

TONY TAN A.K.A. TONY Y. CHING, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 153460. January 29, 2007

Ponente: CORONA, J.

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CORONA, J.:

Petitioner Tony Tan assails the Court of Appeals (CA) decision[1] and resolution[2] in CA-G.R. CR No. 22758 finding him guilty of estafa as defined and penalized under Article 315 (1) (b) of the Revised Penal Code (RPC).

Sometime in 1992, Tony and his wife Rosalina sold a 1988 BMW 525i motor vehicle to Profetiza P. Cabrera, wife of private complainant Roberto C. Cabrera, Jr., for the price of P3 million. The deed of sale, however, did not reflect this purchase price.

On September 19, 1992, Profetiza received the car with its accompanying documents (certificate of registration [CR] no. 10877387 and official receipt no. 61585997) from Rosalina. Profetiza signed an acknowledgement receipt.

Registration of the car in Profetiza's name, however, could not be accomplished since the CR of the car was in the name of Rosita Tan, whereas the vendor of the car indicated in the deed of sale was Rosalina Tan. Profetiza returned the CR and the deed of sale to Rosalina for the necessary correction. In turn, Rosalina executed a deed of sale of motor vehicle bearing the conforme of Profetiza stating that the subject vehicle was being sold to the latter for P 3 million.

In the meantime, EO 90-93 was issued by then President Fidel V. Ramos requiring importers of taxable motor vehicles, models 1988 to 1992, to obtain clearances from the Bureau of Customs (BOC) and Bureau of Internal Revenue (BIR) before the CRs of these imported vehicles could be renewed by the Land Transportation Office.[3]

On September 29, 1993, the BIR Commissioner informed Rosalina that the clearance for the issuance of a CR for the car could be issued only upon payment of P325,000 as compromise for the tax due on the imported car.[4] Rosalina, however, failed to pay since, by then, she had already sold the car to Profetiza. The BIR wrote Rosalina again on January 8, 1994. The BIR demanded payment and warned Rosalina of legal action against her. When the spouses Cabrera became aware of the BIR letters, they offered to share the tax burden with the spouses Tan.

Roberto drew check no. 20A027924P against his account with the Far East Bank and Trust Company for P150,000 payable to cash as his share for the tax due on the car. He delivered the check to Elsa Mendoza, representative of petitioner.

Despite receipt of the check by petitioner, the car still could not be registered in Profetiza's name. The spouses Cabrera discovered that the check was encashed but the tax was never paid.

The spouses Cabrera filed a complaint for rescission of contract of sale and collection of sum of money with damages against the spouses Tan on August 29, 1994. The case, docketed as Civil Case No. 64685, was filed in

the Regional Trial Court (RTC) of Pasig City. Despite that, petitioner still refused to heed the spouses Cabrera's letter dated April 10, 1995 demanding the return of the P150,000.

Roberto also initiated a criminal action against Tony. On April 25, 1995, he executed an affidavit-complaint charging petitioner for estafa in the office of the city prosecutor of Quezon City. Through counsel, Roberto demanded the return of the following documents:[5]

- Deed of Sale
- Official receipt MVRR No. 75874162
- Affidavit of Discrepancy (3 copies)
- Clearance and Affidavit of Loss of [COR] signed by Rosalina Tan
- Certificate of Payment No. 01653976
- Statement and Receipts of Duties Collected on Informal Entry No. 35901826
- Receipt of Department of Finance No. 28226727
- Stencils of BMW with Plate No. TDC 345

Petitioner's counsel offered to refund the P150,000 on June 5, 1995 but Roberto rejected the offer.

On October 25, 1995, an information was filed against petitioner with the RTC Quezon City. It read:

That on or about the 21st of January, 1994 in Quezon City, Philippines, [petitioner] did then and there wil[l]fully, unlawfully and feloniously defraud ROBERTO CABRERA, JR. in the following manner, to wit: [petitioner] received in trust from said Roberto Cabrera, Jr. the amount of P150,000.00, Philippine Currency, with the express obligation... to deliver and cause payment to the [BOC] the deficiency customs duties and taxes of a 1988 Model BMW car which was sold to the wife of Roberto Cabrera, Jr. by the wife of [petitioner] but [petitioner] once in possession of the said amount far from complying with his obligation as aforesaid, with intent to defraud, unfaithfulness and grave abuse of confidence, failed and refused and still fails and refuses to fulfill his aforesaid obligation despite repeated demands made upon him to do so and instead misapplied, misappropriated and converted the same to his own personal use and benefit, to the damage and prejudice of said ROBERTO CABRERA, JR. in the aforesaid amount of P150,000.00, Philippine Currency.

