

## THIRD DIVISION

[ G.R. No. 177944, December 24, 2008 ]

**JUDITH P. ORTEGA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

For Review under Rule 45 of the Revised Rules of Court is the Decision<sup>[1]</sup> dated 27 October 2006 and Resolution dated 24 April 2007 of the Court of Appeals in CA-G.R. CEB CR. No. 00241 entitled, ***People of the Philippines v. Judith P. Ortega***, affirming the Decision<sup>[2]</sup> rendered by the Regional Trial Court (RTC) of the 7<sup>th</sup> Judicial Region, Cebu City, Branch 21, in Criminal Case No. CBU-53833, finding accused-appellant Judith P. Ortega guilty of Estafa.

Based upon an Affidavit<sup>[3]</sup> executed by complainant Marilou Oljol Adorable (Adorable) on 12 July 1999, accused-appellant Judith Perez Ortega (Ortega) was charged by the City Prosecutor in an Information dated 19 November 1999, filed before the RTC of Cebu City, with the crime of Estafa.

The Information reads:

That on or about the 5<sup>th</sup> day of September 1998, and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, with intent to gain, and by means of deceit, fraudulent acts and false pretenses executed prior to or simultaneously with the commission of the fraud, to wit: by falsely pretending to one Marilou Oljol Adorable that she is a real estate agent and offered the latter that she could transfer the name of said Marilou Oljol Adorable in the tax declaration even without a Deed of Sale because of her connections, and by reason of such false pretenses or fraudulent acts of inducement, said Marilou Oljol Adorable was induced to give the total amount of P27,450.00 as processing fees, when in truth and in fact, as the said accused very well knew that she could not facilitate the same, and that such misrepresentation were resorted to only for the purpose of obtaining money from said Marilou Oljol Adorable, and once in possession of the amount, the said accused misappropriated, misapplied and converted the same into her own personal use and benefit and, in spite of repeated demands, said accused failed and refused, and up to the present time still fails and refuses, to return the money, to the damage and prejudice of said Marilou Oljol Adorable in the amount aforestated.<sup>[4]</sup>

The case was docketed as Criminal Case No. CBU-53833.

On her arraignment and with the assistance of counsel, accused-appellant pleaded not guilty to the charge. Thereafter, a pre-trial conference was conducted and terminated on 5 February 2001.

During trial, the prosecution presented Adorable, complainant; and one Epifania Laranjo, a co-teacher of Adorable. On the other hand, the defense presented accused-appellant as its lone witness.

The prosecution's version of the facts, as adopted from the trial court's Decision dated 19 April 2005 is as follows:

On (sic) August 1998, Marilou Adorable, a public school teacher of Don Sergio Sr. Memorial High School was introduced by her co-teacher Epifania to the accused Judith P. Ortega.

Judith P. Ortega has a son who is studying [in] said school as a first year student. On (sic) August 1998, the accused went to the school in order to follow up the status of her son. When she was introduced to the accused by Epifania, the accused inquired from her if she would like to purchase land and she replied she is interested but doesn't have the money. The accused said there is an agricultural land, a parcel of land with an area of 1,000 square meters which is for sale for the amount of P50,000.00 in installments. The accused made sweet convincing words in offering the land for sale. After their conversation, she said she would come back to bring the papers for that parcel of land.

When she came back, she asked Mrs. Adorable to give the sum of P1,200.00 (Exhibit A) for the payment of notarial documents. On September 12, 1998, she asked from Mrs. Adorable for the sum of P6,000.00 (Exhibit B) which was for the payment of fees for the Registry Deeds, Bureau of Lands and BIR. Accused never issued any official receipt.

On September 18, 1998, she came back and asked for P8,000.00 for the payment of capital gains tax. Mrs. Adorable gave the sum of P8,000.00 where she identified the receipt as Exhibit C.

On September 25, 1998, the accused came back again and asked for the amount of P4,000.00 for the approved plan. Marilou Adorable gave P500.00 cash and she pawned her ring and cassette recorder for P3,500.00 to make a total of P4,000.00. She identified Exhibit "D," the receipt. Again, on October 10, 1998, the accused came back and requested the sum of P4,000.00 which was for the payment of the affidavit of no landholdings and improvements. She identified (sic) as Exhibit E and E-1.

