

SECOND DIVISION

[G.R. No. 167805, November 14, 2008]

**ARNOLD STA. CATALINA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

QUISUMBING, J.:

This petition for review on certiorari seeks to reverse and set aside the Decision^[1] dated October 26, 2004 and the Resolution^[2] dated April 14, 2005 of the Court of Appeals in CA-G.R. CR No. 21877.

Petitioner was charged before the Regional Trial Court, Branch 63, Makati City, with the crime of *estafa* defined under Article 315, paragraph 1(b)^[3] of the Revised Penal Code. The Information^[4] reads:

x x x x

That [o]n or about and sometime during the month of February 1988, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the said accused, received in trust from LORENZO B. BALLECER the amount of P100,000.00 for the purpose of opening a letter of credit for the intended importation of jute sacks from China with the express obligation on the part of the accused of returning the same if the transaction does not materialize, but the accused once in possession of the said amount far from complying with his obligation, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously appropriate, apply and convert to his own personal use and benefit the said amount and despite demands, failed and refused and still fails and refuses to return the same to said Lorenzo B. Ballecer, to the damage and prejudice of the latter in the aforesaid amount of P100,000.00.

CONTRARY TO LAW.

Petitioner pleaded not guilty upon arraignment. Thereafter, a trial on the merits ensued.

The following facts were established.

Private complainant Lorenzo B. Ballecer was the president of Sunrise Industries Development, Incorporated while his friend, herein petitioner, was the president of Century United Marketing and Trading Corporation.^[5]

Sometime in February 1988, Ballecer entered into a joint business venture with

petitioner involving importation of jute sacks from China. Petitioner intimated to Ballecer that he could secure the jute sacks from China through a company in Hongkong which would act as his agent. Petitioner also told Ballecer that he had a ready buyer in the Philippines named Saugus Enterprises which was willing to buy the jute sacks at P12.25 per piece. Convinced, Ballecer ordered through petitioner one container load of jute sacks with the total cost of P137,000.^[6]

After the order was made, petitioner told Ballecer to open the importation's letter of credit. Accordingly, Ballecer and petitioner proceeded to Citytrust Bank to open said letter of credit. However, before the letter of credit could be opened, the bank required them to submit the supporting customs documents and to post a marginal deposit of P100,000. Ballecer then asked petitioner to accompany him to United Coconut Planters Bank to encash a check worth P100,000.^[7]

After the encashment of the check, the two returned to Citytrust Bank. However, they arrived after banking hours, so the letter of credit could no longer be opened. Petitioner then suggested that the money be deposited in his account at Citytrust instead. Ballecer agreed.^[8] By way of acknowledgment, petitioner executed a document which reads:

x x x x

This is to certify that I have received from LORENZO B. BALLECER the amount of ONE HUNDRED THOUSAND PESOS ONLY (P100,000.00) and deposited in my CITYTRUST BANK Account No. 00035016566 for use in the opening of a Letter of Credit at said bank for the importation of 20,000 pcs. of jute sacks from Hongkong and that the same will be returned to him if transaction does not materialize.^[9] (Underscoring supplied.)

While preparing the supporting customs documents for the letter of credit, Ballecer found that the cost of the jute sacks was not \$0.15 but \$0.62 or P16.15 per piece.^[10] Realizing that his business venture was a losing proposition, Ballecer cancelled the importation and asked petitioner to return the P100,000. Petitioner, however, failed to return the money despite repeated verbal and formal demands.

In defense, petitioner testified that he did not misappropriate the P100,000. Petitioner claimed that the said money was spent and used for the office expenses, salaries and miscellaneous expenses of the office which Ballecer and petitioner occupy and share together. He further testified that when the check was given to Ballecer, they encashed it and entered into an oral agreement that whatever profit they will realize from their joint business venture shall be shared equally after deducting all expenses.^[11]

On March 11, 1997, the trial court convicted the petitioner of the crime charged. The decretal portion of the Decision^[12] reads:

Finding all the elements necessary to qualify an act as estafa to be present, the court finds the accused ARNOLD STA. CATALINA, "GUILTY" beyond reasonable doubt. A judgment of conviction is rendered against him and he is to suffer the penalty of from 2 years 11 months and 11

days of prision correc[c]ional in its minimum and mediu[m] period, to 8 years of ... prision mayor and 1 year for each additional P10,000.00 in excess of P22,000.00 as provided for under Art. 315 par. 1. Likewise, accused is ordered to pay civil indemnity in the amount of P100,000.00 representing the amount he received from private complainant and which he deposited in his own account.

SO ORDERED.^[13]

Aggrieved, petitioner appealed. He filed a motion praying that the testimony covered by the transcript of stenographic notes dated February 5, 1991 be retaken. The motion was granted by the Court of Appeals in a Resolution^[14] dated July 14, 1999. However, on April 10, 2000, the public prosecutor filed a Manifestation^[15] stating that Ballecer was no longer interested in pursuing his complaint against petitioner and that the case should be decided in light of Ballecer's Affidavit of Desistance.^[16]

On October 26, 2004, the Court of Appeals rendered a Decision affirming the judgment of conviction by the trial court. The appellate court held:

WHEREFORE, PREMISES CONSIDERED, the Decision, dated March 11, 1997, is hereby AFFIRMED and the sentence imposed by the Court **a quo** on the accused is clarified, thus: for the accused to suffer the indeterminate penalty of 2 years, 11 months and 11 days of prision correccional as minimum to 15 years of reclusion temporal as maximum. The judgment of the Court **a quo** ordering accused-appellant to pay private complainant the sum of P100,000.00 representing the amount misappropriated is likewise AFFIRMED.

SO ORDERED.^[17]

Petitioner filed a motion for reconsideration.^[18] The same was denied in a Resolution dated April 14, 2005. Dissatisfied with the aforementioned rulings of the Court of Appeals, the petitioner now comes before us, raising the following issues:

I.

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS HAS DECIDED THE CASE (CA-G.R. CR NO. 21877) IN A WAY PROBABLY NOT IN ACCORDANCE WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT;

II.

WHETHER THE RESPONDENT COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND [USUAL] COURSE OF JUDICIAL PROCEEDINGS, OR SO FAR SANCTIONED SUCH DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION;

III.