

THIRD DIVISION

[G.R. No. 210192, July 04, 2016]

**ROSALINDA S. KHITRI AND FERNANDO S. KHITRI,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

REYES, J.:

Before this Court is a petition for review on *certiorari*^[1] filed by Rosalinda S. Khitri (Rosalinda) and Fernando S. Khitri (Fernando) (collectively, the petitioners) assailing the Decision^[2] of the Court of Appeals (CA) rendered on June 27, 2013 in CA-G.R. CR No. 33961, which affirmed the Decision^[3] dated December 9, 2009 of the Regional Trial Court (RTC) of Las Piñas City, Branch 253, in Criminal Case No. 00-1023, convicting the petitioners of the crime of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code (RPC).

The Information indicting the petitioners reads:

That on or about the 25 January, 1991 and sometime thereafter, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the [petitioners], *conspiring and confederating together and both of them mutually helping and aiding one another*, received in trust from the said complainants the amount of P400,000.00 to be used in the construction of a factory building to be built on the one[-]half portion of the [petitioners'] lot located at Monte Vista Park Subd., Sto. Niño, Cainta, Rizal but [the petitioners] once in possession of the said amount of money and far from complying with their obligation, with abuse of confidence and with intent to defraud said complainants[,] did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to their own personal use and benefits said amount of P400,000.00 and despite repeated demands made by the complainants[,] [the petitioners] failed and refused and still fails [sic] and refuses [sic] to return the said amount of P400,000.00 to the damage and prejudice of the said complainants in the aforementioned amount of P400,000.00.

CONTRARY TO LAW.^[4] (Italics ours)

Antecedents

Rosalinda is Fernando's mother. In their joint Counter-Affidavit,^[5] they admitted that they received the amount of Four Hundred Thousand Pesos (P400,000.00) from Spouses Hiroshi (Hiroshi) and Belen (Belen) Fukami (collectively, the private complainants). However, the petitioners claimed that the money they received was the private complainants' contribution in their joint venture to construct and operate

a garments factory. The petitioners further alleged that they had substantially complied with their obligation by constructing a two-door studio-type apartment in their lot in Cainta, Rizal, half of which was to be devoted for the operation of the garments factory.

On March 28, 2001, the petitioners were arraigned and pleaded "not guilty" to the charge. Since their primary defense was in the nature of an affirmative allegation, the RTC reversed the order of trial.^[6]

In her testimony,^[7] Rosalinda stated that she manufactures and exports ladies' lingerie and wear. Hiroshi, on the other hand, is an exporter of locally-manufactured women's wear to Japan. They were introduced to each other in 1986 by Hiroshi's agent, who used to source lingerie items from Rosalinda. In 1989, Hiroshi proposed a venture for them to jointly manufacture and export women's wear to United States of America and other countries. The venture required the construction of a factory, with Hiroshi contributing P400,000.00 therefor. Initially, Hiroshi wanted the factory to be constructed in Cubao, Quezon City beside Rosalinda's warehouse. However, Rosalinda offered her lot in Monte Vista Park Subdivision, Cainta, Rizal and Hiroshi acceded. The parties' agreement was merely verbal. The construction started in 1991. Half of the lot was reserved for the factory, with the remaining half as Rosalinda's residence. Rosalinda presented a supposed plan for the factory entitled "*Construction of Two-Unit Studio-type Apartments*," prepared for "*Rosalinda P. Subido*."

On cross-examination, Rosalinda clarified that the parties verbally agreed that one-half of the building would be used as factory while the other half would be her residence. However, there was no approved plan for a two-storey factory but only for two units of studio-type apartment. Hiroshi signified his acceptance of the factory building as constructed when he had caused the delivery and installation of five sewing machines in the apartment units albeit no government permit was obtained to operate the factory. Two weeks after, Hiroshi directed the machines to be pulled out for needed repairs.^[8]

In his testimony,^[9] Fernando stated that he is also engaged in garments manufacturing since 1979. He is the sole proprietor of Allure Garments and owns an interest in Venus Fashion Apparel Corporation. Rosalinda, on the other hand, solely owns Nandy's Enterprises, another business entity involved in garments manufacturing. Hiroshi first purchased garments from him in 1988. Later, Hiroshi proposed a joint venture to manufacture garments and agreed to contribute money for a factory to be constructed in their lot in Cubao. Hiroshi eventually agreed to have the factory be built instead in their lot in Cainta, Rizal.

