

## THIRD DIVISION

[ G.R. No. 173905, April 23, 2010 ]

**ANTHONY L. NG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

This is a Petition for Review on Certiorari under Rule 45 seeking to reverse and set aside the August 29, 2003 Decision <sup>[1]</sup> and July 25, 2006 Resolution of the Court of Appeals (CA) in CA-G.R. CR No. 25525, which affirmed the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 95 in Quezon City, in Criminal Case No. Q-99-85133 for *Estafa* under Article 315, paragraph 1(b) of the Revised Penal Code (RPC) in relation to Section 3 of Presidential Decree No. (PD) 115 or the Trust Receipts Law.

#### **The Facts**

Sometime in the early part of 1997, petitioner Anthony Ng, then engaged in the business of building and fabricating telecommunication towers under the trade name "Capitol Blacksmith and Builders," applied for a credit line of PhP 3,000,000 with Asiatrust Development Bank, Inc. (Asiatrust). In support of Asiatrust's credit investigation, petitioner voluntarily submitted the following documents: (1) the contracts he had with Islacom, Smart, and Infocom; (2) the list of projects wherein he was commissioned by the said telecommunication companies to build several steel towers; and (3) the collectible amounts he has with the said companies.<sup>[3]</sup>

On May 30, 1997, Asiatrust approved petitioner's loan application. Petitioner was then required to sign several documents, among which are the Credit Line Agreement, Application and Agreement for Irrevocable L/C, Trust Receipt Agreements,<sup>[4]</sup> and Promissory Notes. Though the Promissory Notes matured on September 18, 1997, the two (2) aforementioned Trust Receipt Agreements did not bear any maturity dates as they were left unfilled or in blank by Asiatrust.<sup>[5]</sup>

After petitioner received the goods, consisting of chemicals and metal plates from his suppliers, he utilized them to fabricate the communication towers ordered from him by his clients which were installed in three project sites, namely: Isabel, Leyte; Panabo, Davao; and Tongonan.

As petitioner realized difficulty in collecting from his client Islacom, he failed to pay his loan to Asiatrust. Asiatrust then conducted a surprise ocular inspection of petitioner's business through Villarva S. Linga, Asiatrust's representative appraiser.

Linga thereafter reported to Asiitrust that he found that approximately 97% of the subject goods of the Trust Receipts were "sold-out and that only 3 % of the goods pertaining to PN No. 1963 remained." Asiitrust then endorsed petitioner's account to its Account Management Division for the possible restructuring of his loan. The parties thereafter held a series of conferences to work out the problem and to determine a way for petitioner to pay his debts. However, efforts towards a settlement failed to be reached.

On March 16, 1999, Remedial Account Officer Ma. Girlie C. Bernardez filed a *Complaint-Affidavit* before the Office of the City Prosecutor of Quezon City. Consequently, on September 12, 1999, an Information for *Estafa*, as defined and penalized under Art. 315, par. 1(b) of the RPC in relation to Sec. 3, PD 115 or the Trust Receipts Law, was filed with the RTC. The said Information reads:

That on or about the 30<sup>th</sup> day of May 1997, in Quezon City, Philippines, the above-named petitioner, did then and there willfully, unlawfully, and feloniously defraud Ma. Girlie C. Bernardez by entering into a Trust Receipt Agreement with said complainant whereby said petitioner as entrustee received in trust from the said complainant various chemicals in the total sum of P4.5 million with the obligation to hold the said chemicals in trust as property of the entruster with the right to sell the same for cash and to remit the proceeds thereof to the entruster, or to return the said chemicals if unsold; but said petitioner once in possession of the same, contrary to his aforesaid obligation under the trust receipt agreement with intent to defraud did then and there misappropriated, misapplied and converted the said amount to his own personal use and benefit and despite repeated demands made upon him, said petitioner refused and failed and still refuses and fails to make good of his obligation, to the damage and prejudice of the said Ma. Girlie C. Bernardez in the amount of P2,971,650.00, Philippine Currency.

CONTRARY TO LAW.

Upon arraignment, petitioner pleaded not guilty to the charges. Thereafter, a full-blown trial ensued.

