ELISEO R. FRANCISCO, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 177720. February 18, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court praying that the Court of Appeals' Decision[1] dated 28 February 2007 and Resolution dated 4 May 2007 in CA-G.R. CR No. 29699 be set aside.

The facts of the case are as follows:

In an Amended Information dated 9 November 2000, which was filed on 13 November 2000 with the Regional Trial Court (RTC) of Pasig City, petitioner Eliseo Francisco, Jr. (Francisco) was charged with Estafa in an Amended Information, as defined in Article 315, par. 2(a)[2] of the Revised Penal Code.

On arraignment, petitioner Francisco pleaded not guilty. Trial ensued.

The prosecution's evidence tends to establish the following facts:

Private complainant Bankard, Inc. is a credit card company engaged in issuing credit cards and in acquiring credit card receivables from commercial establishments arising from the purchase of goods and services by credit card holders using Mastercard or Visa credit cards issued by other banks and credit card companies. Mastercard or Visa pays Bankard for the amount Bankard has paid the commercial establishments for the invoices it acquires. On the other hand, Mastercard or Visa debits Bankard for the amount due to other credit card companies or banks which acquire the invoices where the credit card used for the purchase is issued by Bankard.

Petitioner Francisco was an employee of Bankard at the time the alleged crime occurred. He was knowledgeable in computer programming, and held the position of Acquiring Chargeback Supervisor.

Bankard engaged the services of Equitable Computer Services, Inc. (Equicom) to encode and post credit card transactions and submit reports on those services. Procedurally, Bankard transmits to Equicom the invoices, instructions for debiting, credit advances and other documents relevant to encoding and posting. Equicom then transmits through electronic mail the reports on the transactions to Bankard. Petitioner Francisco was tasked to convert the Equicom reports sent through electronic mail from its original ARJ Text Format to the Amipro Format used by Bankard. Petitioner Francisco was the only one assigned to perform this task.

Sometime in August 1999, Solidbank, one of the companies which issues credit cards, relayed to Bankard that there were four questionable transactions reflected in Solidbank Mastercard Account No. 5464 9833 0005 1922 under the name of petitioner Francisco. An amount of P663,144.56 was allegedly credited to said account of petitioner Francisco, the credit apparently being a reversal of charges from four establishments. The amount of P18,430.21 was also credited to petitioner Francisco's AIG Visa Card based on another supposed credit advance.

Bankard conducted an investigation. Upon comparison of the original reports of Equicom with those converted by

petitioner Francisco, it was found that based on Equicom's original Daily Transaction Prooflist, there was a reversal of charges from Bankard Travel Services in the amount of $5,989.60 which was credited to the credit card under the name of petitioner Francisco, with a conversion date of 10 August 1999. The Outgoing Interchange Transaction also reflected a reversal of a transaction with Bankard Travel and the credit of the amount of $5,989.60 to Cardholder No. 5464 9833 0005 1922 on 1 August 1999. The converted report no longer reflected the reversal of charges. The crediting of the amount of $5,989.60 as stated in the original reports coming from Equicom and Mastercard was deleted and replaced with the figure zero.

There was also no record of the transactions or purchases from the four establishments charged against petitioner Francisco's Mastercard Account No. 5464 9833 0005 1922 and AIG Visa Account No. 4009 9218 0463 3006 that may be reversed. Only those availments which have been charged against the credit cards could be reversed, and the amount charged for such availments would then be returned and credited to the same credit card. Since there were no original purchase transactions charged against petitioner Francisco's credit cards, the reversal of charges and the crediting of sums of money to petitioner Francisco's credit cards appeared to be fictitious.

Petitioner Francisco was the person who received the transmittals from Equicom of documents including any purported cash advice at the time the credit transactions were made in favor of his credit card accounts.

As a result of the fraudulent crediting of the amount of P663,144.56 to petitioner Francisco's Solidbank credit card account, Bankard was made to pay the same to Solidbank in the course of the settlement of transactions between the issuing banks from the time of the crediting of the amount to petitioner Francisco's credit card account until the fraudulent credits were charged back to Solidbank on 27 August 1999. Solidbank again charged back Bankard for the said amount, from 4 September 1999 to 3 October 1999. Thus, during the time the amount was charged against Bankard, the latter was unable to use such amount. Bankard was unable to recover the amount of P18,430.21 which petitioner Francisco fraudulently credited to his AIG Visa Card No. 4009 9218 0463 3006.

The defense presented petitioner Francisco as its lone witness. Petitioner Francisco denied that he caused the crediting of said amounts to his credit cards.

