

ALEX SULIT Y TRINIDAD, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 202264. October 16, 2019

Ponente: J. REYES, JR., J.

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J. REYES, JR., J.:

Before this Court is a Petition for Review on Certiorari,[1] assailing the Decision[2] dated May 24, 2011, Resolution[3] dated January 12, 2012, and Resolution[4] dated April 2, 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 32929.

The Relevant Antecedents

Docketed as Criminal Cases Nos. 03-3663 to 03-3670 and 06-361, nine complaints for the crime of estafa were filed against Edgar G. Santias (Santias) and Alex T. Sulit (petitioner) anent several investment transactions with Valbury Assets Ltd. (Valbury), in which they served as Senior Account Manager[5] and Marketing Director,[6] respectively. Except for the name of the private complainants and the amounts involved, the nine Information were similarly worded, to wit:

That in or about and during the period from August to September 2001, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating and mutually helping with one another, did then and there willfully, unlawfully and feloniously defraud complainant Caridad P. Bueno in the following manner to wit: the said accused by means of false manifestation and representations executed prior to or simultaneously with the commission of fraud which they made to the complainant to the effect that they are connected with Valbury Assets Ltd. and who have the authority to place her money in a foreign currency trading with the assurance of substantial return of investment and by means of other deceptions of similar import, induced and succeeded in inducing complainant to give the total amount of [USD] 7,500.00 to the accused, the latter knowing fully well that their manifestations and representations were false and fraudulent and were only made to obtain the said amount which accused applied and used to their own benefits, to the damage and prejudice of the complainant in the aforementioned amount of [USD] 7,500.00.

CONTRARY TO LAW.[7]

Upon arraignment, petitioner pleaded not guilty while Santias remained at large. Trial on the merits then ensued.[8]

Caridad Bueno (Bueno), Ma. Lita Bonsol (Bonsol), and Gregoria Ilot (Ilot) alleged that they were enticed by their former co-worker, Lordelyn Dizon (Dizon) to invest their money with Valbury, a company engaged in buying and selling of foreign currencies.[9]

On August 20, 2001, Bueno was accompanied by Dizon to the office of Valbury wherein she was introduced to Santias, George Gan (Gan), and petitioner. Santias took such opportunity to persuade Bueno to place her money in a foreign currency trading with the assurance that her money will be safe with them and she could withdraw the

same anytime she pleases. Further, Santias promised that the money will earn an interest of USD 1,500.00 a month. Lured by the false promise of quick financial gains, Bueno returned to the office of Valbury the following day and placed an investment in the amount of P258,000.00 to Santias, who converted the money into USD 5,000.00 and promised to trade the same. The receipt of such money was acknowledged in a Letter dated August 30, 2001.[10]

On September 11, 2001, Bueno went to Valbury to inquire about her profits. However, she was informed by Gan, Santias, and Sulit that the company lost the capital because of the World Trade bombing in New York City. They then persuaded Bueno to give an additional USD 1,000.00 investment so that they could trade it again; and by such means, they would be able to recover her loss.[11]

On September 25, 2001, Bueno tried to obtain her profits but was once again persuaded to make further investment in the amount of USD 1,500.00, piling up her total investments in the amount of USD 7,500.00. However, Bueno was not able to receive profit from any of her investment on account of business losses.[12]

When Bueno sought the aid of the National Bureau of Investigation (NBI), petitioner, Santias, and Gan returned 50% of her investment which amounted to USD 7,500.00.[13]

On the other hand, Bonsol corroborated the testimony of Bueno that Santias convinced her that her money will not only be safe with them but will earn huge interest should she choose to invest the same with Valbury.[14] Swayed by such promise, she invested her money in the amount of P510,000.00 and handed the same to Santias. However, Bonsol was not able to recover the profits promised to her upon demand.[15]

As Bonsol likewise sought the help of the NBI, she was able to recover P255,000.00 from petitioner, Gan, and Santias.[16]

Ilot testified that she gave her investment to Santias in the amount of P250,000.00. Santias told Ilot that her money will earn interest after a week. However, similar to what happened to Bueno and Bonsol, Ilot was not able to obtain her projected profits as well as her initial investment. Ilot narrated that Sulit convinced her to invest additional money so as to recover her initial investment. To this, Ilot declined.[17]

It appeared from the records that the Securities and Exchange Commission (SEC) issued a Certification to the effect that Valbury is not a registered corporation which has the authority buy, sell, and trade foreign currencies.[18]

After the prosecution rested its case, petitioner filed a motion for demurrer to evidence, which was partly granted by the trial court in an Order dated April 25, 2008.[19] The trial court dismissed six out of the nine complaints for failure of the other complainants to appear.[20]