During the pendency of the abovementioned case, conferences between petitioner and Asiitrust's Remedial Account Officer, Daniel Yap, were held. Afterward, a Compromise Agreement was drafted by Asiitrust. One of the requirements of the Compromise Agreement was for petitioner to issue six (6) postdated checks. Petitioner, in good faith, tried to comply by issuing two or three checks, which were deposited and made good. The remaining checks, however, were not deposited as the Compromise Agreement did not push through.

For his defense, petitioner argued that: (1) the loan was granted as his working capital and that the Trust Receipt Agreements he signed with Asiitrust were merely preconditions for the grant and approval of his loan; (2) the Trust Receipt Agreement corresponding to Letter of Credit No. 1963 and the Trust Receipt Agreement corresponding to Letter of Credit No. 1964 were both contracts of adhesion, since the stipulations found in the documents were prepared by Asiitrust

in fine print; (3) unfortunately for petitioner, his contract worth PhP 18,000,000 with Islacom was not yet paid since there was a squabble as to the real ownership of the latter's company, but Asiitrust was aware of petitioner's receivables which were more than sufficient to cover the obligation as shown in the various Project Listings with Islacom, Smart Communications, and Infocom; (4) prior to the Islacom problem, he had been faithfully paying his obligation to Asiitrust as shown in Official Receipt Nos. 549001, 549002, 565558, 577198, 577199, and 594986,<sup>[6]</sup> thus debunking Asiitrust's claim of fraud and bad faith against him; (5) during the pendency of this case, petitioner even attempted to settle his obligations as evidenced by the two United Coconut Planters Bank Checks<sup>[7]</sup> he issued in favor of Asiitrust; and (6) he had already paid PhP 1.8 million out of the PhP 2.971 million he owed as per Statement of Account dated January 26, 2000.

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

After trial on the merits, the RTC, on May 29, 2001, rendered a Decision, finding petitioner guilty of the crime of *Estafa*. The *fallo* of the Decision reads as follows:

WHEREFORE, judgment is hereby rendered finding the petitioner, Anthony L. Ng GUILTY beyond reasonable doubt for the crime of *Estafa* defined in and penalized by Article 315, paragraph 1(b) of the Revised Penal Code in relation to Section 3 of Presidential Decree 115, otherwise known as the Trust Receipts Law, and is hereby sentenced to suffer the indeterminate penalty of from six (6) years, eight (8) months, and twenty one (21) days of *prision mayor*, minimum, as the minimum penalty, to twenty (20) years of reclusion temporal maximum, as the maximum penalty.

The petitioner is further ordered to return to the Asiitrust Development Bank Inc. the amount of Two Million, Nine Hundred Seventy One and Six Hundred Fifty Pesos (P2,971,650.00) with legal rate of interest computed from the filing of the information on September 21, 1999 until the amount is fully paid.

IT IS SO ORDERED.

In rendering its Decision, the trial court held that petitioner could not simply argue that the contracts he had entered into with Asiitrust were void as they were contracts of adhesion. It reasoned that petitioner is presumed to have read and understood and is, therefore, bound by the provisions of the Letters of Credit and Trust Receipts. It said that it was clear that Asiitrust had furnished petitioner with a Statement of Account enumerating therein the precise figures of the outstanding balance, which he failed to pay along with the computation of other fees and charges; thus, Asiitrust did not violate Republic Act No. 3765 (Truth in Lending Act). Finally, the trial court declared that petitioner, being the entrustee stated in the Trust Receipts issued by Asiitrust, is thus obliged to hold the goods in trust for the entruster and shall dispose of them strictly in accordance with the terms and conditions of the trust receipts; otherwise, he is obliged to return the goods in the event of non-sale or upon demand of the entruster, failing thus, he evidently

violated the Trust Receipts Law.

