

VICIA D. PASCUAL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 160540. March 22, 2007

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the decision[1] and resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 25992 entitled *People of the Philippines v. Vicia D. Pascual*.

The facts follow.

Petitioner was elected vice-president of the Assumption College Parents Council for the school year 1996-1997. When the council's president suffered a stroke, she took over as acting president from October 1996-June 1997. The council's funds, at that time deposited in the United Coconut Planters Bank (UCPB) and Asianbank, were entrusted to her.

In 1998, when Joyce M. O'Hara became president, petitioner was requested to turn over the council's money to the new set of officers but despite several demands, petitioner failed to do so. Later, O' Hara discovered that petitioner had already withdrawn the money from UCPB and Asianbank. Although petitioner opened a new account in the council's name at Philippine National Bank, she, however, failed to deposit about P578,208.96 of the council's money.

Two criminal cases for estafa were filed in the Regional Trial Court of Makati City, Branch 135, against petitioner, Criminal Case No. 98-1014 and Criminal Case No. 98-1015.

In Criminal Case No. 98-1014, Asianbank accused petitioner of falsely representing to it that she had been authorized by the council to withdraw the latter's deposits from the bank. On the other hand, in Criminal Case No. 98-1015, the council charged petitioner with misappropriating the money entrusted to her as acting president.

When arraigned, petitioner pleaded not guilty to the twin charges. A joint trial ensued.

At the trial, Ms. O'Hara presented the following as evidence: (1) statements of account issued by UCPB and Asianbank showing the amounts withdrawn by petitioner; (2) the council's checks issued by petitioner, payable to herself and (3) demand letters asking petitioner to return the money.[3]

Petitioner, who was also the defense's sole witness, denied the charges against her. She claimed that the council authorized her to withdraw the money from UCPB and Asianbank to finance the construction of a covered walk in Assumption College. To support this claim, she presented a Secretary's Certificate signed by a certain Marietta Veneracion.

On the other hand, Asianbank failed to continue participating in the trial of Criminal Case No. 98-1014; hence, this case was dismissed for failure to prosecute. On manifestation of petitioner's former counsel, the evidence in Criminal Case No. 98-1014 was adopted and offered as the defense's evidence in Criminal Case No. 98-1015.

After trial, the court a quo found petitioner liable for estafa under Article 315, paragraph 1(b)[4] of the Revised Penal Code (RPC). Accordingly, the trial court declared:

WHEREFORE, premises considered, it having been proven beyond reasonable [doubt] the guilt of [petitioner] VICIA DAVID PASCUAL in Criminal Case No. 98-1015, for the crime of estafa under [Article 315,] paragraph 1 [b], as principal, with no aggravating and mitigating circumstances, she is hereby sentenced to an indeterminate prison term penalty of four [4] years two [2] months of prision correccional in its medium period, as minimum to twenty [20] years of reclusion temporal in its medium period, as maximum; to indemnify complainant Assumption College Parents Council the amount of P578,208.96 with legal interest thereon from the date of the filing of the information until fully paid; and to pay the costs.

For failure to prosecute, Criminal Case No. 98-1014 is hereby dismissed.

SO ORDERED.[5]

Petitioner moved for new trial and offered to submit to the trial court her affidavit that she gave the council's money to a contractor hired to build a covered walk for Assumption College and that this contractor supposedly ran away with the money. Attached to this affidavit were documents which she claimed were newly-discovered evidence, namely: (1) the approved resolution of the council and a sketch of the proposed construction of the covered walk; (2) approval of the project by the president of Assumption College; and (3) approval by the San Lorenzo Village Association of the covered walk project.[6]

When the trial court denied petitioner's motion for new trial, she appealed to the CA. There, she argued that, due to her former lawyer's negligence, she failed to submit her affidavit during the trial proper. Although petitioner averred that she gave the money to the contractor, she claimed she could no longer locate the receipt issued to her.

Except for the penalty imposed by the trial court, the CA affirmed petitioner's conviction for estafa. The CA held:

The alleged loss of receipt is unbelievable as it is not duly proven. And the construction for which payment was allegedly made turned out to be non-existent. There is no other logical conclusion save that she merely misappropriated the money. Otherwise stated, [petitioner] abused the confidence the Council reposed on her by misusing and/or detaining its money from the use it was intended to be applied.