As the defense opted not to present evidence, the facts established in the trial court remained uncontroverted.[21]

In a Decision[22] dated July 23, 2009, the trial court found the petitioner guilty beyond reasonable doubt of the crime of estafa under Article 315, paragraph (par.) 2(a) of the Revised Penal Code (RPC). The trial court was convinced that petitioner represented to the offended parties that he, together with his cohorts, could trade their investment money and earn a high rate of interest knowing that they are not authorized to do so under pertinent securities regulation laws. Thus, the assurances that the complainants' money will earn high interest and that they could withdraw the same anytime were false. It was undisputed that the private complainants were not able to recover their money and the corresponding interest upon demand; more so, they were urged by petitioner and his cohorts to invest again so that they will be able to recover their money.

As Bonsol and Bueno were able to recover half of their invested money, the trial court found that the amount

defrauded totaled to P698,500.00.

The dispositive portion of which reads:

WHEREFORE, finding the accused ALEX SULIT guilty beyond reasonable doubt with the crime of ESTAFA under Article 315, par. 2 (a) of the Revised Penal Code and applying the Indeterminate Sentence Law he is hereby sentenced to suffer an imprisonment ranging from four (4) years and two (2) months of prison correccional as minimum to twenty (20) years as maximum.

By way of civil liability, accused Sulit is likewise directed to pay the private complainants the following amounts: [Php 193,500.00] to Caridad Bueno, [Php 255,000.00] to Ma. Lita Bonsol and [Php 250,000.00] to Gregoria Ilot.

SO ORDERED.[23]

Aggrieved, petitioner filed an appeal before the CA.

In a Decision[24] dated May 24, 2011, the CA found the appeal without merit. In affirming the decision of the trial court, the CA held that the elements of estafa under Article 315, par. 2(a) of the Revised Penal Code (RPC) are present in this case: petitioner conspired with his co-accused in employing fraud and deceit to induce the private complainants to invest in their business with the assurance of profits within a short period of time. Persuaded by such promises, private complainants parted with their money to the coffers of Valbury. However, the promise of substantial return of investment never materialized. The private complainants likewise, were not able to recover their money.

Moreover, the CA found that petitioner's active participation in all the transactions sanctioned the presence of conspiracy among him, Santias, and Gan.

The fallo thereof reads:

WHEREFORE, premises considered, the appeal is DENIED. The assailed Decision dated July 23, 2009, rendered by the Regional Trial Court, Branch 134, Makati City, in Criminal Case Nos. 03-3664, 03-3669 and 06-361 is hereby AFFIRMED.

SO ORDERED.[25]

On June 14, 2011, the Public Attorney's Office filed a Motion to Withdraw Appearance as counsel for petitioner.[26]

The following day, petitioner filed a Motion for Reconsideration (of the Decision promulgated on May 24, 2011) and/or Motion to Reopen/Motion for New Trial with Leave of Court and with Reservation to File Further Arguments, Papers, etc.,[27] denying his participation in the investment transactions among the private complainants and Santias. Further, petitioner maintained that he suffered from the gross carelessness of his former lawyer when he consented to waive his right to present his evidence. As one of his reliefs, petitioner prayed for the remand of the case so that a new trial may be carried out.

To this, the CA issued a Minute Resolution dated July 7, 2011 giving due course to said motion and requiring the Office of the Solicitor General (OSG) to comment on the same.[28]

On June 17, 2011, Atty. Ernesto S. San Juan filed a Motion for Substitution of Counsel/Formal Entry of Appearance as new counsel for petitioner.[29]

After the OSG filed its comment, the CA subsequently issued a Resolution[30] dated January 12, 2012 denying petitioner's motion for reconsideration.

On February 15, 2012, petitioner filed a Very Urgent Motion to Resolve all Pending Matters, seeking the resolution of the motion for new trial.

In a Resolution[31] dated April 2, 2012, the CA denied the motion to reopen/new trial for lack of merit.

Hence, this petition.

The Issues

This Court is left to determine and resolve the following issues: (1) whether or not the guilt of petitioner was proven beyond reasonable doubt; and (2) whether or not petitioner was deprived of due process.

The Court's Ruling

The elements of estafa by means of deceit under Article 315(2)(a) of the RPC are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.[32]

Preliminarily, it is a settled rule that factual findings of the trial courts are accorded great respect because they are in the best position to assess the credibility of the witnesses having had the opportunity to observe their demeanor during the trial.[33]

This Court declines to disturb the factual findings of the Regional Trial Court (RTC) and the CA as they are in unison in finding that all the elements of estafa are extant in this case.

