

FIRST DIVISION

[G.R. NO. 170298, June 26, 2007]

**MANUEL S. ISIP, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks to set aside the Decision^[1] of the Court of Appeals dated 26 October 2004 in CA-G.R. CR No. 21275 entitled, "*People of the Philippines v. Manuel S. Isip and Marietta M. Isip*" to the extent that it affirmed with modifications petitioner Manuel S. Isip's conviction for Estafa in Criminal Case No. 136-84 of the Regional Trial Court (RTC), Branch XVII, Cavite City, and its Amended Decision^[2] dated 26 October 2005 denying his Partial Motion for Reconsideration.

The antecedents are the following:

Petitioner was charged with Estafa in Criminal Case No. 136-84 before Branch XVII of the RTC of Cavite City, under the following information:

That on or about March 7, 1984, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received from Leonardo A. Jose one (1) seven carat diamond (men's ring), valued at P200,000.00, for the purpose of selling the same on commission basis and to deliver the proceeds of the sale thereof or return the jewelry if not sold, on or before March 15, 1984, but the herein accused once in possession of the above-described articles, with intent to defraud and with grave abuse of confidence, did, then and there, willfully, unlawfully and feloniously misappropriate, misapply and convert the same to his own personal use and benefit and notwithstanding repeated demands made by Leonardo A. Jose for the return of the jewelry or the delivery of the proceeds of the sale thereof, failed to do so, to the damage and prejudice of the aforesaid Leonardo A. Jose in the abovestated amount of P200,000.00, Philippine Currency.^[3]

Petitioner's wife, Marietta M. Isip, was indicted before the same court for seven counts of Violation of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law. The cases were docketed as Criminal Cases No. 146-84, 147-84, 148-84, 149-84, 155-84, 156-84 and 157-84. The accusatory portion of the information in Criminal Case No. 146-84 reads:

That on or about March 27, 1984, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that her account with the bank is insufficient, did, then and there, willfully, unlawfully, feloniously and

Crim. Case No.	Value of Jewelry	Date of Receipt	Agreed Date of Return	Check No./Date	Amount
257-84	P150,000	03-07-84	03-30-84	030086/03-	P150,000
260-84	P95,000	03-20-84	03-27-84	12-84	P95,000
261-84	P562,000	03-20-84	03-27-84	518647/03-	P562,000
378-84	P200,000	02-03-84	-	25-84	P50,000
				518672/03-	P50,000
				27-84	
				518644/03-	
				17-84	
				518645/03-	
				30-84	

When arraigned on the charges, petitioner and Marietta Isip pleaded not guilty. There being only one complainant in all the cases, joint trial of the cases followed.

The versions of the prosecution and the defense, as taken by the Court of Appeals in the parties' respective briefs, are the following:

i) Prosecution Version. –

Sometime in 1982, appellant spouses Manuel and Marietta Isip were introduced to complainant Atty. Leonardo Jose. The introduction was made by complainant's father, Nemesio, business associate of the Isips. Nemesio and the Isips were then engaged in the buy and sell of pledged and unredeemed jewelry pawned by gambling habitu's (pp. 8-16, tsn, June 8, 1993).

Needing a bigger capital to finance the growing operation, the Isips convinced complainant to be their capitalist, a proposition to which complainant acceded to (p. 14, *ibid*).

Thus, the operation went smoothly – that was before February, 1984 (pp. 14-18, tsn, *ibid*).

On February 3, 1984, at complainant's residence in Caridad, Cavite City, appellant spouses received from complainant a 6 carat men's ring valued at P200,000.00 with the condition that they are going to sell said jewelry x x x on commission basis for P200,000.00 and if they are not able to sell the same, they have to return the ring if sold on or before March 3, 1984 (p. 8, tsn, October 15, 1993).

On March 3, 1984, the Isips did not return the ring or the proceeds thereof. Instead, Marietta Isip issued two (2) personal checks dated March 17 and 30, 1984, respectively, for P50,000.00 each as partial payment for the jewelry. The receipt of the jewelry was acknowledged by Marietta Isip with Manuel acting as a witness (pp. 9-11, tsn, *ibid*).

This particular men's ring is the subject of Criminal Case No. 378-84 for Estafa while Check Nos. 518644 and 518645 (Pacific Banking Corp.) dated March 17 and 30, respectively, are the subject of Criminal Case Nos. 147-84 and 148-84.

In the morning of March 7, 1984, the Isip couple went again to complainant's residence in Caridad, Cavite City where complainant delivered one (1) Choker Pearl with 35 pieces of south sea pearls with diamond worth P150,000.00. The condition was that the proceeds be turned over to complainant on or before March 30, 1984 (pp. 27-29, tsn, *ibid*). March 30, 1984 came, but instead of turning over the proceeds or return the Choker Pearl, Mrs. Isip issued a check dated March 12, 1984 for P150,000.00 (RCBC check No. 030086) as payment (p. 34, *ibid*).

This is the subject of Criminal Case No. 254-84 for Estafa against the spouses and Criminal Case No. 149-84 for violation of BP 22 against Marietta Isip.

In the afternoon of the same day, Mr. Manuel Isip went to complainant's residence in Cavite City and got from the latter a men's ring (7 carats) worth P200,000.00. Mr. Isip signed a receipt with the condition that he return the ring or deliver the proceeds, if sold, on or before March 15, 1984. March 15, 1984 came, but Mr. Isip sought an extension which fell due on April 7, 1984. April 7, 1984 came and went by, but Mr. Isip defaulted (pp. 41-46, tsn, *ibid*). The above is the subject matter of Criminal Case No. 136-84 for Estafa against Manuel Isip.

On March 20, 1984, the Isips went again to Cavite City and got from complainant one (1) Dome shaped ring with matching earring with diamonds valued at P120,000.00. As with their previous agreement, the item was to be returned or the proceeds of the sale be delivered on March 21, 1984 (pp. 48-52, tsn, *ibid*). The following morning, however, Mrs. Isip issued two (2) personal checks (Check Nos. 518646 and 518669 dated March 29, 1984 for P90,000.00 and P25,000.00, respectively) in payment for the Dome shaped ring (p. 53, tsn, *ibid*).

This is the subject of Criminal Case No. 256084 for Estafa against the spouses Isip and Criminal Case Nos. 156-84 and (sic) 157-84 for Violation of BP 22 against Marietta Isip.

At noontime on the same day, the Isip couple went back to the residence of complainant and got from him one (1) collar heart shaped necklace and one (1) baguette necklace worth P95,000.00 (p. 60, tsn, *ibid*). As agreed upon, Marietta Isip signed a receipt with the condition that the jewelry or the proceeds thereof be delivered to complainant on March 27, 1984. The Isips defaulted and instead, Mrs. Isip issued a check (Check No. 518647) dated March 27, 1984 in the amount of P90,000.00 (pp. 3-5, tsn, October 22, 1993).

The subject pieces of jewelry are the subject of Criminal Case No. 260-84 for Estafa against the Isip couple and Criminal Case No. 155-84 for Violation of BP 22 against Marietta Isip.

Again, in the early evening of March 20, 1984, the Isips went to complainant informing him that Balikbayan doctors are having a convention in Vigan, Ilocos Sur saying that, that was the most opportune

time to sell jewelries. Assorted pieces of jewelry were delivered to Mrs. Isip as reflected in a receipt duly signed by her (Exhibit "O") acknowledging the value thereof to the tune of P562,000.00.

Exhibit "O" contained the promise that the jewelry or proceeds thereof will be delivered on March 27, 1984. In spite of the promise contained in Exhibit "O", Mrs. Isip issued a postdated check (Check No. 51867) dated March 27, 1984 in the amount of P562,000.00 as payment for the assorted pieces of jewelry (pp. 8-12, tsn, October 22, 1993).

This is the subject matter of Criminal Case No. 261-84 for Estafa against the couple and Criminal Case No. 146-84 against Marietta Isip for Violation of BP 22.

All of the checks covered by the above transactions were deposited on April 6, 1984 (p. 14, tsn, *ibid*), but all of them bounced for being drawn against insufficient funds. Demand letters sent to the couple proved futile (pp. 15-20, *ibid*).

ii) Defense Version.

During all the times material to these cases, complainant Leonardo Jose, who had his residence at Room 411, 4th Floor, Plaza Towers Condominium on (sic) 3375 Guerrero Street, Ermita, Manila, but claims he had his ancestral home at 506 P. Burgos Street, Caridad, Cavite, was an employee of the Bureau of Customs, having been so since 1964 (Tr., 6/8/93, 7). Upon the other hand, appellants Manuel S. Isip (Manuel hereafter) and Marietta M. Isip (Marietta hereafter) are spouses, residents at 3635 M. Arellano Street, Bacood, Sta. Mesa, Manila (Tr., 8/29/93, 4) and engaged in various business undertakings in Pampanga, Nueva Ecija, Baguio City, Olongapo City and Bataan (Tr., *Idem*, 9; Tr., 10/2/95, 13) – appellant Manuel, in the brokerage and trucking business; while appellant Marietta, in that of selling jewelry and financing, as well as in PX goods, real estate and cars, which she started when she was still single (Tr., *Idem*, 9-10; Tr., 10/2/95, 12). In 1982, at the casino in Olongapo City, appellant Marietta started obtaining jewelry from losing or financially-strapped players which she repledged as security for financing she obtained from one Nemesio Jose, father of complainant Leonardo Jose (Tr., *Idem*, 11-12; Tr., *Idem*, 14). After about a year, when Nemesio Jose ran short of capital, he referred appellants to his son, complainant Leonardo Jose, with address at the Plaza Towers Condominium aforesaid for needed financing (Tr., *Idem*, 13-14; Tr., *Idem*, 17-19). Beginning early 1983, at complainant's residence at Plaza Tower Condominium in Manila, appellant Marietta, accompanied by her husband who participated only as a witness, started having transactions with complainant who, on different dates in February, March and April, 1984, extended various amounts to her for which appellant Marietta pledged jewelry which, in turn, were agreed between her and complainant to be sold on commission and to turn over the proceeds thereof or return the jewelry to complainant (Tr., *Idem*, 16-18). In the course of the transactions, appellant Marietta had issued several checks to complainant as guarantee for the payment of the subject jewelry which have either been paid or redeemed, had