At this point, Mrs. Adorable doubted the accused why she did not give her official receipts. So she confronted her for the official receipt. The accused promised to bring the tax declaration on her name. Thus, on November 26, 1998, accused came back and told Mrs. Adorable to wait as the tax declaration is already prepared and transferred in her name. The accused again asked P500.00 fee which the accused issued a receipt

(Exhibit F and F-1).

On December 2, 1998, again the accused came back to see Mrs. Adorable and asked for the payment of P750.00 for the titling of the lot. She identified Exhibit G and G-1 which was (sic) the receipt.

The accused gave to Mrs. Marilou Adorable, a tax declaration no. 97-G.R.-07-050-00093 in the name Adorable, Marilou. It was a Xerox copy because the original copy was taken back by the accused. She went to a lending company to secure a loan. In fact, she went to several lending companies to secure a loan and she was told that the tax declaration has to be authenticated. She went to the City Assessor's Office for the tax declarations (Exhibit "H") for the authentication. She was informed that it was the tax declaration print out but it was not in her name that appears in the record of the assessor's office. What she received was a fake tax declaration according to the assessor's office. She confronted the accused why her name did not appear in the tax declaration. The accused said why she did not inform her about her going to the assessor's office as she would have told her that it was not yet entered in the computer.

She waited for a while for the accused to deliver the real and genuine tax declaration. She waited for so long until she lost her patience. She demanded from the accused the return of her money but the accused refused. She went to the Lupong Barangay and there she met the accused. At the time of their meeting at the Lupong Barangay, the accused informed her that Mrs. Adorable did not pay her anything. And because of this, Mrs. Adorable had so much indebtedness. The accused never returned the money and she was disappointed. Mrs. Adorable wanted her money back. She identified the certification from the barangay as Exhibit I.<sup>[5]</sup>

The defense presented a version entirely different from the narration of facts by the prosecution. Testifying for and on her own behalf, Ortega denied the allegations of the complainant. In fact, accused-appellant explained that she knew Adorable to be the teacher of her son. According to her, it was Adorable who sought her help regarding the many loans she had to settle. According to Ortega, Adorable visited her at her house on 16 February 1999 and asked for assistance regarding the property involved, because the latter had some debts. At the instance of Adorable, Ortega made it appear that the former had sought her help in the processing of the application for title to the land to show to her creditors how she had spent their money. As requested, Ortega issued receipts for the benefit of Adorable so the latter could show to her creditors that her property papers were being processed. Ortega was also told to prepare another note that the receipts were not genuine, but she was afraid to get involved and get prejudiced by the receipts prepared by her. To show that it was just a scheme, she presented a document allegedly signed by Adorable, in which Adorable admitted that her land title application was just for show to her creditors. Ortega claims that it was Adorable who dictated what was to be written on the receipts and that the receipts were done in the penmanship of Ortega's daughter, although signed by her. On Adorable's claim that she pawned her Singer Sewing Machine so she could give P4,000.00, Ortega countered that the sewing machine was pawned only for P1,500.00. Furthermore, Ortega denied

knowledge of Adorable's fake tax declaration and of any know-how regarding the transfer of lots. Ortega denied knowing Manuel Cabingatan, the registered owner of the parcel of land subject of the Deed, and denied having ties with anybody from the Assessor's Office, Register of Deeds or the DENR. Finally, Ortega testified that she was supposed to present a vital witness, a certain Lila Chin, to corroborate and support her version. Said witness, though always present and ready to testify during the scheduled hearings, was unable to testify because the defense counsel was always absent.

On 23 February 2005, when defense counsel again failed to appear, the trial court considered the case submitted for decision.

In its decision dated 19 April 2005, the RTC of Cebu City convicted Ortega of the crime of estafa under Article 315, paragraph 2(a) of the Revised Penal Code, disposing as follows:

WHEREFORE, premises considered, the Court finds the accused Judith P. Ortega, guilty beyond reasonable doubt of the crime of estafa as defined in subsection 2 par. (a) of Art. 315 of the Revised Penal Code, for which she is hereby sentenced to suffer an indeterminate penalty of 1 year 8 months and 21 days of prision correctional, as minimum to 8 years of prision mayor as maximum and to indemnify Mrs. Marilou Adorable the sum of P27,450.00, the amount of which she has been defrauded.<sup>[6]</sup>

Resolving the case based on the sole issue of credibility, the RTC gave more weight and probative value to the positive testimony of complainant Marilou Adorable, corroborated by her co-teacher Epifania Laranjo, that it was Ortega who deceived Adorable into purchasing a land in installments after having paid the amount of P27,450.00, for which she was later on to be given a fake tax declaration.

