers to the City Government of Puerto Princesa: 154 units on 06 January 1994, 43 more units on 12 January 1994, and the last five units on 13 January 1994.[12]

The subject of this Petition is limited to the first purchase order, Purchase Order No. GSO-856, dated 03 January 1994, for the refill of 99 fire extinguishers, with a total cost of P309,000.00.[13] On 16 June 1994, the City Government of Puerto Princesa issued Check No. 611437 to LMICE to pay for Purchase Order No. GSO-856, in the amount of P300,572.73, net of the 3% withholding tax.[14] Within the same day, petitioner Huertazuela claimed Check No. 611437 from the City Government of Puerto Princesa and deposited it under the current account of LMICE with PCIBank.[15]

On 17 June 1994, private complainant Federico went to see petitioner Huertazuela at the LMICE branch office in Puerto Princesa City to demand for the amount of P154,500.00 as his commission from the payment of Purchase Order No. GSO-856 by the City Government of Puerto Princesa. Petitioner Huertazuela, however, refused to pay private complainant Federico his commission since the two of them could not agree on the proper amount thereof.[16]

Also on 17 June 1994, private complainant Federico went to the police station to file an Affidavit-Complaint for estafa against petitioners.[17] Petitioners submitted their Joint Counter-Affidavit on 12 July 1994.[18] The City Prosecution Office of Puerto Princesa City issued a Resolution, dated 15 August 1994, finding that a prima facie case for estafa existed against the petitioners and recommending the filing of an information for estafa against both of them.[19]

The Information, docketed as Criminal Case No. 11943 and raffled to the RTC of Puerto Princesa City, Palawan, Branch 52, reads as follows —

I N F O R M A T I O N

The undersigned accuses PABLITO MURAO and NELIO C. HUERTAUELA of the crime of ESTAFA, committed as follows:

That on or about the 16th day of June, 1994, at Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping one another, after having received the amount of P309,000.00 as payment of the 99 tanks of refilled fire extinguisher (sic) from the City Government of Puerto Princesa, through deceit, fraud and misrepresentation, did then and there willfully, unlawfully and feloniously defraud one Chito Federico in the following manner, to wit: said accused, well knowing that Chito Federico agent of LM Industrial Commercial Enterprises is entitled to 50% commission of the gross sales as per their Dealership Contract or the amount of P154,500.00 as his

commission for his sale of 99 refilled fire extinguishers worth P309,000.00, and accused once in possession of said amount of P309,000.00 misappropriate, misapply and convert the amount of P154,500.00 for their own personal use and benefit and despite repeated demands made upon them by complainant to deliver the amount of P154,500.00, accused failed and refused and still fails and refuses to do so, to the damage and prejudice of said Chito Federico in the amount of P154,500.00, Philippine Currency.[20]

After holding trial, the RTC rendered its Judgment on 05 May 1997 finding petitioners guilty beyond reasonable doubt as co-principals of the crime of estafa defined and penalized in Article 315(1)(b) of the Revised Penal Code. Estafa, under the said provision, is committed by —

ART. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow . . .

1. With unfaithfulness or abuse of confidence, namely:

(a) . . .

(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; . . .

In the same Judgment, the RTC expounded on its finding of guilt, thus —

For the afore-quoted provision of the Revised Penal Code to be committed, the following requisites must concur:

- That money, goods or other personal property be 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;
- That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
- That such misappropriation or conversion or denial is to the prejudice of another; and
- That there is demand made by the offended party to the offender. (Reyes, Revised Penal Code of the Philippines, p. 716; Manuel Manahan, Jr. vs. Court of Appeals, Et Al., G.R. No. 111656, March 20, 1996)

All the foregoing elements are present in this case. The aborted testimony of Mrs. Norma Dacuan, Cashier III of the Treasurer's Office of the City of Puerto Princesa established the fact that indeed, on June 16, 1994, co-accused Nelio Huertazuela took delivery of Check No. 611437 with face value of P300,572.73, representing payment for the refill of 99 cylinders of fire extinguishers. Although the relationship between complaining witness Chito Federico and LMIC is not fiduciary in nature, still the clause "any other obligation involving the duty to make delivery of or to return" personal property is broad enough to include a "civil obligation" (Manahan vs. C.A., Et Al., Mar. 20, 1996).