### **Ruling of the Appellate Court**

Petitioner then elevated the case to the CA by filing a Notice of Appeal on August 6, 2001. In his Appellant's Brief dated March 25, 2002, petitioner argued that the court *a quo* erred: (1) in changing the name of the offended party without the benefit of an amendment of the Information which violates his right to be informed of the nature and cause of accusation against him; (2) in making a finding of facts not in accord with that actually proved in the trial and/or by the evidence provided; (3) in not considering the material facts which if taken into account would have resulted in his acquittal; (4) in being biased, hostile, and prejudiced against him; and (5) in considering the prosecution's evidence which did not prove the guilt of petitioner beyond reasonable doubt.

On August 29, 2003, the CA rendered a Decision affirming that of the RTC, the *fallo* of which reads:

WHEREFORE, the foregoing considered, the instant appeal is DENIED. The decision of the Regional Trial Court of Quezon City, Branch 95 dated May 29, 2001 is AFFIRMED.

SO ORDERED.

The CA held that during the course of the trial, petitioner knew that the complainant Bernardez and the other co-witnesses are all employees of Asiatruster and that she is suing in behalf of the bank. Since petitioner transacted with the same employees for the issuance of the subject Trust Receipts, he cannot feign ignorance that Asiatruster is not the offended party in the instant case. The CA further stated that the change in the name of the complainant will not prejudice and alter the fact that petitioner was being charged with the crime of *Estafa* in relation to the Trust Receipts Law, since the information clearly set forth the essential elements of the crime charged, and the constitutional right of petitioner to be informed of the nature and cause of his accusations is not violated.<sup>[8]</sup>

As to the alleged error in the appreciation of facts by the trial court, the CA stated that it was undisputed that petitioner entered into a trust receipt agreement with Asiatruster and he failed to pay the bank his obligation when it became due. According to the CA, the fact that petitioner acted without malice or fraud in entering into the transactions has no bearing, since the offense is punished as *malum prohibitum* regardless of the existence of intent or malice; the mere failure to deliver the proceeds of the sale or the goods if not sold constitutes the criminal offense.

With regard to the failure of the RTC to consider the fact that petitioner's outstanding receivables are sufficient to cover his indebtedness and that no written demand was made upon him hence his obligation has not yet become due and demandable, the CA stated that the mere query as to the whereabouts of the goods and/or money is tantamount to a demand.<sup>[9]</sup>

Concerning the alleged bias, hostility, and prejudice of the RTC against petitioner,

the CA said that petitioner failed to present any substantial proof to support the aforementioned allegations against the RTC.

After the receipt of the CA Decision, petitioner moved for its reconsideration, which was denied by the CA in its Resolution dated July 25, 2006. Thereafter, petitioner filed this Petition for Review on Certiorari. In his Memorandum, he raised the following issues:

***Issues:***

1. The prosecution failed to adduce evidence beyond a reasonable doubt to satisfy the 2<sup>nd</sup> essential element that there was misappropriation or conversion of subject money or property by petitioner.
2. The state was unable to prove the 3<sup>rd</sup> essential element of the crime that the alleged misappropriation or conversion is to the prejudice of the real offended property.
3. The absence of a demand (4<sup>th</sup> essential element) on petitioner necessarily results to the dismissal of the criminal case.

**The Court's Ruling**

We find the petition to be meritorious.

Essentially, the issues raised by petitioner can be summed up into one--whether or not petitioner is liable for *Estafa* under Art. 315, par. 1(b) of the RPC in relation to PD 115.

It is a well-recognized principle that factual findings of the trial court are entitled to great weight and respect by this Court, more so when they are affirmed by the appellate court. However, the rule is not without exceptions, such as: (1) when the conclusion is a finding grounded entirely on speculations, surmises, and conjectures; (2) the inferences made are manifestly mistaken; (3) there is grave abuse of discretion; and (4) the judgment is based on misapprehension of facts or premised on the absence of evidence on record.<sup>[10]</sup> Especially in criminal cases where the accused stands to lose his liberty by virtue of his conviction, the Court must be satisfied that the factual findings and conclusions of the lower courts leading to his conviction must satisfy the standard of proof beyond reasonable doubt.

In the case at bar, petitioner was charged with *Estafa* under Art. 315, par. 1(b) of the RPC in relation to PD 115. The RPC defines *Estafa* as:

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

1. With unfaithfulness or abuse of confidence, namely: