

## FIRST DIVISION

[ G.R. No. 159280, May 18, 2004 ]

**AUGUSTO SIM, JR., petitioner, vs. HON. COURT OF APPEALS and  
The PEOPLE OF THE PHILIPPINES, respondents.**

### D E C I S I O N

**YNARES-SATIAGO, J.:**

On appeal by petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure is a Decision<sup>[1]</sup> by the Court of Appeals (CA) dated May 21, 2003 affirming with modification the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Manila, Branch 34, finding petitioner Augusto Sim, Jr. and co-accused Elison Villaflor guilty beyond reasonable doubt of estafa under Article 315, paragraph 2 (a) of the Revised Penal Code, instead of Article 315, paragraph 1 (b) thereof, as well as its Resolution<sup>[3]</sup> dated August 1, 2003 denying appellant's Motion for Reconsideration. Petitioner and co-accused Elison Villaflor were sentenced to suffer an indeterminate prison term of four (4) years and two (2) months of *prisión correccional*, as minimum, to twenty (20) years of *reclusión temporal*, as maximum, and to indemnify the private complainant Jay Byron Ilagan the sum of P480,000.00 representing the amount paid for the purchase of the car that was impounded by the authorities.

Elison Villaflor and Augusto Sim, Jr., were formally charged with the crime of Estafa in an Information dated September 6, 1999 which reads:<sup>[4]</sup>

That on or about May 2, 1998, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously defraud Jay Byron Ilagan in the following manner, to wit: the said accused by means of false manifestations which they made to said Jay Byron Ilagan to the effect that they are selling one (1) colored green Nissan Pathfinder pick-up with motor number PD27-555735 bearing Plate No. BCF-620 in the amount of P480,000.00 registered in the name of Henry Austria, and by means of other similar deceits, induced and succeeded in inducing said Jay Byron Ilagan to give and deliver, as in fact he gave and delivered to said accused the amount of P480,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent, as the said car is a stolen car and they are not the owner, and were made solely, to obtain, as in fact they did obtain the amount of P480,000.00 which amount once in their possession, with intent to defraud, willfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said Jay Byron Ilagan in the aforesaid amount of P350,000.00, Philippine currency.

Contrary to law.

Private complainant Jay Byron Ilagan is a tire supplier whose store, Marfi Tire Supply, is located along the highway at San Pablo City, Laguna. He had been dealing with accused Elison Villaflor for twenty years, as the latter is engaged in the same business of selling tires and rims at 39 C-3 Road, Dagat-Dagatan, Caloocan City.

In March 1998, private complainant talked to Elison somewhere in Tondo, Manila, and expressed his interest in buying a vehicle. Elison told him that he knew someone who sells vehicles at a cheap price, and that he had bought a Toyota Tamaraw FX at lower than the market price. Private complainant then asked Elison to ask if there was an Isuzu pick-up for sale. A month later, Elison called private complainant to inform him that he was able to find a 1997 Nissan Pathfinder. They agreed to inspect the vehicle together as private complainant wanted to buy it before his birthday on May 31, 1998.<sup>[5]</sup>

On April 30, 1998, only Elison went to Dagupan City to get the Nissan Pathfinder from his friend, petitioner Augusto Sim, Jr. Petitioner told Elison that the Nissan Pathfinder was given to him by a customer in payment of a debt and had been used only for a year.

Elison brought the 1997 Nissan Pathfinder to San Pablo City. Private complainant at first did not like the vehicle since it was not the brand he was looking for. Elison said that his *kumpadre* would look at the vehicle as the latter was also interested in it.<sup>[6]</sup>

Private complainant decided to buy the 1997 Nissan Pathfinder at the agreed price of P480,000.00. The amount was paid in five checks issued by Fe Ilagan under her account at Solidbank-San Pablo Branch. One check was dated May 6, 1998 in the sum of P350,000.00, and four checks in the sum of P32,500.00 each was dated June 6, July 6, August 6 and September 6, all in 1998.<sup>[7]</sup>

Elison gave private complainant photocopies of the Certificate of Registration (C.R.) and Official Receipt (O.R.) issued by the Land Transportation Office (LTO) showing the name of the owner as one Henry Austria. While waiting for the processing of the papers, the vehicle was parked at private complainant's place. After a week, Elison brought the deed of sale which private complainant signed without the signature of the owner, Henry Austria. After private complainant signed the deed of sale, he gave it back to Elison to be brought back to Dagupan City for signing by the owner/vendor and transfer of registration in the name of private complainant.<sup>[8]</sup>

On June 7, 1998, Elison returned and delivered to private complainant the deed of sale signed by the owner/vendor, together with the new C.R. and O.R. issued by the LTO of Lingayen, Pangasinan in the name of private complainant.<sup>[9]</sup>

The checks given by private complainant in payment of the vehicle were deposited by petitioner in his name at Solidbank-Dagupan Branch. All five checks were debited in favor of petitioner. After receiving the registration papers from Elison, private complainant was eventually able to use the Nissan Pathfinder.<sup>[10]</sup>

On October 28, 1998, private complainant's vehicle was apprehended by Anti-

Carnapping operatives of the Philippine National Police (ANCAR NCRTMO). The vehicle and its registration papers were inspected and thereafter brought to Camp Crame. It turned out that the vehicle was a "hot car" as it had been reported stolen on November 29, 1997 by its real owner, Golf Construction of the Philippines, Inc. pursuant to the Alarm Sheet issued by the PNP Traffic Management Group.<sup>[11]</sup>

Private complainant accompanied the ANCAR operatives to the residence of Elison. He went with them to Camp Crame, and named petitioner as the owner of the vehicle. However, they were not able to locate petitioner right away. Meanwhile, the vehicle was impounded by the authorities. The investigation revealed that its original motor and chassis numbers were replaced and/or tampered but its Production Number remained intact. Eventually, the real description of the vehicle was fully established and identified by no less than the manufacturer/assembler of the unit, Universal Motors Corporation.<sup>[12]</sup>

Private complainant spoke with Elison about the possible recovery of the money paid by him for the confiscated vehicle. On November 30, 1998, private complainant met petitioner for the first time. Petitioner signed a Promissory Note with Deed of Undertaking whereby he obligated himself to pay private complainant the amount of P480,000.00 plus attorney's fees of P50,000.00 in scheduled installments. Petitioner issued a check in the amount of P75,000.00 but private complainant did not encash it, thinking that if he does, petitioner would not pay him anymore. Private complainant was unable to recover the money paid by him to petitioner.<sup>[13]</sup>

Thereafter, Elison and petitioner were charged with estafa under a criminal information dated September 6, 1999. Elison was arraigned on September 17, 1999; while petitioner was arraigned on June 1, 2000. Both pleaded "*not guilty*."

After trial, the trial court convicted both Elison and petitioner of the crime of estafa under Art. 315, par. 1 (b) of the Revised Penal Code. On appeal, the Court of Appeals affirmed the trial court's judgment with the modification that appellants should be convicted of estafa under Art. 315, par. 2 (a).

Hence, this petition for review on certiorari, assigning the following errors:

## I

THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT CONSPIRACY IS PRESENT CONTRARY TO THE EVIDENCE ON RECORD.

## II

THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO RULE ON THE ACQUITTAL OF HEREIN PETITIONER.

Two issues are presented before this Court: (1) Whether there was conspiracy between petitioner and Elison Villafior in defrauding private complainant Jay Byron Ilagan; and (2) Whether petitioner is guilty beyond reasonable doubt of the crime of estafa under Art. 315, par. 2 (a) of the Revised Penal Code.

On the first assignment of error, petitioner argues that there is no conspiracy between him and co-accused. He points that it was only co-accused Elison Villaflores who dealt with private complainant. The latter had not even met him before he was allegedly forced to sign the amicable agreement.

Petitioner further alleges that contrary to the findings of the appellate court, there is no convincing evidence to show that petitioner performed any previous or simultaneous act with Elison in committing the offense against private complainant. The witnesses presented by the prosecution did not show or prove that petitioner directly participated in the commission of the offense or performed an act which would show community of purpose with Elison.

Petitioner's argument is bereft of merit.

Even in the absence of direct evidence of prior agreement to commit the crime, conspiracy may be deduced from the acts of the perpetrators before, during and after the commission of the crime, which are indicative of a common design, concerted action and concurrence of sentiments.<sup>[14]</sup> Conspiracy is deemed implied when the malefactors have a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.<sup>[15]</sup>

In *Erquiaga v. Court of Appeals*,<sup>[16]</sup> we ruled that conspiracy, as a rule, has to be established with the same quantum of proof as the crime itself and shown as clearly as the commission of the crime. However, conspiracy need not be shown by direct evidence, but may take the form of circumstances which, if taken together, would conclusively show that the accused came to an agreement to commit a crime and decided to carry it out with their full cooperation and participation.

As correctly pointed out by the appellate court, petitioner's actions in relation to the fraudulent sale of the Nissan Pathfinder to private complainant clearly established conspiracy as alleged in the information, which acts transcend mere knowledge or friendship with co-accused Elison.<sup>[17]</sup> Notwithstanding the fact that it was only Elison who dealt with or personally transacted with private complainant until the time the sale was consummated, by his own testimony petitioner admitted all the acts by which he actively cooperated and not merely acquiesced in perpetrating the fraud upon private complainant.<sup>[18]</sup> That petitioner is a conspirator having joint criminal design with Elison is evident from the fact that as between them, both knew that petitioner was the person selling the vehicle under the false pretense that a certain Henry Austria was the registered owner.<sup>[19]</sup> Petitioner, together with Elison, clearly deceived private complainant in order to defraud him in the amount of P480,000.00, to the latter's damage and prejudice. In addition, the acts of petitioner in deliberately misrepresenting himself to private complainant as having the necessary authority to possess and sell to the latter the vehicle so that he could collect from him P480,000.00 only to renege on that promise and for failure to reimburse the said amount he collected from private complainant, despite demand, amount to estafa punishable under Art. 315, par. 2 (a).

The Court of Appeals, in affirming the findings of fact of the trial court, aptly observed:<sup>[20]</sup>

That conviction under the afore-cited provision is more proper is evident from the trial court's finding that appellant Augusto Sim, Jr. from the very beginning was aware that the subject vehicle was not his nor given to him in payment of debt as he made appellant Villaflor to believe. Nonetheless, appellant Villaflor was not absolved from liability, having actively conspired with appellant Augusto Sim, Jr. to convince private complainant to purchase the Pathfinder upon their false pretense and representation that said vehicle was being sold by its *real owner*, Henry Austria, the name appearing in the registration papers and deed of sale under circumstances clearly showing their knowledge that the status of said vehicle is dubious or anomalous, as in fact it turned out to be a "hot car" or had been stolen/carnapped from its true owner. The totality of the evidence indicates a common or joint design, purpose and objective of the accused-appellants to defraud private complainant who parted with his money upon the belief that there is no problem regarding the ownership of the Pathfinder sold to him by the appellants.

The trial court rejected the argument of the defense that it was private complainant who supposedly had the vehicle and its registration papers checked at Camp Crame before buying the same. It pointed out that verification would have been difficult considering that the motor and chassis numbers in the registration papers are correct but the name of the owner appearing therein is false.

Elison's false pretense in holding out that he had authorization from the owner to sell the 1997 Nissan Pathfinder was made in conjunction with petitioner's fraudulent misrepresentation that he was legally entitled to possess the aforesaid vehicle. The evidence shows that petitioner and Elison acted in conspiracy to deceive private complainant into buying a stolen Nissan Pathfinder, thereby defrauding the latter in the amount of P480,000.00, and upon their false pretense and representation as to the real status of the vehicle, i.e., that said unit is in fact being sold by its true owner Henry Austria and that Augusto Sim, Jr. in whose name the checks were issued had the authority or right to sell the same. After a few months, the vehicle sold was apprehended and impounded by police authorities for being stolen or carnapped which resulted in pecuniary damage to private complainant who had demanded the return of his money from petitioner and Elison.<sup>[21]</sup> The evidence of the prosecution satisfactorily established the fraudulent acts and representations which induced private complainant to part with his money for which he suffered damage and loss when the vehicle sold to him by petitioner and Elison was recovered by its true owner through operatives of the police anti-carnapping group.<sup>[22]</sup>

On the second assignment of error, petitioner contends that the evidence is not sufficient to prove petitioner's guilt beyond reasonable doubt for the crime of estafa under Art. 315, par. 2 (a) of the Revised Penal Code.

Petitioner's contention is untenable.

While the trial court charged and convicted petitioner and his co-accused of estafa