The second element cannot be gainsaid. Both Pablito Murao and Nelio Huertazuela categorically admitted that they did not give to Chito Federico his commission. Instead, they deposited the full amount of the consideration, with the PCIBank in the Current Account of LMIC.

xxx xxx xxx

The refusal by the accused to give Chito Federico what ever percentage his commission necessarily caused him prejudice which constitute the third element of estafa. Demand for payment, although not an essential element of estafa was nonetheless made by the complainant but was rebuffed by the accused. The fraudulent intent by

the accused is indubitably indicated by their refusal to pay Chito Federico any percentage of the gross sales as commission. If it were true that what the dealer/sales Agent is entitled to by way of commission is only 30% of the gross sales, then by all means the accused should have paid Chito Federico 30%. If he refused, they could have it deposited in his name. In that way they may not be said to have misappropriated for themselves what pertained to their Agent by way of commission.

xxx xxx xxx

WHEREFORE, premises considered judgment is hereby rendered finding the accused PABLITO MURAO and NELIO HUERTAZUELA guilty beyond reasonable doubt as co-principals, of the crime of estafa defined and penalized in Article 315 par. 1(b) of the Revised Penal Code, and applying the provisions of the Indeterminate Sentence Law, both accused are hereby sentenced to an indeterminate penalty ranging from a minimum of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional in its medium period, to a maximum of TWENTY (20) YEARS of reclusion temporal in its maximum period; to pay Chito Federico, jointly and severally:

a.

Sales Commission equivalent to 50% of P309,000.00 or with legal interest thereon from June 17, 1994 until fully paid;

P154,500.00

b. Attorney's fees

P 30,000.00.[21]

Resolving the appeal filed by the petitioners before it, the Court of Appeals, in its Decision, dated 31 May 1999, affirmed the aforementioned RTC Judgment, finding petitioners guilty of estafa, but modifying the sentence imposed on the petitioners. The dispositive portion of the Decision of the Court of Appeals reads —

WHEREFORE, the appealed decision is hereby AFFIRMED with the MODIFICATION that appellants PABLITO MURAO and NELIO HUERTAZUELA are hereby each sentenced to an indeterminate penalty of eight (8) years and One (1) day of prision mayor, as minimum, to Twenty (20) years of reclusion temporal, as maximum. The award for attorney's fee of P30,000.00 is deleted because the prosecution of criminal action is the task of the State prosecutors. All other aspects of the appealed decision are maintained.[22]

When the Court of Appeals, in its Resolution, dated 19 January 2000,[23] denied their Motion for Reconsideration, petitioners filed the present Petition for Review[24] before this Court, raising the following errors allegedly committed by the Court of Appeals in its Decision, dated 31 May 1999 —

I

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PETITIONERS ARE LIABLE FOR ESTAFA UNDER ARTICLE 315 1(B) OF THE REVISED PENAL CODE UNDER THE FOREGOING SET OF FACTS, WHEN IT IS CLEAR FROM THE SAID UNDISPUTED FACTS THAT THE LIABILITY IS CIVIL IN NATURE.

II

WITH DUE RESPECT, THE HONORABLE COURT ERRED WHEN IT UPHOLD (sic) PRIVATE COMPLAINANT'S CLAIM THAT HE IS ENTITLED TO A FIFTY (50%) PERCENT COMMISSION

WITHOUT EVIDENCE TO SUPPORT SUCH CLAIM.

This Court finds the instant Petition impressed with merit. Absent herein are two essential elements of the crime of estafa by misappropriation or conversion under Article 315(1)(b) of the Revised Penal Code, namely: (1) That money, goods or other personal property be 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; and (2) That there be a misappropriation or conversion of such money or property by the offender.

The findings of the RTC and the Court of Appeals that petitioners committed estafa rest on the erroneous belief that private complainant Federico, due to his right to commission, already owned 50% of the amount paid by the City Government of Puerto Princesa to LMICE by virtue of Check No. 611437, so that the collection and deposit of the said check by petitioners under the account of LMICE constituted misappropriation or conversion of private complainant Federico's commission.

However, his right to a commission does not make private complainant Federico a joint owner of the money paid to LMICE by the City Government of Puerto Princesa, but merely establishes the relation of agent and principal.[25] It is unequivocal that an agency existed between LMICE and private complainant Federico. Article 1868 of the Civil Code defines agency as a special contract whereby "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." Although private complainant Federico never had the opportunity to operate as a dealer for LMICE under the terms of the Dealership Agreement, he was allowed to act as a sales agent for LMICE. He can negotiate for and on behalf of LMICE for the refill and delivery of fire extinguishers, which he, in fact, did on two occasions — with Landbank and with the City Government of Puerto Princesa. Unlike the Dealership Agreement, however, the agreement that private complainant Federico may act as sales agent of LMICE was based on an oral agreement.[26]

As a sales agent, private complainant Federico entered into negotiations with prospective clients for and on behalf of his principal, LMICE. When negotiations for the sale or refill of fire extinguishers were successful, private complainant Federico prepared the necessary documentation. Purchase orders, invoices, and receipts were all in the name of LMICE. It was LMICE who had the primary duty of picking up the empty fire extinguishers, filling them up, and delivering the refilled tanks to the clients, even though private complainant Federico personally helped in hauling and carrying the fire extinguishers during pick-up from and delivery to clients.