In her testimony,^[10] Belen confirmed that she and her husband Hiroshi used to source some women's wear and lingerie items, which they export to Japan, from the petitioners in their Cubao factory from 1988 to 1992. Sometime in 1990, when the petitioners were running low on capital, they approached the private complainants to form a corporation to manufacture and export women's clothes and lingerie. Initially, the private complainants hesitated because the project entailed a huge amount for the construction of a two-storey factory. The private complainants at first suggested to have the factory be built in the petitioners' lot in Cubao. However, the Cubao area is congested. Further, after visiting the petitioners' lot in Cainta, and

having been shown a sketch of the two-storey factory to be constructed, they agreed to build thereat. The factory was intended to occupy one-half of the lot, while the other half thereof would be reserved for the petitioners' residence. The private complainants gave their P400,000.00 contribution to the petitioners and this amount was used to open a Boston Bank joint account in Belen and Rosalinda's names. The private complainants were eventually shocked to discover instead a two-door studio-type apartment, the plan for which was never shown to them. In their disappointment, they demanded the return of their money, but the petitioners avoided their calls and even changed their phone numbers. Through counsel, the private complainants wrote a demand letter for the petitioners to return their money. In response, the petitioners offered one apartment unit, with the cost of the lot where it stands to be paid for separately. The private complainants outrightly rejected the offer.

Hiroshi testified that he had been coming back and forth from Japan to the Philippines for 30 years purchasing and exporting locally manufactured women's clothes. The petitioners were referred to him by a Japanese friend, and he soon began buying merchandise from them in 1988. The petitioners subsequently broached the idea of a joint venture to manufacture women's clothes, with the private complainants contributing to the cost of constructing a two-storey factory building. Since the petitioners' shop in Cubao is too small, they showed him a rough sketch of a two-storey factory on a white board, and brought him to see their lot in Cainta where the factory would be built. The petitioners explained to him that one-half of the lot would be used for the two-storey factory. Later, he asked Belen to check the state of the factory because the petitioners had been rejecting his phone calls. Belen saw a two-door studio-type apartment, instead of a two-storey factory, and took pictures of the same. Hiroshi was never shown the plan for a two-door studio-type apartments, which Rosalinda presented in court. The private complainants tried to contact the petitioners but they could no longer be reached. They felt deceived because their agreement was not complied with.^[11]

On cross-examination, Hiroshi admitted that the negotiations for the joint venture were done in his Elizabeth Mansions office in Quezon City. He recalled having seen the petitioners in Las Piñas City only once or twice. There was no written contract anent the joint venture because he trusted the petitioners.^[12]

Ruling of the RTC

The RTC, in its Decision^[13] dated December 9, 2009, convicted the petitioners, the *fallo* of which reads:

WHEREFORE, premises considered, the Court finds [the petitioners], **GUILTY** beyond reasonable doubt of the crime of *Estafa* punishable under *Article 315, paragraph 1 (b) of the [RPC]*. Consequently, [the petitioners] are sentenced to suffer the indeterminate prison term of four (4) years and two (2) months of *Prision Correccional* maximum as MINIMUM to twenty (20) years of *Reclusion Temporal* as MAXIMUM.

Moreover, this Court hereby orders [the petitioners] to reimburse private complainants the sum of x x x FOUR HUNDRED THOUSAND PESOS (Php400,000.00), plus interest of twelve percent (12%) per annum, from

January 21, 1991, until fully paid, as actual damages, and ONE HUNDRED THOUSAND PESOS (Php100,000.00), as litigation expenses and attorney[']s fees.

SO ORDERED.^[14]

Unfazed by the above, the petitioners appealed to the CA.

