

ARNOLD STA. CATALINA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 167805. November 14, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari seeks to reverse and set aside the Decision[1] dated October 26, 2004 and the Resolution[2] dated April 14, 2005 of the Court of Appeals in CA-G.R. CR No. 21877.

Petitioner was charged before the Regional Trial Court, Branch 63, Makati City, with the crime of estafa defined under Article 315, paragraph 1(b)[3] of the Revised Penal Code. The Information[4] reads:

X X X X

That [o]n or about and sometime during the month of February 1988, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the said accused, received in trust from LORENZO B. BALLECER the amount of P100,000.00 for the purpose of opening a letter of credit for the intended importation of jute sacks from China with the express obligation on the part of the accused of returning the same if the transaction does not materialize, but the accused once in possession of the said amount far from complying with his obligation, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously appropriate, apply and convert to his own personal use and benefit the said amount and despite demands, failed and refused and still fails and refuses to return the same to said Lorenzo B. Ballecer, to the damage and prejudice of the latter in the aforesaid amount of P100,000.00.

CONTRARY TO LAW.

Petitioner pleaded not guilty upon arraignment. Thereafter, a trial on the merits ensued.

The following facts were established.

Private complainant Lorenzo B. Ballecer was the president of Sunrise Industries Development, Incorporated while his friend, herein petitioner, was the president of Century United Marketing and Trading Corporation.[5]

Sometime in February 1988, Ballecer entered into a joint business venture with petitioner involving importation of jute sacks from China. Petitioner intimated to Ballecer that he could secure the jute sacks from China through a company in Hongkong which would act as his agent. Petitioner also told Ballecer that he had a ready buyer in the Philippines named Saugus Enterprises which was willing to buy the jute sacks at P12.25 per piece. Convinced, Ballecer ordered through petitioner one container load of jute sacks with the total cost of P137,000.[6]

After the order was made, petitioner told Ballecer to open the importation's letter of credit. Accordingly, Ballecer and petitioner proceeded to Citytrust Bank to open said letter of credit. However, before the letter of credit could be opened, the bank required them to submit the supporting customs documents and to post a marginal deposit of P100,000. Ballecer then asked petitioner to accompany him to United Coconut Planters Bank to encash a check worth P100,000.[7]

After the encashment of the check, the two returned to Citytrust Bank. However, they arrived after banking hours, so the letter of credit could no longer be opened. Petitioner then suggested that the money be deposited in his account at Citytrust instead. Ballecer agreed.[8] By way of acknowledgment, petitioner executed a document which reads:

x x x x

This is to certify that I have received from LORENZO B. BALLECER the amount of ONE HUNDRED THOUSAND PESOS ONLY (P100,000.00) and deposited in my CITYTRUST BANK Account No. 00035016566 for use in the opening of a Letter of Credit at said bank for the importation of 20,000 pcs. of jute sacks from Hongkong and that the same will be returned to him if transaction does not materialize.[9] (Underscoring supplied.)

While preparing the supporting customs documents for the letter of credit, Ballecer found that the cost of the jute sacks was not \$0.15 but \$0.62 or P16.15 per piece.[10] Realizing that his business venture was a losing proposition, Ballecer cancelled the importation and asked petitioner to return the P100,000. Petitioner, however, failed to return the money despite repeated verbal and formal demands.

In defense, petitioner testified that he did not misappropriate the P100,000. Petitioner claimed that the said money was spent and used for the office expenses, salaries and miscellaneous expenses of the office which Ballecer and petitioner occupy and share together. He further testified that when the check was given to Ballecer, they encashed it and entered into an oral agreement that whatever profit they will realize from their joint business venture shall be shared equally after deducting all expenses.[11]

On March 11, 1997, the trial court convicted the petitioner of the crime charged. The decretal portion of the Decision[12] reads:

Finding all the elements necessary to qualify an act as estafa to be present, the court finds the accused ARNOLD STA. CATALINA, "GUILTY" beyond reasonable doubt. A judgment of conviction is rendered against him and he is to suffer the penalty of from 2 years 11 months and 11 days of prision correc[c]ional in its minimum and mediu[m] period, to 8 years of ... prision mayor and 1 year for each additional P10,000.00 in excess of P22,000.00 as provided for under Art. 315 par. 1. Likewise, accused is ordered to pay civil indemnity in the amount of P100,000.00 representing the amount he received from private complainant and which he deposited in his own account.