CONTRARY TO LAW.[6]

On November 7, 1997, the spouses Cabrera's complaint in Civil Case No. 64685 was dismissed after the trial court found that the importer of the vehicle, a certain Orlando Roco, was the one liable for the additional duties or taxes, not petitioner. Rescission of the contract was deemed an inappropriate remedy based on Article 1381 of the Civil Code. Petitioner's appeal, docketed as CA G.R. No. CV-59080, was dismissed by the CA. The judgment became final and executory on December 25, 1999.[7]

Meanwhile, on May 18, 1998, after due proceedings in the criminal case, the RTC found petitioner guilty of estafa under Article 315 (1) (b) of the RPC. He was sentenced to suffer imprisonment of seven years and four months of prision mayor as minimum to 12 years and six months of prision temporal as maximum.[8]

Claiming that the dismissal of the civil case against him and his wife was evidence that petitioner had no obligation to refund the money, petitioner filed a motion for reconsideration (MR) of the decision in the estafa case. On December 16, 1998, the trial court denied the MR.

Petitioner then interposed an appeal with the CA, contending that the RTC committed a reversible error when it

did not acquit him of the charge for estafa. The CA upheld the RTC decision with some modifications on the penalty imposed.[9] The dispositive portion read:

IN THE LIGHT OF ALL THE FOREGOING, the Decision appealed from is AFFIRMED with the modifications that the [petitioner] is hereby meted an intermediate penalty of from Four (4) Years and Two (2) Months of Prison Correccional, as Minimum, to Twenty (20) Years of Reclusion Temporal, as Maximum, and is hereby ordered to pay to the Private Complainant the amount of P150,000.00, with interest thereon at the rate of 12% per annum from date of the Decision of this Court until the said amount is paid, in full, by the [petitioner] to the Private Complainant.[10]

Petitioner's MR thereon was likewise denied for lack of merit.[11]

Consequently, petitioner filed this appeal via Rule 45 of the Rules of Court.

We deny the petition.

Petitioner's chief argument is based on the supposed failure of the prosecution to overcome the constitutional presumption of innocence. The prosecution allegedly failed to discharge the burden of proving the elements that constituted the crime of estafa.

Otherwise, petitioner raises no new argument that was not already considered by the lower courts. In short, petitioner wants us to determine matters of a factual nature. For this alone, the petition ought to be denied outright. This Court is not a trier of facts; recourse to a review under Rule 45 is appropriate only where questions of law, not matters of evidence, are raised.[12]

Factual findings and conclusions of the trial court and the [CA] are entitled to great weight and respect, and will not be disturbed on review by us, in the absence of any clear showing that the lower courts overlooked certain facts and circumstances which would substantially affect the disposition of the case. The jurisdiction of this Court over cases elevated from the [CA] is limited to reviewing or revising errors of law ascribed to the [CA]. The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the record or that they are so glaringly erroneous as to constitute grave abuse of discretion.[13]

But to lay petitioner's doubts to rest, we shall proceed with a discussion.

Otherwise known as "swindling," estafa is committed by any person who shall defraud another by any of the means mentioned in the RPC. Petitioner was tried and convicted for violation of Article 315 (1) (b) which states that, among others, fraud may be committed with unfaithfulness or abuse of confidence in the following manner:

xxx xxx xxx

(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; xxx
xxx[14]

The elements of estafa with abuse of confidence under this provision are as follows:

- 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 a demand made by the offended party to the offender.[15]

Both the RTC and CA found all the elements of estafa present.

Petitioner had the obligation to return the amount of P150,000 which he failed to pay to the BOC as agreed upon. The obligation or duty to make delivery or to return personal property is broad enough to include a civil obligation arising by agreement of private complainant and petitioner. While not denying receipt of the check of the said amount, petitioner unreasonably maintains that no written agreement expressly enjoined him to remit the money to the BOC or to return it to private complainant if no payment was made. His reasoning is distorted, to say the least.

