

THIRD DIVISION

[G.R. No. 177720, February 18, 2009]

**ELISEO R. FRANCISCO, JR., PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying that the Court of Appeals' Decision^[1] dated 28 February 2007 and Resolution dated 4 May 2007 in CA-G.R. CR No. 29699 be set aside.

The facts of the case are as follows:

In an Amended Information dated 9 November 2000, which was filed on 13 November 2000 with the Regional Trial Court (RTC) of Pasig City, petitioner Eliseo Francisco, Jr. (Francisco) was charged with Estafa in an Amended Information, as defined in Article 315, par. 2(a)^[2] of the Revised Penal Code.

On arraignment, petitioner Francisco pleaded not guilty. Trial ensued.

The prosecution's evidence tends to establish the following facts:

Private complainant Bankard, Inc. is a credit card company engaged in issuing credit cards and in acquiring credit card receivables from commercial establishments arising from the purchase of goods and services by credit card holders using Mastercard or Visa credit cards issued by other banks and credit card companies. Mastercard or Visa pays Bankard for the amount Bankard has paid the commercial establishments for the invoices it acquires. On the other hand, Mastercard or Visa debits Bankard for the amount due to other credit card companies or banks which acquire the invoices where the credit card used for the purchase is issued by Bankard.

Petitioner Francisco was an employee of Bankard at the time the alleged crime occurred. He was knowledgeable in computer programming, and held the position of Acquiring Chargeback Supervisor.

Bankard engaged the services of Equitable Computer Services, Inc. (Equicom) to encode and post credit card transactions and submit reports on those services. Procedurally, Bankard transmits to Equicom the invoices, instructions for debiting, credit advances and other documents relevant to encoding and posting. Equicom then transmits through electronic mail the reports on the transactions to Bankard. Petitioner Francisco was tasked to convert the Equicom reports sent through electronic mail from its original ARJ Text Format to the Amipro Format used by Bankard. Petitioner Francisco was the only one assigned to perform this task.

Sometime in August 1999, Solidbank, one of the companies which issues credit cards, relayed to Bankard that there were four questionable transactions reflected in Solidbank Mastercard Account No. 5464 9833 0005 1922 under the name of petitioner Francisco. An amount of P663,144.56 was allegedly credited to said account of petitioner Francisco, the credit apparently being a reversal of charges from four establishments. The amount of P18,430.21 was also credited to petitioner Francisco's AIG Visa Card based on another supposed credit advance.

Bankard conducted an investigation. Upon comparison of the original reports of Equicom with those converted by petitioner Francisco, it was found that based on Equicom's original Daily Transaction Prooflist, there was a reversal of charges from Bankard Travel Services in the amount of \$5,989.60 which was credited to the credit card under the name of petitioner Francisco, with a conversion date of 10 August 1999. The Outgoing Interchange Transaction also reflected a reversal of a transaction with Bankard Travel and the credit of the amount of \$5,989.60 to Cardholder No. 5464 9833 0005 1922 on 1 August 1999. The converted report no longer reflected the reversal of charges. The crediting of the amount of \$5,989.60 as stated in the original reports coming from Equicom and Mastercard was deleted and replaced with the figure zero.

There was also no record of the transactions or purchases from the four establishments charged against petitioner Francisco's Mastercard Account No. 5464 9833 0005 1922 and AIG Visa Account No. 4009 9218 0463 3006 that may be reversed. Only those availments which have been charged against the credit cards could be reversed, and the amount charged for such availments would then be returned and credited to the same credit card. Since there were no original purchase transactions charged against petitioner Francisco's credit cards, the reversal of charges and the crediting of sums of money to petitioner Francisco's credit cards appeared to be fictitious.

Petitioner Francisco was the person who received the transmittals from Equicom of documents including any purported cash advice at the time the credit transactions were made in favor of his credit card accounts.

As a result of the fraudulent crediting of the amount of P663,144.56 to petitioner Francisco's Solidbank credit card account, Bankard was made to pay the same to Solidbank in the course of the settlement of transactions between the issuing banks from the time of the crediting of the amount to petitioner Francisco's credit card account until the fraudulent credits were charged back to Solidbank on 27 August 1999. Solidbank again charged back Bankard for the said amount, from 4 September 1999 to 3 October 1999. Thus, during the time the amount was charged against Bankard, the latter was unable to use such amount. Bankard was unable to recover the amount of P18,430.21 which petitioner Francisco fraudulently credited to his AIG Visa Card No. 4009 9218 0463 3006.

The defense presented petitioner Francisco as its lone witness. Petitioner Francisco denied that he caused the crediting of said amounts to his credit cards.

On 10 January 2005, the RTC rendered its Decision convicting petitioner Francisco as follows:

WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, considering that the prosecution has proven beyond reasonable doubt that accused ELISEO FRANCISCO is GUILTY of the crime charged, the Court hereby sentences said accused of the crime of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code, as amended.

Accordingly, accused is hereby sentenced to suffer an indeterminate penalty of imprisonment of 2 years 4 months of *arresto mayor* as minimum to 6 years 2 months and 11 days of *prision mayor* as maximum and ordered to reimburse private complainant Bankard, Inc., of the amount of PhP18,430.21.^[3]

Petitioner Francisco filed a Motion for Reconsideration/New Trial, praying for the re-opening of the case in order that he may present the credit card statements and demand letters. Petitioner Francisco contended that Bankard's line of business affected by the instant case was that of acquiring credit card receivables. According to petitioner Francisco, this meant that he, like any other credit card holder, remained indebted to the issuers of the credit card, which were Solidbank Mastercard and AIG Visa. He should, therefore, be acquitted since private complainant Bankard was not the entity that incurred damage, but Solidbank Mastercard and AIG Visa. In an Order dated 12 July 2005, the RTC denied petitioner Francisco's Motion for Reconsideration/New Trial.

Petitioner Francisco proceeded to the Court of Appeals. On 28 February 2007, the Court of Appeals rendered its Decision affirming the conviction of petitioner Francisco, but with modification of his prison sentence:

WHEREFORE, the appealed Decision dated January 10, 2005 is affirmed, subject to the modification of the imprisonment sentence which should be an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as the minimum period, to twenty (20) years of *reclusion temporal*, as the maximum period.^[4]

According to the Court of Appeals, the total amount defrauded, P681,574.77, gave rise to a minimum penalty under *prision correccional* and a maximum penalty of twenty years, pursuant to Article 315 of the Revised Penal Code, which provides:

Art. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

Petitioner Francisco now comes before this Court, bringing forth the issue for our consideration: