

YUSUKE FUKUZUME, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 143647. November 11, 2005*

Ponente: AUSTRIA-MARTINEZ, J.

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Before us is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) dated March 13, 2000 in CA-G.R. CR No. 21888, which affirmed with modification the judgment of the Regional Trial Court (RTC) of Makati, Branch 146 dated October 21, 1996 in Criminal Case No. 95-083, finding herein accused-appellant guilty beyond reasonable doubt of the crime of estafa, sentencing him to suffer the penalty of imprisonment for twenty (20) years and to pay private complainant the sum of P424,000.00; and the CA Resolution dated June 16, 2000 denying petitioner's motion for reconsideration.[2]

The facts of the case are as follows:

Private complainant Javier Ng Yu (Yu) is a businessman engaged in buying and selling aluminum scrap wires.[3] Sometime in July 1991, Yu, accompanied by a friend, Mr. Jovate,[4] who was the vice-president of Manila Electric Company, went to the house of herein accused-appellant Yusuke Fukuzume (Fukuzume) in Parañaque.[5] Jovate introduced Fukuzume to Yu telling the latter that Fukuzume is from Furukawa Electric Corporation (Furukawa) and that he has at his disposal aluminum scrap wires.[6] Fukuzume confirmed this information and told Yu that the scrap wires belong to Furukawa but they are under the care of National Power Corporation (NAPOCOR).[7] Believing Fukuzume's representation to be true, Yu agreed to buy the aluminum scrap wires from Fukuzume.[8] The initial agreed purchase price was P200,000.00.[9] Yu gave Fukuzume sums of money on various dates which eventually totaled P290,000.00, broken down as follows: P50,000.00, given on July 12, 1991; P20,000.00, given on July 22, 1991; P50,000.00, given on October 14, 1991; and, P170,000.00, given on October 18, 1991.[10] Fukuzume admitted that he received the same from Yu and that he still owes him the amount of P290,000.00.[11] To support his claim that the aluminum scrap wires being sold are indeed owned by Furukawa, that these scrap wires are with NAPOCOR, and that Furukawa's authorized representatives are allowed to withdraw and dispose of said scrap wires, Fukuzume gave Yu two certifications dated December 17, 1991 and December 27, 1991 purportedly issued by NAPOCOR and signed by its legal counsel by the name of R. Y. Rodriguez.[12] At the time that Fukuzume gave Yu the second certification, he asked money from the latter telling him that it shall be given as gifts to some of the people in NAPOCOR. Yu gave Fukuzume money and, in exchange, the latter issued two checks, one for P100,000.00 and the other for P34,000.00.[13] However, when Yu deposited the checks, they were dishonored on the ground that the account from which the checks should have been drawn is already closed.[14] Subsequently, Yu called up Fukuzume to inform him that the checks bounced.[15] Fukuzume instead told him not to worry because in one or two weeks he will give Yu the necessary authorization to enable him to retrieve the aluminum scrap wires from NAPOCOR.[16] On January 17, 1992, Fukuzume gave Yu a letter of even date, signed by the Director of the Overseas Operation and Power Transmission Project Divisions of Furukawa, authorizing Fukuzume to dispose of excess aluminum conductor

materials which are stored in their depots in Tanay and Bulacan.[17] Thereafter, Fukuzume agreed to accompany Yu when the latter is going to take the aluminum scrap wires from the NAPOCOR compound.[18] When Yu arrived at the NAPOCOR compound on the scheduled date, Fukuzume was nowhere to be found.[19] Hence, Yu proceeded to show the documents of authorization to NAPOCOR personnel. However, the people from NAPOCOR did not honor the authorization letter issued by Furukawa dated January 17, 1992.[20] NAPOCOR also refused to acknowledge the certifications dated December 17, 1991 and December 27, 1991 claiming that these are spurious as the person who signed these documents is no longer connected with NAPOCOR as of December 1991.[21] Unable to get the aluminum scrap wires from the NAPOCOR compound, Yu talked to Fukuzume and asked from the latter the refund of the money he paid him.[22] Fukuzume promised to return Yu's money.[23] When Fukuzume failed to comply with his undertaking, Yu sent him a demand letter asking for the refund of P424,000.00 plus loss of profits.[24] Subsequently, Yu filed a complaint with the National Bureau of Investigation (NBI).[25]

