

## ANTONIO NEPOMUCENO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. No. 166246. April 30, 2008*

Ponente: QUISUMBING, J.

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### QUISUMBING, J.:

Before us is a petition for review filed by Antonio Nepomuceno, seeking to reverse and set aside the Decision [1] dated July 6, 2004 of the Court of Appeals in CA-G.R. CR No. 26671. The assailed decision had affirmed with modification the Decision [2] dated July 24, 2002 of the Regional Trial Court (RTC), Branch 85, Lipa City, Batangas, convicting petitioner of estafa as defined and penalized under Article 315 1(b) [3] of the Revised Penal Code.

Nepomuceno was charged with estafa in an Information dated November 8, 1996 which reads:

X X X X

That on or about the 22[nd] day of October, 1994 at Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being [then] employed as manager of Lipa Lending Investor, Inc. and as such has the duty to manage and administer the funds of the said corporation, with grave abuse of confidence reposed upon him by the officers of the aforesaid corporation, did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit the amount of One Hundred Eighty Thousand (P180,000.00) Pesos belonging to Lipa Lending Investor, Inc. by making it appear that the said amount was part of the change or overpayment due to a certain Rommel Villanueva, a borrower of Lipa Lending Investor, Inc., when in truth and in fact as he very well knew he was not authorized to receive the same and despite demands to return the said amount accused failed and refused to do so, to the damage and prejudice of Lipa Lending Investor, Inc. in the aforesaid amount of P180,000.00, Philippine currency.

Contrary to law. [4]

During arraignment on January 13, 1997, Nepomuceno pleaded not guilty. [5] Thereafter, trial ensued.

Based on the evidence, and as undisputed by both the prosecution and defense, Lipa Lending Investor, Inc. (Lipa Lending) employed petitioner Nepomuceno as manager. Lipa Lending, thru Nepomuceno, granted a certain Rommel Villanueva a loan in the amount of P1,167,953 on October 7, 1994. [6] Nepomuceno approved and released the proceeds of the loan in his capacity as an officer of said company. [7] Villanueva received the loan proceeds but failed to abide by his obligation to pay when the promissory note matured on October 14, 1994. Villanueva made a payment in the sum of P1,100,000 to Lipa Lending on October 21, 1994. On the following day, Nepomuceno, claiming that there was an overpayment by Villanueva, approved the issuance of three checks by Lipa Lending payable to Villanueva, himself, and a certain Raul Magaling in the amounts of P520,308.08, P180,000.00 and P10,000.00 respectively. [8]

For his defense, Nepomuceno claimed that Villanueva was a customer of good standing of Lipa Lending.

Villanueva borrowed P1,167,953 as a short-term loan, payable in installments, commencing on October 14, 1994. A promissory note covered the loan but it did not provide the due date of the loan and the exact amount of installment that should be paid by Villanueva. Nepomuceno further averred that on October 21, 1994, Villanueva issued a Real Bank Check in the amount of P1,100,000 to Lipa Lending. Of the amount stated in the check, P245,000.00 was his partial payment for the loan of P1,167,953.00 while another portion in the sum of P144,691.92 was to be deducted from the purchase price of the repossessed jeepney of a certain Nicodemo Lebosada which the corporation had taken. The check issued by Villanueva was cleared the next day, resulting in his request for the balance in the sum of P710,308.08. Lipa Lending prepared a cash voucher for the release of said amount as “change or overpayment for short term loan.” Nepomuceno argued that this term refers only to the first installment due and not the entire loan. Villanueva requested for a division of the P710,308.08 into three checks. The first check was for him in the sum of P520,308.08; the second was for Nepomuceno in the amount of P180,000.00; and the third was for Magaling in the amount of P10,000.00. Nepomuceno then explained that Villanueva gave the check in the sum of P180,000 to him. [9]

The RTC found Nepomuceno guilty beyond reasonable doubt of the crime of estafa in its Decision dated July 24, 2002, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused Antonio Nepomuceno guilty beyond reasonable doubt of Estafa defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from Six (6) years and One (1) day of prision mayor as minimum to Twelve (12) years and One (1) day of reclusion temporal as maximum. Furthermore, accused is ordered to restitute to Lipa Lending Investor, Inc. the amount of P180,000.00 with legal rate of interest computed from the date of institution of this case until the same is paid in full. Costs de officio.

