

[CR No. 26974, September 17, 2010]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME DELA CRUZ, ACCUSED-APPELLANT.

Court of Appeals

Before this Court is an appeal from the decision^[1] dated July 18, 2002 of the Regional Trial Court, Third Judicial Region, Branch 88, Talavera, Nueva Ecija, in Criminal Case No. 498-SD (99) for Estafa, entitled "People of the Philippines, Plaintiff, vs. Jaime dela Cruz, Accused.", the dispositive portion of which reads:

"WHEREFORE, foregoing considered, the guilt of the accused having been proven beyond reasonable doubt, he is hereby sentenced to suffer an indeterminate penalty of imprisonment of 4 years and 2 months of prision correccional, as minimum, to 11 years and 4 months of reclusion temporal, as maximum, and to pay the private complainant the amount of P50,000.00.

SO ORDERED."^[2]

The facts are:

On January 7, 1999, an Information for Estafa was filed against accused-appellant Jaime dela Cruz (dela Cruz for brevity), the accusatory portion of which reads:

"That on or about the 25th day of September, 1997 and on several dates thereafter up to November 17, 1997, inclusive, in the Municipality of Sto. Domingo, Province of Nueva Ecija, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses and fraudulent acts and pretended to have an auto repair shop at Baloc, Sto. Domingo, Nueva Ecija, was able to induce one JIMMY I. DOMINGO to deliver the latter's two (2) funeral parlor cars to the accused for repair and to deliver to him to amount of P50,000.00 as expenses for the said repair, under an express obligation to repair the said two funeral parlor cars and deliver the same to Jimmy I. Domingo after the said repair, but the said accused, far from complying with his express obligation and with unfaithfulness and grave abuse of confidence, did then and there willfully, unlawfully and feloniously (sic) fail and refuse to comply with his express obligation and despite demands, failed and refused to return the said money to the offended party, to the latter's damage and prejudice in the aforementioned amount.

Contrary Law.^[3]

On March 8, 1999, accused-appellant dela Cruz pleaded not guilty to the offense charged.^[4]

On June 28, 1999, the lower court issued a Pre-Trial Order^[5] with the following admissions and stipulations:

"During the pre-trial, the prosecution proposed for admission the following which were admitted by the defense:

1. That accused has a shop at Sto. Domingo, Nueva Ecija involved in repair of vehicles;
2. That sometime on September 25, 1997, accused received from one Jimmy Domingo two (2) funeral cars; and
3. That in connection with the contract to repair such two (2) funeral cars owned by Jimmy Domingo, the latter had delivered the total amount of P50,000.00.

Denied was that to date nothing has been done with such repair for the funeral cars.

The proposals by the accused which were admitted by the prosecution were:

1. That one of the cars before it was repaired was colored gray, it is now green; and
2. That the private complainant and the accused entered into a contract for the repair of the two (2) cars.

Denied by the prosecution is that the accused is entitled for the remaining P20,000.00 for the repair of the said cars.

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During the trial, the prosecution presented private complainant Jimmy I. Domingo (Domingo for brevity) who testified that: he was then the incumbent mayor of Sto. Domingo, Nueva Ecija and has a funeral parlor with (six) 6 cars being used as a conveyance for the deceased; he bought a Cadillac Chevy Malibu Station Wagon with Motor No. 10L154842-T1201CRE^[6] from Federico Figueroa^[7] and a Chevrolet Station Wagon Undertaker with Motor Number T-0919C^[8] from Victor Santos; there cars are not yet registered in his name because accused-appellant dela Cruz approached him and offered his services to repair the same and immediately took the said cars; he paid accused-appellant dela Cruz the amount of P50,000.00 in installments, but the latter, after the lapse of one (1) year, did not comply with his obligation; he confronted accused-appellant dela Cruz regarding the matter but the latter did not oblige, instead, asked for more money, so he filed the case; their agreement for the total cost of repairs for the two (2) cars was P70,000.00; he did not give additional money; accused-appellant dela Cruz told him that upon payment of fifty (50%) percent of the agreed amount, he will begin the repairs but he did not do so; he has eight (8) functioning funeral cars but these are not enough to meet the demands of his business; each car earns P100,000.00 a year; and, he is familiar with accused-appellant dela Cruz for quite a long time.^[9]

On cross-examination, he started that: in the ordinary course of business, his

funeral parlor has eight (8) burials per week and in order to meet the demands, he rents cars from others; after paying P50,000.00, accused-appellant dela Cruz still demanded an additional P20,000.00 which he refused; accused-appellant dela Cruz told him that the cars will be in good running condition if he will deliver the P20,000.00, but he told the former that such amount will no longer be enough; and, it is their agreement that accused-appellant dela Cruz will repair the two (2) cars for P70,000.00.^[10]

On June 8, 1999, the lower court conducted an ocular inspection of the subject cars with the following transcriptions:

Court: This is an ocular inspection which is a part of the pre-trial conference to determine the extent of the repair undertaken by the accused on the two (2) funeral cars belonging to the private complainant.

What are your observations, Fiscal?

Pros. Caballero: If the prosecution will give its observation, Your Honor, on the repairs to be made on these two (2) cars, evidently, the repair is on the initial stage because certain parts of the vehicles are already removed like the sets and some of the door handles. Another observation is that one of the cars rather both cars lack several of their glass windows. The green car lacks two (2) tires and there is no front bumper. The seats likewise are also removed. What I can admit is there is a first coating of green paint in one of the cars and at the end thereof there is a coating of the putty (masilya). Except the removal of those essential parts, there is no sign of activity, Your Honor.