In an Information, dated November 4, 1994, filed with the RTC of Makati, Fukuzume was charged with estafa committed as follows:

That sometime in the month of July, 1991 up to September 17, 1992, in the Municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to prejudice and defraud Javier Yu y Ng, did then and there willfully, unlawfully and feloniously make false representation and fraudulent manifestation that he is the duly authorized representative of Furukawa Electric Co. Ltd., in the Philippines, and was authorized to sell excess aluminum conductor materials not being used by Napocor and Furukawa, the accused knowing full well that those representations were false and were only made to induce and convince said Javier Yu y Ng to buy said materials, who believing said representations to be true, gave and delivered the total amount of P424,000.00 but the accused once in possession of the money, far from complying with his obligation to deliver said aluminum conductor materials to herein complainant, with intent of gain, unfaithfulness and abuse of confidence, applied and used for his own personal use and benefit the said amount and despite repeated demands failed and refused and still fails and refuses to account for, to the damage and prejudice of Javier Yu y Ng in the aforementioned amount of P424,000.00.

CONTRARY TO LAW.[26]

Upon being arraigned on February 28, 1995, Fukuzume pleaded not guilty.[27] Trial ensued.

In its Decision dated October 21, 1996, the trial court found Fukuzume guilty as charged. The dispositive portion of the RTC decision reads:

WHEREFORE, all the foregoing premises considered, the Court hereby finds the accused GUILTY beyond reasonable doubt of the crime of estafa and hereby orders him to suffer the maximum penalty of imprisonment for twenty (20) years. With respect to his civil liability, accused is hereby ordered to pay complainant the amount of P424,000.00 plus legal interest from the date of demand until fully paid.

SO ORDERED.[28]

Aggrieved by the trial court's decision, Fukuzume filed an appeal with the CA.

On March 13, 2000, the CA promulgated its decision affirming the findings and conclusions of the trial court but modifying the penalty imposed, thus:

... although the trial court correctly imposed the maximum penalty of imprisonment for twenty (20) years, it failed to determine the minimum penalty for the offense committed (prision correccional in its maximum period to prision mayor in its minimum period but imposed in the maximum period), hence, the penalty is

modified to six (6) years and one (1) day of prision mayor in its minimum period, as the minimum, to not more than twenty (20) years of reclusion temporal in its maximum period, as maximum.[29]

Accordingly, the dispositive portion of the CA Decision reads:

WHEREFORE, the judgment appealed from, except for the aforementioned modification in the prison term of appellant, is hereby AFFIRMED.

SO ORDERED.[30]

Hence, herein petition filed by Fukuzume based on the following grounds:

THE DECISION OF THE HONORABLE COURT OF APPEALS THAT THE TRIAL COURT OF MAKATI HAS JURISDICTION IS NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

THE HONORABLE COURT OF APPEALS HAD DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT WHEN IT CONCLUDED THAT THE ALLEGED FALSE PRETENSE WAS EXECUTED PRIOR TO OR SIMULTANEOUS WITH THE ALLEGED COMMISSION OF THE FRAUD.

THE HONORABLE COURT OF APPEALS HAD DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT BY FAILING TO CONSIDER THAT THE ORIGINAL TRANSACTION BETWEEN THE PETITIONER AND PRIVATE COMPLAINANT HAD BEEN NOVATED AND CONVERTED INTO A MERE DEBTOR-CREDITOR RELATIONSHIP, THEREBY EXTINGUISHING THE INCIPIENT CRIMINAL LIABILITY THEREOF, IF ANY.[31]

We agree with Fukuzume's contention that the CA erred in ruling that the RTC of Makati has jurisdiction over the offense charged. The CA ruled:

The trial court of Makati has jurisdiction. Subject to existing laws, in all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or territory wherein the offense was committed or any one of the essential ingredients thereof took place (Rule 110, Sec. 15, Rules of Court). Although the false representation and verbal contract of sale of the aluminum scrap wires took place at appellant's residence in Parañaque, appellant and private complainant nevertheless admitted that the initial payment of P50,000.00 for said transaction was made at the Hotel Intercontinental in Makati City (Record, pp. 15, 68). Hence, an element of the crime – that the offended party was induced to part with his money because of the false pretense – occurred within the jurisdiction of the lower court giving it jurisdiction over the instant case.

