

## SECOND DIVISION

[ G.R. NO. 157433, July 24, 2007 ]

**ERLINDA ASEJO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### DECISION

**VELASCO, JR., J.:**

The present petition<sup>[1]</sup> seeks to reverse and set aside the November 27, 2002 Decision<sup>[2]</sup> and February 28, 2003 Resolution<sup>[3]</sup> of the Court of Appeals (CA), which affirmed with modification the February 27, 2001 Decision<sup>[4]</sup> of the Quezon City Regional Trial Court, Branch 104, convicting petitioner of estafa as defined in Article 315 1(b) of the Revised Penal Code.

#### The Facts

Petitioner and her husband, Eliseo Asejo, were charged with estafa on July 6, 1999 alleged to have been committed as follows:

That on or about the 6th day of May 1998, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, with unfaithfulness or abuse of confidence, did then and there willfully, unlawfully, and feloniously defrauded Vilma F. Castro in the manner as follows: on the date and place aforementioned, said accused received the amount of P100,000.00, Philippine Currency, from complainant as they will deposit the said amount in a bank for two months to serve as "show money" to the concerned people that they are liquid in their business and return said amount on or before July 18, 1998, but said accused, once in possession of said amount, far from complying with their aforesaid obligation, misapplied, misappropriated and converted the same to their own personal use and benefit, and despite repeated demands made upon them by said complainant to return the amount of P100,000.00, they failed and refused and still fails (sic) and refuses (sic) to do so, to the damage and prejudice of said offended party in the amount aforementioned.

CONTRARY TO LAW.<sup>[5]</sup>

During the arraignment on September 21, 1999, Erlinda Asejo pleaded not guilty. Eliseo Asejo, on the other hand, was still at large and had not yet been tried. At the trial, the prosecution presented private complainant, Vilma Castro, who testified that on April 30, 1998, the Asejo spouses went to her house to borrow PhP 100,000. The money was supposed to be shown to the bank ("½show money") to make it appear that the Asejos were financially liquid. On May 6, 1998, petitioner went back to

Castro's house where she received the amount and signed a Trust Undertaking<sup>[6]</sup> which reads:

For and in consideration of the trust conveyed upon us, the undersigned hereby acknowledged the receipt of the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS, Philippine currency, from MRS. VILMA F. CASTRO said amount being extended and received by us not as loan or credit and without interest, nevertheless, we hereby undertake and commit to return the same amount to said MRS. VILMA F. CASTRO on or before July 18, 1998 without need of prior demand.

In view of the foregoing, and as a token of gratitude for the trust and confidence reposed upon us, we, the undersigned, solidarily promise and warrant faithful compliance of the terms and conditions herein-above committed.<sup>[7]</sup>

When the obligation became due, Castro went to the spouses to demand payment but Castro failed to collect the money.<sup>[8]</sup>

A corroborating witness, Alberto Bato, testified that he saw the petitioner on May 6, 1998 in Castro's house. Petitioner and Castro were then discussing about money when Bato was called to sign as a witness to the Trust Undertaking.<sup>[9]</sup>

Petitioner admitted that she received PhP 100,000 but claimed that the amount was Castro's down payment for petitioner's lot. She testified that in April 1998, she offered her lot for sale to Castro because she needed money to pay a loan with the bank. They allegedly agreed to the price of PhP 250,000 with a down payment of PhP 100,000 and the balance payable upon the return of Castro's husband from abroad. Castro, however, decided to withdraw from the sale and demanded the return of the PhP 100,000. Petitioner was able to return only PhP 15,000 and six (6) pigs allegedly valued at PhP 17,498. In 1999, petitioner claims that she was called to the house of Castro's in-laws and was harassed to sign an antedated document entitled "Trust Undertaking" by Alberto Bato, a policeman.<sup>[10]</sup> She further alleged that since she could not return the PhP 100,000, she was compelled by Castro to push through with the sale at the lower amount of PhP 150,000.

The agreement, however, did not materialize due to the foreclosure of the property. Petitioner claims that Castro filed the complaint for estafa for petitioner's failure to return the full amount she received as down payment.<sup>[11]</sup>

On February 27, 2001, the trial court rendered the following judgment:

WHEREFORE, the Court finds accused Erlinda Asejo guilty beyond reasonable doubt as principal of the crime of ESTAFA defined and penalized in Article 315, subdivision no. 1, paragraph b, of the Revised Penal Code, and sentences her to an indeterminate penalty of four years and two months of prision correccional as minimum to nine years and six months of prision mayor as maximum, as well as orders her to pay to complainant the amount of P100,000.00 representing the amount of the fraud.

SO ORDERED.<sup>[12]</sup>

### **The Ruling of the Court of Appeals**

On appeal, the CA affirmed the petitioner's conviction but modified the penalty:

WHEREFORE, the decision appealed from is AFFIRMED with the modification that accused-appellant is sentenced to suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional* as MINIMUM, to thirteen (13) years and one (1) day of *reclusion temporal* as MAXIMUM.

SO ORDERED.<sup>[13]</sup>

Hence, petitioner is asking this Court to reverse the judgment of conviction in view of the prosecution's alleged failure to present a formal demand letter as a requisite for a conviction of estafa. Petitioner further asserts that the transaction was actually a loan because the Trust Undertaking did not specifically enjoin her to return the very same thing that she received, but merely the same amount.<sup>[14]</sup>

### **The Issues**

WHETHER FORMAL DEMAND IS REQUIRED TO HOLD PETITIONER LIABLE FOR ESTAFA UNDER ART. 315 1(B)

WHETHER THE AMOUNT RECEIVED WAS PURSUANT TO A LOAN AND NOT A TRUST AGREEMENT

### **The Court's Ruling**

The petition has no merit.

The appellate and trial courts found the version of the prosecution consistent with the evidence. According to the trial court:

First, the money, which she received from complainant on May 6, 1998, could not have been given as down payment for the property, which was mortgaged with the bank and sold at public auction on May 8, 1998. Second, the trust undertaking could not have been signed in 1999 because it was already attached to the affidavit-complaint dated September 29, 1998 as Annex A and the memorandum for preliminary investigation (Exhibit B) shows that the affidavit-complaint was filed with the Office of the City Prosecutor on September 29, 1998. Third, it is contrary to human experience for one not to require a document or receipt for the down payment of P100,000.00 for the sale of a property. Fourth, the mortgaged obligation of the accused as of March 1998 was more than the price allegedly offered to complainant for the property to be sold.<sup>[15]</sup>

The foregoing findings clearly support private complainant's claim regarding the purpose of the money, that is, that petitioner received the money in trust to be used