VON MADARANG Y MONTEMAYOR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 179577. August 25, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On petition for review are the Court of Appeals May 24, 2007 Decision[1] and September 11, 2007 Resolution[2] affirming with modification the October 27, 2005 Decision of Branch 145 of the Regional Trial Court (RTC) of Makati in Criminal Case No. 03-2888 convicting Von Madarang (petitioner) of Estafa which is penalized under paragraph 1(b) of Article 315 of the Revised Penal Code (RPC).

Teresita Ramirez (Teresita), sole owner/proprietress of Makati-based T.E.R. Trading, a firm engaged in the business of supplying and selling Business Registration Aluminum Plates (registration plates), transacted business in certain towns of Isabela and Santiago City through the help of Cecilia Dy (Cecilia), the wife of then Isabela Governor Benjamin Dy.

Sometime in October 1997, Von Madarang y Montemayor (petitioner) whom Cecilia introduced to Teresita agreed to assist in the selling of registration plates at a price fixed by Teresita, the overprice to serve as his and Cecilia's commission.[3]

It appears that on petitioner's request, Teresita executed a Special Power of Attorney (SPA - Exh. "2-A")[4] which was notarized on January 20, 1998 authorizing petitioner as follows:

> - To collect payments for BUSINESS REGISTRATION ALUMINUM PLATES Plus Stickers, size 5 x 9 Pt. 8 sold to the following municipalities:
>
> 1. Municipality of Cordon, Isabela
> 2. Municipality of Cauayan, Isabela
> 3. Municipality of Ramon, Isabela
>
> - To accept and receive cash or checks as payments thereof and sign or issue our official receipts, or cash vouchers for such payments.
>
> - To cash or endorse checks or treasury warrants issued by the municipalities as payments or by the bank, payable to T.E.R. Trading. (emphasis and underscoring supplied)

It further appears that on petitioner's request, Teresita executed another SPA, also notarized on January 20, 1998 (SPA-Exh. "A"),[5] to include Santiago City as among the places from which petitioner could collect payments.

Based on Certifications[6] separately issued by Santiago City, Cordon and San Mateo, petitioner had collected full payments of registration plates sold there in the amounts of P345,600, P57,600 and P33,290.91, respectively. From Teresita's records denominated as the "Von Madarang Accounts,"[7] she noted that petitioner failed to remit P132,000 representing the balance of unremitted collections.[8]

Her demands, the last for which was by letter of July 22, 2002,[9] for the remittance of petitioner's balance having remained unheeded, the Makati City Prosecutor's Office, on Teresita's complaint, filed before the Makati RTC an Information for Estafa against petitioner, the accusatory portion of which reads:

> That on or about the 20[th] day of February 1998, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, received in trust the sum of Php 132,000.00 with the obligation to deliver the same to complainant Teresita Ramirez, but the accused once in the possession of the said amount of Php 132,000.00, far from complying with his obligation, with abuse of confidence and with unfaithfulness, and with intent to defraud the said complainant, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the said amount of Php 132,000.00 and despite repeated demands, failed and refused and still fails and refuses to return the said amount, to the damage and prejudice to the said complainant in the aforementioned amount of Php 132,000.00.
>
> CONTRARY TO LAW.

Petitioner asserted that under SPA dated January 23 [sic], 1998 executed by Teresita (SPA-Exh. "1"),[10] he was under no obligation to remit the collections from Santiago City and San Mateo as his authority thereunder was to collect payments only from Cordon, Cauayan and Ramon.