First. Ensuing their fraudulent scheme, petitioner, Gan and Santias misrepresented that their company is engaged in the legitimate business of buying and selling foreign currencies. However, it was established during trial that Valbury is not authorized to do so as it is not registered with the SEC. Furthermore, petitioner, Santias, and Gan promised that they could trade the invested foreign currencies for a guaranteed profit and that such investment could be withdrawn at any time. Second. Such misrepresentation was used to convince the private complainants to deliver their money as investment to Valbury. Third. Private complainants relied on the words of guarantee by petitioner, Gan, and Santias to part with their money. And, Fourth. Private complainants suffered damages after they failed to recover not only their invested money, but also the guaranteed profits upon demand.

Petitioner's contention that private complainants should have expected the probability of losing their investments in view of the "Risk Disclosure Agreement" that they signed is misplaced. To stress, the RTC and the CA found that Valbury is not registered as an entity authorized to buy, sell, and trade foreign currencies with the SEC. Thus, petitioner, Gan, and Santias' misrepresentation that they could legally trade private complainants' money is a clear deceit and fraud on their part.

Moreover, petitioner tries to limit his participation in all the transactions, arguing that his "mere presence" therein does not necessarily amount to conspiracy.

As a rule, once conspiracy is shown, the act of one is the act of all the conspirators.[34] As in all crimes, the existence of conspiracy must be proven beyond reasonable doubt. While direct proof is unnecessary, the same degree of proof necessary in establishing the crime is required to support the attendance thereof, i.e., it must be shown to exist as clearly and convincingly as the commission of the offense itself.[35]

In this case, this Court agrees with the findings of the RTC and the CA that conspiracy is present.

A careful and thorough review of the records of the case discloses that private complainants testified in detail as to petitioner's active participation in all the transactions, to wit:

On Caridad Bueno

Q:

Now, were you able to get any interest or profit from the US \$5,000.00 you invested?

A:

None, sir.

Q:

So, were you able to get the US\$5,000.00 back?

A:

No more, sir.

Q

Now, when did you learn that the US\$5,000.00 got lost?

A:

On September 11 attack, we went to the office of Valbury Assets to hear some news and it was there that we learned that our money was already lost.

Q:

From whom did you learn that your money was lost?

A:

Thru Edgar Santias, Alex Sulit and George Gan, sir.

x x x x

A:

I was told by Mr. Gan, Mr. Santias and Mr. Sulit to put additional money so that my account could be revived and I could recover.

Q:

When you say you can recover, what were you supposed to recover?

A:

That I give additional money so that they could trade again, sir.

Q:

And, did you give additional investment?

A:

Yes, sir.

Q:

How much?

A:

US\$ 1,000.00, sir.

x x x x

Q:

You went to the NBI, that's what you said earlier. What happened when you were at the NBI?

A:

We talked and the NBI people planned to go to Valbury Assets to invest US\$ 10,000.00, sir.

x x x x

A:

We went to the office of Valbury Assets bringing with us \$10,000.00 given by the NBI, sir.

Q:

And what happened there, if any?

A:

I endorsed it to Alex Sulit, sir.

Q:

You endorsed what?

A:

The money inside the envelope, sir.[36]

During Caridad Bueno's cross, re-direct, and re-cross examination:

Q:

The question Ms. Witness is during the time that you were paying, was there any occasion that you talked or communicated with Mr. Sulit? During that time.

A:

None sir but he was there.

Q:

But was there any occasion when you had Mr. Sulit communicated with you other than that incident?

A:

We were already in group when he needs us.

Q:

Can you please be more specific what is this meeting you referred to?

A:

When we encountered problems with our money that was the time we sent there in group because we have the same cases (sic).

Q:

Can you remember that date and time?

A:

October 2001.

Q:

And what if any did Mr. Sulit tell your group?

A:

What I could remember during our last group meeting, we were asked to invest US\$10,000.00 so that we could recover our investment.

Q:

Who specifically told you to invest more money?

A:

They were (sic) three of them who were talking to us Sir.

Q:

And who are these three persons?

A:

Edgar Santias, George Gan and Alex Sulit.[37] (Emphases supplied)

On Ma. Lita A. Bonsol

Q:

It states here that what was received by Valbury Assets was 10,000 US Dollars, how much exactly did you give to Valbury Assets?

A:

[P] 510,000.00 Sir

Q:

Why is it stated that that it is 10,000 US dollars[?]

A:

They converted the money into dollars Sir.

x x x x

Q:

After you paid the said amount, what happened next if any?

A:

We were asked to wait.

Q:

Wait for what Ms. Witness?

A:

To wait for the interest.

