

FIRST DIVISION

[G.R. No. 119858, April 29, 2003]

**EDWARD C. ONG, PETITIONER, VS. THE COURT OF APPEALS AND
THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

Petitioner Edward C. Ong ("petitioner") filed this petition for review on certiorari^[1] to nullify the Decision^[2] dated 27 October 1994 of the Court of Appeals in CA-G.R. C.R. No. 14031, and its Resolution^[3] dated 18 April 1995, denying petitioner's motion for reconsideration. The assailed Decision affirmed *in toto* petitioner's conviction^[4] by the Regional Trial Court of Manila, Branch 35,^[5] on two counts of *estafa* for violation of the Trust Receipts Law,^[6] as follows:

WHEREFORE, judgment is rendered: (1) pronouncing accused EDWARD C. ONG guilty beyond reasonable doubt on two counts, as principal on both counts, of ESTAFA defined under No. 1 (b) of Article 315 of the Revised Penal Code in relation to Section 13 of Presidential Decree No. 115, and penalized under the 1st paragraph of the same Article 315, and sentenced said accused in each count to TEN (10) YEARS of prision mayor, as minimum, to TWENTY (20) YEARS of reclusion temporal, as maximum;

(2) ACQUITTING accused BENITO ONG of the crime charged against him, his guilt thereof not having been established by the People beyond reasonable doubt;

(3) Ordering accused Edward C. Ong to pay private complainant Solid Bank Corporation the aggregate sum of P2,976,576.37 as reparation for the damages said accused caused to the private complainant, plus the interest thereon at the legal rate and the penalty of 1% per month, both interest and penalty computed from July 15, 1991, until the principal obligation is fully paid;

(4) Ordering Benito Ong to pay, jointly and severally with Edward C. Ong, the private complainant the legal interest and the penalty of 1% per month due and accruing on the unpaid amount of P1,449,395.71, still owing to the private offended under the trust receipt Exhibit C, computed from July 15, 1991, until the said unpaid obligation is fully paid;

(5) Ordering accused Edward C. Ong to pay the costs of these two actions.

SO ORDERED.^[7]

The Charge

Assistant City Prosecutor Dina P. Teves of the City of Manila charged petitioner and Benito Ong with two counts of *estafa* under separate Informations dated 11 October 1991.

In Criminal Case No. 92-101989, the Information indicts petitioner and Benito Ong of the crime of *estafa* committed as follows:

That on or about July 23, 1990, in the City of Manila, Philippines, the said accused, representing ARMAGRI International Corporation, conspiring and confederating together did then and there willfully, unlawfully and feloniously defraud the SOLIDBANK Corporation represented by its Accountant, DEMETRIO LAZARO, a corporation duly organized and existing under the laws of the Philippines located at Juan Luna Street, Binondo, this City, in the following manner, to wit: the said accused received in trust from said SOLIDBANK Corporation the following, to wit:

10,000 bags of urea

valued at P2,050,000.00 specified in a Trust Receipt Agreement and covered by a Letter of Credit No. DOM GD 90-009 in favor of the Fertiphil Corporation; under the express obligation on the part of the said accused to account for said goods to Solidbank Corporation and/or remit the proceeds of the sale thereof within the period specified in the Agreement or return the goods, if unsold immediately or upon demand; but said accused, once in possession of said goods, far from complying with the aforesaid obligation failed and refused and still fails and refuses to do so despite repeated demands made upon him to that effect and with intent to defraud, willfully, unlawfully and feloniously misapplied, misappropriated and converted the same or the value thereof to his own personal use and benefit, to the damage and prejudice of the said Solidbank Corporation in the aforesaid amount of P2,050,000.00 Philippine Currency.

Contrary to law.

In Criminal Case No. 92-101990, the Information likewise charges petitioner of the crime of *estafa* committed as follows:

That on or about July 6, 1990, in the City of Manila, Philippines, the said accused, representing ARMAGRI International Corporation, did then and there willfully, unlawfully and feloniously defraud the SOLIDBANK Corporation represented by its Accountant, DEMETRIO LAZARO, a corporation duly organized and existing under the laws of the Philippines located at Juan Luna Street, Binondo, this City, in the following manner, to wit: the said accused received in trust from said SOLIDBANK Corporation the following goods, to wit:

125 pcs. Rear diff. assy RNZO 49"

50 pcs. Front & Rear diff assy. Isuzu Elof
85 units 1-Beam assy. Isuzu Spz

all valued at P2,532,500.00 specified in a Trust Receipt Agreement and covered by a Domestic Letter of Credit No. DOM GD 90-006 in favor of the Metropole Industrial Sales with address at P.O. Box AC 219, Quezon City; under the express obligation on the part of the said accused to account for said goods to Solidbank Corporation and/or remit the proceeds of the sale thereof within the period specified in the Agreement or return the goods, if unsold immediately or upon demand; but said accused, once in possession of said goods, far from complying with the aforesaid obligation failed and refused and still fails and refuses to do so despite repeated demands made upon him to that effect and with intent to defraud, willfully, unlawfully and feloniously misapplied, misappropriated and converted the same or the value thereof to his own personal use and benefit, to the damage and prejudice of the said Solidbank Corporation in the aforesaid amount of P2,532,500.00 Philippine Currency.

Contrary to law.

Arraignment and Plea

With the assistance of counsel, petitioner and Benito Ong both pleaded not guilty when arraigned. Thereafter, trial ensued.

Version of the Prosecution

The prosecution's evidence disclosed that on 22 June 1990, petitioner, representing ARMAGRI International Corporation^[8] ("ARMAGRI"), applied for a letter of credit for P2,532,500.00 with SOLIDBANK Corporation ("Bank") to finance the purchase of differential assemblies from Metropole Industrial Sales. On 6 July 1990, petitioner, representing ARMAGRI, executed a trust receipt^[9] acknowledging receipt from the Bank of the goods valued at P2,532,500.00.

