

## THIRD DIVISION

[ G.R. No. 148371, August 12, 2004 ]

**ELSA JOSE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES;  
REJIE RAMOS DEL ROSARIO; AND THE PRESIDING JUDGE,  
REGIONAL TRIAL COURT OF MAKATI, BRANCH 148,  
RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

Private respondent might have been too naive in believing the false pretense foisted by petitioner. Others more sensible might not have succumbed to the sweet talk. But the law protects not only the wary and the wily, but more so the gullible and the guileless.

### The Case

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to annul the December 29, 2000 Decision<sup>[2]</sup> and the June 7, 2001 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-GR CR No. 21073. The decretal portion of the assailed Decision reads as follows:

**"WHEREFORE**, the assailed decision being in conformity with the law and evidence, the same is hereby **AFFIRMED** *in toto*. Costs against [petitioner]."<sup>[4]</sup>

The assailed Resolution denied petitioner's Motion for Reconsideration.

### The Facts

The CA narrated the facts of the case as follows:

"Appeal from the decision dated 19 March 1997 of the Regional Trial Court, National Capital Judicial Region, Branch 148, Makati City, in Criminal Case No. 96-901 entitled **PEOPLE OF THE PHILIPPINES vs. ELSA JOSE** for **ESTAFA**, the dispositive portion of which reads:

'WHEREFORE, premises considered, and finding accused ELSA JOSE guilty beyond reasonable doubt of the crime of **ESTAFA** defined and penalized under Article 315, paragraph 4 No. 2, letter (a) of the Revised Penal Code, she is hereby sentenced to suffer an indeterminate sentence of from Nine (9) Years, Eight (8) Months and Twenty One (21) Days of Prison Mayor as minimum to Thirteen (13) Years, Five (5) Months and Eleven (11) Days of Reclusion Temporal as Maximum, with all the accessories of the law.

'Accused is further ordered to pay unto the complainant Regie Ramos the sum of P104,000.00[,] the amount defrauded by accused plus six (6) [percent] per annum as interest from March 22, 1996, the date of the [I]nformation until the whole amount is fully paid.

'With costs against the accused.

'SO ORDERED.'

"The Information charged:

'That [on] or about and sometime during the period comprised from November, 1994 to March, 1995, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud one REJIE RAMOS DEL ROSARIO in the following manner, to wit: The said accused by means of false pretenses and fraudulent representations which she made to the herein complainant to the effect that she is a travel agent, engaged in the business of facilitating the travel of interested persons to Japan for a fee and by means of other similar deceit and further representation that she could help herein complainant in securing visa, ticket and other travel documents for Japan, induced and succeeded in inducing complainant to give and deliver and in fact the latter gave and delivered to said accused the total amount of P104,000.00 on the strength of said manifestations and representations, the said accused knowing fully well that the same were false and fraudulent and were only made to obtain as in fact she obtained the total amount of P104,000.00, to the damage and prejudice of herein complainant in the aforementioned total amount of P104,000.00.

'Contrary to law.'

"Accused-[petitioner] Elsa Jose entered a plea of not guilty. At the trial, private complainant Rejie Ramos del Rosario and Yolanda B. Bautista testified for the prosecution. x x x.

"The evidence of the prosecution tends to show that on 24 November 1994, private [respondent] Regie Ramos del Rosario x x x went with her aunt Yolanda B. Bautista to the office of [petitioner] located at 802 Cityland 10, Cityland Tower, Makati. Private [respondent] asked [petitioner] whether she was a travel agent. After answering affirmatively, [petitioner] asked about the nature of private [respondent's] visit to Japan. The latter replied it was a graduation gift from her mother. [Petitioner] told private [respondent] that she [petitioner] was a 'professional travel agent' and would assist her in going to Japan, as the former had 'several connection(s) at the Japanese Embassy.' [Petitioner] specifically informed private [respondent] she

could help in the processing of private [respondent's] passport, visa and round trip [ticket].

"On 13 December 1994, private [respondent] again with her aunt went back to [petitioner's] office. As agreed upon, private [respondent] gave [petitioner] P30,000.00 'as initial payment for her services.' A document of even date was signed by [petitioner] and aunt of private [respondent]. [Petitioner] told private [respondent] that she could use the name Rejie Antonio Ramos in her passport.

"Responding to a phone call of [petitioner], private [respondent] and her aunt returned again to [petitioner's] office on 29 December 1994 with P17,000.00 on hand. [Petitioner] assured them that the visa would be obtained soon and the P17,000.00 was in payment of the round trip [ticket]. [Petitioner] explained that 'the airfare ticket is a pre-requisite in trying to secure visa at the Japanese Embassy.' With that [statement], the P17,000.00 was handed to [petitioner]. Another document dated that same day, 29 December 1994, was signed by [petitioner] and Yolanda R. Bautista.

"On 30 March 1995, complying with another telephone call, private [respondent], her aunt and this time, with her mother Remedios A. Ramos-Nigarra<sup>[5]</sup> went to the office of [petitioner] with P57,000.00 on hand. The three were told that part of the money would be used to expedite the release of the private [respondent]'s visa. They were assured that she would be able to leave for Japan with her mother. Believing [petitioner], the P57,000.00 was given to [petitioner]. A receipt for said amount was signed by [petitioner]. Remedios Ramos, the mother of private [respondent], did not affix her signature because private [respondent's] visa had not been handed to them.

