

SECOND DIVISION

[G.R. No. 141485, June 30, 2005]

**PABLITO MURAO AND NELIO HUERTAZUELA, PETITIONERS, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, petitioners pray for the reversal of the Decision of the Court of Appeals in CA-G.R. CR No. 21134, dated 31 May 1999,^[1] affirming with modification the Judgment of the Regional Trial Court (RTC) of Puerto Princesa City, Palawan, in Criminal Case No. 11943, dated 05 May 1997,^[2] finding petitioners guilty beyond reasonable doubt of the crime of estafa under Article 315(1)(b) of the Revised Penal Code.

Petitioner Pablito Murao is the sole owner of Lorna Murao Industrial Commercial Enterprises (LMICE), a company engaged in the business of selling and refilling fire extinguishers, with branches in Palawan, Naga, Legaspi, Mindoro, Aurora, Quezon, Isabela, and Laguna. Petitioner Nelio Huertazuela is the Branch Manager of LMICE in Puerto Princesa City, Palawan.^[3]

On 01 September 1994, petitioner Murao and private complainant Chito Federico entered into a Dealership Agreement for the marketing, distribution, and refilling of fire extinguishers within Puerto Princesa City.^[4] According to the Dealership Agreement, private complainant Federico, as a dealer for LMICE, could obtain fire extinguishers from LMICE at a 50% discount, provided that he sets up his own sales force, acquires and issues his own sales invoice, and posts a bond with LMICE as security for the credit line extended to him by LMICE. Failing to comply with the conditions under the said Dealership Agreement, private complainant Federico, nonetheless, was still allowed to act as a part-time sales agent for LMICE entitled to a percentage commission from the sales of fire extinguishers.^[5]

The amount of private complainant Federico's commission as sales agent for LMICE was under contention. Private complainant Federico claimed that he was entitled to a commission equivalent to 50% of the gross sales he had made on behalf of LMICE,^[6] while petitioners maintained that he should receive only 30% of the net sales. Petitioners even contended that as company policy, part-time sales agents were entitled to a commission of only 25% of the net sales, but since private complainant Federico helped in establishing the LMICE branch office in Puerto Princesa City, he was to receive the same commission as the full-time sales agents of LMICE, which was 30% of the net sales.^[7]

Private complainant Federico's first successful transaction as sales agent of LMICE involved two fire extinguishers sold to Landbank of the Philippines (Landbank), Puerto Princesa City Branch, for the price of P7,200.00. Landbank issued a check,

dated 08 November 1993, pay to the order of "L.M. Industrial Comm'l. Enterprises c/o Chito Federico," for the amount of P5,936.40,^[8] after deducting from the original sales price the 15% discount granted by private complainant Federico to Landbank and the 3% withholding tax. Private complainant Federico encashed the check at Landbank and remitted only P2,436.40 to LMICE, while he kept P3,500.00 for himself as his commission from the sale.^[9]

Petitioners alleged that it was contrary to the standard operating procedure of LMICE that private complainant Federico was named payee of the Landbank check on behalf of LMICE, and that private complainant Federico was not authorized to encash the said check. Despite the supposed irregularities committed by private complainant Federico in the collection of the payment from Landbank and in the premature withholding of his commission from the said payment, petitioners forgave private complainant Federico because the latter promised to make-up for his misdeeds in the next transaction.^[10]

Private complainant Federico, on behalf of LMICE, subsequently facilitated a transaction with the City Government of Puerto Princesa for the refill of 202 fire extinguishers. Because of the considerable cost, the City Government of Puerto Princesa requested that the transaction be split into two purchase orders, and the City Government of Puerto Princesa shall pay for each of the purchase orders separately.^[11] Pursuant to the two purchase orders, LMICE refilled and delivered all 202 fire extinguishers to the City Government of Puerto Princesa: 154 units on 06 January 1994, 43 more units on 12 January 1994, and the last five units on 13 January 1994.^[12]

