

# FIRST DIVISION

[ G.R. No. 246700, March 03, 2021 ]

**RODOLFO "SONNY" D. VICENTE, PETITIONER, VS. PEOPLE OF  
THE PHILIPPINES, RESPONDENT.**

## DECISION

**CARANDANG, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> filed by petitioner Rodolfo "Sonny" D. Vicente (Vicente) assailing the Decision<sup>[2]</sup> dated October 30, 2018 and the Resolution<sup>[3]</sup> dated April 3, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 38867. The CA affirmed the Judgment<sup>[4]</sup> dated May 17, 2016 of the Regional Trial Court (RTC) of Caloocan City, Branch 122 in Criminal Case No. C-87654 convicting Vicente of estafa under Article 315(l)(b) of the Revised Penal Code (RPC) but reduced the penalty of imprisonment imposed.

### Antecedents

Vicente was charged with estafa under Article 315(1)(b) of the RPC in an Information<sup>[5]</sup> dated September 10, 2010 that states:

That in or about June 2008 and sometime thereafter in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused *received in trust from Roxaco Land Corporation the amount of P42,600.00 for the purpose and under the express obligation of delivering and turning over the same to WINNER SIGN GRAPHICS as herein represented by its Account Officer BETHEA LIWANAG, as payment for services rendered by the latter to Roxaco Land Corporation, but said accused once in possession of the said amount, far from complying with his aforesaid obligation, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit, the said amount he received, and with intent to defraud, despite demands made upon him, failed and refused and still refuses and fails to comply with his aforesaid obligation, to the damage and prejudice of Winner Sign Graphics in the total amount of PhP42,600.00.*

**CONTRARY TO LAW.**<sup>[6]</sup> (Emphasis in the original; italics supplied.)

Vicente was arraigned on April 24, 2012 and pleaded not guilty.<sup>[7]</sup> During the pre-trial conference on June 14, 2012, the parties admitted the following: (1) the jurisdiction of the RTC; (2) the identity of Vicente as the person charged in the Information; (3) that Vicente made and executed a letter dated June 29, 2008 addressed to Freddy So, marked as Exhibit "H;" and (4) that Roxaco Land

Corporation (Roxaco) issued a check in favor of Vicente in the amount of P89,000.00.<sup>[8]</sup>

Bethea Liwanag (Liwanag), account officer of Winner Sign Graphics (Winner), testified for respondent.<sup>[9]</sup> The evidence for respondent shows that on June 10, 2008, Vicente called Liwanag to inquire whether they can do billboards for his client Roxaco. Liwanag responded that she will consult with Winner's owner, Federico So (So). So instructed Liwanag to transact directly with Roxaco instead of Vicente.<sup>[10]</sup> Pursuant to So's instruction, Vicente informed Liwanag that Albert Gamboa (Gamboa) will serve as Roxaco's representative. Gamboa then asked for a quotation for the billboards from Liwanag which she gave. Gamboa sent his acceptance of the quotation to Winner via facsimile. Winner proceeded to print the three billboards.<sup>[11]</sup>

After the billboards were installed in Batangas, Liwanag sent the statement of account and sales invoice to Roxaco's account department. In response, Roxaco asked Liwanag why the statement was sent to them when the contract for the billboards was between Roxaco and Snydesign, the company represented by Vicente.<sup>[12]</sup>

Roxaco paid Vicente but he did not pay the contract price due to Winner. Winner thus sent a demand letter dated July 14, 2008 to Vicente for the payment of P42,600.00 as contract price. Vicente, through an email he sent to So and a letter sent by his counsel dated July 22, 2008, informed Winner that *first*, the contract was between him and Roxaco; and *second*, Winner was only entitled to receive P35,400.00.<sup>[13]</sup>

Dissatisfied, Winner filed a complaint for estafa against Vicente.<sup>[14]</sup> Subsequently, an information dated September 10, 2010 was filed against Vicente charging him with estafa under Article 315(1)(b) of the RPC.<sup>[15]</sup>

