

THIRD DIVISION

[G.R. No. 174698, July 28, 2008]

**AURORA TAMAYO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND HEIRS OF PEDRO SOTTO, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court,^[1] petitioner Aurora Tamayo seeks to set aside the Order dated 19 September 2006 of the Tarlac City Regional Trial Court (RTC), Branch 63, in Criminal Case No. 8611.^[2] In said Order, the RTC denied petitioner's motion to suspend the execution of its Decision dated 24 October 1997 in Criminal Case No. 8611 convicting her of the crime of *Estafa*,^[3] on the ground that such Decision, which has been affirmed *in toto* by the Court of Appeals, has become final and executory.

The operative facts are herein summarized.

On 15 August 1994, an Information^[4] was filed before the RTC charging petitioner and her friend, Erlinda Anicas (Anicas), with *estafa* under Article 315 of the Revised Penal Code, thus:

That on or before May 20, 1994 in the Municipality of Tarlac, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of deceit and with intent to defraud, did then and there willfully, unlawfully and feloniously, pretended themselves to be assembler of passenger jeepney and was able to convince Mr. and Mrs. Pedro Sotto of Maligaya, Maliwalo, Tarlac, Tarlac to have one unit of passenger jeep assembled for them for a price of P120,000.00 and once in possession of the said amount, far from complying with their obligation to assemble one unit of passenger jeepney for Mr. and Mrs. Pedro Sotto, misappropriated the same to their own personal use and benefit and in spite of repeated demands, said accused failed and refused, and still fails and refuses to return the amount of P120,000.00 nor to deliver the passenger jeepney to the complainants to the damage and prejudice of the latter for more than P120,000.00, Philippine Currency.

Petitioner was later apprehended while Anicas remained at large. When arraigned on 20 April 1995, petitioner, with the assistance of *counsel de parte*, pleaded "Not guilty" to the charge.^[5] Trial on the merits ensued.

The prosecution presented as witnesses herein private complainants, spouses Pedro and Juanita Sotto (spouses Sotto). Their testimonies, woven together, bear the following:

Sometime in May 1993, petitioner and Anicas went to the house of spouses Sotto at *Barangay* Maliwalo, Tarlac City. Petitioner and Anicas introduced themselves to spouses Sotto as assemblers of passenger jeeps payable on installment basis. After a brief conversation with the spouses Sotto, petitioner and Anicas left.^[6]

On 1 June 1993, petitioner and Anicas returned to the house of spouses Sotto on board a *Malaguena*-type passenger jeep. Petitioner and Anicas showed to spouses Sotto the said jeep and thence proposed to assemble for them such kind of jeep at a price of P210,000.00^[7] to be delivered after a month. Allured by the beauty of the jeep and its low price, spouses Sotto agreed to the proposal of petitioner and Anicas.^[8]

Thereafter, spouses Sotto made a series of partial payments to petitioner and Anicas in the total amount of P120,000.00, viz: (1) P30,000.00 on 2 June 1993; (2) P20,000.00 on 4 June 1993; (3) P10,000.00 on 7 June 1993; (4) P30,000.00 on 24 June 1993; and (5) P30,000.00 on 30 June 1993.^[9]

After a month, Pedro Sotto asked petitioner to show him the jeep but petitioner told him that it was still being assembled in Laguna. Pedro then requested petitioner to accompany him to Laguna to inspect the jeep but petitioner refused and even tried to hide.^[10]

Sensing that something fishy was going on, spouses Sotto sought the services of a lawyer who immediately sent letters to petitioner and Anicas demanding the return of P120,000.00. Upon receipt of the said letters, petitioner and Anicas went to the house of spouses Sotto and assured the latter they would return the money. Petitioner and Anicas, however, failed to return the money to the spouses Sotto. Subsequently, the spouses Sotto filed a complaint for *estafa* against petitioner and Anicas.^[11]