Q:

And did he mention when will the interest is supposed to come?

A:

That I wait for about two (2) weeks Sir.

Q:

Who told you this Ms. Witness?

A:

Edgar Santias Sir.

Q:

Now, did the interest arrive?

A:

No Sir.

Q:

Now, at anytime, were you able to receive the said interest?

A:

None Sir.

Q:

So, what did you do if any when you did not received (sic) any interest?

A:

They asked me to put additional money but I do not have money anymore [.]

x x x x

Q:

When was this?

A:

September 2001 Sir.

Q:

Who actually told you that you should invest additional money?

A:

Edgar Santias Sir.

Q:

Aside from him, did he give any reason why you should give additional investment?

A:

He told me that I should need additional money because he said that "naka-lock ang position".

Q:

What was your understanding of that statement by Mr. Santias that "Naka-lock ang position"?

A:

According to the explanation, I could not get the interest.

Q:

Did you impure such additional funds?

A:

No Sir.

Q:

Since you did not receive any interest, what did you do if any?

A:

We waited and called us for a meeting Sir.

Q:

When you said they called you, who were called to that meeting?

A:

Eliza Asuncion, Gloria Ilot, Caridad Bueno, Eliza Limson.

x x x x

Q:

Who called for that meeting?

A:

The president Mr. George Gan, Edgar Santias and Alex Sulit.

Q:

Did that meeting pushed through? (sic)

A:

Yes Sir.

x x x x

Q:

Aside from the investors, who were there during the meeting?

A:

George Gan, Alex Sulit and Edgar Santias.

Q:

What happened during the meeting?

A:

They told us that our money is already gone.

Q:

When you said "nila or they" that your money is gone, who actually told you?

A:

Three (3) of them Sir.[38] (Emphases supplied)

During cross, re-direct, and re-cross examination of Ma. Lita Bonsol:

Q:

You said Ms. Witness that you were able to talk to Alex Sulit only when your investment had a problem, is that correct?

A:

Yes Sir.

Q:

And after you invested in Valbury Assets and prior to the problem in your investment, you did not have any communication with Alex Sulit, do you confirm that?

A:

Whenever I go to the office, I see him Sir.[39]

On Gregoria Ilot

x x x x

Q:

So is my impression correct Ms. Ilot that the only reason that made you decide to include Mr. Sulit in your complaint against Valbury Assets is the fact at the time you went to the office of Valbury Assets to the office of Mr. Santias and the other officers of the company, he was present, is that correct?

A:

Yes Sir. But I was able to talk to Mr. Sulit after a week.

Q:

But you will admit before this Court that when you are able to talk with Mr. Alex Sulit, you already invested your money and in fact you made it to Mr. Santias, is that correct?

A:

Yes Sir.[40]

Based from the synthesis of testimonies, it is clear that petitioner actively participated in all the transactions. Petitioner's acts of inducing the private complainants to invest further so as to recover their "lost" investments makes him liable through conspiracy. It must likewise be noted that petitioner was always present during all the meetings — from the time when private complainants invested their money to the time that they sought the help of

the NBI to recover the same. Even more, petitioner received the marked money provided by the NBI, representing the additional investment of USD 10,000.00 that petitioner, Gan, and Santias asked from Bueno. Undeniably, these circumstances are contrary to petitioner's denial of his participation.

Truly, petitioner and his cohorts have ultimate objective, that is, to induce private complainants to part with their money. To do so, petitioner and his cohorts misrepresented that they are in a legitimate business of buying and selling foreign currencies; that they could invest private complainants' money with guaranteed profits; and that private complainants have the option of withdrawing their money at any time. However, as it turned out, Valbury was not registered with the SEC and it was not able to deliver its promises to private complainants.

Neither can this Court exclude petitioner from liability only because he did not participate in employing fraud or deceit upon the private complainants when they initially gave their money to Santias.

At the risk of being repetitive, the finding of conspiracy necessarily implies that the act of one is the act of all. It is sufficient that they acted in concert pursuant to the same objective.[41] Thus, it is not indispensable that petitioner engaged with private complainants from the time that they inquired on the investment scheme offered by Valbury to the time that they parted with their money. It is sufficient that the actions of petitioner and his cohorts were clearly directed by a premeditated joint activity which is aimed towards a common purpose.

Lastly, this Court finds that petitioner was not deprived of due process when he was not able to present his evidence during trial.

