

## SECOND DIVISION

[ G.R. No. 178836, July 23, 2008 ]

### ELVIRA "ELVIE" JOSON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

#### DECISION

**TINGA, J.:**

An information<sup>[1]</sup> for estafa was filed against the spouses Elvira Joson (Elvira) and Benjamin Joson (Benjamin), and Elvira's mother, Susan Sunga. Only Elvira was arrested and tried before the Regional Trial Court (RTC) of Manila, Branch 20. She pleaded not guilty at the arraignment.<sup>[2]</sup>

The following facts are borne by the prosecution's evidence consisting of the testimony of Elizabeth Pancho (Elizabeth).

Elizabeth was lured by all the accused into making a series of stock investments totaling P610,000.00, with a promise of 6% to 7% interest payment per month. Each investment would mature in three (3) months. This assertion is corroborated by receipts<sup>[3]</sup> signed by Elizabeth and Benjamin and postdated bank checks,<sup>[4]</sup> some of which were issued by Elvira herself.

On 29 November 1997, Elizabeth gave P150,000.00 to the spouses Joson, for which Benjamin issued a receipt and a postdated check.<sup>[5]</sup> Elvira was the one who received the money from Elizabeth.<sup>[6]</sup> Elvira convinced Elizabeth to invest in December as a bonus would be given. Thus, on 3 December 1997, Elizabeth invested another P150,000.00 with the spouses Joson. Again Elvira received the money and Benjamin issued the receipt and the check for the transaction.<sup>[7]</sup> Elizabeth made further investments of P200,000.00 on 10 January 1998 and P85,000.00 on 14 January 1998. In these transactions, Elvira was the one who received the money from Elizabeth and it was she who also typed the entries in the blank receipts and checks which already bore the signature of Benjamin.<sup>[8]</sup> According to Elizabeth she first invested P25,000.00 with Benjamin on 22 October 1997, as evidenced by a receipt and a check issued by Benjamin. It was only in this October transaction that Elvira had no participation at all.<sup>[9]</sup>

On 22 January 1998, Elizabeth went to the house of the spouses Joson to encash the check which was then already due, but she was told by Benjamin that the interest payment would be temporarily stopped because their money was frozen in the stock market. Elizabeth demanded the return of her capital; she even cried and pleaded with them to return even just half of it. Elvira issued three (3) checks for P15,000.00 each. Elvira signed the checks in front of Elizabeth.<sup>[10]</sup> No receipt or proof that her money was invested in the stock market was given to her.<sup>[11]</sup> Out of

her P610,000.00 investment, only P79,500.00 was returned to her.<sup>[12]</sup> Benjamin executed a promissory note dated 1 February 1998<sup>[13]</sup> wherein he undertook to pay P75,000.00 on or before 14 April 1998, and the balance of P535,000.00 in installment on various dates.<sup>[14]</sup>

In her defense, Elvira denied having ever known Elizabeth.<sup>[15]</sup> And as part of her testimony, the defense presented brokerage receipts<sup>[16]</sup> which showed that Benjamin bought and sold stocks on various dates.<sup>[17]</sup> Benjamin told Elvira that he was not able to pay the investors because of the 1997 Asian economic crisis.

The RTC found Elvira guilty beyond reasonable doubt of estafa.<sup>[18]</sup> A notice of appeal to the Court of Appeals was filed.<sup>[19]</sup>

In a Decision dated 28 February 2007, the Court of Appeals affirmed the RTC's judgment of conviction but modified the penalty.<sup>[20]</sup> Applying the Indeterminate Sentence Law, the appellate court sentenced Elvira to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* as the minimum penalty, to twenty (20) years of *reclusion temporal* as the maximum penalty.<sup>[21]</sup>

The Motion for Reconsideration<sup>[22]</sup> was denied by the Court of Appeals in a Resolution dated 20 April 2007.<sup>[23]</sup> Hence, the present petition.

The lone issue presented for resolution is whether or not Elvira was correctly found guilty beyond reasonable doubt of estafa by the RTC and the Court of Appeals.

To begin with, this Court does not have the duty or function of weighing and sifting through the evidence presented below. As a rule, only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. Questions of fact are not proper subjects in such mode of appeal.<sup>[24]</sup> Not one of the exceptions laid down by jurisprudence<sup>[25]</sup> is present in this case. Moreover, findings of fact of the Court of Appeals affirming those of the trial court are accorded great respect, even finality, by this Court.<sup>[26]</sup>

A detailed review of the records shows that the courts *a quo* were correct in finding Elvira guilty as charged. We find no reason to disturb the RTC's findings and conclusions, affirmed no less by the Court of Appeals, that she was indeed part of the conspiracy to bilk Elizabeth of her money.

