

EN BANC

[G.R. No. 180016, April 29, 2014]

LITO CORPUZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is to resolve the Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, dated November 5, 2007, of petitioner Lito Corpuz (*petitioner*), seeking to reverse and set aside the Decision^[1] dated March 22, 2007 and Resolution^[2] dated September 5, 2007 of the Court of Appeals (CA), which affirmed with modification the Decision^[3] dated July 30, 2004 of the Regional Trial Court (RTC), Branch 46, San Fernando City, finding the petitioner guilty beyond reasonable doubt of the crime of Estafa under Article 315, paragraph (1), sub-paragraph (b) of the Revised Penal Code.

The antecedent facts follow.

Private complainant Danilo Tangcoy and petitioner met at the Admiral Royale Casino in Olongapo City sometime in 1990. Private complainant was then engaged in the business of lending money to casino players and, upon hearing that the former had some pieces of jewelry for sale, petitioner approached him on May 2, 1991 at the same casino and offered to sell the said pieces of jewelry on commission basis. Private complainant agreed, and as a consequence, he turned over to petitioner the following items: an 18k diamond ring for men; a woman's bracelet; one (1) men's necklace and another men's bracelet, with an aggregate value of P98,000.00, as evidenced by a receipt of even date. They both agreed that petitioner shall remit the proceeds of the sale, and/or, if unsold, to return the same items, within a period of 60 days. The period expired without petitioner remitting the proceeds of the sale or returning the pieces of jewelry. When private complainant was able to meet petitioner, the latter promised the former that he will pay the value of the said items entrusted to him, but to no avail.

Thus, an Information was filed against petitioner for the crime of estafa, which reads as follows:

That on or about the fifth (5th) day of July 1991, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, after having received from one Danilo Tangcoy, one (1) men's diamond ring, 18k, worth P45,000.00; one (1) three-baht men's bracelet, 22k, worth P25,000.00; one (1) two-baht ladies' bracelet, 22k, worth P12,000.00, or in the total amount of Ninety-Eight Thousand Pesos (P98,000.00), Philippine currency, under expressed obligation on the part of said accused to remit the proceeds of the sale of the said items or to return the same, if not sold, said accused, once in possession of the said items, with intent to defraud, and with unfaithfulness and abuse of confidence, and far from complying with his aforestated obligation, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the aforesaid jewelries (sic) or the proceeds of the sale thereof, and despite repeated demands, the accused

failed and refused to return the said items or to remit the amount of Ninety-Eight Thousand Pesos (P98,000.00), Philippine currency, to the damage and prejudice of said Danilo Tangcoy in the aforementioned amount.

CONTRARY TO LAW.

On January 28, 1992, petitioner, with the assistance of his counsel, entered a plea of not guilty. Thereafter, trial on the merits ensued.

The prosecution, to prove the above-stated facts, presented the lone testimony of Danilo Tangcoy. On the other hand, the defense presented the lone testimony of petitioner, which can be summarized, as follows:

Petitioner and private complainant were collecting agents of Antonio Balajadia, who is engaged in the financing business of extending loans to Base employees. For every collection made, they earn a commission. Petitioner denied having transacted any business with private complainant. However, he admitted obtaining a loan from Balajadia sometime in 1989 for which he was made to sign a blank receipt. He claimed that the same receipt was then dated May 2, 1991 and used as evidence against him for the supposed agreement to sell the subject pieces of jewelry, which he did not even see.

After trial, the RTC found petitioner guilty beyond reasonable doubt of the crime charged in the Information. The dispositive portion of the decision states:

WHEREFORE, finding accused LITO CORPUZ GUILTY beyond reasonable doubt of the felony of Estafa under Article 315, paragraph one (1), subparagraph (b) of the Revised Penal Code;

there being no offsetting generic aggravating nor ordinary mitigating circumstance/s to vary the penalty imposable;

accordingly, the accused is hereby sentenced to suffer the penalty of deprivation of liberty consisting of an imprisonment under the Indeterminate Sentence Law of FOUR (4) YEARS AND TWO (2) MONTHS of *Prision Correccional* in its medium period AS MINIMUM, to FOURTEEN (14) YEARS AND EIGHT (8) MONTHS of Reclusion Temporal in its minimum period AS MAXIMUM; to indemnify private complainant Danilo Tangcoy the amount of P98,000.00 as actual damages, and to pay the costs of suit.

SO ORDERED.

The case was elevated to the CA, however, the latter denied the appeal of petitioner and affirmed the decision of the RTC, thus:

WHEREFORE, the instant appeal is DENIED. The assailed Judgment dated July 30, 2004 of the RTC of San Fernando City (P), Branch 46, is hereby AFFIRMED with MODIFICATION on the imposable prison term, such that accused-appellant shall suffer the indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 8 years of *prision mayor*, as maximum, plus 1 year for each additional P10,000.00, or a total of 7 years. The rest of the decision stands.

SO ORDERED.