On 10 January 2005, the RTC rendered its Decision convicting petitioner Francisco as follows:

> WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, considering that the prosecution has proven beyond reasonable doubt that accused ELISEO FRANCISCO is GUILTY of the crime charged, the Court hereby sentences said accused of the crime of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code, as amended.
>
> Accordingly, accused is hereby sentenced to suffer an indeterminate penalty of imprisonment of 2 years 4 months of arresto mayor as minimum to 6 years 2 months and 11 days of prision mayor as maximum and ordered to reimburse private complainant Bankard, Inc., of the amount of PhP18,430.21.[3]

Petitioner Francisco filed a Motion for Reconsideration/New Trial, praying for the re-opening of the case in order that he may present the credit card statements and demand letters. Petitioner Francisco contended that Bankard's line of business affected by the instant case was that of acquiring credit card receivables. According to petitioner Francisco, this meant that he, like any other credit card holder, remained indebted to the issuers of the credit card, which were Solidbank Mastercard and AIG Visa. He should, therefore, be acquitted since private complainant Bankard was not the entity that incurred damage, but Solidbank Mastercard and AIG Visa. In an Order dated 12 July 2005, the RTC denied petitioner Francisco's Motion for Reconsideration/New Trial.

Petitioner Francisco proceeded to the Court of Appeals. On 28 February 2007, the Court of Appeals rendered its Decision affirming the conviction of petitioner Francisco, but with modification of his prison sentence:

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> WHEREFORE, the appealed Decision dated January 10, 2005 is affirmed, subject to the modification of the imprisonment sentence which should be an indeterminate penalty of four (4) years and two (2) months of prision correccional, as the minimum period, to twenty (20) years of reclusion temporal, as the maximum period.[4]

According to the Court of Appeals, the total amount defrauded, P681,574.77, gave rise to a minimum penalty under prision correccional and a maximum penalty of twenty years, pursuant to Article 315 of the Revised Penal Code, which 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 case, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

Petitioner Francisco now comes before this Court, bringing forth the issue for our consideration:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE ASSAILED ORDER AND DECISION OF THE REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 267, DESPITE THE ABSENCE OF AN ELEMENT IN THE CRIME CHARGED FOR WHICH PETITIONER WAS INDICTED.[5]

The element of estafa referred to by petitioner Francisco is the third one under Article 315(a) of the Revised Penal Code in the following list provided by this Court in several cases:

> (1) the accused uses a fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or employs other similar deceits;
>
> (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;
>
> (3) 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
>
> (4) as a result thereof, the offended party suffered damage.[6] (Emphasis supplied.)

Petitioner Francisco argues that the prosecution failed to present evidence that he was privy to the business deal between Bankard and the credit card companies (Solidbank Mastercard and AIG Visa). Petitioner Francisco seems to be implying that since he was not privy to the business deal between Bankard and the credit card companies, he could not have induced Bankard to part with its money or property because of any false pretense, fraudulent act or fraudulent means committed by him, directed to the credit card companies.

We disagree.

The third element of estafa under Article 315(a) merely requires that the offended party must have relied on the false pretense, fraudulent act or fraudulent means. It does not require that the false pretense, fraudulent act or fraudulent means be intentionally directed to the offended party. Thus, in this case wherein a person pretended to possess credit in order to defraud third persons (Solidbank Mastercard and AIG Visa), but the offended party nevertheless relied on such fraudulent means and consequently suffered damage by virtue thereof, such person is

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liable for estafa under Article 315(a), even though the fraudulent means was not intentionally directed to the offended party. A person committing a felony is criminally liable although the consequences of his felonious act are not intended by him.[7]

In any case, the prosecution has successfully proven damage on the part of private complainant Bankard. As held by the Court of Appeals:

> As a result of the fictitious credits which the accused caused to be posted in his credit cards, private complainant [Bankard] suffered damages when it was made to pay Solidbank the fictitious credit in the course of the settlement of transactions between the issuing banks from the time of the crediting of the said amount to the credit card of the accused until the fraudulent credits where charged back to Solidbank on 27 August 1999. Solidbank again charged back private complainant for the said amount from 4 September 1999 to 3 October 1999. Hence, during the time the amount was charged against private complainant, the latter was unable to use its fund in the amount of PhP663,144.56 for a period of at least three (3) months. Likewise, private complainant was unable to recover the amount of PhP18,430.21 which the accused fraudulently credited to his AIG Visa Credit Card No. 4009 9218 0463 3006.[8]

Petitioner Francisco further argues that Bankard had no personality to file the complaint, since the credit card companies were the ones which really suffered damage in the case at bar. Thus, argued petitioner Francisco, the third element of estafa under Article 315(a) was lacking:

