

SECOND DIVISION

[G.R. No. 184274, February 23, 2011]

MARK SOLEDAD Y CRISTOBAL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

NACHURA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision^[1] dated June 18, 2008 and Resolution^[2] dated August 22, 2008 in CA-G.R. CR. No. 30603. The assailed Decision affirmed with modification the September 27, 2006 decision^[3] of the Regional Trial Court (RTC), Branch 202, Las Piñas City, finding petitioner Mark C. Soledad guilty beyond reasonable doubt of Violation of Section 9(e), Republic Act (R.A.) No. 8484, or the Access Devices Regulations Act of 1998; while the assailed Resolution denied petitioner's motion for reconsideration.

The facts of the case, as narrated by the CA, are as follows:

Sometime in June 2004, private complainant Henry C. Yu received a call on his mobile phone from a certain "Tess" or "Juliet Villar" (later identified as Rochelle Bagaporo), a credit card agent, who offered a Citifinancing loan assistance at a low interest rate. Enticed by the offer, private complainant invited Rochelle Bagaporo to go to his office in Quezon City. While in his office, Rochelle Bagaporo indorsed private complainant to her immediate boss, a certain "Arthur" [later identified as petitioner]. In their telephone conversation, [petitioner] told private complainant to submit documents to a certain "Carlo" (later identified as Ronald Gobenchiong). Private complainant submitted various documents, such as his Globe handyphone original platinum gold card, identification cards and statements of accounts. Subsequently, private complainant followed up his loan status but he failed to get in touch with either [petitioner] or Ronald Gobenchiong.

During the first week of August 2004, private complainant received his Globe handyphone statement of account wherein he was charged for two (2) mobile phone numbers which were not his. Upon verification with the phone company, private complainant learned that he had additional five (5) mobile numbers in his name, and the application for said cellular phone lines bore the picture of [petitioner] and his forged signature. Private complainant also checked with credit card companies and learned that his Citibank Credit Card database information was altered and he had a credit card application with Metrobank Card Corporation (Metrobank).

Thereafter, private complainant and Metrobank's junior assistant manager Jefferson Devilleres lodged a complaint with the National Bureau of Investigation (NBI) which conducted an entrapment operation.

During the entrapment operation, NBI's Special Investigator (SI) Salvador Arteche [Arteche], together with some other NBI operatives, arrived in Las Piñas around 5:00 P.M. [Arteche] posed as the delivery boy of the Metrobank credit card. Upon reaching the address written on the delivery receipt, [Arteche] asked for Henry Yu. [Petitioner] responded that he was Henry Yu and presented to [Arteche] two (2) identification cards which bore the name and signature of private complainant, while the picture showed the face of [petitioner]. [Petitioner] signed the delivery receipt. Thereupon, [Arteche] introduced himself as an NBI operative and apprehended [petitioner]. [Arteche] recovered from [petitioner] the two (2) identification cards he presented to [Arteche] earlier.^[4]

Petitioner was thus charged with Violation of Section 9(e), R.A. No. 8484 for "possessing a counterfeit access device or access device fraudulently applied for." The accusatory portion of the Information reads:

That on or about the 13th day of August 2004, or prior thereto, in the City of Las Piñas, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with certain Rochelle Bagaporo a.k.a. Juliet Villar/Tess and a certain Ronald Gobenciong a.k.a. Carlo and all of them mutually helping and aiding each other, did then and there willfully, unlawfully and feloniously defraud complainant HENRY YU by applying a credit card, an access device defined under R.A. 8484, from METROBANK CARD CORPORATION, using the name of complainant Henry C. Yu and his personal documents fraudulently obtained from him, and which credit card in the name of Henry Yu was successfully issued and delivered to said accused using a fictitious identity and addresses of Henry Yu, to the damage and prejudice of the real Henry Yu.

CONTRARY TO LAW.^[5]

Upon arraignment, petitioner pleaded "not guilty." Trial on the merits ensued. After the presentation of the evidence for the prosecution, petitioner filed a Demurrer to Evidence, alleging that he was not in physical and legal possession of the credit card presented and marked in evidence by the prosecution. In an Order dated May 2, 2006, the RTC denied the Demurrer to Evidence as it preferred to rule on the merits of the case.^[6]

On September 27, 2006, the RTC rendered a decision finding petitioner guilty as charged, the dispositive portion of which reads:

In the light of the foregoing, the Court finds **accused Mark Soledad y Cristobal a.k.a. "Henry Yu," "Arthur" GUILTY** beyond reasonable doubt of violation of Section 9(e), Republic Act 8484 (Access Device Regulation Act of 1998). Accordingly, pursuant to Section 10 of Republic Act 8484 and applying the Indeterminate Sentence Law, said accused is hereby sentenced to suffer an imprisonment penalty of six (6) years of *prision correccional*, as *minimum*, to not more than ten (10) years of *prision mayor*, as maximum. Further, accused is also ordered to pay a fine of Ten Thousand Pesos (P10,000.00) for the offense committed.

SO ORDERED.^[7]

On appeal, the CA affirmed petitioner's conviction, but modified the penalty imposed by the RTC by deleting the terms *prision correccional* and *prision mayor*.

Hence, this petition raising the following issues:

- (1) Whether or not the Information is valid;
- (2) Whether or not the Information charges an offense, or the offense petitioner was found guilty of;
- (3) Whether or not petitioner was sufficiently informed of the nature of the accusations against him;
- (4) Whether or not petitioner was legally in "possession" of the credit card subject of the case.^[8]

The petition is without merit.

Petitioner was charged with Violation of R.A. No. 8484, specifically Section 9(e), which reads as follows:

Section 9. *Prohibited Acts.* - The following acts shall constitute access device fraud and are hereby declared to be unlawful:

x x x x

- (e) possessing one or more counterfeit access devices or access devices fraudulently applied for.

Petitioner assails the validity of the Information and claims that he was not informed of the accusation against him. He explains that though he was charged with "possession of an access device fraudulently applied for," the act of "possession," which is the gravamen of the offense, was not alleged in the Information.

We do not agree.