

## FIRST DIVISION

[ G.R. No. 171328, February 16, 2011 ]

**LYZAH SY FRANCO, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

[G.R. NO. 171335 ]

**STEVE BESARIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

In the prosecution for the crime of estafa committed under Article 315, paragraph 2(a) of the Revised Penal Code, there must be evidence of false representation or false pretense on the part of the accused to prove reasonable doubt. In this case, the employee's act of soliciting a client despite previous knowledge of several complaints against his or her employer for failure to deliver the motor vehicle that was the subject of the agreement, is tantamount to misrepresentation.

#### ***Factual Antecedents***

These petitions for review on *certiorari* impugn the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 27414 which affirmed with modifications the Decision<sup>[2]</sup> of the Regional Trial Court of Manila, Branch 52, in Criminal Case No. 99-173688, convicting petitioners Lyzah Sy Franco (Franco) and Steve Besario (Besario) of the crime of Estafa. The Information filed against petitioners and their co-accused, Antonio Rule, Jr. (Rule) and George Torres (Torres), contained the following accusatory allegations:

That on or about the first week of June 1998, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously defraud MA. LOURDES G. ANTONIO, in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which they made to said Ma. Lourdes G. Antonio, to the effect that they are employees of FINAL ACCESS MARKETING, a business entity engaged in the sale and financing of used or repossessed cars, and as such could process and facilitate the sale of a Mazda car 323 bearing plate number PVB-999 worth P130,000.00 provided they be given the amount of P80,000.00 as down payment and by means of other deceits of similar import, induced and succeeded in inducing the said Ma. Lourdes G. Antonio to give and deliver as in fact she gave and delivered to herein accused the said amount of P80,000.00, and accused knowing

fully well that their manifestations and representations were false and untrue and were made only to obtain the said amount of P80,000.00 which amount once in their possession, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert the said amount of P80,000.00 to their own personal use and benefit, to the damage and prejudice of said MA. LOURDES G. ANTONIO in the aforesaid amount of P80,000.00 in its equivalent amount to the Philippine Currency.

Contrary to law.<sup>[3]</sup>

During arraignment, petitioners entered separate pleas of "not guilty." Rule and Torres failed to appear and, to date, remain at large. After the termination of the pre-trial conference, trial ensued.

### ***The Version of the Prosecution***

Ma. Lourdes G. Antonio (Lourdes) testified that petitioners swindled her. She claimed that Franco was a friend of her niece and that she has known her for almost a year. In the first week of June 1998, Franco came to her house and offered to assist her in purchasing a used car. Franco introduced herself as Assistant Administrative Coordinator of Final Access Marketing which was engaged in the sale and financing of second-hand and repossessed vehicles. Franco gave her calling card after their conversation.

Lourdes was interested in the offer of Franco since she and her husband were actually looking for a used car for their taxicab operation. She therefore contacted Franco to take up her offer.

On June 26, 1998, Franco and Lourdes went to a showroom on Houston Street, San Juan, Metro Manila, where Lourdes immediately chose a blue Mazda 323 car with Plate No. PVB No. 999 from those that were on display.

At around 7 o'clock in the evening of July 2, 1998, Franco went to the house of Lourdes and presented a sales proposal. She was with Besario and Rule, whom she introduced as her superiors. Rule then made a presentation on the Mazda 323 car informing Lourdes that she can buy it for P130,000.00 with a downpayment of P80,000.00 and the balance to be paid in 12 equal monthly installments. Rule also told Lourdes that the car would be delivered within three days from receipt of her money.

Lourdes agreed to pay the downpayment the following day. Before the petitioners departed, Rule ordered Franco to sign the sales proposal as sales executive. Lourdes also signed the document. Rule then issued a receipt dated July 3, 1998 and instructed Franco and Besario to give it to Lourdes after receiving her downpayment upon their return on the next day.

The following day, July 3, 1998, Franco and Besario returned to the house of Lourdes to collect the downpayment of P80,000.00. Besario received and counted the money and handed it to Franco. After counting the money, Franco returned the same to Besario, who put it inside the bag he was carrying. They gave to Lourdes

the receipt dated July 3, 1998 that was signed by Rule. At the same time, they assured her that the car would be delivered in three days.

The car, however, was not delivered as promised. Lourdes called up Final Access Marketing's office and was able to talk to the owner/manager, Torres, who assured her that her downpayment would be refunded or that they would look for a replacement.

Meanwhile, Lourdes and her husband returned to the showroom on Houston Street, San Juan, where they saw the Mazda car already clean. The security guard told them it was ready for release in the afternoon.

When the car was still undelivered, Lourdes sought the aid of "*Hoy Gising*," a television show that broadcasts grievances of people against fraudulent schemes. During a visit to the show's office, Lourdes learned that 12 other persons were victimized by the group of petitioners.

Lourdes also met with Atty. Renz Jaime, legal counsel of Final Access Marketing, who assured her that Final Access Marketing would return her money by August. When he reneged on his promise, formal demand was made on him to settle the obligation of said business enterprise.

Erlinda Acosta (Erlinda) was one of the alleged victims of petitioners whom Lourdes met while airing her complaint in the television program "*Hoy Gising*." Erlinda testified that she was referred to Besario when she was looking for a second-hand vehicle. She went to the office of Final Access Marketing in Timog Avenue, Quezon City, and was shown by Besario several pictures of vehicles from which she chose a Mitsubishi Pajero.

On April 7, 1998, Erlinda and her son met Besario, Rule and their other companions in a restaurant. They brought the vehicle Erlinda wanted to purchase and her son drove it for a road test. Thereafter, she agreed to buy the vehicle for P600,000.00. She signed a Vehicle Sales Proposal and handed to Rule a downpayment of US\$3,000.00.