The prosecution also adduced documentary evidence to bolster the testimonies of its witnesses, to wit: (1) receipts signed by petitioner and Anicas attesting that petitioner and Anicas received from Pedro several amounts totaling P120,000.00 as partial payment for the assembly of a passenger jeep (Exhibits A and B);^[12] (2) a demand letter sent by the counsel of the spouses Sotto to petitioner and Anicas admonishing the two to return the amount of P120,000.00 to the spouses Sotto (Exhibit C);^[13] (3) reply-letters of the counsel for petitioner and Anicas stating that the said demand letter was received by petitioner and Anicas (Exhibits D, E, and F);^[14] and (4) complaint-affidavit for *estafa* filed by spouses Sotto against petitioner and Anicas.^[15]

For its part, the defense presented the lone testimony of petitioner to refute the foregoing accusation. Petitioner disclaimed any liability to the spouses Sotto.

Petitioner testified that sometime in April 1992, Pedro and Anicas went to her house and requested her to look for a mechanic who can assemble a *Malaguena*-type passenger jeep. She introduced Pedro to a mechanic named Ernesto Ravana (Ravana) who agreed to assemble a *Malaguena*-type passenger jeep for Pedro in the amount of P120,000.00.^[16]

Subsequently, Pedro handed to her an amount of P60,000.00 which she would give to Ravana as partial payment for the assembly of the jeep. She turned over the said amount to Ravana. Later, Pedro told her that he was no longer interested in the assembly of the jeep because he had no more money to pay the balance of its price, and that he wanted to get back the money he had paid for the jeep. She told Pedro that she would reimburse him the amount he gave to Ravana. Afterwards, she gave the amount of P60,000.00 to Ravana for the continuation of the jeep's assembly.^[17]

Thereafter, Ravana told her to pay the balance of the jeep's price or he would discontinue its assembly. When she failed to pay the balance, Ravana avoided her and hid.^[18]

She filed a complaint against Ravana before the officials of the *barangay* where Ravana resided. During their confrontation at the *barangay* hall, she and Ravana entered into an agreement whereby Ravana acknowledged an obligation of P120,000.00 to her and Ravana promised to reimburse her the said amount on a P1,000.00 per month basis. Ravana failed to comply with this agreement. Hence, she sued Ravana for *estafa* in court. Since then, Ravana has gone into hiding.^[19]

After trial, the RTC rendered a Decision on 24 October 1997 convicting petitioner of *estafa* under Article 315 of the Revised Penal Code.^[20] The trial court imposed on petitioner an indeterminate penalty ranging from 4 years 2 months and 1 day of *prision correccional*, as minimum, to 17 years of *reclusion temporal*, as maximum. Petitioner was also ordered to pay the spouses Sotto the amounts of P120,000.00, as actual damages, and P10,000.00, as moral damages. The dispositive portion of the decision reads:

In view of the foregoing, the Court finds the accused Aurora Tamayo guilty beyond reasonable doubt of the crime of *estafa*, defined and penalized under Article 315, of the Revised Penal Code, and is hereby sentenced to suffer a prison term of four (4) years, two (2) months and one (1) day of prison correctional maximum, as the minimum to seventeen (17) years of reclusion temporal medium, as the maximum, and to indemnify the complainants Pedro and Juanita Sotto, the amounts of P120,000.00 as actual damages, and P10,000.00 as reasonable moral damages. The accused is also ordered to pay the costs of this proceeding.

Petitioner appealed the RTC Decision with the Court of Appeals. Meanwhile, on 30 May 2002, Pedro passed away.^[21]

On 22 April 2004, the Court of Appeals promulgated its Decision affirming *in toto* the RTC Decision,^[22] thus:

In fine, we hold that the prosecution was able to prove the guilt of the accused beyond reasonable doubt. After a careful review of the records, the Court finds that the trial court was justified in finding the accused-appellant guilty as charged.

WHEREFORE, the appealed decision of the court *a quo* dated October 24, 1997 is AFFIRMED. Costs against the accused-appellant.

On 13 December 2005, the Court of Appeals issued a Resolution declaring its Decision dated 22 April 2004 final and executory as of 1 June 2004 and ordering the same to be entered in the Book of Entries of Judgments,^[23] viz:

In view of the report of the Court's Judicial Records Division dated November 21, 2005 that **no motion for reconsideration before this court nor petition before the Honorable Supreme Court have been filed despite appellant's receipt of copy of this Court's Decision on May 14, 2004.**

(1) The Decision dated April 22, 2004 is declared to have become FINAL and EXECUTORY as of June 1, 2004; and

(2) The same is ordered ENTERED in the Book of Entries of Judgments.

On 13 June 2006, the RTC issued an Order directing the arrest of petitioner for him to serve the sentence imposed in its Decision dated 24 October 1997.^[24] The Order reads:

Considering the Decision of the Court of Appeals in CA-G.R. CR No. 21762 (Crim. Case No. 8611) promulgated on April 22, 2004 has already become final, let an order of arrest be issued against Aurora Tamayo to serve the sentence of Four (4) Years, Two (2) Months and One (1) Day of prision correccional maximum, as the minimum to Seventeen (17) Years of reclusion temporal medium, as the maximum.

On 18 August 2006, petitioner filed a Manifestation before the RTC alleging that while the instant case was pending with the Court of Appeals, she and Pedro had settled their disputes and that Pedro would no longer pursue the present case against her. She prayed that the implementation of the RTC Order dated 13 June 2006 be cancelled.^[25]

On 22 August 2006, petitioner filed a Motion to Suspend the Writ of Execution of the RTC Order dated 13 June 2006 on the ground that supervening facts had occurred making the execution of the said Order unjust.^[26] She explained in this wise:

DISCUSSION

Accused received a copy of the Order dated June 23, 2006, granting execution on 16 June 2006. Her former Counsel never informed her when the judgment became final on April 22, 2004.

What actually happened is that when this case was pending review in the Court of Appeals, the Private Complainant compromised with the accused resulting to the receipt by the former first the amount of P10,000.00 on March 18, 2001; and another amount of P110,000.00 on March 22, 2001, binding herself to dismiss the appealed CA G.R. No. 21762 (Crim. Case No. 8611). Xerox copy of said receipt is hereto attached as Annex 1 and Annex 2, respectively, both duly signed by Private Complainant. A copy thereof had been furnished Atty. Mergas but he did not take the trouble to present the same in the Court of Appeals, to the great damage and prejudice of herein accused. This negligence of counsel cannot be

attributed to the accused.

x x x x

WHEREFORE, premises duly considered, it is respectfully prayed that the Writ of Execution assailed herein be suspended in the meantime, allowing the accused to present evidence warranting such suspension or dismissal of this case against accused herein. She likewise prays for any other relief and remedy consistent with law, justice and equity.

On 19 September 2006, the RTC issued an Order denying petitioner's motion on the ground that the Decision of the Court of Appeals dated 22 April 2004 was already final and executory,^[27] viz:

After the decision of the Court of Appeals became final, affirming the conviction of accused, the records were returned to this Court for execution of the judgment.

This Court then issued an order of arrest of the accused Aurora Tamayo for her to serve the sentence. Now comes the motion to suspend the writ of execution.

This Court cannot do anything. Nothing could be done about a final judgment, except to execute it.

WHEREFORE, for lack of merit, the motion to suspend the execution is denied. The Commonwealth Insurance Company should produce the body of the accused Aurora Tamayo and explain within thirty (30) days from receipt of this order why no judgment should be rendered against her bond. After the lapse of said period and for non-compliance, the Court will issue a judgment against the bond.

On 2 November 2006, petitioner filed the instant petition before us raising a single issue, to wit:

WHETHER THE DECISION DATED 22 APRIL 2004 OF THE COURT OF APPEALS AFFIRMING PETITIONER'S CONVICTION FOR ESTAFA, AFTER HAVING BEEN DECLARED AS FINAL AND EXECUTORY, CAN BE MODIFIED OR SET ASIDE IN LIGHT OF THE COMPROMISE AGREEMENT BETWEEN PETITIONER AND PEDRO.

Section 7, Rule 120 of the Revised Rules of Criminal Procedure provides for the rules in modifying a judgment of conviction, to wit:

SEC. 7. Modification of Judgment. - A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation.

As can be gleaned from the foregoing provision, a judgment of conviction may be modified or set aside **only if the judgment is not yet final**. Further, **a judgment**