

SECOND DIVISION

[G.R. No. 138090, November 11, 2004]

**ELIZA PABLO Y MARTIN, FELOMINA JACOB Y MIRANDA, AND
VICTORIA ROBERTO Y LIMMIPAO, PETITIONERS, VS. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

DECISION

AUSTRIA-MARTINEZ, J.:

Before us for review is the decision^[1] of the Court of Appeals promulgated on March 19, 1999, which affirmed *in toto* the judgment of the Regional Trial Court of Baguio City (Branch 5), convicting petitioners Eliza Pablo and Felomina Jacobe together with accused Victoria Roberto of the crime of Estafa.

Petitioners Eliza and Felomina together with accused Victoria were charged in the Information, to wit:

That on or about the 1st day of February, 1993, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, by means of deceit and misrepresentations, did then and there willfully, unlawfully and feloniously defraud one EVANGELINE BATES y YONGA-AN, in the total amount of P330,000.00, in the following manner, to wit: the said accused induced complainant to deliver to them the amount of P330,000.00 by convincing the complainant that the money will be used to pay the back taxes and defray the expenses for the processing of a land which the accused claimed they are working on to be titled and thereafter subdivide among themselves individually, and the complainant, misled by the representations of the accused delivered to them the amount of P330,000.00, which said accused received and thereafter misappropriated, misapplied and converted the amount to their own personal use and benefit and in spite of demands from them to return the amount upon discovery of the deceit, the accused failed to do so to the damage and prejudice of EVANGELINE BATES y YONGA-AN in the amount of THREE HUNDRED THIRTY THOUSAND (P330,000.00) PESOS, Philippine Currency.

CONTRARY TO LAW.^[2]

Upon arraignment, petitioners Eliza and Felomina together with accused Victoria pleaded not guilty. Trial ensued thereafter. During the presentation of defense evidence, accused Victoria jumped bail.^[3]

The facts of the case as found by the trial court and adopted by the appellate court, are as follows:

The complainant Evangeline Bates gave evidence to the effect that in the last week of January 1993, the three accused approached her. Eliza, her townmate at Tadian, Mt. Province, introduced Victoria and Felomina to her. The three convinced her to contribute P330,000.00 as her share in the payment of the back taxes due on a parcel of land owned by the late Pulmano Molintas and located at Gibraltar Road, Baguio City, and once the title is validated she will be assigned a 2,500-square meter portion of the land. Because Eliza is her townmate and since Victoria assured her that her son is married to a daughter of Pulmano, she agreed.

Thus, starting January 27, 1993, at the Dainty Restaurant on Session Road, Evangeline gave P30,000.00 to Victoria (Exhibit "A"); P100,000.00 on February 1, 1993 (Exhibit "B"); and P202,000.00 on February 9, 1993 (Exhibit "C"). On all these occasions Eliza and Felomina were present and signed as witnesses the receipts issued by Victoria.

Evangeline gave more than P330,000.00, or the total amount of P332,000.00, because the three accused represented to her that they needed expenses in following up the papers of the land. In fact, on January 21, 1993, she gave Eliza another P1,000.00 for the three accused's expenses in going to San Fabian, Pangasinan (Exhibit "E"). On February 6, 1993, she again gave another P9,000.00 to Engr. Orlando Figuerres for survey services and plans (Exhibit "D"). But under date of February 26, 1993, Victoria, with Eliza and Felomina as guarantors and witnesses, acknowledged receipt from Evangeline of the total amount of P337,150.00 only for the payment of back taxes and validation of the title of Pulmano Molintas with the express obligation that should there be a failure to pay the said back taxes and validation of title, the amount shall be returned to Evangeline; otherwise, the title shall be delivered to her (Exhibit "I" or "5").

Subsequently, Evangeline found out that instead of paying for the back taxes and validation of the property, the three accused divided the money among themselves as follows: Victoria – P176,380.00 (Exhibit "H" or "4"); Eliza – P79,380.00 (Exhibit "F" or "2"); and Felomina – P81,380.00 (Exhibit "G" or "3").

Evangeline demanded the return of her money and the three accused executed their respective promissory notes (Id.) to pay the amount each one had misappropriated at the end of June 1993. Up to the present, however, Evangeline has not yet been paid.

The accused Victoria Roberto partially testified on direct examination and then she jumped bail and has not since appeared to continue her testimony and, more importantly, to submit herself to cross-examination. Hence, at the instance of the prosecution, her partial testimony was stricken off the record.

With this development, the other accused, Eliza Pablo and Felomina Jacobe, alleged that it was Victoria who had conceived of the venture regarding the land of the late Pulmano Molintas and she invited them to join her. In turn, it was Eliza who brought Evangeline Bates into the

picture.

Eliza claimed that they gave the money that came from Evangeline, together with their own money, to a certain Romeo Alcantara in Manila who is supposedly the engineer of Molintas. However, Eliza did not say how much of her own money did she give to Alcantara. On the other hand, Felomina averred that she agreed to contribute P200,000.00 and already gave Victoria P40,000.00 but the latter issued her no receipt.

In any event, when Evangeline backed out from the deal, all of them – Victoria, Eliza and Felomina – executed their respective promissory notes to return the former's money (Exhibits "2" or "B", "3" or "G" and "4" or "H"). Admittedly, they have not yet paid Evangeline.

The defraudation of Evangeline by the three accused is very evident even from the testimonies given by Eliza and Felomina. They made her believe that they needed her contribution of P330,000.00 to pay the back taxes and validation of a parcel of land belonging to the late Pulmano Molintas, whose daughter is married to a son of Victoria, and, in return, she will be given 2,500-square meter portion of the land; otherwise her money will be given back. However, once she gave her contribution, and more, the accused did not pay any taxes nor undertake any validation work on Pulmano's supposed title. In fact, there is even no title in the name of Pulmano Molintas that could be validated. What the defense presented is a tax declaration (Exhibit "10") in the name of Daisy Pacnos, wife of Molintas, which is not a title, much less capable of validation. Moreover, it is indicated on the tax declaration that the original tax declaration is in the name of a certain Acyay. Accordingly, the declaration in the name of Daisy Pacnos is of doubtful validity.

What the accused did was to divide Evangeline's money among themselves. Their yarn that they gave the money to a certain Romeo Alcantara is an undisguised lie. For they do not even have any receipt to show for it even as the amount runs to hundreds of thousands of pesos.

[4]

On the basis thereof, the trial court rendered judgment, the dispositive portion of which reads, as follows:

WHEREFORE, the Court finds and declares the accused ELIZA PABLO y MARTIN, VICTORIA ROBERTO y LIMMIPAO and FELOMINA JACOB E y MIRANDA guilty beyond reasonable doubt of the crime of estafa as charged and hereby sentences EACH of them to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to TWENTY (20) YEARS of reclusion temporal, as maximum; to indemnify the offended party, Evangeline Bates, in the following amounts; P79,380.00 to be paid by Eliza Pablo y Martin, P176,380.00 by Victoria Roberto y Limmipao and P81,380.00 by Felomina Jacobe y Miranda, all amounts to bear interest at the legal rate from December 6, 1993, the date of the filing of the Information, until fully paid; and to pay their proportionate share in the costs.