The CA ruled on the basis of the sworn statement of Yu filed with the NBI on April 19, 1994[32] and the affidavit of Fukuzume which was subscribed on July 20, 1994.[33]

With respect to the sworn statement of Yu, which was presented in evidence by the prosecution, it is clear that he alleged therein that on July 12, 1991, he gave Fukuzume the amount of P50,000.00 at the Intercontinental Hotel in Makati. However, we agree with Fukuzume's contention that Yu testified during his direct examination that on July 12, 1991 he gave the amount of P50,000.00 to Fukuzume in the latter's house. It is not disputed that Fukuzume's house is located in Parañaque. Yu testified thus:

Q

Mr. Witness, you testified the last time that you know the accused in this case, Mr. Yusuke Fukuzume?

A

Yes, sir.

Q

Now, would you enlighten us under what circumstance you came to know the accused?

A

I know the accused Mr. Yusuke Fukuzume through Mr. Hubati.

Q

And why or how did Mr. Hubati come to know the accused, if you know?

A

Mr. Hubati came to my place dealing with the aluminum scrap wires.

ATTY. N. SERING

Your Honor, may I move to strike out the answer. It is not responsive to the question.

COURT

Please wait until the answer is completed.

Q

Now, you met this Mr. Hubati. How?

A

He came to me offering me aluminum scrap wires.

FISCAL E. HIRANG

Q

When was that, Mr. Witness?

A

That was in 1991, sir.

COURT

When?

FISCAL E. HIRANG

Your Honor please, may the witness be allowed to consult his memorandum.

A

July 12, 1991, sir.

Q

And what transpired during that time you met Mr. Hubati?

A

We went to the house of Mr. Fukuzume and gave (sic) him some amount of money.

Q

Now, would you tell the Court the reason why you parted to the accused in this case the amount of money?

A

In payment of the aluminum scrap wires and we have documents to that effect.

Q

Now, please tell us what really was that transaction that took place at the house of Mr. Fukuzume on that particular date?

A

Our agreement with Mr. Hubati and with Mr. Fukuzume is that, I am going to give money in payment of the aluminum scrap wires coming from Furukawa Electric Company.

Q

How much is the amount of money which you agreed to give to the accused?

A

Our first agreement was for P200,000.

Q

Where is that aluminum scrap located?

A

The electric aluminum scrap wires was or were under the care of the National Power Corporation but according to Mr. Fukuzume it belongs to Furukawa Electric Company.

Q

In short, Mr. Witness, on July 12, 1991, you only gave to the accused the amount of P50,000?

ATTY. N. SERING

Objection, Your Honor.

FISCAL E. HIRANG

The complainant testified he gave P50,000. I am asking how much the complainant gave to the accused on that particular date.

A

On July 12, I gave him P50,000 on that date.

Q

Not P200,000?

A

No, sir.[34]

Settled is the rule that whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken ex parte are inferior to testimony given in court, the former being almost invariably incomplete and oftentimes inaccurate.[35]

More importantly, we find nothing in the direct or cross-examination of Yu to establish that he gave any money to Fukuzume or transacted business with him with respect to the subject aluminum scrap wires inside or within the premises of the Intercontinental Hotel in Makati, or anywhere in

Makati for that matter. Venue in criminal cases is an essential element of jurisdiction.[36] Citing *Uy vs. Court of Appeals*,[37] we held in the fairly recent case of *Macasaet vs. People*[38] that:

It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases the offense should have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case. However, if the evidence adduced during the trial show that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction.[39] (Emphasis supplied)

Where life or liberty is affected by its proceedings, the court must keep strictly within the limits of the law authorizing it to take jurisdiction and to try the case and to render judgment.[40]