SO ORDERED.[13]

Aggrieved, petitioner appealed. He filed a motion praying that the testimony covered by the transcript of stenographic notes dated February 5, 1991 be retaken. The motion was granted by the Court of Appeals in a Resolution[14] dated July 14, 1999. However, on April 10, 2000, the public prosecutor filed a Manifestation[15] stating that Ballecer was no longer interested in pursuing his complaint against petitioner and that the case should be decided in light of Ballecer's Affidavit of Desistance.[16]

On October 26, 2004, the Court of Appeals rendered a Decision affirming the judgment of conviction by the trial court. The appellate court held:

WHEREFORE, PREMISES CONSIDERED, the Decision, dated March 11, 1997, is hereby AFFIRMED and the sentence imposed by the Court a quo on the accused is clarified, thus: for the accused to suffer the indeterminate penalty of 2 years, 11 months and 11 days of prision correccional as minimum to 15 years of reclusion temporal as maximum. The judgment of the Court a quo ordering accused-appellant to pay private complainant the sum of P100,000.00 representing the amount misappropriated is likewise AFFIRMED.

SO ORDERED.[17]

Petitioner filed a motion for reconsideration.[18] The same was denied in a Resolution dated April 14, 2005. Dissatisfied with the aforementioned rulings of the Court of Appeals, the petitioner now comes before us, raising the following issues:

I.

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS HAS DECIDED THE CASE (CA-G.R. CR NO. 21877) IN A WAY PROBABLY NOT IN ACCORDANCE WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT;

II.

WHETHER THE RESPONDENT COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND [USUAL] COURSE OF JUDICIAL PROCEEDINGS, OR SO FAR SANCTIONED SUCH DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION;

III.

WHETHER OR NOT THIS HONORABLE TRIBUNAL, IN THE EXERCISE OF ITS POWER OF REVIEW, MAY REVERSE THE DECISION OF THE RESPONDENT COURT, ESPECIALLY IN CASES WHERE THERE IS MORE THAN A CLEAR GROUND OF REASONABLE DOUBT.[19]

In the main, the issue is: Did the Court of Appeals err in convicting the petitioner for the crime of estafa despite the missing transcript of stenographic notes dated February 5, 1991?

In his petition, the petitioner contends that he should have been acquitted of the crime charged. He avers that when the trial court rendered its decision, the transcript of stenographic notes taken on February 5, 1991 was missing. Hence, the appellate court erred in not ordering the trial court to render a new decision based on the complete evidence submitted by the parties, including the testimony on the missing stenographic notes. Petitioner asserts that the facts as found by the trial court and adopted by the appellate court are not complete. Thus, the same should not be used as basis for convicting him of the crime charged.[20]

For its part, the Office of the Solicitor General (OSG) counters that nothing on the record states that the questioned transcript was already missing when the trial court rendered its decision. In fact, the matter of the transcript being lost or missing surfaced only when the case was already in the appellate stage. Also, there is no proof that Ballecer's testimony was not considered at all when the trial court rendered its decision. The OSG submits that contrary to petitioner's claim, the decision of the trial court made reference to the testimony of Ballecer. Conversely, even if the February 5, 1991 transcript was missing when the trial court decided the case, other evidence were presented, which as properly appreciated, led the trial court to correctly conclude that the petitioner committed the crime of estafa.[21]

We have carefully examined the records of the case and find no cogent reason to disturb the findings of the appellate court.