...[A]fter a thorough review, [w]e find no cogent reason to disturb the findings and conclusion of the trial Court, save as to the penalty imposed upon [petitioner].

The penalty for estafa is prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over [P]12,000 but does not exceed [P] 22,000; and if such amount exceeds the latter sum, the penalty provided shall be imposed in its maximum period, adding one year for each additional [P]10,000; 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 other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

Considering the amount of P 578,208.96 misappropriated by [petitioner], the corresponding penalty obviously reached the twenty-year limit. Absent any modifying circumstance, the maximum should be within the maximum twenty years of reclusion temporal while the minimum term should be anywhere within prision mayor, the penalty next lower in degree from reclusion temporal.

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WHEREFORE, the appealed decision is hereby AFFIRMED with the MODIFICATION that [petitioner] VICIA D. PASCUAL is 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. All other aspects of the decision are maintained.[7]

Petitioner moved for reconsideration of the above decision but the same was denied,[8] thus this petition.

Petitioner essentially argues that the CA erred in affirming her conviction. She reiterates her arguments in the lower courts that: (1) she was denied her constitutional right to due process because of her former counsel's failure to present the necessary evidence on her behalf and (2) the CA erred in not giving credence to her affidavit attesting that she did not misappropriate the money.[9] She added that the notice of preliminary investigation was defective and the trial court never acquired jurisdiction over her person.

The petition must fail.

PETITIONER WAS ACCORDED HER CONSTITUTIONAL RIGHT TO DUE PROCESS

Petitioner was not denied due process on the mere premise that she was not able to submit her affidavit regarding where she allegedly spent the council's money. Due process means that a party has been given the opportunity to be heard.[10] When a party has been afforded a chance to present his or her own side, he cannot feign denial of due process.[11] In this case, the records are evident that petitioner herself participated as the only witness for the defense during the trial. She cannot now claim very belatedly that her constitutional right to due process was violated and that she was denied her day in court. What is repugnant to due process is the absolute absence of the opportunity to be heard through pleadings or otherwise,[12] which is not the case here.

Petitioner likewise contends that it was due to her former counsel's incompetence and negligence that she failed to offer her affidavit as evidence during the trial. This contention does not hold ground considering that she neither objected nor called the attention of her former lawyer when the latter manifested in open court that petitioner (as then accused) was adopting in Criminal Case No. 98-1015 the evidence in Criminal Case No. 98-1014,[13] which evidence did not include petitioner's affidavit. Had petitioner truly believed that her counsel then was inept and careless, she could have easily terminated his services at that very instance. In failing to do so, we can only conclude that she acquiesced to the manner her former lawyer handled her case.

The doctrinal rule is that litigants should suffer the consequences of the negligence or incompetence of their counsel whom they themselves hired and had full authority to fire at anytime and replace even without any justifiable cause.[14]

PETITIONER'S AFFIDAVIT WAS SELF-SERVING

Petitioner avers that her affidavit was crucial in determining whether or not she indeed committed estafa. She insists that, had the trial court allowed its submission, she would have been acquitted of the charges.

We disagree.

Lest petitioner forget, the affidavit she insisted on submitting as evidence in the trial court was her own affidavit. Her statements in that affidavit were self-serving. At any rate, even if offered and accepted as evidence, the affidavit was also unsubstantiated considering that petitioner adduced no other convincing evidence to prove that, indeed, the money was paid to the contractor of the covered walk. The affidavit alone was not enough to overthrow the prosecution's evidence pointing to petitioner as the author of the crime.