On April 20, 1998, Erlinda delivered to Besario and Rule a manager's check in the amount of P245,000.00 as payment for the entire balance. She was then assured that the vehicle will be delivered a week later. However, Besario and Rule reneged on their promise. Erlinda went to the office of Final Access Marketing and complained to Franco but to no avail. Her motor vehicle was never delivered. Thus, she went to "*Hoy Gising*."

Juanito Antonio corroborated the testimony of his wife, Lourdes. He was present when petitioners Franco and Besario, together with Rule, went to their house in the evening of July 2, 1998 with a written proposal for the sale of a vehicle. After his wife signed the document, she gave a downpayment of P80,000.00. When the car was not delivered on the date agreed upon, he and his wife went to the office of Final Access Marketing. Upon their inquiries, the security guard on duty said that the car they purchased already had a gate pass and would be delivered in the afternoon. However, the said vehicle was never delivered to them.

### ***The Version of the Petitioners***

Franco denied involvement in the alleged conspiracy to commit estafa against Lourdes. She alleged that it was Torres, the owner of Final Access Marketing, who was the swindler. And like Lourdes, she was a victim in this case.

Franco claimed that petitioner Besario hired her as a clerk-typist. She was promoted to the position of Assistant Administrative Coordinator and was authorized to solicit clients for Final Access Marketing.

Franco learned from her sister that Lourdes wanted to purchase a second-hand car. She went to see Lourdes and presented to the latter a list of repossessed vehicles. She gave her calling card to Lourdes before they parted. Later on, Lourdes called and visited the office of Final Access Marketing, where Franco introduced Lourdes to Besario and Rule.

Franco accompanied Lourdes to showrooms where the latter chose a blue Mazda car with Plate No. PVB 999. Rule agreed to sell the car to Lourdes for P130,000.00. Thus, on the evening of July 2, 1998, she, Besario and Rule went to the house of Lourdes with a Vehicle Sales Proposal. Franco signed the document without reading and understanding the same upon the insistence of Rule. Rule then signed an official receipt and instructed Franco and Besario to return the next day to give the same to Lourdes after collecting her downpayment. Lourdes was also assured that the car would be delivered within three days from receipt of the downpayment.

On July 3, 1998, at around 10 a.m., Franco and Besario came back to collect the downpayment. Lourdes gave her cash payment to Besario, who counted it. He gave said cash to Franco, who counted it again. When the money was handed back to Besario, he put it inside a black bag. Thereafter, Franco and Besario went to a restaurant to pick-up Rule. They rode a taxi and proceeded to the house of Torres, but it was only Besario and Rule who went inside. Franco went home without receiving a single centavo for her transportation fare.

When the car was not delivered, Lourdes called Franco who in turn reminded her boss to expedite its release. However, the continued failure to receive the vehicle compelled Lourdes to report the incident to "*Hoy Gising*." It was only during this period that Franco learned of similar complaints from other customers. Thereafter, Lourdes called her intermittently asking for a reimbursement. However, the latter could not do anything since her employers no longer reported to the office. Rule and Torres left Manila and went to Cebu. She was not aware of their whereabouts at the time of her testimony.

On the other hand, Besario failed to attend several hearings. The notice to appear and to present evidence sent to him was returned unserved since he moved to another address without informing the trial court. Thus, upon motion of the prosecution, he was declared to have waived his right to present evidence. The case was consequently submitted for decision.

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

On October 23, 2001, the trial court rendered its Decision finding petitioners guilty beyond reasonable doubt of the crime of estafa under Article 315, par. 1(b) of the

Revised Penal Code. The dispositive portion reads as follows:

ACCORDINGLY, above premises all considered, the Court finding accused Lyzah Sy Franco and Steve Besario GUILTY, beyond reasonable doubt, of the crime charged in the Information, the Court hereby sentences said two accused to each suffer the indeterminate penalty of imprisonment ranging from seventeen (17) years of reclusion temporal as MAXIMUM to eight (8) years and one (1) day of prison mayor as MINIMUM and to suffer all the accessory penalties as provided by law.

Accused Franco and Besario, jointly and severally are likewise ordered to pay private complainant Ma. Lourdes Antonio the sum of P80,000.00 as actual damages.

SO ORDERED.<sup>[4]</sup>

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

On July 26, 2005, the CA promulgated its Decision that affirmed with modification the decision of the trial court. It convicted the petitioners for the crime of estafa under Article 315, par. 2(a) of the Revised Penal Code and modified the penalty. The dispositive portion of its Decision reads as follows:

WHEREFORE, in view of the foregoing premises, the Decision dated October 23, 2001 rendered by the trial court is hereby AFFIRMED, with modification to the effect that the penalty imposed upon each of the appellants is hereby MODIFIED to an indeterminate sentence of Four (4) years, Two (2) months, and One (1) day of prision correccional as minimum to Thirteen (13) years of reclusion temporal as maximum.

Accused Franco and Besario are likewise ordered to pay, jointly and severally, private complainant, Ma. Lourdes Antonio, the sum of P80,000.00 as actual damages.

SO ORDERED.<sup>[5]</sup>

Hence, petitioners filed separate petitions for review on *certiorari* assailing the Decision of the CA. Franco contends that "the Court of Appeals decided the case on a mistaken inference and [misappreciation] of facts bordering on speculations, surmises or conjectures."<sup>[6]</sup>

On the other hand, Besario ascribes the following error to the CA:

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED REVERSIBLE ERROR BY DISREGARDING THE LAW, JURISPRUDENCE AND EVIDENCE