

## SECOND DIVISION

[ G.R. NO. 152335, December 19, 2005 ]

**ROMEO G. LORENZO, PETITIONER, VS. THE PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**TINGA, J.:**

On 30 June 1999, the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31, found petitioner Romeo G. Lorenzo, as accused, guilty of estafa under Article 315, Par. 2(a) of the Revised Penal Code and sentenced him to an indeterminate penalty of imprisonment of three (3) years, four (4) months and eight (8) days of *prision correccional* as minimum, to twenty (20) years of *reclusion temporal* as maximum, and to indemnify private complainant Myrla M. Minggoy the amount of P150,000.00 and to pay the costs.<sup>[1]</sup> Petitioner appealed the decision to the Court of Appeals, which on 17 October 2001 affirmed the trial court *in toto*.<sup>[2]</sup> On 1 March 2002, the appellate court also denied for lack of merit the motion for reconsideration filed by petitioner.<sup>[3]</sup> Hence, petitioner has come to this Court to challenge the decision via a petition for review on certiorari.

The spouses Romeo and Carmelita Lorenzo were formally charged with the crime of estafa in an Information dated 6 October 1995 which reads:

That on or about the 14<sup>th</sup> day of January, 1993 in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused ROMEO G. LORENZO and CARMELITA P. LORENZO, conspiring, confederating and mutually helping with one another, did then and there willfully, unlawfully and feloniously defraud MYRNA M. MINGGOY, in the following manner, to wit: accused, by means of false manifestations and fraudulent representations that they have the lawful and legal rights and interest over a house and lot, particularly described as Lot 12, Block 2-B, located at Rosario Complex, San Pedro, Laguna, and simultaneous thereto, by means of other similar deceits take and receive the sum of One Hundred Fifty Thousand Pesos (P150,000.00), Philippine Currency, from MYRLA M. MINGGOY, in consideration for the sale of rights and interest over the said house and lot in favor of the latter, accused knowing that said manifestation and representations to be false and fraudulent, and far from complying with their obligation to deliver to, and vacate the said property, and despite repeated demands made upon them to return the said amount, said accused then and there, willfully, unlawfully and feloniously and with intent to defraud, misappropriated, misapplied and converted the aforesaid amount of money to their own personal use and benefit, to the damage and prejudice of MYRLA M. MINGGOY in the aforementioned sum of One Hundred Fifty Thousand Pesos (P150,000.00), Philippine Currency.

## CONTRARY TO LAW.<sup>[4]</sup>

On 21 September 1992, petitioner Romeo G. Lorenzo went to private complainant Myrla M. Minggoy's house to use the phone. Petitioner asked Minggoy if they owned the house where they were staying. Minggoy told him that they were merely renting the place. Petitioner then told her that he owned a house and lot at Rosario Complex, San Pedro, Laguna which he offered to sell to her for P180,000.00, later lowered to P150,000.00. On the same day, she went with petitioner to inspect the property. There, she was introduced to Nora Lorenzo, supposedly petitioner's wife with whom he had eight children. Petitioner told Minggoy that the property was mortgaged with the GSIS and if she agreed to buy the property, she would have to continue making the mortgage payments. Minggoy insisted on seeing petitioner's Statement of Account with the GSIS before agreeing to purchase the property.<sup>[5]</sup>

Minggoy personally went to the GSIS office in Makati to obtain a copy of petitioner's Statement of Account. The Statement of Account showed that petitioner had arrears amounting to P307,784.32 as of January 1993.<sup>[6]</sup>

On 12 January 1993, Minggoy and petitioner met again at her house. Petitioner told Minggoy that she could already pay him the amount for the property since she had already seen his statement of account. Minggoy promised to pay him on 14 January 1993; in the meantime, they looked for a lawyer who would prepare the necessary documents.<sup>[7]</sup>

On 14 January 1993, petitioner and Minggoy, accompanied by his alleged wife Nora, went to the office of Atty. Jose Alvarez who prepared the following documents for them: the Special Power of Attorney,<sup>[8]</sup> Deed of Transfer of Rights,<sup>[9]</sup> Waiver of Rights,<sup>[10]</sup> Deed of Absolute Sale,<sup>[11]</sup> and Sinumpaang Salaysay of Romeo Lorenzo.<sup>[12]</sup> The execution of the documents was witnessed by Mang Art, the secretary of Atty. Alvarez, and Bles, Mang Art's assistant.<sup>[13]</sup> Then, in the presence of Atty. Alvarez, Minggoy paid petitioner P150,000.00 in cash for the property.<sup>[14]</sup>

However, when Minggoy sought to occupy the property, petitioner refused to leave the house. Minggoy asked the help of the barangay officials of Rosario Complex,<sup>[15]</sup> but petitioner did not appear at the scheduled hearings. Hence, Minggoy was given an indorsement to file the case against petitioner and his wife.<sup>[16]</sup>

On 19 April 1993, Minggoy went to the GSIS to confirm ownership of the property by petitioner. She learned that the GSIS had already cancelled the Deed of Conditional Sale it had issued to petitioner for failure of petitioner to settle his account.<sup>[17]</sup> The cancellation was evidenced by a certified true copy of the letter dated 22 May 1991 sent to petitioner.<sup>[18]</sup> Minggoy then filed the case for estafa against petitioner and his wife.

