

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. FELIX AQUINO, ACCUSED-APPELLANT, IRIS AQUINO (DECEASED), ELEANOR MACABBALUG (AT-LARGE), GENALYN NASOL (AT-LARGE), ARTURO DE...

G.R. No. 234818. November 05, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal[1] filed by accused-appellant Felix Aquino (Felix) assailing the Decision[2] dated July 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07078, which affirmed the Joint Decision[3] dated July 22, 2014, as partly revised by the Order[4] dated August 8, 2014, of the Regional Trial Court of Makati City, Branch 146 (RTC) in Crim. Case Nos. 04-1270, 04-1271, 04-1273, 04-1274, 04-1275, 04-1276, 04-1277, 04-1278, 04-1279, 04-1280, 04-1281, 04-1284, 04-1285, 04-1287, 04-1288, 04-1290, 04-1291, 04-1296, 04-1298, 04-1300, and 04-1301, convicting him of twenty-one (21) counts of Syndicated Estafa defined and penalized under Article 315 (2) (a) of the Revised Penal Code (RPC) in relation to Presidential Decree No. (PD) 1689.[5]

The Facts

The instant case stemmed from thirty-three (33) separate Informations[6] filed before the RTC each charging Felix and his co-accused, namely, Iris Z. Aquino (Iris), Eleanor Macabbalug, Genalyn Nasol, Arturo Delgado, Jr., Pearl Militar, and Catherine Anna Dela Cruz of the aforesaid crime. The accusatory portions of the said Informations, save for the case number, private complainants, dates, and respective amounts, are similarly worded as follows:

That within the month of _____ in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating together and mutually helping one another as a syndicate, did then and there, as Officers/Directors of Everflow Group of Companies which operated on funds solicited from the public, willfully, unlawfully, and feloniously induced _____ to give and/or deliver to said accused the amount of _____ as investment in Everflow Group of Companies upon false pretenses and fraudulent acts executed by the accused prior to or simultaneously with the commission of the fraud that said amount will earn 5% interest per month, purposely for the accused to convert, misapply and misappropriate, as they did convert misapply and misappropriate to their personal gain or benefit the amount received as investment, to the damage and prejudice of _____ in the aforesaid amount of _____, which accused failed and refused to return, as they continue to fail and refuse to return said amount despite demands for them to do so.

CONTRARY TO LAW.[7]

The prosecution alleged that spouses Felix and Iris are the owners of Everflow Group of Companies, Inc. (Everflow), with the latter being its chairperson. Private complainants alleged that on various dates between 2000

and 2002, they were convinced by Iris and Felix to invest their money in Everflow, claiming that the money to be invested will earn seventy percent (70%) interest; that the same will be doubled in more than a year; that the investment was in safe hands; and that it would earn five percent (5%) interest per month. Convinced with the reassurances by Iris and Felix, they invested a total of P5,161,211.28 and US\$90,981.00. When complainants went back to Everflow to get their investments, Felix promised the return of their money. After the closure of Everflow because of the Cease and Desist Order issued by the Securities and Exchange Commission, they demanded the return of their money, but to no avail. Thus, they were compelled to file multiple charges of Syndicated Estafa against Felix, Iris, and their co-accused who are allegedly members of the board of directors of Everflow.[8]

Of the seven (7) accused, only Felix and Iris were arrested and arraigned, while the others remained at-large to this day.[9] Further, on April 15, 2008, the RTC provisionally dismissed eleven (11)[10] of the thirty-three (33) counts of Syndicated Estafa with their consent, due to the failure to appear by the respective private complainants before the court despite due notice.[11]

In their defense, Felix and Iris denied the accusations against them, claiming that they were mere victims of a certain Rosario Baladjay who recommended that they put up Everflow as a conduit of Multinational Telecom Investors Corporation (Multitel), which was controlled by a certain Rosario Baladjay. They also alleged that the money invested in Everflow was also invested in Multitel.[12] Notably, the cases against Iris were dismissed due to her supervening death.[13]

The RTC Ruling

In a Joint Decision[14] dated July 22, 2014, the RTC found Felix guilty beyond reasonable doubt of sixteen (16) counts[15] of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment for each count.[16] It further ordered him to pay the total amount of P2,323,504.00 and US\$4,983.00,[17] with legal interest from the filing of the Informations until fully paid.[18]

The RTC found that Felix and his co-accused, who were in control of the operations of Everflow and through their counselors, fraudulently induced private complainants to invest their money to Everflow, despite knowing that they are prohibited from soliciting and accepting investments from the general public. To even bolster their scheme, they even issued checks representing the investment of private complainants plus interest, only for such checks to be dishonored upon presentment for being drawn against closed accounts.[19]