The subject of this Petition is limited to the first purchase order, Purchase Order No. GSO-856, dated 03 January 1994, for the refill of 99 fire extinguishers, with a total cost of P309,000.00.^[13] On 16 June 1994, the City Government of Puerto Princesa issued Check No. 611437 to LMICE to pay for Purchase Order No. GSO-856, in the amount of P300,572.73, net of the 3% withholding tax.^[14] Within the same day, petitioner Huertazuela claimed Check No. 611437 from the City Government of Puerto Princesa and deposited it under the current account of LMICE with PCIBank.^[15]

On 17 June 1994, private complainant Federico went to see petitioner Huertazuela at the LMICE branch office in Puerto Princesa City to demand for the amount of P154,500.00 as his commission from the payment of Purchase Order No. GSO-856 by the City Government of Puerto Princesa. Petitioner Huertazuela, however, refused to pay private complainant Federico his commission since the two of them could not agree on the proper amount thereof.^[16]

Also on 17 June 1994, private complainant Federico went to the police station to file an Affidavit-Complaint for estafa against petitioners.^[17] Petitioners submitted their Joint Counter-Affidavit on 12 July 1994.^[18] The City Prosecution Office of Puerto Princesa City issued a Resolution, dated 15 August 1994, finding that a *prima facie* case for estafa existed against the petitioners and recommending the filing of an information for estafa against both of them.^[19]

The Information, docketed as Criminal Case No. 11943 and raffled to the RTC of Puerto Princesa City, Palawan, Branch 52, reads as follows —

I N F O R M A T I O N

The undersigned accuses PABLITO MURAO and NELIO C. HUERTAZUELA of the crime of ESTAFA, committed as follows:

That on or about the 16th day of June, 1994, at Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping one another, after having received the amount of P309,000.00 as payment of the 99 tanks of refilled fire extinguisher (*sic*) from the City Government of Puerto Princesa, through deceit, fraud and misrepresentation, did then and there willfully, unlawfully and feloniously defraud one Chito Federico in the following manner, to wit: said accused, well knowing that Chito Federico agent of LM Industrial Commercial Enterprises is entitled to 50% commission of the gross sales as per their Dealership Contract or the amount of P154,500.00 as his commission for his sale of 99 refilled fire extinguishers worth P309,000.00, and accused once in possession of said amount of P309,000.00 misappropriate, misapply and convert the amount of P154,500.00 for their own personal use and benefit and despite repeated demands made upon them by complainant to deliver the amount of P154,500.00, accused failed and refused and still fails and refuses to do so, to the damage and prejudice of said Chito Federico in the amount of P154,500.00, Philippine Currency.^[20]

After holding trial, the RTC rendered its Judgment on 05 May 1997 finding petitioners guilty beyond reasonable doubt as co-principals of the crime of estafa defined and penalized in Article 315(1)(b) of the Revised Penal Code. Estafa, under the said provision, is committed by —

ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow . . .

1. With unfaithfulness or abuse of confidence, namely:

(a) . . .

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property; . . .

In the same Judgment, the RTC expounded on its finding of guilt, thus —

For the afore-quoted provision of the Revised Penal Code to be committed, the following requisites must concur:

1. That money, goods or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
2. That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;

3. That such misappropriation or conversion or denial is to the prejudice of another; and
4. That there is demand made by the offended party to the offender.
(Reyes, *Revised Penal Code of the Philippines*, p. 716; *Manuel Manahan, Jr. vs. Court of Appeals, Et Al.*, G.R. No. 111656, March 20, 1996)

All the foregoing elements are present in this case. The aborted testimony of Mrs. Norma Dacuan, Cashier III of the Treasurer's Office of the City of Puerto Princesa established the fact that indeed, on June 16, 1994, co-accused Nelio Huertazuela took delivery of Check No. 611437 with face value of P300,572.73, representing payment for the refill of 99 cylinders of fire extinguishers. Although the relationship between complaining witness Chito Federico and LMIC is not fiduciary in nature, still the clause "any other obligation involving the duty to make delivery of or to return" personal property is broad enough to include a "civil obligation" (*Manahan vs. C.A., Et Al.*, Mar. 20, 1996).