SO ORDERED. [10]

The Court of Appeals affirmed with modification the abovementioned ruling in a Decision promulgated on July 6, 2004 by changing the penalty imposed. The dispositive portion of the appellate court’s decision reads:

WHEREFORE, the Decision of the trial court convicting accused-appellant Antonio Nepomuceno for estafa under Article 315, paragraph 1(b) of the Revised Penal Code is AFFIRMED with the modification that the sentence he shall suffer is an indeterminate penalty of four (4) years and two (2) months of prision correccional to twenty (20) years of reclusion temporal.

SO ORDERED. [11]

Thus, this petition.

Nepomuceno raises the following issues for our resolution:

I.

[WHETHER OR NOT] THE COURT A QUO ERRED IN CONVICTING PETITIONER OF THE OFFENSE OF ESTAFA DESPITE THE FACT THAT THE AMOUNT OF P180,000.00 NO LONGER BELONGED TO LIPA LENDING INVESTOR, INC. BUT TO ROMMEL VILLANUEVA. THERE WAS THEREFORE NO DAMAGE CAUSED TO THE PRIVATE COMPLAINANT, WHICH IS ONE OF THE ESSENTIAL ELEMENTS OF THE OFFENSE.

II.

[WHETHER OR NOT] THE COURT A QUO ERRED IN NOT HOLDING THAT DEMAND IS AN ESSENTIAL ELEMENT OF THE OFFENSE OF ESTAFA COMMITTED THROUGH ABUSE OF CONFIDENCE; AND THAT THERE WAS NO SUCH DEMAND MADE IN THE INSTANT CASE.

## III.

[WHETHER OR NOT] THE COURT A QUO ERRED IN NOT APPRECIATING THE CIRCUMSTANCES PROVING THE INNOCENCE OF THE PETITIONER. [12]

Simply, the issues are: (1) Was petitioner guilty of estafa? and (2) Is demand necessary to convict for estafa?

Petitioner, in his Memorandum[13] filed on February 28, 2006, argues that damage as an element of estafa is lacking in this case because the amount of P180,000 did not belong to Lipa Lending but to Rommel Villanueva, and there was therefore no harm done to Lipa Lending when Villanueva gave the amount of P180,000 to him. Accordingly, he did not receive the amount of P180,000 in trust, on commission, for administration or any other circumstance involving the duty to make delivery of or return the same to Lipa Lending.[14] Petitioner also argues that the element of demand in estafa was not present since the prosecution did not present evidence that demand was made to him to account for the amount of P180,000.[15]

On the other hand, respondent, thru the Office of the Solicitor General, in its Memorandum[16] filed on May 11, 2006, contends that the issues raised by petitioner are factual issues which are not proper in a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure;[17] that contrary to petitioner's contention, the amount of P180,000 belonged to Lipa Lending and not to Rommel Villanueva since the amount was directly received by petitioner from Lipa Lending by way of a company check payable to petitioner himself;[18] and that the absence of demand does not bar petitioner's conviction for estafa as held in the case of *Salazar v. People*. [19]

The elements of estafa 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; and, (4) that there is a demand made by the offended party on the offender.[20]

Is the element of damage or prejudice present in this case? There is no denying that Nepomuceno received P1,100,000 from Villanueva. He claims, however, that there is no due date for Villanueva's loan and that the latter only allotted P245,000 as payment, with the rest of the amount to be distributed among Villanueva, Magaling, and the petitioner himself.

We cannot give credence to Nepomuceno's claims. As manager of Lipa Lending, it was his duty to see to it that the latter's clients pay their loans. There was no justification for the petitioner to cause the preparation of three checks because the Statement of Account [21] of Villanueva shows Villanueva had an outstanding obligation to Lipa Lending as of October 24, 1994 amounting to P938,526, thereby negating the contention of the petitioner that Villanueva had a claim against the corporation due to overpayment. The petitioner, during cross-examination, admitted he appropriated the P180,000 for his own use [22] and claimed that the P180,000 given to him was his commission from Villanueva. [23] Moreover, the promissory note executed between Lipa Lending and Villanueva did not intend a loan payable in installments. For while said document is a standard form with blanks for the provisions of installment of the loan, the parties only wrote down the amount of the loan and the due date of its payment. If their intention was really to settle the loan on installment, they would have clearly provided the terms thereof. Thus, there is no basis to believe otherwise that the entire amount of the loan became due and demandable on the date agreed upon, which is October 14, 1994. [24] It is thus clear that Nepomuceno caused the preparation of the checks in his name and gave himself money due to the company he works for, to the prejudice and damage of said company.

Given the circumstances on record, we find Nepomuceno's acts inexcusable and his testimony unconvincing. His

grounds involve factual issues already passed upon twice below and are inappropriate in a petition for review on certiorari under Rule 45, which allows only questions of law to be raised.

