

## FIRST DIVISION

[ G.R. NO. 167084, October 31, 2006 ]

**MONINA PUCAY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Revised Rules of Court seeking to reverse the Decision<sup>[2]</sup> dated 14 October 2004 of the Court of Appeals in CA-G.R. CR No. 26246 entitled, *People of the Philippines v. Monina Pucay*, affirming the conviction of petitioner Monina Pucay for the crime of Estafa, and its Resolution<sup>[3]</sup> dated 8 February 2005, denying her Motion for Reconsideration.

Private respondent Asian Retailers, Inc. (ARI) is a domestic corporation engaged in the business of lending money and gift checks to government employees.

Petitioner Monina Pucay (Pucay) was an employee of the Land Transportation Office (LTO) with the designation of Cashier II assigned at the Treasury Section.

In September 1988, ARI started its lending operation at the LTO Main Office at East Avenue, Quezon City as authorized by LTO Assistant Secretary Sabalza. The operation started with the lending of gift checks to LTO employees. A year later, the operation expanded to include lending of money at an interest.<sup>[4]</sup>

The arrangement was for ARI's President Benjamin Gochangco (Gochangco) to provide blank sets of promissory notes for the employees to fill up by indicating the amount of loan they wanted to obtain whether in the form of cash or gift checks with their signatures affixed. This form served as promissory note where the amount and the maturity date of the loan were shown.<sup>[5]</sup> The amount of loan that had become due and demandable was to be automatically deducted from the pay envelopes of the debtor-employees every payday and remitted to ARI. The Head of the Treasury Section, Virginia Francisco and two other employees, namely, Hilda Balita and petitioner Pucay, were responsible for carrying out the aforesaid tasks.<sup>[6]</sup>

In May 1991, the collection to be remitted to ARI was stolen inside the Treasury Section Office resulting in a scuffle therein. This incident prompted the LTO Administration to direct ARI to discontinue its lending operation in order to avoid similar incidents in the future. Gochangco and Pucay, however, decided to continue the lending activities on their own.<sup>[7]</sup>

In a verbal agreement entered between Gochangco and Pucay, the latter undertook to deduct the amount of the loan from the pay envelopes of the indebted employees

and remit the collection to the former or to any of his representatives. Gochangco, in turn, will pay Pucay 2% of the interest earned by ARI every month as her commission. This agreement went on without the knowledge of the LTO Administration.<sup>[8]</sup>

Subsequently, Pucay failed to remit her collection in the amount of P205,695.00. The money she collected on 23 August 1992 and 31 August 1992 in the amounts of P71,935.00 and P133,760.00 respectively, were not remitted to Gochangco or to any of his representatives.<sup>[9]</sup> When confronted by Gochangco about the matter, Pucay reasoned that the collection was again stolen inside the Treasury Section Office.<sup>[10]</sup> After repeated verbal demands made upon her, Pucay wrote a letter<sup>[11]</sup> dated 10 September 1992 addressed to Gochangco pleading to give her time to remit the amount of P205,000.00.

Finally, on 17 September 1992, Gochangco served his letter-demand and was acknowledged by Pucay in the presence of LTO Assistant Secretary Juan Borra, Virginia Francisco, Atty. Consuelo Perez, Borra's confidential staff, and Atty. Renato Callanta, Gochangco's Lawyer.<sup>[12]</sup> Such written demand notwithstanding, the accused still failed to remit the amount of collection.

Consequently, an Information<sup>[13]</sup> for Estafa attended by the aggravating circumstance of grave abuse of confidence and/or unfaithfulness was filed against Pucay which reads:

The undersigned accuses Monina Pucay of the crime of estafa committed as follows:

That on or about the period comprised from August 23 and 30, 1992, in Quezon City, Philippines, the said accused, did then and there, willfully, unlawfully and feloniously defraud Asian Retailers Inc., a corporation duly organized and existing under the laws of the Republic of the Philippines with official address at 54 Cenacle Drive, Quezon City, in the following manner, to wit: the said accused, being then employed as collecting/releasing agent of said corporation and as such had the duty among others, to remit in trust from said offended party her collections in the total amount of P205,695.00, Philippine currency but the said accused once in possession of said amount, and far from complying with her aforesaid obligation, failed and refused and still fails and refuses to do so despite repeated demands made upon her to that effect and instead with intent to defraud, and with grave abuse of confidence and/or unfaithfulness, did then and there, willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of said Asian Retailers Inc., in the aforesaid amount of P205,695.00, Philippine Currency.

When arraigned on 17 March 1993, Pucay, assisted by *counsel de officio*, entered a plea of not guilty.<sup>[14]</sup> Thereafter, trial on the merits ensued.