On the ground of newly discovered evidence, Ortega filed a Motion for Reconsideration/Motion for New Trial<sup>[7]</sup> before the same court. The RTC, however, found the Motion to be fatally defective.<sup>[8]</sup>

On Notice of Appeal, Ortega appealed to the Court of Appeals, which docketed the case as CA-G.R. CEB No. 0024, raising the following issues:

- I. THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.
- II. THE COURT A *QUO* GRAVELY ERRED WHEN IT DID NOT ALLOW WITNESS LILA CHIN TO TESTIFY, DESPITE BEING PRESENT DURING THE TRIAL, JUST BECAUSE THE DEFENSE COUNSEL WAS NOT PRESENT. SAID WITNESS COULD HAVE CONFIRMED AND CORROBORATED THE VERSION OF THE ACCUSED-APPELLANT.
- III. THAT THE PROSECUTION FAILED TO PRESENT EVIDENCE TO PROVE THE GUILT OF ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.

Sustaining the RTC's finding of guilt beyond reasonable doubt, the Court of Appeals resolved:

WHEREFORE, the appeal filed by the accused-appellant is hereby DENIED. Accordingly, the assailed Decision of the Regional Trial Court, Branch 21, of Cebu City, dated 19 April 2005 is AFFIRMED in *toto*.<sup>[9]</sup>

In convicting Ortega, the Court of Appeals gave more credence to the testimonies of the prosecution witnesses and scant consideration to the version of the defense. The Court of Appeals explained that were it not for the deceitful representations of Ortega, Adorable would have had no reason to make advances for the payment of the documents relating to the purchase and titling of the property.

Hence, the present Petition for Review on *Certiorari* in which Ortega raises the sole issue for resolution by this Court, to wit:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT INSPITE OF THE FACT THAT THE EVIDENCE ON RECORD COULD NOT SUPPORT CONVICTION.

Accused-appellant Ortega prays for her acquittal and asks that the Court of Appeals Decision dated 27 October 2006 and Resolution dated 24 April 2007 be set aside. Maintaining her innocence, she contends that the penalty of eight (8) years is too stiff since it would deprive her of the right to apply for probation and will have the effect of orphaning her ten (10) children, the youngest being only three (3) years old.

Ortega claims that the Court of Appeals gravely erred in convicting her of Estafa and admits that although her petition involves questions of fact, *Philippine National Bank v. Court of Appeals*<sup>[10]</sup> held that this Court has authority to review and reverse factual findings of the lower court where the court a *quo's* findings do not conform to the evidence on record.

The prosecution maintains that it was able to prove accused-appellant's guilt beyond reasonable doubt.

The petition has no merit.

Ortega claims that the prosecution's evidence does not support a finding of guilt beyond reasonable doubt. She denies the charges, countering that it was Adorable who visited her house asking for assistance regarding a certain property to be disposed of by Adorable to pay off debts to creditors. Under Article III, Section 14, paragraph 2, as provided under the Bill of Rights of the 1987 Philippine Constitution, a defendant in a criminal action shall be presumed innocent until the contrary is proved. This burden of proving an accused's guilt beyond reasonable doubt belongs exclusively to the prosecution, and once there is reasonable doubt that an accused's guilt has been satisfactorily shown, the accused shall be entitled to an acquittal.

The petition being a petition for review, the jurisdiction of this Court is confined to reviewing questions of law.<sup>[11]</sup> The issues ultimately focus on the credibility of witnesses and whether the evidence for the prosecution - as opposed to petitioner's *alibi* - is sufficient to warrant petitioner's conviction for commission of the crime of Estafa as alleged in the Information. The core issue being raised by accused-appellant is essentially a factual issue. It is well-settled in criminal jurisprudence