THE DEFECTIVE NOTICE OF PRELIMINARY INVESTIGATION WAS AN ISSUE BELATEDLY RAISED

We likewise hold that petitioner is now barred from attacking the validity of the notice of preliminary investigation. Petitioner should have raised this issue in the lower courts, particularly during the arraignment. A question never raised in the courts below cannot be raised for the first time on appeal without offending the basic rules of fair play, justice and due process.[15]

Moreover, an inquiry into this issue necessitates a review of factual and evidentiary matters which is proscribed in a petition for review on certiorari under Rule 45 of the Rules.[16]

Notwithstanding the above disquisitions, petitioner ought to know that the absence or defect in the conduct of a preliminary investigation does not affect the court's jurisdiction over a case.[17] Nor does it impair the validity of the information or render it defective.[18]

**PETITIONER COMMITTED ESTAFA UNDER
ARTICLE 315, PARAGRAPH 1(B) OF THE RPC**

In estafa through misappropriation under Article 315, paragraph 1 (b) of the RPC, the following essential elements must be present: (1) that money, goods, or other personal property is received by the accused in trust or on commission or for administration or under any obligation involving the duty to make delivery of or to return the same; (2) that there is misappropriation or conversion of such money or property by the accused or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another and (4) that there is a demand made by the offended party on the accused.[19]

All the elements concur in this case. First, petitioner received the money in trust or for administration as the council's acting president; second, she failed to substantiate her claim that she did not misappropriate the money; third, the council was prejudiced by such misappropriation and fourth, she failed to return the money to the council despite repeated demands to do so.

Finally, we find no conflict in the findings of fact of the lower courts. Well-settled is the rule that factual findings of the trial court, especially when affirmed by the CA, are conclusive on us.[20] Without any cogent or compelling proof that the lower courts committed reversible error in their decisions, we shall not deviate from the rule. We therefore affirm the findings of both the trial court and the CA that petitioner committed estafa punishable under Article 315, paragraph 1(b) of the RPC.

WHEREFORE, the decision and resolution of the Court of Appeals in CA-G.R. CR No. 25992 are hereby AFFIRMED. Accordingly, the petition is DENIED.

Costs against petitioner.

SO ORDERED.

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

[1] Penned by Associate Justice Ruben T. Reyes (now Presiding Justice of the Court of Appeals), and concurred in by Associate Justices Remedios Salazar-Fernando and Edgardo F. Sundiam of the Seventh Division of the Court of Appeals. Rollo, pp. 72-88.

[2] Id., p. 100.

[3] Id., pp. 33-34.

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

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1. With unfaithfulness or abuse of confidence, namely:

(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

[5] Decided by Judge Francisco B. Ibay, RTC, Makati City, Branch 135. Rollo, pp. 31-37.

[6] Id., p. 82.

[7] Id., pp. 83-88.

[8] Supra note 2.

[9] Rollo, pp. 17-18.

[10] Roxas v. Vasquez, 432 Phil. 148 (2002).

[11] Dayrit v. Philippine Bank of Communications, 435 Phil. 120 (2002); Development Bank of the Philippines v. Court of Appeals, 362 Phil. 1 (1999).

[12] Sps. Friend, et al. v. Union Bank of the Philippines, G.R. No. 165767, 29 November 2005, 476 SCRA 453; Salonga v. Court of Appeals, G.R. No. 111478, 13 March 1997, 269 SCRA 534; Bacelonia v. Court of Appeals, 445 Phil. 300 (2003).

[13] Rollo, p. 80.

[14] Salva v. CA, 364 Phil. 281 (1997); Alabanzas v. Intermediate Appellate Court, 29 November 1991, 204 SCRA 304; Sps. Friend, et al. v. Union Bank of the Philippines, supra.

[15] Villanueva v. Sps. Alejo and Virginia Salvador, G.R. No. 139436, 25 January 2006; People v. Chua, G.R. No. 128280, 4 April 2001, 356 SCRA 225; Ayson v. Enriquez Vda. De Carpio, G.R. No. 152438, 17 June 2004, 432 SCRA 449; Reburiano v. Court of Appeals, 361 Phil. 294 (1999).

[16] Velasquez v. Court of Appeals, G.R. No. 138480, 25 March 2004, 426 SCRA 309; L.T. Datu & Co., Inc. v. Sy, G.R. No. 143701, 23 March 2004, 426 SCRA 189.

[17] San Agustin v. People, G.R. No. 158211, 31 August 2004, 437 SCRA 392.

[18] Id.; Villaflor v. Vivar, 402 Phil. 222 (2001).

[19] Filadams Pharma, Inc. v. Court of Appeals, G.R. No. 132422, 30 March 2004, 426 SCRA 460.

[20] Velasco v. People, G.R. No. 166479, 28 February 2006.

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