In the present case, the criminal information against Fukuzume was filed with and tried by the RTC of Makati. He was charged with estafa as defined under Article 315, paragraph 2(a) of the Revised Penal Code, the elements of which are as follows:

- That there must be a false pretense, fraudulent act or fraudulent means.
- That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud.
- 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.
- That as a result thereof, the offended party suffered damage.[41]

The crime was alleged in the Information as having been committed in Makati. However, aside from the sworn

statement executed by Yu on April 19, 1994, the prosecution presented no other evidence, testimonial or documentary, to corroborate Yu's sworn statement or to prove that any of the above-enumerated elements of the offense charged was committed in Makati. Indeed, the prosecution failed to establish that any of the subsequent payments made by Yu in the amounts of P50,000.00 on July 12, 1991, P20,000.00 on July 22, 1991, P50,000.00 on October 14, 1991 and P170,000.00 on October 18, 1991 was given in Makati. Neither was there proof to show that the certifications purporting to prove that NAPOCOR has in its custody the subject aluminum scrap wires and that Fukuzume is authorized by Furukawa to sell the same were given by Fukuzume to Yu in Makati. On the contrary, the testimony of Yu established that all the elements of the offense charged had been committed in Parañaque, to wit: that on July 12, 1991, Yu went to the house of Fukuzume in Parañaque; that with the intention of selling the subject aluminum scrap wires, the latter pretended that he is a representative of Furukawa who is authorized to sell the said scrap wires; that based on the false pretense of Fukuzume, Yu agreed to buy the subject aluminum scrap wires; that Yu paid Fukuzume the initial amount of P50,000.00; that as a result, Yu suffered damage. Stated differently, the crime of estafa, as defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code, was consummated when Yu and Fukuzume met at the latter's house in Parañaque and, by falsely pretending to sell aluminum scrap wires, Fukuzume was able to induce Yu to part with his money.

The Office of the Solicitor General argues that Fukuzume himself alleged in his affidavit dated July 20, 1994 that in an unspecified date, he received P50,000.00 from Yu at the Intercontinental Hotel in Makati. However, we cannot rely on this affidavit for the reason that it forms part of the records of the preliminary investigation and, therefore, may not be considered evidence. It is settled that the record of the preliminary investigation, whether conducted by a judge or a prosecutor, shall not form part of the record of the case in the RTC.[42] In *People vs. Crispin*,[43] this Court held that the fact that the affidavit formed part of the record of the preliminary investigation does not justify its being treated as evidence because the record of the preliminary investigation does not form part of the record of the case in the RTC. Such record must be introduced as evidence during trial, and the trial court is not compelled to take judicial notice of the same.[44] Since neither prosecution nor defense presented in evidence Fukuzume's affidavit, the same may not be considered part of the records, much less evidence.

From the foregoing, it is evident that the prosecution failed to prove that Fukuzume committed the crime of estafa in Makati or that any of the essential ingredients of the offense took place in the said city. Hence, the judgment of the trial court convicting Fukuzume of the crime of estafa should be set aside for want of jurisdiction, without prejudice, however, to the filing of appropriate charges with the court of competent jurisdiction.

It is noted that it was only in his petition with the CA that Fukuzume raised the issue of the trial court's jurisdiction over the offense charged. Nonetheless, the rule is settled that an objection based on the ground that the court lacks jurisdiction over the offense charged may be raised or considered *motu proprio* by the court at any stage of the proceedings or on appeal.[45] Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise, since such jurisdiction is conferred by the sovereign authority which organized the court, and is given only by law in the manner and form prescribed by law.[46] While an exception to this rule was recognized by this Court beginning with the landmark case of *Tijam vs. Sibonghanoy*,[47] wherein the defense of lack of jurisdiction by the court which rendered the questioned ruling was considered to be barred by laches, we find that the factual circumstances involved in said case, a civil case, which justified the departure from the general rule are not present in the instant criminal case.

Thus, having found that the RTC of Makati did not have jurisdiction to try the case against Fukuzume, we find it unnecessary to consider the other issues raised in the present petition.

WHEREFORE, the instant petition is GRANTED. The assailed decision and resolution of the Court of Appeals in

CA-G.R. CR No. 21888 are SET ASIDE on ground of lack of jurisdiction on the part of the Regional Trial Court of Makati, Branch 146. Criminal Case No. 95-083 is DISMISSED without prejudice.

SO ORDERED.

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

[*] Also spelled as Fukuzumi in some parts of the Original Records and Rollos of the Court of Appeals and of this Court.

[1] Penned by Associate Justice Bernardo Ll. Salas and concurred in by Presiding Justice Salome A. Montoya (retired) and Justice Presbitero J. Velasco, Jr. (now Court Administrator).

[2] CA Rollo, p. 137.

[3] Testimony of Javier Yu, TSN, September 19, 1995, p. 17.

[4] Also spelled as "Hubati" in TSN, September 18, 1995.

[5] Testimony of Javier Yu, TSN, June 21, 1995, pp. 3-4; Exhibit "J," Records, p. 68.

[6] Testimony of Javier Yu, TSN, September 18, 1995, p. 9; TSN, September 19, 1995, p. 3.

[7] TSN, September 18, 1995, p. 4.

[8] TSN, September 19, 1995, pp. 3-4.

[9] TSN, September 18, 1995, p. 4.

[10] Id., p. 7.

[11] Testimony of Yusuke Fukuzume, TSN, March 11, 1996, pp. 8-9.

[12] TSN, September 19, 1995, pp. 4-7; Exhibits "C" and "D," Records, pp. 62-63.

[13] TSN, September 19, 1995, pp. 7-8.

[14] Id., p. 8.

[15] Id., p. 9.

[16] Ibid.

[17] Ibid.; Exhibit "B," Records, p. 61.

[18] TSN, September 19, 1995, p. 10.

[19] Ibid.

[20] Ibid.

[21] Id., pp. 11-13; Exhibit "H," Records, p. 66.

[22] TSN, September 19, 1995, p. 14.

[23] Ibid.

- [24] Id., p. 13; Exhibit "I," Records, p. 67.
- [25] TSN, September 19, 1995, p. 14; Exhibit "J," Records, p. 68.
- [26] Records, p. 1.
- [27] RTC Order, Records, p. 26.
- [28] Records, pp. 166-167.
- [29] CA Rollo, p. 114.
- [30] Ibid.
- [31] Rollo, pp. 14-15.
- [32] Exhibit "J," Records, p. 68.
- [33] Records, p. 15.
- [34] TSN, September 18, 1995, pp. 2-4.
- [35] People vs. Mamarion, G.R. No. 137554, October 1, 2003, 412 SCRA 438, 465.
- [36] Agustin vs. Pamintuan, G.R. No. 164938, August 22, 2005.
- [37] G.R. No. 119000, July 28, 1997, 276 SCRA 367, 374-375.
- [38] G.R. No. 156747, February 23, 2005, 452 SCRA 255.
- [39] Id., p. 271.
- [40] Pangilinan vs. Court of Appeals, G.R. No. 117363, December 17, 1999, 321 SCRA 51, 60; citing People vs. Pegarum, 58 Phil. 715 (1933).
- [41] Erquiaga vs. Court of Appeals, G.R. No. 124513, October 17, 2001, 367 SCRA 357, 365; citing Luis B. Reyes, Revised Penal Code, Book 2, 14[th] Edition, p. 763.
- [42] Formerly Section 8, Rule 112, Revised Rules of Criminal Procedure now Section 8(b), Rule 113, Revised Rules of Criminal Procedure, as amended.
- [43] G.R. No. 128360, March 2, 2000, 327 SCRA 167, 178.
- [44] Ibid.
- [45] Regalado, Remedial Law Compendium, Vol. II, 7[th] Revised Edition, p. 416, citing Suy Sui vs. People, 92 Phil. 684, 686-687 (1953).
- [46] US vs. Castañares, 18 Phil. 210, 214 (1911).
- [47] G.R. No. L-21450, April 15, 1968, 23 SCRA 29.

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