All profits made and any advantage gained by an agent in the execution of his agency should belong to the principal.[27] In the instant case, whether the transactions negotiated by the sales agent were for the sale of brand new fire extinguishers or for the refill of empty tanks, evidently, the business belonged to LMICE. Consequently, payments made by clients for the fire extinguishers pertained to LMICE. When petitioner Huertazuela, as the Branch Manager of LMICE in Puerto Princesa City, with the permission of petitioner Murao, the sole proprietor of LMICE, personally picked up Check No. 611437 from the City Government of Puerto Princesa, and deposited the same under the Current Account of LMICE with PCIBank, he was merely collecting what rightfully belonged to LMICE. Indeed, Check No. 611437 named LMICE as the lone payee. Private complainant Federico may claim commission, allegedly equivalent to 50% of the payment received by LMICE from the City Government of Puerto Princesa, based on his right to just compensation under his agency contract with LMICE,[28] but not as the automatic owner of the 50% portion of the said payment.

Since LMICE is the lawful owner of the entire proceeds of the check payment from the City Government of Puerto Princesa, then the petitioners who collected the payment on behalf of LMICE did not receive the same or any part thereof 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 to private complainant Federico, thus, the RTC correctly found that no fiduciary relationship existed between petitioners and private complainant Federico. A fiduciary relationship between the complainant and the accused is an essential element of estafa by misappropriation or conversion, without which the accused could not have committed estafa.[29]

The RTC used the case of *Manahan, Jr. v. Court of Appeals*[30] to support its position that even in the absence of a fiduciary relationship, the petitioners still had the civil obligation to return and deliver to private complainant Federico his commission. The RTC failed to discern the substantial differences in the factual background of the *Manahan* case from the present Petition. The *Manahan* case involved the lease of a dump truck. Although a contract of lease may not be fiduciary in character, the lessee clearly had the civil obligation to return the truck to the lessor at the end of the lease period; and failure of the lessee to return the truck as provided for in the contract may constitute estafa. The phrase "or any other obligation involving the duty to make delivery of, or to return the same" refers to contracts of bailment, such as, contract of lease of personal property, contract of deposit, and commodatum, wherein juridical possession of the thing was transferred to the lessee, depositary or borrower, and wherein the latter is obligated to return the same thing.[31]

In contrast, the current Petition concerns an agency contract whereby the principal already received payment from the client but refused to give the sales agent, who negotiated the sale, his commission. As has been established by this Court in the foregoing paragraphs, LMICE had a right to the full amount paid by the City Government of Puerto Princesa. Since LMICE, through petitioners, directly collected the payment, then it was already in possession of the amount, and no transfer of juridical possession thereof was involved herein. Given that private complainant Federico could not claim ownership over the said payment or any portion thereof, LMICE had nothing at all to deliver and return to him. The obligation of LMICE to pay private complainant Federico his commission does not arise from any duty to deliver or return the money to its supposed owner, but rather from the duty of a principal to give just compensation to its agent for the services rendered by the latter.

Furthermore, the Court of Appeals, in its Decision, dated 31 May 1999, defined the words "convert" and "misappropriate" in the following manner —

The High Court in *Saddul v. Court of Appeals* [192 SCRA 277] enunciated that the words "convert" and "misappropriate" in the crime of estafa punished under Art. 315, par. 1(b) connote an act of using or disposing of another's property as if it were one's own, or if devoting it to a purpose or use different from that agreed upon. To misappropriate to one's use includes, not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.[32]

Based on the very same definition, this Court finds that petitioners did not convert nor misappropriate the proceeds from Check No. 611437 because the same belonged to LMICE, and was not "another's property." Petitioners collected the said check from the City Government of Puerto Princesa and deposited the same under the Current Account of LMICE with PCIBank. Since the money was already with its owner, LMICE, it could not be said that the same had been converted or misappropriated for one could not very well fraudulently appropriate to himself money that is his own.[33]

Although petitioners' refusal to pay private complainant Federico his commission caused prejudice or damage to the latter, said act does not constitute a crime, particularly estafa by conversion or misappropriation punishable under Article 315(1)(b) of the Revised Penal Code. Without the essential elements for the commission thereof, petitioners cannot be deemed to have committed the crime.