Petitioner in fact claimed that he was not an agent, but a business partner of Teresita, thereby dispensing with the obligation to remit the collections from Santiago City, as well as from San Mateo, which represented his and Cecilia's share in the transactions.[11]

Brushing aside petitioner's claim that his authority was to collect payments only from Cordon, Cauayan and Ramon as SPA-Exh. "1" showed, the trial court noted that after Teresita executed SPA-Exh. "2-A"[12] which was notarized on January 20, 1998 authorizing petitioner to collect from Cordon, Cauayan and Ramon, she, on petitioner's request, subsequently executed SPA-Exh. "A," also notarized on January 20, 1998,[13] adding Santiago City to the places where petitioner was authorized to collect. Thus the trial court observed:

> On the other hand, the Special Power of Attorney offered in evidence by the accused as Exhibit "1" appears to be an original copy. A careful perusal of this document would show that item no. 4 which contained the words "Alicia, Isabela" was inserted by using a different typewriting machine from the one utilized in preparing the rest of the contents of the said Special Power of Attorney, thus, giving the impression that it was only an added item after the execution and notarization of the said Special Power of Attorney.
>
> In the light of this observation, the inference can be made that initially, the private complainant executed a Special Power of Attorney [Exhibit "2-A"] wherein she delegated to the accused as his agent the authority to collect the payments of the sale of the aforementioned items from the municipalities of Cordon, Cauayan and Ramon. Thereafter and as can be seen from the left hand margin of Exhibit "2-A" [page 13 of the records], a handwritten notation admitted to be that of accused (tsn. 6-23-05; p. 8] was made, which reads: "Please include the city of Santiago." Thus, to formalize and give more authenticity to this additional inclusion of the city of Santiago, the private complainant executed another Special Power of Attorney marked as Exhibit "A" which formalized the inclusion of the city of Santiago from where the accused can also collect the proceeds of the sale of the aforementioned business transactions.[14] (emphasis and underscoring supplied)

The trial court nevertheless credited petitioner's contention that any balance he owed Teresita was only P95,000,[15] and that such "mathematical inaccuracy . . . will not result in serious doubt as to warrant the acquittal of the accused of the offense charged. . . ."[16]

By Decision[17] of October 27, 2005, the trial court thus convicted petitioner, disposing as follows:

> PREMISES CONSIDERED, judgment is rendered finding the accused Von Madarang y Montemayor

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> GUILTY beyond reasonable doubt of the offense of Estafa defined under paragraph 1(b) of Article 315 of the Revised Penal Code, sentencing him to suffer an indeterminate term of imprisonment of four (4) years and two (2) months of prision correccional as minimum to thirteen (13) years and one (1) day of reclusion temporal as maximum, with all the accessory penalties provided for by law. He is likewise ordered to pay the private complainant Teresita Ramirez the amount of P95,000.00 with interest at the legal rate from the filing of the Information until fully paid pursuant to Article 2211 of the said Civil Code.
>
> With cost against the accused.
>
> SO ORDERED. (underscoring supplied)

At the Court of Appeals before which he appealed, petitioner assigned as main errors the trial court's non-recognition of: (1) Teresita's erroneous accounting and the existence of the conflicting SPAs (Exhs. "A," "1" and "2-A") which amounted to reasonable doubt to warrant his acquittal, and (2) the existence of a partnership between him and Teresita.[18]

The appellate court affirmed petitioner's conviction but reduced his unaccounted collections to P67,500 (P32,500 from Santiago City plus P35,000 from Cordon) since San Mateo is not listed under SPA-Exh. "A" as one of those from which petitioner was authorized to collect payments. Thus, with the sum of P67,500 as basis for modifying the imposable penalty, the appellate court disposed:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The assailed decision is AFFIRMED with MODIFICATION. Appellant is found guilty beyond reasonable doubt of the crime of Estafa sentencing him to suffer an indeterminate term of imprisonment of four (4) years and two (2) months of prision correccional, as minimum, to ten (10) years, eight (8) months and twenty one (21) days of prision mayor, as maximum. Appellant is likewise ordered to pay private complainant Teresita Ramirez the amount of P67,500.00 as actual damages and to pay the costs.
>
> SO ORDERED. (italics in the original)

Reconsideration having been denied by Resolution of September 11, 2007, petitioner filed the present petition invoking the same grounds as those raised before the appellate court.