On the other hand, petitioner filed four criminal cases for falsification of public document before the Municipal Trial Court of San Pedro, Laguna against Minggoy.<sup>[19]</sup> Petitioner presented his version of the events. He had known Minggoy as a real estate agent since she was his neighbor. Sometime in November 1992, he offered to

her the sale of his rights over a house and lot that he owned. Answering her query whether he had updated his GSIS amortization payments, he told Minggoy that he had not paid his amortizations for quite a long time.

On 3 January 1993, Minggoy went to petitioner's house and told him that she had prospective buyers for the property. They both agreed that Minggoy would secure the Special Power of Attorney authorizing her to sell the property. They met again on 10 January 1993 with Minggoy bringing with her four sets of SPA. Although petitioner was not able to read the documents because of his poor eyesight, he relied on the reassurances of Minggoy that the documents were all SPAs that would be given to the prospective buyers. Petitioner willingly signed the documents.

He waited for word from Minggoy but he heard nothing from her until the *baranggay* officers came to his house and informed him that he had to vacate the property as he had already supposedly transferred his rights to Minggoy.<sup>[20]</sup> Petitioner came to know that the documents he signed were a deed of waiver of rights and a deed of absolute sale only when the case for estafa against him was filed.<sup>[21]</sup> He adds that he could not have appeared before the notary public, signed the documents, and received payment from Minggoy on 14 January 1993, since on said date he was detained at the police station in Kababayan Center, Barangay Isidro, Sucat Road, Parañaque on a charge of drunkenness.<sup>[22]</sup>

During arraignment, petitioner and his wife, as accused, pleaded not guilty and trial ensued. On 1 October 1997, the case against accused Carmelita P. Lorenzo was dismissed for insufficiency of evidence.<sup>[23]</sup> The RTC rendered its decision convicting accused of estafa under Art. 315, Par. 2(a) of the Revised Penal Code. On appeal, the Court of Appeals affirmed the trial court's decision *in toto*, and also denied the motion for reconsideration filed by petitioner. Aggrieved, petitioner now comes to this court via a petition for review on certiorari, alleging that the Court of Appeals erred in:

- (a) convicting petitioner on the basis of the uncorroborated testimony of private complainant which is replete with inconsistencies on material points;
- (b) convicting petitioner despite the presence of fraud in the execution and signing of the four sets of deed of conveyance;
- (c) convicting petitioners of estafa under Art. 315, Par. 2(a) notwithstanding the absence of deceit in the commission of the offense; and
- (d) ordering petitioner to indemnify private complainant in the amount of P150,000.00.<sup>[24]</sup>

We affirm the conviction but grant the petition in part.

It is doctrinal that the findings of fact of the Court of Appeals affirming those of the trial court are accorded great respect, even finality, by this Court.<sup>[25]</sup> It is likewise very basic that only errors of law and not of fact are reviewable by this Court in petitions for review on certiorari under Rule 45 under which this petition is filed. It is

not the Court's function under Rule 45 to review, examine and evaluate or weigh the probative value of the evidence presented.<sup>[26]</sup> A scrutiny of the issues raised shows that petitioner actually seeks this Court's reevaluation of the facts and evidence. The issues and errors alleged in this petition are the very same questions of fact raised in the appeal before the Court of Appeals, although couched in different terms and explained more lengthily in the petition.

A departure from the general rule may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court,<sup>[27]</sup> or when the same is unsupported by the evidence on record.<sup>[28]</sup> There is no ground to apply the exception in the instant case, however, because the findings and conclusions of the Court of Appeals are in full accord with those of the trial court. This Court will not assess and evaluate all over again the evidence, both testimonial and documentary, adduced by the parties to the appeal particularly where, as in this case, the findings of both the trial court and the Court of Appeals coincide.<sup>[29]</sup>

In any case, the findings of fact of the Court of Appeals, as well as those of the trial court, are firmly supported by the evidence on record, consisting mainly of the testimonies of private complainant herself and of one

Mrs. Rosario Martinez of the GSIS,<sup>[30]</sup> which were found to be credible. We see no reason to rule otherwise.

On the other hand, petitioner's defense consists mainly of denial and alibi which the trial court has adequately shown to be without basis and unsupported by concrete evidence.

To convict petitioner of the crime of estafa, the following elements must be present: (1) there must be a false pretense, fraudulent act or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means; and (4) as a result thereof, the offended party suffered damage.<sup>[31]</sup>

The evidence on record plainly shows that the elements of the offense are present in the case. Petitioner fraudulently offered to sell to private complainant his rights over the subject property although such rights had been lost by virtue of the cancellation of his Deed of Conditional Sale with the GSIS. Relying on petitioner's misrepresentations, private complainant paid him P150,000.00 as consideration but she was never able to gain possession of the property given petitioner's refusal to vacate the same. Clearly, petitioner is guilty of the offense.

Petitioner, however, raises a point that should be ruled in his favor. He argues that the Court of Appeals should not have ordered him to indemnify complainant in the amount of P150,000.00, saying that complainant had instituted a separate civil action for recovery of the P150,000.00 plus damages, but the same was dismissed by the Court of Appeals on 29 November 1996 in a petition for certiorari in CA-G.R. SP No. 40468. Hence, petitioner asserts, to award indemnity would be tantamount to making an award on the basis of civil liability which has been subject of a