Ruling of the CA

In its Decision^[15] dated June 27, 2013, the CA affirmed *in toto* the RTC decision. The CA agreed with the RTC that it had jurisdiction over the crime charged. All the elements of the crime of estafa are present, and that the petitioners conspired in committing the crime. The evidence of the prosecution showed that the parties agreed to form a joint venture to manufacture women's wear, with the petitioners contributing the use of one half of their lot in Cainta to build a two-storey garments factory, while the private complainants would contribute P400,000.00 for the construction thereof. On January 25, 1991, the private complainants gave the amount of P400,000.00, with which Belen and Rosalinda opened a joint account in Boston Bank, San Juan City. On different dates, four checks, each bearing the amount of P100,000.00, were issued by Belen to Rosalinda. The petitioners' messenger picked up the checks from the private complainants' residence in Las Piñas City and thereafter, the amounts indicated therein were withdrawn from Boston Bank joint account. After the entire amount of P400,000.00 had been withdrawn, the petitioners could no longer be contacted by phone. This prompted Belen to visit the construction site. She discovered that what was constructed was not a two-storey factory building but a residential duplex apartment. Belen took pictures of the apartment and showed them to Hiroshi, who then decided to withdraw from the joint venture and demanded the return of their money. The private complainants consulted a lawyer, who sent demand letters, but they received no reply from the petitioners.

The petitioners filed a motion for reconsideration, which was denied by the CA in its Resolution^[16] dated November 21, 2013.

Hence, this petition raising the following errors:

- I. THE CA GRAVELY ERRED IN MAINTAINING THAT THE RTC OF LAS PIÑAS CITY HAD JURISDICTION OVER THE CASE.**
- II. THE CA GRAVELY ERRED IN UPHOLDING THE CONVICTION OF THE PETITIONERS INSTEAD OF FINDING THAT THEIR LIABILITY, IF ANY, IS ONLY CIVIL IN NATURE.**
- III. THE CA GRAVELY ERRED IN FINDING THAT CONSPIRACY EXISTED BETWEEN THE PETITIONERS.**^[17]

The Issues

Essentially, the issues for resolution are the following: (1) whether the evidence submitted is sufficient to establish guilt of the petitioners beyond reasonable doubt; and (2) whether the evidence submitted establishes conspiracy between the

petitioners.^[18]

In this petition, the petitioners reiterate their contention that the crime for which they were indicted was committed in Quezon City, San Juan City and Cainta, Rizal, and not in Las Piñas City. Moreover, no conspiracy between the petitioners was established. They point out that Belen herself admitted that the amount of P400,000.00 was deposited in a joint account, which Belen and Rosalinda opened in a bank in San Juan City. Moreover, there was no criminal intent to swindle the private complainants. It was Hiroshi himself who approached the petitioners to propose a joint venture. In fact, as agreed, a structure was erected on the lot of the petitioners, which, although not exactly what the private complainants had in mind, is suitable for the operation of a garments factory. Hiroshi even delivered and installed sewing machines in the building. After two weeks, he pulled out the sewing machines for the purpose of having them repaired. The petitioners also point out that they never stopped communicating with the private complainants. Besides, 10 years had elapsed from the time the factory was constructed before the private complainants decided to file a criminal complaint.

On the other hand, the Office of the Solicitor General (OSG) maintains that the RTC of Las Piñas City had jurisdiction over the case. The delivery of the checks and acceptance thereof by the petitioners through their authorized representatives connote not merely the transfer of money but also marked the creation of a fiduciary relation between the parties. Hence, in legal contemplation, the petitioners received the amount of P400,000.00 in the private complainants' residence in Las Piñas City. The OSG further insists that all the elements of the crime and the fact of conspiracy are present.^[19]

Ruling of the Court

The instant petition is meritorious.

The RTC of Las Piñas City had jurisdiction over the case.

The Court agrees that the RTC of Las Piñas City had territorial jurisdiction over the case. Although the bank account for the joint venture was set up in San Juan City, in which the P400,000.00 capital contribution of the private complainants was deposited and eventually withdrawn, Belen issued four checks from her residence in Las Piñas City. These checks were picked up by the messenger sent by the petitioners.

The Court has ruled in the case of *Tan v. People*^[20] that "[t]he delivery by the private complainant of the check and its acceptance by [the accused] signified not merely the transfer to the accused of the money belonging to private complainant, [but] it also marked the creation of a fiduciary relation between the parties."^[21]

Not all the elements of the crime of estafa are present.

However, the CA erred in affirming the ruling of the RTC, which convicted the petitioners of estafa as the prosecution failed to prove all the elements of the crime charged.