On 27 March 1995, the trial court rendered Judgment<sup>[15]</sup> finding Pucay guilty beyond reasonable doubt of the crime of estafa, the dispositive portion of which reads:

WHEREFORE, this Court finds the accused MONINA PUCAY y PALADIN, GUILTY beyond reasonable doubt of the crime of estafa through misappropriation as punished under Art. 315 par. 1 (b) of the Revised Penal Code which similarly provides in its first paragraph on penalties, in case the amount involved exceeds P22,000 then the penalty provided shall be imposed in its maximum period, adding one year for each additional P10,000.00 but the total penalty shall not exceed 20 years; hence, since the amount involved is P205,695.00, and there are no mitigating nor aggravating circumstances, she is ordered to suffer the penalty of RECLUSION TEMPORAL IN ITS MAXIMUM PERIOD OF EIGHTEEN (18) YEARS, TWO (2) MONTHS AND TWENTY ONE (21) DAYS TO TWENTY (20) YEARS. As far as the civil aspect is concerned, accused is ordered to pay the private complainant the amount of (a) P205,695.00 as actual damages plus the legal interest computed from the time of the demand made upon her by the complainant, (b) P10,000.00 acceptance fee plus 10% of the total collectible from the accused, as attorney's fees; plus costs of suit.

Dissatisfied, Pucay moved for new trial before the Court of Appeals on the ground of newly discovered evidence. She claimed that the alleged evidence is of such weight and materiality that if introduced and admitted, would probably change the judgment. In a Resolution<sup>[16]</sup> dated 21 January 1997, the appellate court granted a new trial, thereby vacating the Judgment dated 27 March 1995 and directed the court *a quo* to conduct a trial *de novo*. The dispositive portion of the Resolution reads:

WHEREFORE, the decision of the Regional Trial Court of Quezon City, Branch 104 convicting accused-appellant is hereby set aside. It is ordered to hold a new trial on the newly discovered and such other evidence as it may allow, upon which, together with the evidence on record, the lower court shall then render another decision.

Accordingly, a new trial was conducted by the lower court where the newly discovered evidence was introduced and admitted in the proceedings of the case. On 11 June 2001, the trial court rendered a Decision<sup>[17]</sup> affirming with modification the Judgment dated 27 March 1995, similarly finding the accused guilty beyond reasonable doubt of the crime of estafa but modified the penalty. The dispositive portion of the Decision reads:

WHEREFORE, finding accused MONINA PUCAY guilty beyond reasonable doubt as principal of the crime of ESTAFA defined and penalized in Article 315 paragraph 1 (b) of the Revised Penal Code, the Court sentences her to an indeterminate penalty of four (4) years and two (2) months of prison correctional as minimum to twenty years of reclusion temporal as maximum, and orders her to pay the amount of P205,000.00 to the complainant.

On appeal, the appellate court, in confirming the presence of all the elements of estafa and finding no reversible error in the factual findings of the trial court, affirmed the latter's decision. The dispositive portion of the said Decision reads:

WHEREFORE, the appeal is dismissed for lack of merit and the trial court's Decision dated June 11, 2001 is affirmed "in toto."<sup>[18]</sup>

Similarly ill-fated was Pucay's Motion for Reconsideration which was likewise denied by the appellate court in a Resolution dated 8 February 2005.

Hence, this instant petition raising this sole issue:

WHETHER THE LOWER COURT ERRED IN FINDING THE PETITIONER  
GUILTY OF ESTAFA BEYOND REASONABLE DOUBT.

There is no merit in the petition.

Inarguably, the resolution of the issue raised by Pucay requires us to inquire into the sufficiency of the evidence presented, including the credibility of the witnesses, a course of action which this Court will not do, consistent with our repeated holding that this Court is not a trier of facts.

Basic is the rule that factual findings of trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the findings.<sup>[19]</sup>

This rule, however, admits of several exceptions, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.<sup>[20]</sup>

Pucay claims that the decision of the trial court as affirmed by the appellate court is purely based on speculations and probabilities and did not establish proof beyond reasonable doubt that the crime was indeed committed. Hence, the case should be taken out of the purview of the general rule and should be reviewed in its entirety.

We do not agree.

The elements of estafa under Article 315(1)(b) of the Revised Penal Code<sup>[21]</sup> are: (1) the offender receives the money, goods or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) the offender misappropriates or converts such money or property or denies receiving such money or property; (3) the misappropriation or conversion or denial is to the prejudice of another; and (4) the offended party demands that the offender to return the money or property.<sup>[22]</sup>

In this case, Pucay claims that the prosecution failed to prove the foregoing elements of estafa. She maintains that the lending operation ended in May, 1991 upon the directive of LTO Administration after the collection was stolen inside the