Vicente filed a demurrer to evidence with leave of court.<sup>[16]</sup> It was denied by the RTC in its Resolution dated May 7, 2013.<sup>[17]</sup> Thereafter, Vicente was presented as the sole witness for his defense.<sup>[18]</sup> He insisted that his contract with Roxaco was exclusive and that he simply subcontracted the printing requirements to Winner. Vicente said that once the project was completed, Roxaco paid him the full project cost of P89,200.00 through three checks. Vicente encashed two checks and deposited one. He is the rightful owner of the amounts covered by the checks and has no obligation to deliver it to Winner. Nonetheless, he is indebted to Winner in the amount of P35,400.00 for the billboards. Vicente alleged that he tried to offer this amount to So through Allan Francisco (Francisco), their *kumpare*, but the latter did not accept it and told him to wait until further notice. He was not able to talk to So. Vicente averred that the accusations against him were ill-motivated by So's failure to pirate the Roxaco account from him.<sup>[19]</sup>

### **Ruling of the Regional Trial Court**

On May 17, 2016, the RTC rendered its Judgment<sup>[20]</sup> against Vicente, to wit:

WHEREFORE, and in view of the foregoing premises, accused **RODOLFO "SONNY" D. VICENTE**, is therefore found **GUILTY** beyond reasonable doubt for the crime of Estafa under Art. 315 par. (l) (b) of the Revised Penal Code and hereby sentences him to suffer the penalty of **THIRTEEN [13] YEARS OF RECLUSION TEMPORAL**. He is likewise ordered to pay the amount of **THIRTY FIVE THOUSAND FOUR HUNDRED PESOS** (Php35,400.00) as actual damages and **TEN THOUSAND PESOS** (Php10,000.00) as attorney's fees.

No costs. **SO ORDERED.**<sup>[21]</sup> (Emphasis in the original.)

The RTC ruled that all the elements of the crime of estafa under paragraph 1(b), Article 315 of the RPC were proven by the prosecution, namely: (1) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (3) the misappropriation, conversion or denial is to the prejudice of another; and (4) demand by the offended party that the offender return the money or property received. The RTC held that based on the evidence of both parties, it was shown that these elements were present. *First*, Vicente was obliged to give P35,400.00 to Winner for the billboards. Vicente admitted that Winner is entitled to this amount because he contracted the latter to do some work for him. He failed to show evidence that he offered to pay the amount to So. The RTC opined that Vicente need not wait for any instruction to pay it because it was his obligation to do so.<sup>[22]</sup> *Second*, Vicente did not tender the amount due to Winner, which is tantamount to misappropriation.<sup>[23]</sup> *Third*, Winner was prejudiced in the amount of P35,400.00 as a result of Vicente's refusal to pay the cost of installing the billboards.<sup>[24]</sup> *Fourth*, Winner demanded payment from Vicente through its July 14, 2008 letter but to no avail.<sup>[25]</sup>

Under Article 315 of the RPC, the imposable penalty when the amount involved exceeds P22,000.00 is *prision correccional* in its maximum period to *prision mayor* in its maximum period, or six (6) years and one (1) day to twelve (12) years. An additional penalty of one (1) year for every P10,000.00 in excess of P22,000.00 shall be imposed. Since the amount involved here is P35,400.00, the RTC sentenced Vicente to suffer the penalty of imprisonment of thirteen (13) years of *reclusion temporal*.<sup>[26]</sup>

The RTC also awarded P35,400.00 as actual damages based on Liwanag's testimony that Winner was prejudiced only to the extent of that amount, instead of P42,600.00.<sup>[27]</sup> However, the RTC denied Winner's prayer for attorney's fees in the amount of P50,000.00 as acceptance fee and P3,000.00 as appearance fee because it failed to prove that it paid the same. Instead, the RTC awarded the amount of P10,000.00 as attorney's fees, finding it reasonable under the premises.<sup>[28]</sup> Vicente appealed to the CA to assail his conviction and pray for his acquittal. He also pointed out that Republic Act No. (R.A.) 10951<sup>[29]</sup> applies in his case.<sup>[30]</sup>

### **Ruling of the Court of Appeals**

The CA affirmed the RTC in its Decision<sup>[31]</sup> dated October 30, 2018 but modified the penalty as follows:

**WHEREFORE**, the foregoing considered, the instant appeal is **PARTLY GRANTED**. The Decision dated May 17, 2016 of the Regional Trial Court of Caloocan City, Branch 122 is hereby **AFFIRMED** with **MODIFICATION** in that the penalty imposed upon accused-appellant in said RTC Decision is **REDUCED** from THIRTEEN (13) YEARS of Reclusion Temporal to SIX (6) MONTHS of Arresto Mayor.