However, in an Order[20] dated August 8, 2014, the RTC modified the dispositive portion of its earlier Joint Decision, convicting Felix of twenty-one (21) counts[21] instead of sixteen (16) counts of Syndicated Estafa, as indicated in the body of the said Joint Decision. Nonetheless, the RTC clarified that while Felix was found criminally liable for twenty-one (21) counts of Syndicated Estafa, he can only be held civilly liable to sixteen (16) private complainants in their respective cases, considering: (a) that the witnesses who testified in the other five (5) counts were not necessarily the private complainants therein who had personal knowledge of the commission of the offense; and (b) the absence of private complainants in said five (5) counts and the absence of an authorization that they are indeed claiming the civil aspect of their respective cases.[22]

Aggrieved, Felix appealed to the CA.[23]

The CA Ruling

In a Decision[24] dated July 28, 2017, the CA affirmed the RTC ruling in toto.[25] It held that Felix and his co-accused defrauded private complainants substantial amounts of money by misrepresenting and falsely pretending to the latter that they will invest the money in legitimate businesses which will earn them huge

percentage of returns. However, such returns remained unrealized when the checks purportedly representing the same were dishonored for being drawn against a closed account. According to the CA, Felix and his co-accused's fraudulent intent was made even more apparent by the fact that they solicited investments from the general public despite Everflow not being authorized to do so.[26]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Felix is guilty beyond reasonable doubt of Syndicated Estafa.

The Court's Ruling

The appeal is without merit.

Article 315 (2) (a) of the RPC reads:

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

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

x x x x

The elements of Estafa as contemplated in this provision 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.[27]

In relation thereto, Section 1 of PD 1689 states that Syndicated Estafa is committed as follows:

Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)" or farmers' association, or funds solicited by corporations/associations from the general public.

x x x x

Thus, the elements of Syndicated Estafa are: (a) Estafa or Other Forms of Swindling, as defined in Articles 315 and 316 of the RPC, is committed; (b) the Estafa or Swindling is committed by a syndicate of five (5) or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)" or farmers' association, or of funds solicited by corporations/associations from the general public.[28]

In this case, a judicious review of the records reveals that Felix and his co-accused repeatedly induced the public to invest in Everflow on the undertaking that their investment would yield a huge percentage of returns. Under such lucrative promise, the public – as represented by private complainants – were enticed to invest their hard-earned money into Everflow. Initially, Everflow would deliver on their promise, thus "hooking" the unwary investors into infusing more funds into it. However, as the Everflow officers/directors, i.e., Felix and his co-accused, knew from the start that Everflow had no clear trade by which it can pay the assured profits to its investors, they could no longer comply with their guarantee and had to simply abscond with their investors' funds. It is settled that "where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that there will be none, or that they will be substantially less than he represents, the statements constitute an actionable fraud where the hearer believes him and relies on the statement to his injury,"[29] as in this case.

Lest it be misunderstood, not all proposals to invest in certain business ventures are tainted with fraud. To be sure, an actionable fraud arises when the accused has knowledge that the venture proposed would not reasonably yield the promised results, and yet, despite such knowledge, deliberately continues with the misrepresentation. Business investments ordinarily carry risks; but for as long as the incipient representations related thereto are legitimate and made in good faith, the fact that the business eventually fails to succeed or skews from its intended targets does not mean that there is fraud. As case law instructs, "the gravamen of the [crime of Estafa] is the employment of fraud or deceit to the damage or prejudice of another.[30] When fraud pertains to the means of committing a crime or the classes of crimes under Chapter Three, Title Four, Book Two and Chapter Three, Title Seven, Book Two of the RPC, criminal liability may arise; otherwise, if fraud merely causes loss or injury to another, without being an element of a crime, then it may only be classified as civil fraud from which an action for damages may arise.[31]

Far from being a legitimate business venture, the Court herein observes that Felix and his co-accused's modus operandi is constitutive of criminal fraud as they used the same to commit a crime. In fact, their modus operandi may be characterized as a kind of Ponzi scheme, which schemes have gained notoriety in modern times. As generally defined, a Ponzi scheme is "a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the perpetrators focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business. It is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme. It is difficult to sustain the scheme over a long period of time because the operator needs an ever larger pool of later investors to continue paying the promised profits to early investors. The idea behind this type of swindle is that the 'con-man' collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, Ponzi schemes only last weeks, or months at the most."[32]

In this light, the courts a quo correctly found that all the elements of Syndicated Estafa are present in the instant case, as shown in the following circumstances: (a) the officers/directors of Everflow, comprising of Felix and his co-accused who are more than five (5) people, made false pretenses and representations to the investing public, i.e., private complainants, regarding a lucrative investment opportunity with Everflow in order to solicit money from them; (b) the said false pretenses and representations were made prior to and simultaneous with the commission of fraud, which is made more apparent by the fact that Everflow was not authorized by the Securities and Exchange Commission to solicit investments from the public in the first place; (c) relying on the same, private complainants invested various amounts of money into Everflow; and (d) Felix and his co-accused failed to deliver their promised returns and ended up running away with private complainants' investments, obviously to

the latter's prejudice.

Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[33] As such, Felix's conviction for twenty-one (21) counts of Syndicated Estafa must be upheld. Accordingly, he should suffer the penalty of life imprisonment for each count of the aforesaid crime.

Finally, the Court deems it proper to adjust the actual damages awarded to private complainants in order to reflect the amount defrauded from them, as indicated in the respective Informations. These amounts shall earn legal interest at the rate of twelve percent (12%) per annum from the filing of the Informations until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.[34]

WHEREFORE, the appeal is DENIED. The Decision dated July 28, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07078 finding accused-appellant Felix Aquino GUILTY beyond reasonable doubt of twenty-one (21) counts of Syndicated Estafa defined and penalized under Article 315 (2) (a) of the Revised Penal Code in relation to Presidential Decree No. 1689 is hereby AFFIRMED with MODIFICATION, sentencing him to suffer the penalty of life imprisonment for each count. He is further ordered to pay actual damages to the following private complainants in the following amounts: (a) P150,000.00 to Elna E. Hidalgo; (b) P50,000.00 to Rosabella Espanol; (c) US\$562.00 to Reynold C. Español; (d) P15,000.00 to Virginia D. Casero; (e) P15,435.00 to Imelda Dela Cruz; (f) P50,000.00 to Vennus C. Español; (g) P102,819.00 to Merlina C. Español; (h) US\$4,421.00 to Luz B. Unay; (i) P480,000.00 to Victor Flores; (j) P400,000.00 to Felix So Manota; (k) P125,250.00 to Restituto C. Novero; (l) P320,000.00 to Melanie C. Navata; (m) P315,000.00 to Michelle C. Navata; (n) P50,000.00 to Gil Nicanor; (o) P210,000.00 to Zosimo Malagday; and (p) P40,000.00 to Elpidio Navata. All sums due shall each earn legal interest at the rate of twelve percent (12%) per annum from the filing of the Informations until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.

SO ORDERED.

Carpio (Chairperson), Caguioa, and A. Reyes, Jr., JJ., concur.

J. Reyes, Jr.,[*] J., on official leave.

[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018; on official leave.

[1] See Notice of Appeal dated August 14, 2017; rollo, p. 36-37.

[2] Id. at 2-35. Penned by Associate Justice Marie Christine Azcarraga-Jacob with Associate Justices Normandie B. Pizarro and Danton Q. Bueser concurring.

[3] CA rollo at 113-134. Penned by Judge Encarnacion Jaja G. Moya.

[4] Id. at 135.

[5] Entitled "INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA" (April 6, 1980).

[6] Not attached to the rollo.

[7] See rollo, pp. 3-6. See also CA rollo, pp. 113-114. Private complainants and the respective amounts allegedly taken from them are as follows:

Criminal

Case No. Complainant Amount Criminal

Case No. Complainant Amount

04-1270 Elna E. Hidalgo P150,000.00 04-1287 Restituto Novero P125,250.00

04-1271 Rosabella Espanol P50,000.00 04-1288 Karen N. Novero US\$50,000.00

04-1272 Dionisio Miguel P200,000.00 04-1289 Letecia Barnizo P30,000.00

04-1273 Reynold C. Español US\$562.00 04-1290 Melanie C. Navata P320,000.00

04-1274 Virginia D. Casero P15,000.00 04-1291 Michelle C. Navata P315,000.00

04-1275 Imelda Dela Cruz P15,435.00 04-1292 Fermin P. Vivas P200,000.00

04-1276 Vennus C. Español P50,000.00 04-1293 Victoria F. Sto. Tomas P25,306.38

04-1277 Merlina C. Español P102,819.00 04-1294 Lorna V. Aclan US\$5,000.00

04-1278 Luz B. Unay US\$4,421.00 04-1295 Rochelle P. Alinabon P350,000.00

04-1279 Rogelio C. Unay P200,000.00 04-1296 Judith Novero P334,000.00

04-1280 Marilyn Ruth C. Flores P13,400.90 04-1298 Ma. Cecilia Reyes Patton P300,000.00