The second element cannot be gainsaid. Both Pablito Murao and Nelio Huertazuela categorically admitted that they did not give to Chito Federico his commission. Instead, they deposited the full amount of the consideration, with the PCIBank in the Current Account of LMIC.

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The refusal by the accused to give Chito Federico what ever percentage his commission necessarily caused him prejudice which constitute the third element of estafa. Demand for payment, although not an essential element of estafa was nonetheless made by the complainant but was rebuffed by the accused. The fraudulent intent by the accused is indubitably indicated by their refusal to pay Chito Federico any percentage of the gross sales as commission. If it were true that what the dealer/sales Agent is entitled to by way of commission is only 30% of the gross sales, then by all means the accused should have paid Chito Federico 30%. If he refused, they could have it deposited in his name. In that way they may not be said to have misappropriated for themselves what pertained to their Agent by way of commission.

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WHEREFORE, premises considered judgment is hereby rendered finding the accused PABLITO MURAO and NELIO HUERTAZUELA guilty beyond reasonable doubt as co-principals, of the crime of estafa defined and penalized in Article 315 par. 1(b) of the Revised Penal Code, and applying the provisions of the Indeterminate Sentence Law, both accused are hereby sentenced to an indeterminate penalty ranging from a minimum of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *prision correccional* in its medium period, to a maximum of TWENTY (20) YEARS of *reclusion temporal* in its maximum period; to pay Chito Federico, jointly and severally:

- a. Sales Commission P154,500.00
equivalent to 50% of

P309,000.00 or with
legal interest thereon
from June 17, 1994 until
fully paid;

b. Attorney's fees

P 30,000.00.

[21]

Resolving the appeal filed by the petitioners before it, the Court of Appeals, in its Decision, dated 31 May 1999, affirmed the aforementioned RTC Judgment, finding petitioners guilty of estafa, but modifying the sentence imposed on the petitioners. The dispositive portion of the Decision of the Court of Appeals reads —

WHEREFORE, the appealed decision is hereby AFFIRMED with the MODIFICATION that appellants PABLITO MURAO and NELIO HUERTAZUELA are hereby each sentenced to an indeterminate penalty of *eight (8) years and One (1) day of prision mayor*, as minimum, to Twenty (20) years of *reclusion temporal*, as maximum. *The award for attorney's fee of P30,000.00 is deleted because the prosecution of criminal action is the task of the State prosecutors.* All other aspects of the appealed decision are maintained.[22]

When the Court of Appeals, in its Resolution, dated 19 January 2000,[23] denied their Motion for Reconsideration, petitioners filed the present Petition for Review[24] before this Court, raising the following errors allegedly committed by the Court of Appeals in its Decision, dated 31 May 1999 —

I

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PETITIONERS ARE LIABLE FOR ESTAFA UNDER ARTICLE 315 1(B) OF THE REVISED PENAL CODE UNDER THE FOREGOING SET OF FACTS, WHEN IT IS CLEAR FROM THE SAID UNDISPUTED FACTS THAT THE LIABILITY IS CIVIL IN NATURE.

II

WITH DUE RESPECT, THE HONORABLE COURT ERRED WHEN IT UPHOLD (*sic*) PRIVATE COMPLAINANT'S CLAIM THAT HE IS ENTITLED TO A FIFTY (50%) PERCENT COMMISSION WITHOUT EVIDENCE TO SUPPORT SUCH CLAIM.

This Court finds the instant Petition impressed with merit. Absent herein are two essential elements of the crime of estafa by misappropriation or conversion under Article 315(1)(b) of the Revised Penal Code, namely: (1) That money, goods or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; and (2) That there be a misappropriation or conversion of such money or property by the offender.

The findings of the RTC and the Court of Appeals that petitioners committed estafa rest on the erroneous belief that private complainant Federico, due to his right to commission, already owned 50% of the amount paid by the City Government of Puerto Princesa to LMICE by virtue of Check No. 611437, so that the collection and