**SO ORDERED.**<sup>[32]</sup> (Emphasis in the original)

The CA agreed with the RTC that the evidence presented by the prosecution was sufficient to establish Vicente's commission of the crime charged. Vicente made it appear to Winner that Gamboa was Roxaco's representative. As a result, Roxaco gave Vicente the payment which Winner was entitled to. The CA held that Vicente admitted that he received payment from Roxaco and that he misappropriated it under the mistaken belief that it was his exclusive property. This prejudiced Winner who duly demanded payment from Vicente.<sup>[33]</sup>

Nonetheless, the CA held that R.A. 10951 should apply in this case. Under Section 85 of R.A. 10951, the penalty of imprisonment that shall be imposed for violation of Article 315 of the RPC when the amount involved does not exceed P40,000.00 is *arresto mayor* in its medium and maximum period or two (2) months and one (1) day to six (6) months. Accordingly, the CA reduced the penalty of imprisonment imposed against Vicente to six (6) months of *arresto mayor*.<sup>[34]</sup>

Vicente filed a motion for reconsideration. After it was denied by the CA, he filed a petition for review on *certiorari* before this Court. Vicente argued in his petition that the first two elements of estafa under paragraph 1(b), Article 315 of the RPC are absent in this case, that is, he received money in trust or on commission, or for administration or under any other obligation involving the duty to deliver or return it and that he misappropriated or converted the money received. The payment he received from Roxaco was pursuant to their exclusive contract which did not involve Winner. Winner was aware of the exclusivity of the contract in light of Liwanag's admission that Roxaco told her that Winner had nothing to do with its contract with Snydesign.<sup>[35]</sup> Liwanag also admitted that the billboards were completed for the account of Vicente, not Roxaco.<sup>[36]</sup> Vicente pointed out that under Article 1311 of the Civil Code, "[c]ontracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law." Vicente thus claimed that respondent failed to prove that he was obliged to remit the payment he received from Roxaco to Winner. As for the amount of money he owes Winner, it is an entirely separate and distinct obligation. Since it was not proven that he had the obligation to turn over the payment received from Roxaco to Winner, Vicente concluded that there was no misappropriation in this case. He had every right to dispose of the money however he pleased. Consequently, he should be acquitted.<sup>[37]</sup>

Respondent filed its comment<sup>[38]</sup> wherein it argued that all the elements of estafa

under Article 315(1)(b) of the RPC were proven beyond reasonable doubt. *First*, Vicente was obliged to return or deliver Winner's share of P35,400.00. Vicente admitted this in his email, which was offered as evidence by both parties, as well as during his cross-examination.<sup>[39]</sup> *Second*, Vicente admitted that he received payment from Roxaco, a part of which belongs to Winner. Winner sent a letter to him demanding its share but he did not heed it. Vicente thus failed to deliver Winner's share despite demand. This constitutes *prima facie* evidence of misappropriation. His excuse that Francisco told him to wait for further instruction before paying the amount due is too flimsy and shallow to be given credence.<sup>[40]</sup> *Third*, Winner was prejudiced in the amount of P35,400.00 because of Vicente's misappropriation. Respondent averred that there is no reason to set aside the ruling of the CA because the evidence showed that Vicente is guilty beyond reasonable doubt.<sup>[41]</sup>

### **Issue**

The issue in this case is whether the CA erred in affirming the conviction of Vicente for estafa.

### **Ruling of the Court**

The petition is meritorious.

Estafa by misappropriation under Article 315(1)(b) of the RPC, as amended by R.A. 10951 provides:

Article 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (P40,000): *Provided*, That in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally partially guaranteed by a bond; or by denying having received such money, goods, or other property x x x

The elements of estafa by misappropriation are: (1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return it; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such