Petitioner maintains that his authority was to collect payments only from Cordon, Cauayan and Ramon, hence, he was under no obligation to turn over the proceeds of collections from San Mateo and Santiago City.

The Court finds that, indeed, it is the prosecution's SPA-Exh. "A" which is the document-agreement of the parties. In observing that Exh. "1" could not, in effect, be relied upon, the trial court noted that while petitioner's SPA-Exh. "1" appears to be an "original copy," item no. 4 therein reading "Alicia, Isabela" bears a different typeset, indicating that it was intercalated through the use of a typewriter different from that used in the execution of SPA-Exh. "2-A."

Additionally, the Court observes that the blank space for the day when SPA-Exh. "1" was executed on January 1998 was filled up in handwriting to read "23." But such document was notarized on January 20, 1998, thus betraying petitioner's scheme.

As observed in the earlier-quoted portion of the trial court's decision, SPA-Exh. "A" appears to have been subsequently executed on January 20, 1998, the same day that SPA-"Exh. 2-A" was executed by Teresita, to "formalize" the written request of petitioner to include Santiago City as among the places from where petitioner could collect payments.

The Certifications[19] issued by Santiago City and Cordon clearly show that petitioner received collections from them. Since SPA-Exh. "A" does not authorize petitioner to collect from San Mateo, Teresita cannot demand from

petitioner the remittance of collections received therefrom by him. The appellate court's ruling that petitioner is duty bound to deliver only the amounts of P32,500 from Santiago City and P35,000 from Cordon is thus in order.

Respecting petitioner's contention that the accounting inconsistency between the "Von Madarang accounts" and Teresita's testimony in open court creates reasonable doubt to merit his acquittal, the same does not lie. As the appellate court explained:

> Exhibit "E" ["Von Madarang account"] was never in conflict with the oral testimony of the complainant. During cross examination, she testified that included in the amount is the value of the marker and sticker worth P7,000.00 and P10,000.00 respectively. Though she failed to mention the item cash money worth P5,000.00, such failure does not affect the veracity of her testimony. Inconsistencies on minor or trivial matters only serve to strengthen rather than weaken the credibility of the witnesses for they erase the suspicion of rehearsed testimony (People vs. Santiago, 420 SCRA 248; underscoring supplied)[20]

In fine, mere mathematical inaccuracy or error in the accounting document-basis of the amounts alleged to have been misappropriated in the Information does not engender doubt on appellant's culpability, especially since the exact amount of his civil liability has been ascertained from the evidence adduced during the trial.

Petitioner's claim that a partnership agreement between him and Teresita existed deserves scant consideration. SPA-Exh. "A" showing the existence of a contract of agency belies such claim.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with the concurrence of Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison; CA rollo, pp. 72-81.

[2] Id. at 131-132.

[3] TSN, April 22, 2004, p. 9.

[4] Records, p. 13.

[5] Id. at 118.

[6] Exhibits `B" to "D," dated September 25, 2002 and May 19, 2003, respectively, id. at 119-121.

[7] Exhibit "E," id. at 122.

[8]

> Cordon, Isabela
>
> Php 35,000.00
>
> San Mateo, Isabela
>
> 97,500.00
>
> Santiago, Isabela
>
> 32,500.00

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[9] Exhibit "F," records, p. 123.

[10] Records, p. 160.

[11] TSN, June 23, 2005, pp. 4, 20-21.

[12] Vide note 4.

[13] Vide note 5.

[14] Records, pp. 331-332.

[15] P165,000 less payments of P70,000.

[16] Infra note 17 at 333.

[17] Rendered by Presiding Judge Cesar D. Santamaria; records, pp. 328-333.

[18] Vide Appellant's Brief, CA rollo, p. 27.

[19] Exhibits `B" and "C," vide note 6.

[20] Vide note 1 at 76.

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