The distinction between the conversion of a check and the conversion of cash in relation to the formal allegation in the information of conversion of a specific sum of money is not material in estafa.[16] “[T]he delivery by the [private complainant] of the check and its acceptance by [petitioner] signified not merely the transfer to [petitioner] of the money belonging to [private complainant, it] also marked the creation of a fiduciary relation between the parties.”[17] More important, however, is the fact that the law provides only the degree of proof necessary to engender moral certainty and does not require any specific form — whether oral or documentary — to produce conviction beyond reasonable doubt.[18] The essential facts establishing the elements of the crime may be proven by pure testimony.

The records clearly establish that the arrangement either for the remittance to the BOC or the return of the money to private complainant in fact existed. Petitioner even wants us to believe that the money was an “additional cost” of the car without any proof save his self-serving statement to this effect. Yet, contrary to this stance, he also posits that he was not able to raise his share of the tax burden, hence, he could not remit the full amount to the BOC to settle the tax deficiency. Likewise, contradictory to his initial stance, petitioner even offered, albeit belatedly, to return the P150,000.

For sure, the money was delivered to petitioner for a particular purpose, the non-fulfillment of which mandated its return.[19]

The words “convert” and “misappropriate” connote an act of using or disposing of another’s property as if it were one’s own or devoting it to a purpose or use different from that agreed upon.[20] To misappropriate for one’s own use includes not only conversion to one’s personal advantage but also every attempt to dispose of the property of another without any right.[21]

On the element of conversion or misappropriation, the court a quo, as upheld by the CA, stated:

In the instant case, [petitioner] admittedly converted or diverted the check he received by encashing it from the drawee bank, and yet, did not pay the deficiency custom duties and taxes as agreed upon....[22]

As to what circumstances justify a party so receiving money to withhold the application of the same to the agreed purpose, there is no fixed rule.[23] Each case should be decided based on its own particular facts. Reference must be made primarily to the good or bad faith exhibited by the accused in withholding the money from the use for which it was intended to be applied.[24] In this case, petitioner never gave a good reason for not remitting the money to the BOC or for not returning it to private complainant. Petitioner only made self-serving statements to justify withholding the P150,000. The ruling in the civil case declaring that the importer, neither petitioner nor private complainant, was required by law to pay the deficiency taxes did not vindicate petitioner. The ruling of the court did not justify his withholding the amount which was entrusted to him as private complainant’s share in the tax burden; it only identified the proper taxpayer of the subject tax. Petitioner only offered to return the money

after the filing of the civil case against him and after being charged before the city prosecutor for estafa.[25]

Indeed, the misappropriation or conversion by petitioner caused prejudice to private complainant and his wife.

Damage as an element of estafa may consist in (1) the offended party being deprived of his money or property as a result of the defraudation; (2) disturbance in property right; or (3) temporary prejudice.[26]

Registration of the car in the name of private complainant's wife still had not been accomplished as of the time this petition was filed since the taxes due remained unpaid. Granting that both petitioner and private complainant were not liable therefor, the money supposedly meant for the BOC fell into the wrong hands.

Finally, even if demand is not required by law, it is necessary to prove misappropriation. Failure to account, upon demand, is circumstantial evidence of misappropriation.[27]

The consummation of the crime of [estafa]... does not depend on the fact that a request for the return of the money is first made and refused in order that the author of the crime should comply with the obligation to return the sum misapplied. The appropriation or conversion of money received to the prejudice of the owner thereof [is] the sole essential [fact] which constitute the crime of [estafa], and thereupon the author thereof incurs the penalty imposed by the [RPC].[28]

Even so, the lower courts did find that demand was duly made on petitioner. As early as August 29, 1994, private complainant and his wife filed their complaint against petitioner and his wife. They alleged, among others, the demand to return the aforesaid amount. Petitioner and his wife were served summons and a copy of the complaint on September 7, 1994. Thereafter, they adduced their evidence before the trial court. This judicial demand was equally efficacious as, if not more effective than, the letters of demand of private complainant to petitioner before the latter was charged before the city prosecutor.[29] No specific type of proof is required to show that there was demand. Demand need not even be formal; it may be verbal.[30] The specific word "demand" need not even be used to show that it has indeed been made upon the person charged since even a mere query as to the whereabouts of the money would be tantamount to a demand.[31]

As regards the appropriate penalty, the RPC 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 correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos 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 cases, 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; xxx xxx xxx.

Taking into consideration the Indeterminate Sentence Law, the appellate court properly imposed a sentence of four years and two months of prision correccional, as minimum, to twenty years of reclusion temporal, as maximum. Petitioner is also directed to return the amount of P150,000 with the proper legal interest.

WHEREFORE, the petition is hereby DENIED for lack of merit. The decision and resolution of the Court of Appeals in CA-G.R. CR No. 22758 dated December 20, 2001 and May 13, 2002 are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno C.J., (Chairperson), Sandoval-Guitierrez, Azcuna, and Garcia, JJ., concur.

[1] Penned by Associate Justice Romeo J. Callejo Sr. (now Associate Justice of this Court) and concurred in by Associate Justices Remedios Salazar-Fernando and Josefina Guevara-Salonga of the Twelfth Division of the Court of Appeals, Annex “A,” rollo, pp. 55-76.

[2] Annex “B,” rollo, p. 79.

[3] Section 2 of EO 90-93 read:

Section 2. The [LTO] shall not allow the renewal of the registration of any taxable imported motor vehicle covered by this Order, unless the appropriate clearances are issued by the [BOC] and [BIR] certifying that the required taxes, duties and fees collectible thereon [have been paid], under the aforementioned Codes, which schedules shall be promulgated through a Department Order to be issued by the Secretary of Finance.

In the implementation of the Order of the President, the BIR and BOC executed a Memorandum of Agreement after which the BOC issued a Memorandum Order as a precondition to the renewal of the registration of the said motor vehicle by the LTO. (Annex “A,” rollo, p. 57; Annex “E,” rollo, pp. 100-101)

[4] A bigger amount (around P781,000) was actually due as tax on the imported car, but the letter from the BIR declared that, as a compromise, it would be in Rosalina’s interest to pay the lower amount indicated therein not later than October 14, 1993. The BIR warned that failure on her part to settle the obligation would constrain the government to take appropriate legal measures to protect its interests.

[5] Annex “A,” rollo, p. 60.

[6] Annex “G,” rollo, p. 106.

[7] Annex “F,” rollo, p. 105.

[8] Annex “H,” rollo, pp. 108-112.

[9] Annex “A,” rollo, p. 76.

[10] Annex “A,” rollo, p. 76.

[11] Annex “B,” rollo, p. 79.

[12] RULES OF COURT, Rule 45, Secs. 1 and 5.

[13] *Libuit v. Court of Appeals*, G.R. No. 154363, 13 September 2005, 469 SCRA 610. Citations omitted.

[14] REVISED PENAL CODE, Art. 315 (1) (b).

[15] Reyes, THE REVISED PENAL CODE CRIMINAL LAW BOOK TWO 736 (2001), Rex Book Store, Manila, Philippines.

[16] *Id.*

[17] *Id.*, citing *Galvez v. Court of Appeals*, 149 Phil. 377 (1971).

[18] *People v. Reyes*, 346 Phil. 786, 803 (1997).

[19] See Reyes, *supra* note 15, at 738-746.

[20] *Murao and Huertazuela v. People of the Philippines*, G.R. No. 141485, 30 June 2005, 46 SCRA 366, 379. Citations omitted.

[21] *Id.* Citations omitted. See also *Serona v. Court of Appeals*, 440 Phil. 508 (2002).

[22] Annex “H,” rollo, p. 110; Annex “A,” rollo, pp. 58, 71-73.

[23] Reyes *supra* note 15, at 752. Citations omitted.

[24] *Id.*

[25] Annex “A,” rollo, p. 60.

[26] *Nagrampa v. People of the Philippines*, 435 Phil. 441, 455 (2002). Citations omitted. See Reyes, *supra* note 15, at 732. The elements of estafa, in general, are:

- That the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and
- That damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.

[27] Reyes, *supra* note 15, at 757.

[28] *Salazar v. People of the Philippines*, 439 Phil. 762, 775 (2002), citing *U.S. v. Ramirez*, 9 Phil. 67, 70 (1907).

[29] Annex “A,” rollo, pp. 73-75.

[30] *Lee v. People*, G.R. No. 157781, 11 April 2005, 455 SCRA 256, 267.

[31] *Id.*, at 268. Citations omitted.

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