Court: The Court notes that practically, nothing has been done in the matter of repair except the removal of spare parts from the body of the cars like door handles, glass windows, upholstery, both up and down, likewise, the bumpers. As the Court does not know the conditions of these two (2) cars before their delivery to the accused, it is now asking the private complainant the condition of the motors at the time of delivery.

To the private complainant:

Q: Mr. Domingo, when you delivered these two (2) cars to the accused, what was their condition? Mr. Domingo

A: They were running and complete in accessories but the starters are defective, Your Honor.

Court: May we know if the motors are still there?

Note: The hoods of the two cars were lifted to expose their motors which motors are now rusting and had accumulated bird's droppings as well as falling leaves. The two cars are exposed to weather there being no shed to protect them from the elements. It appears also that there is no repair machinery or tool inside or within the vicinity of the accused's yard except the removed parts of the two cars which had not been gone over

one by one to determine if they are still complete.

To the accused:

Q: What repairs had you undertaken with respect to these two (2) cars?

Mr. Dela Cruz

A: The parts had been removed, Your Honor, preparatory to their repainting. The green one has already a primary coating with a putty on the left rear side.

Court: Are there any other observations, Fiscal?

Pros. Caballero: No more, Your Honor.^[11]

The defense presented accused-appellant Jaime dela Cruz, and he testified that: he knows private complainant Domingo because he had a contract with him regarding the body repair and painting of two (2) funeral cars; he was able to repair the said cars; he was able to finish the painting of the white car while he was able to put the first and second coating only of the second car because private complainant Domingo did not give additional money; their agreement was for private complainant Domingo to provide the paint and to give P20,000.00; he has been engaged in this business since he was 15 years old and it is his livelihood; he had painted more or less 50 units; he can finish the contract if private complainant Domingo provided the paint as agreed upon; the steps in strip-to-metal car painting are: to remove the old paint with the use of a paint remover, polish it with sandpaper to expose the metal, then spray with a primer, and fill the parts with a body filler; it will be polished again with sandpaper and another primer will be applied; the paint job will be done in four coatings, and after painting, a retarder shall be applied to make the coat shiny and the final polishing will be done^[12]; and, in 1992, he worked in Saudi Arabia as a painter.^[13]

On cross-examination, he stated that: the subject cars are now in private complainant Domingo's possession because the lower

court ordered them to be returned; when the cars were delivered to him, the same were not in running condition and they had to be towed to his place; he spent more or less P40,000.00 in painting the two cars which amount was used for the materials, such as the primer, thinner, body peeler, sand paper, under coating, color paints, top coat paints and retarder; he also spent for the use of acetylene, oxygen, galvanized iron and wires; he used all these materials for the job; the P40,000.00 which he used came from the private complainant Domingo, unfortunately, he did not keep the receipts for the materials used^[14]; he received a total of P50,000.00 from private complainant Domingo; when the vehicles were order taken by the lower court after their ocular inspection on June 8, 1999, he had already repaired them and he was already in the process of painting them; and, after that, he no longer had the chance to continue with the job.^[15]

On July 18, 2002. the lower court rendered the assailed decision. Hence, this appeal with the following assignment of errors:

I.

THE LOWER COURT GRAVELY ABUSED ITS DISCRETION WHEN IT CONVICTED THE ACCUSED FOR BREACH OF CONTRACT, A PURE CIVIL OBLIGATION (WHICH BREACH HAS NOT EVEN MEAN (SIC) SUFFICIENTLY ESTABLISHED);

II.

THE LOWER COURT GRAVELY ABUSED ITS DISCRETION (SIC) IN JUSTIFYING THE DECISION BY MERE ASSUMPTION OF FRAUD MISREPRESENTATION OR FALSE PRETENSES AND NOT ON THE BASIS OF EVIDENCE (AS IN TRUTH, NO EVIDENCE ON THE ASSUMPTION OF THE COURT CAN BE SEEN).

The appeal is meritorious.

Accused-appellant dela Cruz argues that: he is entitled to an acquittal because in order for him to be convicted, proof beyond reasonable doubt is required which the prosecution failed to do; liability arising from a civil contract cannot be the basis of a criminal prosecution, otherwise, all those who may have been remiss or renege in the performance of their obligations will be charged criminally.

In convicting accused-appellant dela Cruz, the lower court opined that:

"Herein, the defense of the accused is that he had not done any fraudulent Act nor had he resorted to any fraudulent means as well as false pretenses for the repair of Domingo's cars because in fact he repaired the cars.

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The Court is not convinced. To the Court, his defense are dubious and doubtful and unworthy of belief, his delay and failure to repair the cars being very apparent indices of his lack of capacity to perform the repairs.

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Herein, contrary to his defense, the accused, by telling Mayor Domingo that he will repair his cars and he has a car repair shop, have led Mayor Domingo to believe that he has the capacity to repair the cars which induced the latter part with his car (sic) and entrust them to the accused for repair, and also the sum of P2,000.00 as initial payment thereof on September 25, 1997. Mayor Domingo relied on his representation that he could repair the cars. The delivery of the two cars to the accused for