Under Article 315, paragraph 2(a) of the Revised Penal Code, swindling or estafa by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud is committed by "using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions, or by other similar deceits." The elements of estafa under this penal provision are: (1) the accused defrauded another by means of deceit and (2) damage or prejudice capable of pecuniary estimation is caused to the offended party or third party.<sup>[27]</sup>

It is not disputed that the accused failed to pay the expected returns on Elizabeth's investment, and neither did they return the actual amount of her investments. What

needs to be determined therefore is whether or not the element of defraudation by means of deceit has been established beyond reasonable doubt.

In the case of *People v. Menil, Jr.*,<sup>[28]</sup> the Court has defined fraud and deceit in this wise:

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. On the other hand, deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.

It was proven beyond reasonable doubt that Elvira and her co-conspirators employed fraud and deceit on Elizabeth to induce her to invest with them. The inducement was their assurance to Elizabeth that the latter's investment in publicly traded stocks would yield returns of 6 % interest per month. Lured by the false promise of quick financial gains, Elizabeth readily turned over her money to Elvira and her co-conspirators.

The denial of Elvie that she knew or had met Elizabeth cannot stand against the straightforward and explicit testimony of the latter, who had identified the former as one of the persons who enticed her to part with her money and invest it in the stock market upon the representation that a 6% monthly rate of return would be given to her. In fact, it was Elvira who convinced Elizabeth to make an additional investment on 3 December 1997 upon the promise that a bonus would accrue in her favor after her 29 November 1997 investment.<sup>[29]</sup> Elvira even issued her own checks to Elizabeth.<sup>[30]</sup> And being a co-conspirator in the crime, the fact that Elvira did not sign the receipt for the money invested does not cast doubt on her culpability as she was the one who actually received the money.<sup>[31]</sup> Even at times when Benjamin was not around when Elizabeth made her investments, it was Elvira who filled in and issued the blank receipts already containing Benjamin's signature.<sup>[32]</sup>

It has been held by this Court that where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that there will be none, or that they will be substantially less than he represents, the statements constitute an actionable fraud where the hearer believes him and relies on the statement to his injury.<sup>[33]</sup> In the present case, it is abundantly clear that the profits which Elvira and her co-conspirators promised to Elizabeth would not be realized.

As to the penalty, the Court of Appeals was correct in its application of the Indeterminate Sentence Law.<sup>[34]</sup> The Court held in a catena of cases that in

computing the penalty for estafa, the fact that the amounts involved exceed P22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead the matter should be taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence.<sup>[35]</sup> Since the penalty prescribed by law for estafa,<sup>[36]</sup> if the amount of fraud is over P12,000.00 but does not exceed P22,000.00, is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum to medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded P22,000.00, plus one (1) year for each additional P10,000.00. The maximum penalty should not exceed twenty years. In connection with the accessory penalties which may be imposed and for the purpose of the other provisions of the Revised Penal Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.<sup>[37]</sup>

The Court's application of the penalty imposed under Article 315 of the Revised Penal Code in relation to the Indeterminate Sentence Law is in consonance with the legislative intent to favor the defendant in a criminal case with a view to shorten his term of imprisonment. The purpose of the law is "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness."<sup>[38]</sup>

**WHEREFORE**, the decision of the Court of Appeals in CA-G.R. CR No. 29906 is **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Velasco, Jr., and Brion, JJ., concur.

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<sup>[1]</sup> Records, pp. 1-2. The dispositive portion of the information in Criminal Case No. 99-170819 reads:

That sometime in February, 1997, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously defraud ELIZABETH B. PANCHO in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which they made to the said ELIZABETH B. [PANCHO] to the effect that they are engaged in a financing business and that if she would invest with them, they would give her a 6% to 7% monthly interest which will be regularly renewed every three months with the interest being paid either [in] cash or in postdated checks on their investment and by means of other deceits of similar import, induced and succeeded in inducing the said ELIZABETH B. PANCHO to give and deliver, as in fact she gave and delivered the amount of P 610,000.00, on the strength of said manifestations and representations, the said accused well knowing that the same were false and untrue and were made solely to obtain, as in fact, they did obtain the said amount of P 610,000.00,