

MIGUEL COSME, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 149753. November 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to set aside the Decision[1] of the Court of Appeals (CA) dated June 22, 2001 in CA-G.R. CR No. 23015 which affirmed with modification the Decision of the Regional Trial Court (RTC) of Manila, Branch 1, finding herein Miguel Cosme, Jr. (petitioner) guilty beyond reasonable doubt of the crime of Estafa; and the CA Resolution dated September 10, 2001, denying petitioner's motion for reconsideration.

An Information dated January 16, 1996, was filed against petitioner, alleging as follows:

That in [sic] or about and during the period comprised between September 12, 1994 and October 13, 1994, inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully [sic] unlawfully and feloniously defraud Paul P.A. Bunda in the following manner, to wit: the said accused received in trust from the said Paul P.A. Bunda the sum of P1,800,000.00, under the express obligation on the part of the said accused to settle and clear the accrued real estate taxes of 231,707 square meters of land covered by PSU-20888 located at Almanza, Las Pinas, Metro Manila, but said accused once in possession of the said amount, far from complying with his aforesaid obligation, failed and refused and still fails and refuses to settle and clear the accrued real estate taxes of the aforesaid lot despite repeated demands made upon him to that effect, and with intent to defraud and with grave abuse of confidence, he thereafter misappropriated, misapplied and converted the same to his own personal use and benefit, to the damage and prejudice of the said Paul P.A. Bunda in the aforesaid amount of P1,800,000.00, Philippine currency.

Contrary to law.[2]

On June 3, 1997, upon being arraigned, petitioner with the assistance of a counsel de oficio pleaded not guilty.[3] Thereafter, trial ensued, after which, the RTC rendered its Decision with the following findings and disposition:

Records disclose that on April 9, 1993, Judith Rodriguez and the private complainant, Paul Bunda, entered into a Memorandum Agreement concerning lots nos. 1 and 2, PSU-208888, with an aggregate area of 231,907 sq.m., situated at Barrio Almanza, Las Pinas, Metro Manila, Exhibit "G". Under the agreement, Judith agreed to assign and convey 40% of the aforementioned lots in favor of the complainant as consideration for the payment by the latter of the accrued real estate taxes on the property.

Sometime in August, 1994, the complainant visited the property and, for the first time, met the accused who represented himself as the overseer of the property where he also resided.

Sometime in September 1994, the complainant and the accused met at the Aurelio Hotel on Roxas Blvd., Manila. It was in this meeting that accused succeeded in convincing the complainant to entrust to him Two Million (P2,000,000.00) Pesos for the payment of the accrued real estate taxes on the property, telling the complainant that he was a nephew of the then incumbent mayor of Las Pinas and had good connections with

the Mayor's Office as well as with the Offices of the Treasurer and of the Assessor of Las Pinas.

On September 12, 1994, the complainant again met the accused at the same hotel and gave to the latter an initial amount of One Hundred Thousand (P100,000.00) Pesos for the payment of the accrued real estate taxes on the property. Another One Hundred Thousand (P100,000.00) Pesos in cash was given to the accused by the complainant on September 14, 1994. Both payments were unreceipted because the accused told the complainant that it was no longer necessary.

Again, on two separate occasions thereafter, complainant handed to the accused two checks both payable to cash, dated September 28 and October 13, 1994, in the respective sums of One Million (P1,000,000.00) Pesos and Six Hundred Thousand (P600,000.00) Pesos, Exhibits "B" and "C", which checks were later encashed by the accused, Exhibits "B-3", "B-4", "C-3" and "C-4". Accused, however, did not use the money for the payment of the accrued real estate taxes on the property in question, but instead misappropriated it for his own use and benefit.

The court has judiciously examined the evidence on record and finds that the prosecution has established beyond reasonable doubt that the accused committed estafa under Article 315 (b) of the Revised Penal Code x x x.

x x x x

WHEREFORE, the court finds the accused, Miguel Cosme, Jr., guilty beyond reasonable doubt of the crime of Estafa and, as a consequence, sentences him to suffer the indeterminate penalty of twelve (12) years of prison mayor as minimum to twenty (20) years of reclusion temporal as maximum and to pay the costs.

Further, accused is ordered to pay the complainant actual damages in the total amount of P1,800,000.00 with interest thereon at the legal rate from date of filing of this action until fully paid.

SO ORDERED.[4]

Petitioner appealed the case to the CA.

On June 22, 2001, the CA rendered its Decision with the following dispositive portion:

WHEREFORE, foregoing considered, the appealed Decision dated October 20, 1998 is hereby AFFIRMED with the modification that the amount of actual damages be reduced to P1,600,000.00 with legal rate of interest from the date of filing of the action until fully paid.[5]

Petitioner filed a Motion for Reconsideration but the same was denied by the CA in its Resolution of September 10, 2001.

Hence, herein petition with the following assignment of errors:

I

THE COURT OF APPEALS LIKE THE COURT A QUO ERRED IN GIVING CREDENCE TO THE SOLE, UNCORROBORATED, VARIABLE AND INCOHERENT TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE COURT OF APPEALS LIKE THE COURT A QUO ERRED IN FINDING THAT THE ALLEGED DEMAND LETTER WAS RECEIVED BY THE PETITIONER.

III

THE COURT OF APPEALS LIKE THE COURT A QUO ERRED IN FAILING TO GIVE CREDENCE TO

THE DEFENSE OF THE PETITIONER.[6]

In his first assigned error, petitioner argues that the private complainant's testimony is full of improbabilities, falsehoods and half-truths, to wit: (1) that it is highly improbable that the private complainant entrusted to him the amount of P200,000.00 cash which was allegedly given on two separate occasions; (2) it is irrational and improbable for private complainant, who is an experienced real estate dealer, to delegate and commission the petitioner, a mere overseer and security guard whom he hardly knows, to undertake the payment of real estate taxes with the Treasurer's Office considering that with his knowledge and experience he can do it himself; (3) it boggles the mind why private complainant could not care less even if petitioner allegedly had not told him the exact amount to be paid for the accrued real estate taxes and that notwithstanding the alleged lack of computation, he freely gave in to petitioner's demand and paid him P1,800,000.00 without demanding any receipt or written agreement as evidence to prove why he paid such amount; (4) it is difficult to believe that as an experienced real estate dealer private complainant does not know that real estate taxes cannot be paid on staggered or installment basis; (5) if indeed the check payments in the amount of P1,600,000.00 were intended as payment for accrued real estate taxes how come the checks were paid to cash and not made specifically payable to the Municipal Treasurer's Office; (6) if it were true that petitioner told private complainant to prepare P2,000,000.00 as payment for the real estate taxes, how come the latter only paid P1,800,000.00; (7) if private complainant has indeed entered into an agreement with the owner of the property that the former shall be given 40% of the subject property in exchange for his payment of the accrued real estate taxes, he should have been aware of the actual real estate taxes due and that the amount of P1,800,000.00 would not suffice to cover the said taxes.

Anent the second assigned error, petitioner contends that no less than the evidence presented by the prosecution shows that he (petitioner) never received the demand letter sent by private complainant. Citing authorities on the rule on service of notice, petitioner argues that the prosecution cannot presume on the basis of the registry return receipt that the demand letter was sent through registered mail and that the same was actually received by petitioner or his agent, especially in the present case where petitioner denies having received the said demand letter.

As to the third assigned error, petitioner asserts that it is error on the part of the trial and appellate courts to rely hook, line and sinker on the inconsistent and uncorroborated testimony of the private complainant and at the same time brush aside as "difficult to believe" the defense of petitioner. Petitioner maintains that he has sufficiently shown that it is not far-fetched for the complainant to commission petitioner to act as overseer of the subject property and facilitate its titling after the former pays the accrued real estate taxes considering that complainant claims to have an interest over 40% of the subject property; that the amount of P1,600,000.00 is given as payment for a "package deal" which includes the hiring of security guards to look after the property, the construction of a steel fence on portions of the same, the facilitation in the computation of accrued real estate taxes and the eventual titling of the property. Petitioner also contends that it is error on the part of the trial court to completely disregard the affidavit of denial executed by Judith Rodriguez considering that the prosecution admitted the existence, authenticity and genuineness of the said affidavit by way of stipulation.

In its Comment, the Office of the Solicitor General (OSG) contends at the outset that the petition should be dismissed as it essentially raises issues of fact which are not the proper subjects of a petition for review on certiorari under Rule 45 of the Rules of Court. On the trial court's act of giving credence to the testimony of private complainant, the OSG argues that under settled jurisprudence, the Supreme Court will not interfere in the judgment of the trial court in passing upon the credibility of witnesses unless there appears in the record some facts or circumstances of weight and influence which have been overlooked and, if considered, would affect the outcome of the case. The OSG submits that there is no reason to assail the credibility of the private complainant

especially in the absence of any showing that he was motivated by bad faith. The OSG also contends that the testimony of a single witness, if found credible and positive is sufficient to convict.

The Court deems it proper to discuss first the issue whether the present petition should be dismissed on the ground that it raises issues of fact which are not proper subjects of a petition for review on certiorari.

Settled is the rule that the Supreme Court's jurisdiction in a petition for review on certiorari as a mode of appeal under Rule 45 of the Rules of Court, as amended, is limited to reviewing only errors of law not of fact.[7] The rationale of this rule is founded on the fact that the Supreme Court is not a trier of facts.[8] However, as exceptions to this rule, the Court may pass upon questions of fact in a petition for review when, among others: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are premised on the absence of evidence; and (6) the findings of fact are contradicted by evidence on record.[9] The Court finds that the present case does not fall under any of the foregoing exceptions. Thus, on this ground alone, the instant petition should be dismissed.

However, considering that an appeal in a criminal case opens the whole case for review,[10] the Court deems it proper to delve into the merits of the present petition.

The Court notes, at the outset, that the RTC found petitioner guilty of Estafa by conversion or misappropriation under Article 315 (1) (b) of the Revised Penal Code, to wit:

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

1. With unfaithfulness or abuse of confidence, namely:

x x x x

(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;

x x x x

On the other hand, the CA found petitioner guilty of Estafa as defined under Article 315 (2) (a) of the Revised Penal Code, to wit:

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 x

As correctly enumerated by the CA, the elements of Estafa by means of deceit as defined under Article 315 (2) (a) of the Revised Penal Code are as follows: (1) that there must be a false pretense, fraudulent act or fraudulent means; (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; and (d) that as a result thereof, the offended party suffered damage.[11] The CA ruled that the deceit employed by petitioner consisted in his act of pretending "that he had the authority and capability to cover the payment of the realty taxes for he is influential in Las Pinas and has connections with the Assessor's & Treasurer's Offices being an alleged nephew of then incumbent Mayor Casimiro of Las Pinas City."

However, a reading of the Information filed against petitioner shows that while it contains conclusions that petitioner committed fraud against private complainant, there are no allegations indicating specific acts which constitute fraud as contemplated under Article 315 (2) (a) of the Revised Penal Code, more particularly petitioner's alleged act of falsely pretending that he had the needed connections to settle the realty taxes due on the subject property.

Prior to its most recent amendment, Section 9, Rule 110 of the Rules of Court, which was in effect at the time the Information against petitioner was filed, states:

Sec. 9. Cause of accusation. - The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to pronounce judgment.[12]

In *People v. Almendral*,[13] the Court held thus:

The information filed against an accused is intended to inform him of the accusations against him in order that he could adequately prepare his defense. It is thus textbook doctrine that an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. To ensure that the constitutional right of the accused to be informed of the nature and cause of the accusation against him is not violated, the information must state the name of the accused, the designation given to the offense by the statute, a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense, and the place where the offense has been committed. It must embody the essential elements of the crime charged by setting forth the facts and circumstances that have a bearing on the culpability and liability of the accused so that he can properly prepare for and undertake his defense.[14]

In the present case, the Information filed against petitioner did not specify the alleged fraudulent acts or false pretenses that supposedly induced private complainant to part with his money. Hence, petitioner may not be convicted of *Estafa* as defined under Article 315 (2) (a) of the Revised Penal Code since the prosecution failed to allege the essential elements of this kind of offense.

However, the RTC correctly found that petitioner has been properly charged with *estafa* as defined under Article 315 (1) (b) of the Revised Penal Code. In *Lee v. People*[15] this Court held that the elements of *Estafa* by conversion or misappropriation as defined under Article 315 (1) (b) of the Revised Penal Code are as follows: (1) that money, goods, or other personal properties are 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; (2) that there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another.[16]

Clearly, the aforequoted Information filed by the prosecution against petitioner was able to allege all the essential elements of *estafa* under Article 315 (1) (b) of the RPC.

In finding petitioner guilty, the RTC and the CA relied on the testimony of private complainant.

The Court agrees with both the defense and the prosecution that the present petition dwells basically on the issue of credibility of witnesses. Settled is the rule that in assessing the credibility of witnesses, this Court gives great respect to the evaluation of the trial court for it had the unique opportunity to observe the demeanor of witnesses and their deportment on the witness stand, an opportunity denied the appellate courts, which merely rely on the records of the case.[17] The assessment by the trial court is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence, especially when such finding is affirmed by the CA.[18] After examining the records of the instant case, the Court finds no cogent reason to depart from the lower courts' assessment of the credibility of private complainant. The absence of evidence as to an improper motive actuating the sole witness of the prosecution strongly tends to indicate that his testimony is worthy of full faith and credence.[19] Moreover, the Court agrees with the OSG that truth is established not by the number of witnesses but by the quality of their testimonies, for in determining the value and credibility of evidence, the witnesses are to be weighed not numbered.[20]

In his defense, petitioner does not deny having received the amount of P1,600,000.00 from private complainant. However, he asserts that the said sum was given as payment for his services in hiring men to provide additional security within the premises of the subject property, in building a fence along portions of the property's perimeters, for facilitating the computation of the accrued real estate taxes, and for the eventual titling of the land after the realty taxes shall have been paid by private complainant. He testified thus:

Q

You said that Mr. Bunda offered to you a proposal, did he immediately tell you that he would give you 1.6 million as payment for your services?

A

No sir. In fact I was the one who asked for such amount because I told him that I would be needing the money for more security guards as well as expenses for fencing and for the processing of the title of the property.

Q

Did you hire security guards?

A

Yes sir.

Q

How many security guards did you hire?

A

Ten (10).

Q

What security agency did you hire for the security guards?

A

I did not hire from any agency, I just hired from private persons because if I would hire security guards from the agency there will be more paper works.

Q

What proof do you have to show that you hired security guards?

A

None sir, because I hired private persons.

Q

For how long did you hire these security guards?

A

From the time Paul Bunda gave me 1.6 million, I immediately hired ten security guards and that was until December 1994.

Q

But all this time you did not maintain any payroll for the security guards?

A

None sir, I did not maintain any payroll. I just paid them in cash every 15th and 30th of the month.

Q

Everytime you paid them you did not also prepare any receipt or any document signed by the security guards?

A

None sir.

Q

You did not also maintain or keep any list of the names of the security guards? You did not have any logbook?

A

None sir, because I know all of them.

x x x x

Q

I would say that you don't have any proof also that you spent for the fencing as you obliged to perform for the private complainant, is that correct?

A

No sir, I don't have any proof.

Q

What kind of fence was that which you installed?

A

Steel fence.

Q

That would require concrete posts?

A

No sir. What were used were just steel posts with barbed wire.

Q

How much did you spend for this fence?

A

I cannot recall.

Q

You did not keep any receipt for the materials?

A

I did not keep copies of the receipts.[21]

Aside from his bare assertions, petitioner failed to present any proof that he actually hired security guards or that he caused the erection of fences along the subject property's perimeters.

Settled is the rule that, to be credible, testimonial evidence should come not only from the mouth of a credible witness.[22] The testimony must also be credible, reasonable and in accord with human experience.[23] No better test has yet to be found to determine the weight of the testimony of a witness than its conformity to the knowledge and common experience of mankind.[24] In the present case, petitioner claims that he is a legitimate, respected and learned businessman.[25] As such, he is expected to take ordinary care of his concerns by keeping evidence of the salaries he gave to the security guards he hired as well as the expenses he incurred in the building of fences around the property. At the least, he could have kept his own record of the expenditures he made pursuant to his contract with the private complainant.

Thus, the RTC and the CA did not give credence to petitioner's claims. This Court finds no compelling reason to depart from the trial and appellate court's assessment of petitioner's credibility because he failed to present substantial and convincing evidence to prove his claim.

Furthermore, to prove his claim that he facilitated the computation of accrued real estate taxes due on the subject property, petitioner presented a copy of a Real Property Tax Order of Payment dated December 13, 1994,[26] together with a detailed computation of the land tax due on the property. He claims that he gave copies of these documents to private complainant.[27]

However, a perusal of these documents convinces the Court that they are, at best, dubious. Why is the Real Property Tax Order of Payment dated December 13, 1994 when petitioner claims that he was able to obtain said document prior to or sometime in October 1994? Petitioner testified in his re-direct examination that the Order of Payment covers the period up to December 1994.[28] If that is the case, why was the computation only up to December 13 and not December 31? Petitioner failed to explain this discrepancy. As to the detailed computation attached to the Real Property Tax Order of Payment, the document is a mere piece of paper without any indication that it was officially issued by the Assessor's Office of Las Pinas. Such document can easily be printed out of any cash register.

As to petitioner's contention that the prosecution failed to prove that he received the demand letter sent to him by private complainant's counsel, the rule is that demand is not an element of the felony or a condition precedent to the filing of a criminal complaint for estafa.[29] Indeed, the accused may be convicted of the felony under Article 315, paragraph 1(b) of the Revised Penal Code if the prosecution proved misappropriation or conversion by the accused of the money or property subject of the Information.[30] In a prosecution for estafa, demand is not necessary where there is evidence of misappropriation or conversion.[31] However, failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation.[32] As found earlier, petitioner failed to account for the money given to him in trust by private complainant.

The CA held:

The prosecution has not adduced any evidence to substantiate its claim that aside from the P1.6 Million shelled out by private complainant to appellant in the form of checks, private complainant had earlier given appellant

P200,000.00 in cash.[33]

Petitioner makes much of the fact that the CA gave credence to his defense that he did not receive the amount of P200,000.00 in cash from private complainant. On this premise, petitioner concludes that, in effect, private complainant's testimony should not be given credence because it is full of falsehoods, half-truths and improbabilities.

The Court is not persuaded. The modern trend of jurisprudence is that the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case.[34] Consistent with this rule, the fact that the CA discounted private complainant's claim that he gave P200,000.00 in cash to petitioner does not mean that the remaining portions of his testimony should not also be given credence.

With respect to the impossible penalty, Article 315 of the Revised Penal Code provides:

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

1st. The penalty of prision correctional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

The penalty prescribed by Article 315 is composed of only two, not three, periods, in which case, Article 65 of the same Code requires the division of the time included in the penalty into three equal portions of time included in the penalty prescribed, forming one period of each of the three portions.[35] Applying the latter provisions, the maximum, medium and minimum periods of the penalty prescribed are: Maximum - 6 years, 8 months, 21 days to 8 years Medium - 5 years, 5 months, 11 days to 6 years, 8 months, 20 days Minimum - 4 years, 2 months, 1 day to 5 years, 5 months, 10 days[36]

In the present case, since the amount involved is P1,600,000.00, exceeds P22,000.00, the penalty to be imposed should be the maximum period of 6 years, 8 months and 21 days to 8 years of prision mayor. Article 315 further states that a period of one year shall be added to the penalty for every additional P10,000.00 defrauded in excess of P22,000.00, but in no case shall the total penalty which may be imposed exceed 20 years. The amount swindled from private complainant greatly exceeds the amount of P22,000.00, which when translated to the additional penalty of one year for every P10,000.00 defrauded goes beyond 20 years. Under the law, the maximum penalty to be imposed in the present case should be 20 years of reclusion temporal.