04-1281 Victor Flores P480,000.00 04-1300 Gil Nicanor P50,000.00

04-1282 Eddie P. Agorilla P50,000.00 and US\$1,000.00 04-1301 Asteria De Guzman P100,000.00

04-1283 Charisma N. De Guzman US\$10,000.00 04-1302 Zosimo Malagday P210,000.00

04-1284 Chona N. Novero P200,000.00 and US\$14,500.00 04-1303 Elpidio Navata P40,000.00

04-1285 Felix So Manota P400,000.00 04-1304 Nilda Primo P100,000.00 and US\$2,600.00

04-1286 Esperanza Longino P735,000.00 and US\$2,898.00

(Cases are erroneously numbered in the CA Decision.)

[8] See rollo, pp. 6-20.

[9] See id. at 6.

[10] Criminal Case Nos. 04-1272, 04-1282, 04-1283, 04-1286, 04-1289, 04-1292, 04-1293, 04-1294, 04-1295, 04-1299, and 04-1302.

[11] Rollo, p. 20.

[12] See id. at 20-22.

[13] Id. at 32.

[14] CA rollo, pp. 113-134.

[15] Criminal Case Nos. 04-1270, 04-1271, 04-1273, 04-1274, 04-1275, 04-1276, 04-1277, 04-1278, 04-1281, 04-1285, 04-1287, 04-1290, 04-1291, 04-1298, 04-1300, and 04-1301 (erroneously numbered as 04-1302).

[16] See CA rollo, pp. 132-133.

[17] Felix is held liable to pay: (a) in Crim. Case No. 04-1270, P150,000.00 to Elna E. Hidalgo; (b) in Crim. Case No. 04-1271, P50,000.00 to Rosabella C. Español; (c) in Crim. Case No. 04-1273, US\$562.00 to Reynold C. Español; (d) in Crim. Case No. 04-1274, P15,000.00 to Virginia D. Casero; (e) in Crim. Case No. 04-1275, P15,435.00 to Imelda Dela Cruz; (f) in Crim. Case No. 04-1276, P50,000.00 to Vennus C. Español; (g) in Crim. Case No. 04-1277, P102,819.00 to Medina C. Espanol; (h) in Crim. Case No. 04-1278, US\$4,421.00 to Luz B. Unay; (i) in Crim. Case No. 04-1281, P480,000 00 to Victor Flores; (j) in Crim. Case No. 04-1285, P400,000.00 to Feliz So Manota; (k) in Crim. Case No. 04-1287, P125,250.00 to Restituto C. Novero; (l) in Crim. Case No. 04-1290, P320,000.00 to Melanie C. Navata; (m) in Crim. Case No. 04-1291, P315,000.00 to Michelle C. Navata; (n) in Crim. Case No. 04-1298, P50,000.00 to Gil Nicanor; (o) in Crim. Case No. 04-1300, P210,000.00 to Zosimo Malagday; and (p) in Crim. Case No. 04-1301 (erroneously numbered as 04-1302), P40,000.00. (Id.)

[18] Id.

[19] See id. at 128-131.

[20] Id. at 135.

[21] Criminal Case Nos. 04-1279, 04-1280, 04-1284, 04-1288, and 04-1296 were added to the initial list of cases where Felix was convicted.

[22] See id. at 132 and 135.

[23] See Notice of Appeal dated July 23, 2014; id. at 64.

[24] Rollo, pp. 2-35.

[25] Id. at 34.

[26] See id. at 25-34.

[27] *People v. Tibayan*, 750 Phil. 910, 919 (2015), citing *People v. Chua*, 695 Phil. 16, 32 (2012).

[28] Id. at 920, citing *Galvez v. CA*, 704 Phil 463, 472 (2013).

[29] *People v. Menil, Jr.*, 394 Phil. 433, 453 (2000), citing *People v. Balasa*, 356 Phil. 362, 387 (1998).

[30] See *People v. Baladjay*, G.R. No. 220458, July 26, 2017.

[31] See *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. Nos. 159139 and 174777, June 6, 2017; citations omitted.

[32] *People v. Tibayan*, *supra* note 27, at 921; citations omitted.

[33] See *Peralta v. People*, G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[34] See *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013), applying Resolution No. 796 of the Bangko Sentral ng Pilipinas Monetary Board.

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