

JENG EVANGELISTA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE HONORABLE COURT APPEALS, RESPONDENTS.

G.R. No. 89319. October 12, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari by petitioner JENG EVANGELISTA from the decision[1] promulgated on March 1, 1989 of the Court of Appeals affirming the decision[2] dated June 16, 1987 of the Regional Trial Court of Quezon City, Branch 100, in Criminal Case No. Q-33252 for ESTAFA, the dispositive portion of which reads, as follows:

“WHEREFORE, in view of the foregoing and citing the case of 'People vs. Romero, CA O.G. 695' this Court finds the accused Jeng Evangelista Y Cereno guilty beyond reasonable doubt, and hereby sentences him to suffer an Indeterminate penalty of from TWO (2) YEARS ELEVEN (11) MONTHS and TEN (10) DAYS of Prison Correccional as minimum to FIVE (5) YEARS FIVE (5) MONTHS and TEN (10) DAYS of Prison Correccional and to pay the costs. The accused is further ordered to indemnify the complaining witness Virgilio Mercado the sum of SEVENTEEN THOUSAND (P17,000.00) PESOS without subsidiary imprisonment in case of insolvency. However in the service of his sentence, the herein accused is entitled to the provisions of Article 29 of the Revised Penal Code as amended by Republic Act 6127, and further amended by BP Blg. 85, provided he does not fall within the exceptions thereof.”[3]

The Information upon which this prosecution was based is, as follows:

“That on or about the 12th day of April, 1984 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, by means of deceit, false pretenses and/or fraudulent acts executed prior to or simultaneous with the commission of the fraud did then and there willfully, unlawfully and feloniously defraud one Virgilio Mercado Y Aro, in the manner, as follows: That pursuant to their conspiracy, the accused Jeng Evangelista, Charles Doe and John Doe on the date and in the place aforementioned approached the offended party and induced the latter to capitalize a card game of Bacharat (sic) with an alleged rich man from Bacolod City, who is the accused Peter Doe alias Minong and to give them the amount of P10,000.00 cash \$350.00 as capital as he will surely win; That to insure his success said accused represented to said offended party that they will help him win by making pre-arranged signal in which the offended party was taught and coached by said accused, and the offended party believing in the representation of the said accused, gave and delivered said amount of P10,000.00 and U.S.Dol.\$350.00 to the accused and the latter changed the same to chips and thereafter the card game ensued between the offended party and the accused Peter Doe alias Minong, however, said party lost, to his damage and prejudice in the aforementioned amount.”

Upon arraignment, petitioner pleaded "Not Guilty" while his other co-accused Charles Doe, John Doe and Peter Doe alias Minong remained at large.

The facts, as found by the trial court are, as follows:

Complainant Virgilio Mercado was introduced on April 10, 1984 to petitioner Jeng Evangelista by the latter's co-worker, Ben Magalong, at the Producers Bank's canteen in Paseo de Roxas, Makati, Metro-Manila. During said meeting, complainant and Magalong talked about the casino and petitioner told them that he has a friend who frequents the casino. Thereafter, complainant asked petitioner to introduce him to his friend and the latter agreed.

On April 12, 1984, complainant met petitioner at the Ma Mon Luk Restaurant in Quezon City where the latter told the former to accompany him to the casino at the Philippine Village Hotel and they boarded a taxi with Raffy Juta. However, before proceeding to the casino, petitioner suggested that they go to his friend's (Chito Areola) house first as they would teach him how to gamble and win in the casino. Upon reaching the house of Chito Areola at No. 6 Ilustre Street, Galas, Quezon City, petitioner, together with Rey Santos and Chito Areola, led complainant to a room where the latter was taught the rudiments of the games of blackjack and baccarat. They also taught complainant how to cheat by using certain tricks and signals.

Thereafter, petitioner and his friends informed complainant that before proceeding to the casino, he will be playing against a rich man from Bacolod named Minong with Chito Areola acting as the dealer^[4] and requested complainant to deposit his money to them. Whereupon, complainant deposited P10,000.00 and U.S.\$350.00 or a total of P17,000.00, which were replaced with plastic chips, to petitioner and his friends on their assurances that he will win in the card game by using the pre-arranged signals and tricks taught to him.

During the early part of the card game, complainant was winning as petitioner and his friends were employing the tricks and signals they had taught him. However, complainant started to lose when petitioner and his friends stopped giving him the pre-arranged signals. With a few remaining chips left from his winnings worth P20,000.00, more or less,^[5] complainant decided to stop playing for fear of losing his capital but petitioner and his friends refused and, instead, stared menacingly at him.

Thereafter, complainant asked petitioner and his friends to return his money which he had earlier deposited but the latter told him that he had lost all his money in the card game. As soon as complainant realized that he was being cheated, he asked permission to leave with Raffy Juta and was allowed after he had executed a letter,^[6] the content of which he cannot remember since it was only dictated to him by Rey Santos.^[7]

On May 3, 1984, petitioner was arrested at the Philippine Banking Corporation in Makati, Metro-Manila by the policemen who accompanied complainant.

Corporal Rogelio Castillo testified during the trial that when he investigated petitioner, the latter verbally admitted his guilt to him.

On the other hand, petitioner denied participating in the alleged deceitful and fraudulent card game and maintained that:

"x x x he came to know the complaining witness, Mr. Mercado, when the latter was introduced to him by a co-worker, Mr. Ben Magalong; during that meeting, Mr. Mercado mentioned to him about gambling in the casino, and he in turn informed Mr. Mercado that he had friends who frequented the place; eager to meet these persons, the complaining witness allegedly went to the house of Mr. Areola after an appointment had been set by the petitioner; there were other persons present during that time including Mr. Raffy Juta and Mr. Rey Santos; after some conversation, petitioner saw them play "Black Jack" while petitioner only watched the game; at the start of the game, Mr. Mercado was winning but later, he did not want to stop because he was already losing; in the end, Mr. Mercado lost in the game which allegedly started about 2:00 o'clock in the afternoon and ended about 6:00 o'clock in the evening; Mr. Mercado still wanted to play but he had no more money, so, they set another date for them to play; in fact, Mr. Mercado prepared a letter to his playmates dated April 13, 1984 (Exh. 1) asking them to play again; on May 3, 1984, he was surprised when he was arrested by five policemen accompanied by Mr. Mercado; he was brought to Fort Bonifacio where he was tortured and

made to admit having cheated Mr. Mercado; and that he never admitted his guilt to Corporal Castillo (tsn, April 16, 1986, pp. 2-7).[8]

Petitioner now contends that he should be acquitted on the ground that his guilt was not proven beyond reasonable doubt. Petitioner assailed complainant's credibility by asserting that by consenting to petitioner's fraudulent scheme of cheating Minong, complainant was a willing party and conspirator in the card game he played with Minong. Consequently, complainant's testimony should not be given credence by the Court.

We do not agree.

Under Article 315, paragraph 3(b) of the Revised Penal Code, estafa is committed by any person who shall defraud another by resorting to some fraudulent practice to insure success in a gambling game.

In the case at bar, the evidence for the prosecution proved that complainant was deceived into parting with his money on petitioner's assurance that he would win in the card game by using the pre-arranged signals and tricks taught to him. While it is true that complainant consented to petitioner's scheme to defraud Peter Dee alias Minong, the fact remains that it was complainant who ended up being cheated by petitioner and his friends since the latter helped one another to victimize complainant and to divest him of all his money. As stated by the appellate court:

“It is true that by consenting to a fraudulent scheme, and although he was deceived at the end, complainant displayed the sort of a person he is: dishonest and a conspirator to the deceit and fraudulent practice with which he played the game. But if complainant's testimony is to be discarded by the Court because he consented to the fraudulent scheme, may the Court give credence to the testimony of the accused who, together with Areola and Santos, lured complainant to play Blackjack against Minong with the attractive promise of sure winning and taught him to cheat at the card? Evidently, the accused is not in a position to condemn the complainant. He comes to Court with even dirtier hands [than complainant].”[9]

Although complainant agreed to the unscrupulous scheme of petitioner and his friends to defraud Minong in the card game, it must be noted that all the essential elements of estafa are present in the case at bar. Consequently, the party responsible for such fraud or damage cannot escape criminal responsibility even though the offended party consented to participate in the illegal or immoral transaction.[10]

Moreover, this Court has enunciated the oft-repeated principle that it will not interfere with the findings of the trial court on the issue of credibility of witnesses unless it has plainly overlooked certain facts of substance and value which, if properly considered, would have altered the result of the case.[11] The fact that complainant was lured by petitioner in a fraudulent card game cannot serve as a ground for discrediting complainant's testimony, rather his inveiglement to participate in the fraudulent card game was part of the scheme to defraud him. As we held in *Ubarra v. Mapalad*:

“We find the application of the *pari delicto* theory in a criminal case to be strange, to say the least. In the first place, the rule on *pari delicto* is a rule in civil law. It is principally governed by Articles 1411 and 1412 of the Civil Code under the Chapter on Void or Inexistent Contracts, and presupposes a situation where the parties are in culpability similarly situated, i.e., in *eodem loco* (*Jandusay vs. Court of Appeals*, 172 SCRA 376 [1989]). That this rule can by no means apply in a criminal case is evidenced by the aforesaid Article 1411 which provides in part that '[W]hen the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted.' Secondly, in view of the broader grounds of public policy, the rule may not be invoked against the State. Thirdly, in the prosecution of public crimes, the complainant is the State -- i.e., the People of the Philippines -- while the private offended party is but a complaining witness. Any criminal act perpetrated by the latter on the occasion of the commission of the crime, or which may have given

rise to the criminal act imputed to the accused is not the act or conduct of the State and can by no means bind it under the doctrine of *pari delicto*. To rule otherwise would be to establish a dangerous doctrine which would irreparably weaken the very foundations of the criminal justice system and frustrate the administration of justice. Whatever wrongful act may have been committed by the offended party may only be invoked to justify the accused's own act or mitigate his liability."^[12]

WHEREFORE, finding no reversible error in the decision appealed from, this petition for review on certiorari is hereby DENIED for lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Penned by Justice Luis L. Victor with the concurrence of Justice Bienvenido C. Ejercito and Justice Felipe B. Kalalo.

[2] Penned by Judge George C. Macli-ing.

[3] Rollo, pp. 29-30.

[4] T.S.N., February 27, 1985, p. 8.

[5] T.S.N., April 25, 1986, p. 8.

[6] Folder of Exhibits, Exhibit "1".

[7] T.S.N., June 3, 1985, pp. 2-3.

[8] Rollo, p. 84-85.

[9] *Id.*, at p. 40.

[10] *People vs. Manansala*, 58 Phil. 796 [1933].

[11] *People vs. Baslot*, 209 SCRA 537 [1992].

[12] *Ubarra vs. Mapalad*, A.M. No. MTJ-91-622, March 22, 1993.

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