On 12 July 1990, petitioner and Benito Ong, representing ARMAGRI, applied for another letter of credit for P2,050,000.00 to finance the purchase of merchandise from Fertiphil Corporation. The Bank approved the application, opened the letter of credit and paid to Fertiphil Corporation the amount of P2,050,000.00. On 23 July 1990, petitioner, signing for ARMAGRI, executed another trust receipt^[10] in favor of the Bank acknowledging receipt of the merchandise.

Both trust receipts contained the same stipulations. Under the trust receipts, ARMAGRI undertook to account for the goods held in trust for the Bank, or if the goods are sold, to turn over the proceeds to the Bank. ARMAGRI also undertook the obligation to keep the proceeds in the form of money, bills or receivables as the separate property of the Bank or to return the goods upon demand by the Bank, if not sold. In addition, petitioner executed the following additional undertaking stamped on the dorsal portion of both trust receipts:

I/We jointly and severally agreed to any increase or decrease in the interest rate which may occur after July 1, 1981, when the Central Bank

floated the interest rates, and to pay additionally the penalty of 1% per month until the amount/s or installment/s due and unpaid under the trust receipt on the reverse side hereof is/are fully paid.^[11]

Petitioner signed alone the foregoing additional undertaking in the Trust Receipt for P2,253,500.00, while both petitioner and Benito Ong signed the additional undertaking in the Trust Receipt for P2,050,000.00.

When the trust receipts became due and demandable, ARMAGRI failed to pay or deliver the goods to the Bank despite several demand letters.^[12] Consequently, as of 31 May 1991, the unpaid account under the first trust receipt amounted to P1,527,180.66,^[13] while the unpaid account under the second trust receipt amounted to P1,449,395.71.^[14]

Version of the Defense

After the prosecution rested its case, petitioner and Benito Ong, through counsel, manifested in open court that they were waiving their right to present evidence. The trial court then considered the case submitted for decision.^[15]

The Ruling of the Court of Appeals

Petitioner appealed his conviction to the Court of Appeals. On 27 October 1994, the Court of Appeals affirmed the trial court's decision *in toto*. Petitioner filed a motion for reconsideration but the same was denied by the Court of Appeals in the Resolution dated 18 April 1995.

The Court of Appeals held that although petitioner is neither a director nor an officer of ARMAGRI, he certainly comes within the term "employees or other x x x persons therein responsible for the offense" in Section 13 of the Trust Receipts Law. The Court of Appeals explained as follows:

It is not disputed that appellant transacted with the Solid Bank on behalf of ARMAGRI. This is because the Corporation cannot by itself transact business or sign documents it being an artificial person. It has to accomplish these through its agents. A corporation has a personality distinct and separate from those acting on its behalf. In the fulfillment of its purpose, the corporation by necessity has to employ persons to act on its behalf.

Being a mere artificial person, the law (Section 13, P.D. 115) recognizes the impossibility of imposing the penalty of imprisonment on the corporation itself. For this reason, it is the officers or employees or other persons whom the law holds responsible.^[16]

The Court of Appeals ruled that what made petitioner liable was his failure to account to the entruster Bank what he undertook to perform under the trust receipts. The Court of Appeals held that ARMAGRI, which petitioner represented, could not itself negotiate the execution of the trust receipts, go to the Bank to receive, return or account for the entrusted goods. Based on the representations of petitioner, the Bank accepted the trust receipts and, consequently, expected

petitioner to return or account for the goods entrusted.^[17]

The Court of Appeals also ruled that the prosecution need not prove that petitioner is occupying a position in ARMAGRI in the nature of an officer or similar position to hold him the "person(s) therein responsible for the offense." The Court of Appeals held that petitioner's admission that his participation was merely incidental still makes him fall within the purview of the law as one of the corporation's "employees or other officials or persons therein responsible for the offense." Incidental or not, petitioner was then acting on behalf of ARMAGRI, carrying out the corporation's decision when he signed the trust receipts.

The Court of Appeals further ruled that the prosecution need not prove that petitioner personally received and misappropriated the goods subject of the trust receipts. Evidence of misappropriation is not required under the Trust Receipts Law. To establish the crime of *estafa*, it is sufficient to show failure by the entrustee to turn over the goods or the proceeds of the sale of the goods covered by a trust receipt. Moreover, the bank is not obliged to determine if the goods came into the actual possession of the entrustee. Trust receipts are issued to facilitate the purchase of merchandise. To obligate the bank to examine the fact of actual possession by the entrustee of the goods subject of every trust receipt will greatly impede commercial transactions.

Hence, this petition.

The Issues

Petitioner seeks to reverse his conviction by contending that the Court of Appeals erred:

1. IN RULING THAT, BY THE MERE CIRCUMSTANCE THAT PETITIONER ACTED AS AGENT AND SIGNED FOR THE ENTRUSTEE CORPORATION, PETITIONER WAS NECESSARILY THE ONE RESPONSIBLE FOR THE OFFENSE; AND
2. IN CONVICTING PETITIONER UNDER SPECIFICATIONS NOT ALLEGED IN THE INFORMATION.

The Ruling of the Court

The Court sustains the conviction of petitioner.

First Assigned Error: Petitioner comes within the purview of Section 13 of the Trust Receipts Law.

Petitioner contends that the Court of Appeals erred in finding him liable for the default of ARMAGRI, arguing that in signing the trust receipts, he merely acted as an agent of ARMAGRI. Petitioner asserts that nowhere in the trust receipts did he assume personal responsibility for the undertakings of ARMAGRI which was the entrustee.

Petitioner's arguments fail to persuade us.