As regards the imposition of the minimum penalty, the leading case of *People v. Gabres*[37] is instructive:

The fact that the amounts involved in the instant case exceed P22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for the estafa charge against accused-appellant is prision correctional maximum to prision mayor minimum, the penalty next lower would then be prision correctional minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded P22,000.00, plus an additional one (1) year for each additional P10,000.00.[38]

As to the rate of interest, the guidelines laid down in *Eastern Shipping lines, Inc. v. Court of Appeals*[39] are applicable to the present case, to wit:

- When an obligation, regardless of its source, i.e., law contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
- With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
 - When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
 - When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
 - When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[40] (emphasis supplied).

WHEREFORE, the petition is DENIED. The assailed Decision and Resolution of the Court of Appeals are AFFIRMED with MODIFICATION that petitioner is found guilty of Estafa under Article 315 (1) (b) of the Revised Penal Code. He is sentenced to suffer the indeterminate penalty of two (2) years and four (4) months of prision correctional as minimum to twenty (20) years of reclusion temporal as maximum. Petitioner is held civilly liable to return to private complainant Paul P.A. Bunda the amount of P1,600,000.00 with legal interest at 6% per annum from the date of filing of the action until finality of the judgment. After the judgment becomes final and executory, the amount due shall further earn interest at 12% per year until the obligation is fully satisfied.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr. and Chico-Nazario, JJ., concur.

[1] Penned by Justice Eugenio S. Labitoria (now retired) and concurred in by Justices Eloy R. Bello Jr. (now retired) and Perlita J. Tria Tirana (now retired).

[2] Records, p. 1.

[3] Id. at 132.

[4] Id. at 239-240.

[5] CA rollo, p. 109.

[6] Rollo, p. 16.

[7] Siccuan v. People, G.R. No. 133709, April 28, 2005, 457 SCRA 458, 463.

[8] Id.

[9] Mendoza v. People, G.R. No. 146234, June 29, 2005, 462 SCRA 160, 169-170.

[10] People v. Alzona, G.R. No. 132029, July 30, 2004, 435 SCRA 461, 471.

[11] Fukuzume v. People, G.R. No. 143647, November 11, 2005, 474 SCRA 570, 581; Sim, Jr. v. Court of Appeals, G.R. No. 159280, May 18, 2004, 428 SCRA 459, 468-469.

[12] Under the Revised Rules of Criminal Procedure which took effect on December 1, 2000, Section 9, Rule 110 of the Rules of Court now reads as follows:

Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in the terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[13] G.R. No. 126025, July 6, 2004, 433 SCRA 440.

[14] Id. at 450-451.

[15] G.R. No. 157781, April 11, 2005, 455 SCRA 256.

[16] Id. at 266-267.

[17] People v. Garillo, 446 Phil. 163, 174-175 (2003).

[18] Sullon v. People, G.R. No. 139369, June 27, 2005, 461 SCRA 248, 253; People v. Bulan, G.R. No. 143404, June 8, 2005, 459 SCRA 550, 562.

[19] People v. Dionisio, 425 Phil. 651, 659 (2002).

[20] People v. Gaspar, November, 376 Phil 762, 779 (1999).

[21] TSN, February 10, 1998, pp. 31-35.

[22] People v. Padrones, G.R. No. 150234, September 30, 2005, 471 SCRA 447, 470.

[23] Id.

[24] Id.

[25] Rollo, p. 35.

[26] Exhibit "6", records, p. 218.

[27] TSN, February 10, 1998, pp. 12-14.

[28] TSN, March 30, 1998, pp. 3-4.

[29] Lee v. People, supra note 15, at 267, citing Salazar v. People, 439 Phil. 762 (2002).

[30] Id.

[31] Id.

[32] Id.

[33] CA rollo, p. 109.

[34] People v. Masapol, 463 Phil. 25, 33 (2003).

[35] People v. Billaber, G.R. Nos. 114967-68, January 26, 2004, 421 SCRA 27, 42.

[36] Id.

[37] 335 Phil. 242(1997).

[38] Id. at 257.

[39] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[40] Id. at 95-97.

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