Petitioner, after the CA denied his motion for reconsideration, filed with this Court the present petition stating the following grounds:

A. THE HONORABLE COURT OF APPEALS ERRED IN CONFIRMING THE ADMISSION AND APPRECIATION BY THE LOWER COURT OF PROSECUTION EVIDENCE, INCLUDING ITS EXHIBITS, WHICH ARE MERE MACHINE COPIES, AS THIS VIOLATES THE BEST EVIDENCE RULE;

B. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT'S FINDING THAT THE CRIMINAL INFORMATION FOR ESTAFA WAS NOT FATALY DEFECTIVE ALTHOUGH THE SAME DID NOT CHARGE THE OFFENSE UNDER ARTICLE 315 (1) (B) OF THE REVISED PENAL CODE IN THAT -

1. THE INFORMATION DID NOT FIX A PERIOD WITHIN WHICH THE SUBJECT [PIECES OF] JEWELRY SHOULD BE RETURNED, IF UNSOLD, OR THE MONEY TO BE REMITTED, IF SOLD;

2. THE DATE OF THE OCCURRENCE OF THE CRIME ALLEGED IN THE INFORMATION AS OF 05 JULY 1991 WAS MATERIALLY DIFFERENT FROM THE ONE TESTIFIED TO BY THE PRIVATE COMPLAINANT WHICH WAS 02 MAY 1991;

C. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT'S FINDING THAT DEMAND TO RETURN THE SUBJECT [PIECES OF] JEWELRY, IF UNSOLD, OR REMIT THE PROCEEDS, IF SOLD - AN ELEMENT OF THE OFFENSE - WAS PROVED;

D. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT'S FINDING THAT THE PROSECUTION'S CASE WAS PROVEN BEYOND REASONABLE DOUBT ALTHOUGH -

1. THE PRIVATE COMPLAINANT TESTIFIED ON TWO (2) VERSIONS OF THE INCIDENT;

2. THE VERSION OF THE PETITIONER - ACCUSED IS MORE STRAIGHTFORWARD AND LOGICAL, CONSISTENT WITH HUMAN EXPERIENCE;

3. THE EQUIPOISE RULE WAS NOT APPRECIATED IN AND APPLIED TO THIS CASE;

4. PENAL STATUTES ARE STRICTLY CONSTRUED AGAINST THE STATE.

In its Comment dated May 5, 2008, the Office of the Solicitor General (OSG) stated the following counter-arguments:

The exhibits were properly admitted inasmuch as petitioner failed to object to their admissibility.

The information was not defective inasmuch as it sufficiently established the designation of the offense and the acts complained of.

The prosecution sufficiently established all the elements of the crime charged.

This Court finds the present petition devoid of any merit.

The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion.^[4] Petitioner is of the opinion that the CA erred in affirming the factual findings of the trial court. He now comes to this Court raising both procedural and substantive issues.

According to petitioner, the CA erred in affirming the ruling of the trial court, admitting in evidence a receipt dated May 2, 1991 marked as Exhibit "A" and its submarkings, although the same was merely a photocopy, thus, violating the best evidence rule. However, the records show that petitioner never objected to the admissibility of the said evidence at the time it was identified, marked and testified upon in court by private complainant. The CA also correctly pointed out that petitioner also failed to raise an objection in his Comment to the prosecution's formal offer of evidence and even admitted having signed the said receipt. The established doctrine is that when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived.^[5]

Another procedural issue raised is, as claimed by petitioner, the formally defective Information filed against him. He contends that the Information does not contain the period when the pieces of jewelry were supposed to be returned and that the date when the crime occurred was different from the one testified to by private complainant. This argument is untenable. The CA did not err in finding that the Information was substantially complete and in reiterating that objections as to the matters of form and substance in the Information cannot be made for the first time on appeal. It is true that the gravamen of the crime of estafa under Article 315, paragraph 1, subparagraph (b) of the RPC is the appropriation or conversion of money or property received to the prejudice of the owner^[6] and that the time of occurrence is not a material ingredient of the crime, hence, the exclusion of the period and the wrong date of the occurrence of the crime, as reflected in the Information, do not make the latter fatally defective. The CA ruled:

x x x An information is legally viable as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof. Then Section 6, Rule 110 of the Rules of Court provides that a complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. In the case at bar, a reading of the subject Information shows compliance with the foregoing rule. That the time of the commission of the offense was stated as "on or about the fifth (5th) day of July, 1991" is not likewise fatal to the prosecution's cause considering that Section 11 of the same Rule requires a statement of the precise time only when the same is a material ingredient of the offense. The gravamen of the crime of estafa under Article 315, paragraph 1 (b) of the Revised Penal Code (RPC) is the appropriation or conversion of money or property received to the prejudice of the offender. Thus, aside from the fact that

the date of the commission thereof is not an essential element of the crime herein charged, the failure of the prosecution to specify the exact date does not render the Information *ipso facto* defective. Moreover, the said date is also near the due date within which accused-appellant should have delivered the proceeds or returned the said [pieces of jewelry] as testified upon by Tangkoy, hence, there was sufficient compliance with the rules. Accused-appellant, therefore, cannot now be allowed to claim that he was not properly apprised of the charges proffered against him.^[7]

It must be remembered that petitioner was convicted of the crime of Estafa under Article 315, paragraph 1 (b) of the RPC, which reads:

ART. 315. *Swindling (estafa)*. – Any person who shall defraud another by any of the means mentioned hereinbelow.

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 or partially guaranteed by a bond; or by denying having received such money, goods, or other property; x x x

The elements of estafa with abuse of confidence are as follows: (a) that money, goods or other personal property is 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; (b) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) that there is a demand made by the offended party on the offender.^[8]

Petitioner argues that the last element, which is, that there is a demand by the offended party on the offender, was not proved. This Court disagrees. In his testimony, private complainant narrated how he was able to locate petitioner after almost two (2) months from the time he gave the pieces of jewelry and asked petitioner about the same items with the latter promising to pay them. Thus:

PROS. MARTINEZ

q Now, Mr. Witness, this was executed on 2 May 1991, and this transaction could have been finished on 5 July 1991, the question is what happens (sic) when the deadline came?

a I went looking for him, sir.

q For whom?

a Lito Corpuz, sir.

q Were you able to look (sic) for him?

a I looked for him for a week, sir.