> Stated otherwise, this element speaks of an offended party which undoubtedly may only refer to Solidbank Mastercard and AIG Visa simply because it was these two credit card companies that extended credit facilities to herein petitioner when the latter used his credit cards.
>
> Despite this factual setup however, not even one of these credit card companies appeared as private complainant in the instant case. BANKARD Inc., the former employer of herein petitioner is the one who lodged the criminal complaint after the latter filed an illegal dismissal case against it before the National Labor Relations Commission. Worse, the assailed Decision of the Honorable Court of Appeals even awarded civil liabilities in favor of BANKARD Inc. corresponding to the accumulated credit balances of petitioner with Mastercard and Visa, when in truth and in fact, Mastercard and Visa continues even up to the present to exert collection effort against petitioner by sending him corresponding demand letters.[9]

Firstly, as discussed above, it was duly proven that Bankard also suffered damages by reason of fraudulent acts committed by petitioner Francisco.

Secondly, even assuming for the sake of argument that Solidbank Mastercard and AIG Visa were the proper offended parties in this case, petitioner Francisco is mistaken in his assertion that it was essential for either Solidbank Mastercard or AIG Visa to have filed the complaint for estafa.

Except in cases that cannot be prosecuted de oficio, namely adultery, concubinage, seduction, abduction and acts of lasciviousness,[10] a complaint filed by the offended party is not necessary for the institution of a criminal action. The Information filed by the prosecutor with the proper court is sufficient.

A crime is an offense against the State, and hence is prosecuted in the name of the People of the Philippines. The participation of the private offended party is not essential to the prosecution of crimes, except in the crimes stated above, or in the prosecution of the civil action deemed instituted with the criminal action.[11] A complaint for purposes of preliminary investigation by the prosecutor need not be filed by the "offended party" but may be filed by any competent person, unless the offense subject thereof cannot be prosecuted de oficio.[12]

The Court of Appeals was correct in modifying the penalty to be imposed on petitioner Francisco. Article 315 of the Revised Penal Code provides that the penalty for estafa is "(t)he 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."

Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty should be one degree lower than prision correccional in its maximum period to prision mayor in its minimum period, the period prescribed in the Revised Penal Code. One degree lower than the above penalty would be prision correccional in its minimum period to prision correccional in its medium period, the inclusive imprisonment duration for which is 6 months and 1 day to 4 years and 2 months. The minimum term of the indeterminate sentence imposed by the Court of Appeals, which is 4 years and 2 months, is within the above-stated period.

The maximum term of the indeterminate penalty, according to the Indeterminate Sentence Law, is "that which, in view of the attending circumstances, could be properly imposed under the Rules of the said Code." As held by the Court of Appeals, the total amount defrauded is P681,574.77. This exceeds the threshold amount of P22,000 by P659,547.77. There are, thus, 65 additional P10,000.00s. This would have resulted in an additional 65 years, if not for the maximum imposable penalty of twenty years. The Court of Appeals, therefore, properly pegged the maximum term of the indeterminate sentence at twenty years.

WHEREFORE, the Decision of the Court of Appeals dated 28 February 2007 and Resolution dated 4 May 2007 in CA-G.R. CR No. 29699, are hereby AFFIRMED. Costs against petitioner Francisco.

SO ORDERED.

Quisumbing,[*] Austria-Martinez,[**](Acting Chairperson), Corona, and Carpio Morales, JJ. concur.

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[*] Per Special Order No. 564, dated 12 February 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program.

[**] Associate Justices Renato C. Corona and Conchita Carpio Morales were designated to sit as additional members replacing Associate Justices Antonio Eduardo B. Nachura and Diosdado M. Peralta per Raffle dated 16 February 2009.

[1] Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Normandie B. Pizzarro, concurring; rollo, pp. 35-52.

[2] Article 315, par. 2(a) of the Revised Penal Code provides:

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 fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

[3] Rollo, p. 65.

[4] Id. at 51.

[5] Id. at 158.

[6] Flores v. Layosa, G.R. No. 154714, 12 August 2004, 436 SCRA 337, 347.

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[7] Article 4 of the Revised Penal Code provides:

Article 4. Criminal liability. - Criminal liability shall be incurred:

1. By any person committing a felony (delito) although the wrongful act done be different from that which he intended.

[8] Rollo, pp. 47-48.

[9] Rollo, pp. 162-163.

[10] Section 4, Rule 10 of the Rules of Court.

[11] Section 1, Rule 111 of the Rules of Court.

[12] Regalado, Remedial Law Compendium (10[th] Ed., p. 274); Hernandez v. Albano, 112 Phil. 507, 509 (1961); Ebarle v. Sucaldito, G.R. No. L-33628, 29 December 1987, 156 SCRA 803, 819.

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