Factual findings and conclusions of the trial court and the Court of Appeals 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 or circumstances which would substantially affect the disposition of the case. The jurisdiction of this Court over cases elevated from the Court of Appeals is limited to reviewing errors of law ascribed to the Court of Appeals. 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.[25]

As for the element of demand, the law does not require demand as a condition precedent to the crime of embezzlement. [26] The consummation of the crime of estafa does not depend on the fact that a request for a 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. [27]

As for the penalty, under Article 315 of the Revised Penal Code, if the amount exceeds P22,000, the penalty shall be as follows:

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....

x x x x

In this case, the amount misappropriated is P180,000.

In *People v. Gabres*, [28] the Court explained the imposition of the minimum penalty, as follows:

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be “that which, in view of the attending circumstances, could be properly imposed” under the Revised Penal Code, and the minimum shall be “within the range of the penalty next lower to that prescribed” for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

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 correccional maximum to prision mayor minimum, the penalty next lower would then be prision correccional 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. [29]

Hence, the minimum term of the indeterminate penalty should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months.

The Court explained further the imposition of the maximum penalty in *People v. Saley*. [30] Thus:

[I]n fixing the maximum term, the prescribed penalty of prision correccional maximum period to prision mayor minimum period should be divided into “three equal portions of time,” each of which portion shall be deemed to form one period; hence –

Minimum Period Medium Period Maximum Period

From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days

From 5 years, 5 months and 11 days to 6 years, 8 months and 20 days

From 6 years, 8 months and 21 days to 8 years

in consonance with Article 65, in relation to Article 64, of the Revised Penal Code.

When the amount involved in the offense exceeds P22,000.00, the penalty prescribed in Article 315 of the Code “shall be imposed in its maximum period,” adding one year for each additional P10,000.00 although the total penalty which may be imposed shall not exceed 20 years. The maximum penalty should then be termed as prision mayor or reclusion temporal as the case may be. In fine, the one year period, whenever applicable, shall be added to the maximum period of the principal penalty of anywhere from 6 years, 8 months and 21 days to 8 years. [31]

Accordingly, the maximum penalty should be within six (6) years, eight (8) months and twenty-one (21) days to eight (8) years, plus one (1) year for each additional P10,000. [32] With fifteen (15) years in excess of the maximum of eight (8) years, Nepomuceno’s maximum penalty stands at twenty-three (23) years. Nevertheless, the penalty cannot exceed twenty (20) years.

Thus, the Court of Appeals correctly imposed on Nepomuceno the penalty of imprisonment ranging from four (4) years and two (2) months of prision correccional to twenty (20) years of reclusion temporal.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 26671 promulgated on July 6, 2004 affirming with modification the Decision dated July 24, 2002 of the Regional Trial Court, Branch 85, Lipa City, Batangas, is AFFIRMED.

No pronouncement as to costs.

### **SO ORDERED.**

Carpio-Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

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[1] Rollo, pp. 31-41. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Romeo A. Brawner and Magdangal M. De Leon concurring.

[2] Records, pp. 239-246. Penned by Judge Avelino G. Demetria.

[3] 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

- 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

[4] Records, pp. 1-2.

[5] Id. at 33-34.

[6] Id. at 86.

[7] Id. at 87.

[8] Id. at 38, 40, 42.

[9] Rollo, pp. 33-34.

[10] Records, p. 246.

[11] Rollo, p. 40.

[12] Id. at 97.

[13] Id. at 93-108.

[14] Id. at 98.

[15] Id. at 99-100.

[16] Id. at 117-132.

[17] Id. at 121.

[18] Id. at 125.

[19] G.R. No. 149472, October 15, 2002, 391 SCRA 162.

[20] Libuit v. People, G.R. No. 154363, September 13, 2005, 469 SCRA 610, 616.

[21] Records, p. 44.

[22] TSN, January 25, 1999, p. 28.

[23] Id. at 14.

[24] Rollo, pp. 37-38.

[25] Libuit v. People, supra note 20, at 618.

[26] Tubb v. People and Court of Appeals, 101 Phil. 114, 119 (1957).

[27] Salazar v. People, supra note 19, at 174, citing United States v. Ramirez, 9 Phil. 67, 70 (1907).

[28] G.R. Nos. 118950-54, February 6, 1997, 267 SCRA 581.

[29] Id. at 595-596.

[30] 353 Phil. 897 (1998).

[31] Id. at 935-936.

[32] *Perez v. People*, G.R. No. 150443, January 20, 2006, 479 SCRA 209, 223.

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