First, all the elements of estafa under Article 315, par. 1(b) of the Revised Penal Code are present. The elements of estafa under said provision are: (a) that money, goods or other personal property is 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; (b) that there be misappropriation or conversion of such money or property by the offender; or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the

prejudice of another.[22]

Here, the petitioner received in trust from Ballecer the amount of P100,000 for the purpose of opening a letter of credit for the importation of jute sacks with the concurrent obligation to return the same amount in the event that the transaction failed to materialize. Petitioner, however, misappropriated and applied to his own use the said amount and even admitted issuing checks to be drawn from the P100,000 for a purpose other than opening a letter of credit. Petitioner was then asked to return the P100,000. Despite repeated verbal and formal demands, petitioner failed and refused to return said amount to the prejudice of Ballecer. Clearly, all the elements of the crime of estafa were proven in the instant case.[23]

Second, the appellate court did not err in convicting petitioner despite the fact that the February 5, 1991 transcript was missing. As correctly pointed out by the OSG, nothing on record categorically indicates that the transcript was already missing when the trial court rendered its decision. The mere fact that the trial court did not mention the February 5, 1991 testimony does not mean that it was not considered at all. Courts are not required to state in its decision all the facts found in the records. It is enough that the court states the facts and the law on which its decision is based.[24] The mere fact that no mention was made in the trial court's decision of the testimony of a witness does not necessarily mean said testimony was overlooked by the trial court in arriving at its decision. If it did not make reference of said testimony, it is because it was insignificant.[25]

Even assuming that the transcript of February 5, 1991 was missing at the time the trial court decided the case, there were other evidence presented which led it to correctly conclude that indeed petitioner committed estafa. In fact, the missing transcript of February 5, 1991 contained only a portion of the testimony of Ballecer. Other transcripts, which extensively covered Ballecer's testimonies, provided sufficient basis for the trial court to convict petitioner.

Finally, the Affidavit of Desistance[26] submitted by Ballecer will not justify the dismissal of the action. By itself, an Affidavit of Desistance is not a ground for the dismissal of an action, once the action has been instituted in court.[27] Here, Ballecer made the so-called pardon of the petitioner after the institution of the action. He made the Affidavit of Desistance only on October 25, 1999 - more than two years after the trial court had rendered its decision. The Court attaches no persuasive value to a desistance especially when executed as an afterthought. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who had given it later on changed his mind for one reason or another. Such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses.[28] Moreover, if we allow the dismissal of the case in view of Ballecer's Affidavit of Desistance, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.[29]

WHEREFORE, the petition is hereby DENIED. The Decision dated October 26, 2004 and the Resolution dated April 14, 2005 of the Court of Appeals in CA-G.R. CR No. 21877 are AFFIRMED.

SO ORDERED.

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

[1] CA rollo, pp. 164-175. Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao concurring.

[2]Id. at 191-192.

[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. Dated March 10, 1989.

[5] CA rollo, p. 165.

[6] Id.

[7] Id.

[8] Id. at 166.

[9]Records, p. 166.

[10] CA rollo, p. 166.

[11] Id. at 166-167.

[12]Records, pp. 448-450. Penned by Judge Salvador S. Abad Santos.

[13] Id. at 450.

[14] CA rollo, p. 50.

[15]Records, pp. 504-505.

[16] Id. at 506-507.

[17]CA rollo, p. 175.

[18] Id. at 178-182.

[19]Rollo, p. 22.

[20]Id. at 26-29.

[21] Id. at 104-107.

[22] Lee v. People, G.R. No. 157781, April 11, 2005, 455 SCRA 256, 266-267.

[23] Records, pp. 449-450.

[24] RULES OF COURT, Rule 36,

SECTION 1. Rendition of judgments and final orders. - A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and

the law on which it is based, signed by him, and filed with the clerk of court.

[25] *People v. Derpo*, Nos. L-41040 & 43908-10, December 14, 1988, 168 SCRA 447, 455.

[26] *Rollo*, pp. 53-54.

[27] *People v. Ramirez Jr.*, G.R. Nos. 150079-80, 10 June 2004, 431 SCRA 666, 677.

[28] *Alonte v. Savellano, Jr.*, G.R. No. 131652, March 9, 1998, 287 SCRA 245, 264 citing *People v. Junio*, G.R. No. 110990, October 28, 1994, 237 SCRA 826, 834.

[29] *Victoriano v. People of the Philippines*, G.R. Nos. 171322-24, November 30, 2006, 509 SCRA 483, 491-492.

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