It is apparent from the records that petitioner filed a demurrer to evidence without leave of court. The consequence of such is the waiver of petitioner's right to present evidence under Sec. 23 of Rule 119 of the Revised Rules of Criminal Procedure, to wit:

Section 23. Demurrer to Evidence.

x x x x

When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

x x x x

In any case, petitioner failed to prove that he was deprived of due process, an exception to the general rule is that the negligence of counsel binds the client.[42]

Lastly, it must be considered that the penalty corresponding to the amount defrauded was adjusted with the passage of Republic Act No. 10951, to wit:

Section 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

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

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

To summarize, the private complainants' investments are as follows: (a) Bueno's investment is in the amount of

USD 7,500.00; (b) Bonsol's investment is in the amount of P255,000.00; and (c) Ilot's investment is in the amount of P250,000.00.

It was admitted that half of Bonsol and Bueno's investments were returned to them. Considering the prevailing rate when the commission of the crime took place in 2001[43], the other half of Bueno's investment is in the amount of P192,187.13. The other half of Bonsol's investment, on the other hand, is in the amount of P255,000.00.

Thus, the total amount defrauded is P697,187.13.

The imposable penalty is *arresto mayor* in its maximum period to *prision correccional* in its minimum period. There being no mitigating and aggravating circumstances, the maximum penalty should be one year and one day of *prision correccional*.

Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, the range of which is one month and one day to four months. Thus, the indeterminate penalty is two months and one day of *arresto mayor*, as minimum, to one year and one day of *prision correccional*, as maximum.

This Court likewise imposes the legal interest of 6% per annum on the amount from date of finality of this Court's Decision until full payment as per *Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013*.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED**. Accordingly, The Decision dated May 24, 2011, Resolution dated January 12, 2012, and Resolution dated April 2, 2012 of the Court of Appeals in CA-G.R. CR No. 32929 are **AFFIRMED with MODIFICATION**.

Petitioner Alex Sulit y Trinidad is found **GUILTY** beyond reasonable doubt of the crime of *estafa* under Article 315, par. 2(a) of the Revised Penal Code. He is hereby sentenced to suffer the penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum.

Petitioner Alex Sulit y Trinidad is likewise **ORDERED** to pay P192,187.13 to Caridad Bueno; P255,000.00 to Ma. Lita Bonsol; and P250,000.00 to Gregoria Ilot. An interest of 6% shall be imposed on these amounts from the finality of this Decision until full payment.

SO ORDERED.

Carpio (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[1] Rollo, pp. 13-28.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr. and Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino, concurring; *id* at 36-45.

[3] *Id.* at 34-35.

[4] *Id.* at 29-33.

[5] *Id.* at 50.

[6] *Id.* at 51.

[7] *Id.* at 37-38.

[8] Id. at 38.

[9] Id.

[10] Transcript of Stenographic Notes (TSN), February 23, 2006, pp. 4-8; id. at 259-263.

[11] Rollo, p. 264.

[12] Id. at 265-266.

[13] Id. at 267.

[14] TSN, September 7, 2006, p. 6; id. at 219.

[15] Id. at 49.

[16] TSN, June 8, 2006, p. 12; id. at 206.

[17] Rollo, pp. 50-51.

[18] Id. at 54.

[19] Id at 52.

[20] Id at 217.

[21] Id.

[22] Penned by Presiding Judge Perpetua Patal-Año; id at 46-56.

[23] Id. at 55-56.

[24] Supra note 2.

[25] Rollo, p. 44.

[26] Id. at 30.

[27] Id. at 93-97.

[28] Id.

[29] Id.

[30] Supra note 3.

[31] Supra note 4.

[32] *People v. Menil, Jr.*, 394 Phil. 433, 450 (2000).

[33] *People of the Philippines v. Dejolde*, G.R. No. 219238, January 31, 2018.

[34] See *People of the Philippines v. Jesalva*, 811 Phil. 299, 309 (2017), citing *People v. Medice*, G.R. No. 181701, January 18, 2012, 663 SCRA 344- 345 .

[35] See *People of the Philippines v. Anabe*, 644 Phil. 261, 278 (2010).

[36] TSN, February 23, 2006, pp. 8-16; rollo, pp. 265-271.

[37] TSN, March 30, 2006, p. 9; id. at 289.

[38] TSN, June 8, 2006, pp. 9-11; rollo, pp. 203-205.

[39] TSN, September 7, 2006, p. 11; id. at 224.

[40] TSN, January 30, 2007, p. 5; id. at 245.

[41] *People v. Mateo*, G.R. No. 210612, October 9, 2012, 842 SCRA 258, 274.

[42] *Ong Lay Hin v. Court of Appeals*, 752 Phil. 15, 24 (2015).

[43] USD 1 is equivalent to 51.2499 Philippine Peso; <http://www.bsp.gov.ph/statistics/sdds/exchrates.htm>

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