"Thereafter, private [respondent] kept following up her papers with the [petitioner] who insisted on her prior assurances that the visa [would] soon be released. The delay prompted private [respondent]'s mother to leave for Japan without her private [respondent].

"Sometime in January 1985,<sup>[6]</sup> she and her aunt proceeded to the office of [petitioner,] and [were] given a VISA SLIP as proof that the visa had been obtained. Private [respondent] verified the visa with the Japanese Embassy. Unfortunately, she found it to be 'not authentic because it (the visa slip) does not bear any [s]eal of the embassy.

"Private [respondent] informed [petitioner] about it and demanded that the visa, passport and ticket be produced or the money returned. For [petitioner's] failure to do any, a formal demand letter dated 01 December 1995 was sent by the lawyer of private [respondent], but to no avail.

"A certification dated 23 February 1996 issued by the Office of the Municipality of Makati, states, *inter alia*, that:

'This is to certify that based on records on file Ms. ELSA JOSE, and/or CALFARME ENTERPRISE, with business address at Suite 802 Cityland 10, Tower II, [c]orner H. dela Costa and corner Valero Street, City of Makati, has been verified[;] that the said person or business entity did not secure any permit to operate business in this City.

'This certification has been issued upon the request of Atty. Melvyn S. Florencio, for verification and record purposes.'

"On the other hand, the version of the defense is that sometime in November to December 1994, a certain Riza Ramos told [petitioner] that private [respondent] wanted to seek her [petitioner's] assistance in going to Japan. [Petitioner] replied she did not have the time.

"Thereafter, a Japanese supplier called up [petitioner;] that the mother of the private [respondent] requested her to help the private [respondent] get a visa. [Petitioner] answered, 'I will see what I can do. It depends on the circumstances of what documents she has.'

"When private [respondent] and her aunt went to the office of [petitioner] in 805 Cityland 10, Tower II, HB Dela Costa corner Valerio Streets, Makati City, [petitioner] explained to them how busy she was but nevertheless told them she would just assist in getting the documents they needed. [At that] time, the mother of private [respondent] called up [petitioner] that the former was willing to pay 'so much' to the latter for her time. [Petitioner] quoted P90,000.00 or more because she had a lot of other business matters to attend to and her time was also 'very precious.'

"The documents [petitioner] signed on December 13 x x x and 29 x x x, 1994 did not mean that she had misrepresented herself to be a travel or tourist agent. She explained that when she agreed to assist the private [respondent] in securing her passport, round trip ticket and visa, they were together in having those documents processed.

"For her passport, private [respondent] went to the office of [petitioner] bringing x x x her birth certificate and other requisite documents like private [respondent's] affidavit of illegitimacy. [These were] given to [petitioner]. When the passport was issued, a photocopy thereof together with the guaranty letter of private [respondent's] Japanese father<sup>[7]</sup> was filed with the Japanese Embassy.

"Also, the two went to get private [respondent's] round trip ticket and [petitioner] gave it to private [respondent]. The two filed the visa application [at] the Japanese Embassy which sent a letter reply to private [respondent] instructing her to pick up in person the subject visa.

"The document dated 30 March 1996 was prepared and signed when the mother of private [respondent] went to [petitioner's] office. The mother did not sign the document because the visa was not yet there.

"[Petitioner] emphasized that the visa receipt was not really a visa receipt; rather, it was a 'positive response from the Japanese Embassy' directing private [respondent] to present it together with the 'original documents' to the embassy which in return would hand back a [pick-up] receipt. '[T]hat is the only time you can find out whether you are given a visa or not.'"[8]

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

In affirming the trial court, the CA held that the prosecution had established with moral certainty that petitioner was guilty of the crime charged. She had falsely pretended to possess the qualification and the influence of a travel agent. She did so by helping in the processing of private respondent's passport, round-trip ticket and visa -- where none was produced -- and by claiming to have several connections at the Japanese Embassy. The positive assertions of the prosecution witnesses were given greater evidentiary weight than her negative averments.

The appellate court held that the failure of private respondent to get the visa, in spite of having submitted all the required papers, was due to a fake visa slip given by petitioner. Finally, it declared that the document of receipt for the amount of P57,000 was *res ipsa loquitur*. The money should therefore be returned to private respondent.

Hence, this Petition.[9]

### **Issues**

In her Memorandum, petitioner raises the following issues for our consideration:

"I.

"Respondent Court gravely erred in holding that petitioner-accused employed deceit through false pretense and fraudulent representation upon private respondent in obtaining the sum of P104,000.00 on promise to secure her travel papers but failed which is punishable under Article 315, par. 4(2)(a)[.]

"II.

"Respondent Court gravely erred in not acquitting petitioner-accused of the offense charged in the information despite [the] fact that the evidence of the prosecution is utterly insufficient to sustain conviction."

[10]

The foregoing points raised by petitioner boil down to only one main issue: whether there was deceit.

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

The Petition has no merit.

### **Main Issue: Presence of Deceit**