While petitioners may have no criminal liability, petitioners themselves admit their civil liability to the private complainant Federico for the latter's commission from the sale, whether it be 30% of the net sales or 50% of the

gross sales. However, this Court is precluded from making a determination and an award of the civil liability for the reason that the said civil liability of petitioners to pay private complainant Federico his commission arises from a violation of the agency contract and not from a criminal act.[34] It would be improper and unwarranted for this Court to impose in a criminal action the civil liability arising from a civil contract, which should have been the subject of a separate and independent civil action.[35]

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR No. 21134, dated 31 May 1999, affirming with modification the Judgment of the RTC of Puerto Princesa City, Palawan, in Criminal Case No. 11943, dated 05 May 1997, finding petitioners guilty beyond reasonable doubt of estafa by conversion or misappropriation under Article 315(1)(b) of the Revised Penal Code, and awarding the amount of P154,500.00 as sales commission to private complainant Federico, is hereby REVERSED and SET ASIDE. A new Judgment is hereby entered ACQUITTING petitioners based on the foregoing findings of this Court that their actions did not constitute the crime of estafa by conversion or misappropriation under Article 315(1)(b) of the Revised Penal Code. The cash bonds posted by the petitioners for their provisional liberty are hereby ordered RELEASED and the amounts thereof RETURNED to the petitioners, subject to the usual accounting and auditing procedures.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Associate Justice Ruben T. Reyes, with Associate Justices Jainal D. Rasul and Eloy R. Bello, Jr., concurring; Rollo, pp. 31-48.

[2] Penned by Judge Filomeno A. Vergara, Ibid., pp. 53-65.

[3] Ibid., p. 4.

[4] Records, p. 3.

[5] TSN, 08 June 1995, pp. 15-17.

[6] Records, p. 4.

[7] TSN, 14 September 1995, pp. 8-9; TSN, 19 October 1995, p. 9.

[8] Records, p. 90.

[9] TSN, 14 September 1995, pp. 9-13; TSN, 19 October 1995, pp. 5-8.

[10] TSN, 14 September 1995, pp. 13-15; TSN, 19 October 1995, pp. 8, 10-11.

[11] TSN, 07 March 1996, pp. 31-32.

[12] TSN, 19 October 1995, pp. 13-14.

[13] The Information filed against petitioners only involved the First Purchase Order. During the trial before the RTC, it was established that the second Purchase Order was likewise paid. Respondent filed a Motion to Amend the Pleadings to include therein the details of the second Purchase Order (Records, pp. 127-130), but the RTC, in its Order, dated 23 October 1996 (Records, pp. 150-153), denied said Motion since it would already constitute a substantial amendment of the Information and the intended amended Information would already charge more than one offense.

[14] Records, pp. 80-81, 91.

[15] TSN, 14 September 1995, p. 18.

[16] Supra, note 6.

[17] Records, pp. 3-5.

[18] Records, pp. 10-12.

[19] Records, pp. 6-9.

[20] Rollo, pp. 51-52.

[21] Supra, note 2, pp. 60-65.

[22] Supra, note 1, p. 47.

[23] Penned by Associate Justice Ruben T. Reyes, with Associate Justices Ramon A. Barcelona and Eloy R. Bello, Jr. concurring; Rollo, pp. 49-50.

[24] Rollo, pp. 3-30.

[25] United States v. Reyes, 36 Phil 791 (1917).

[26] Art. 1869 of the Civil Code recognizes an agency contracted orally.

[27] Pederson v. Johnson, 169 Wis. 320, 172 N.W. 723 (1919).

[28] Article 1875 of the Civil Code provides that "Agency is presumed to be for a compensation, unless there is proof to the contrary."

[29] Yong Chan Kim v. People, G.R. No. 84719, 25 January 1991, 193 SCRA 344, 353-354; Galvez v. Court of Appeals, G.R. No. L-22760, 29 November 1971, 42 SCRA 278, 284.

[30] G.R. No. 111656, 20 March 1996, 255 SCRA 202.

[31] 2 Reyes, The Revised Penal Code 662 (1993 rev. ed.)

[32] Supra, note 21, p. 41.

[33] Yam v. Malik, G.R. No. L-50550-52, 31 October 1979, 94 SCRA 30, 35; United States v. Figueroa, 22 Phil 269, 271 (1912).

[34] People v. Miranda, G.R. No. L-17389, 31 August 1962, 5 SCRA 1067; People v. Pantig, G.R. No. L-8325, 25 October 1955, 51 O.G. 5627.

[35] According to Article 31 of the Civil Code, "When a civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter."

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.