

SECOND DIVISION

[G.R. No. 106671, March 30, 2000]

**HARRY TANZO, PETITIONER, VS. HON. FRANKLIN M. DRILON, IN
HIS CAPACITY AS SECRETARY OF JUSTICE, MANUEL J. SALAZAR
AND MARIO J. SALAZAR, RESPONDENTS.**

D E C I S I O N

DE LEON, JR., J.:

Before us is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking to annul and set aside the April 10, 1992 Resolution of public respondent Secretary of Justice, as well as the latter's August 6, 1992 Resolution denying the petitioner's motion for reconsideration. The assailed Resolutions upheld the Quezon City Prosecutor's dismissal of the criminal complaint for estafa filed by petitioner Harry Tanzo against private respondents Manuel and Mario Salazar.

The facts are:

Private respondents are brothers who were engaged in the business of forwarding and transporting "balikbayan" boxes from California, U.S.A. to Metro Manila, Philippines. Manuel J. Salazar (hereinafter "Manuel") managed the Philippine side *via* MANSAL Forwarders, a business registered in his name with principal office at No. 48 Scout Tobias Street, Quezon City. On the other hand, Mario J. Salazar (hereinafter "Mario") handled the U.S. side of the forwarding business as General Manager of M.J.S. International, Inc., a corporation with principal office at No. 3400 Fletcher Drive, Los Angeles, California, U.S.A.

According to the petitioner, sometime in February of 1989, while he was in Los Angeles, California, U.S.A., Mario tried to convince him to invest some money in the said business. Mario had allegedly represented that petitioner's money will be held in trust and administered by both him and his brother for the exclusive use of their forwarding and transporting business. Petitioner further alleged that Mario promised him a return on his investment equivalent to ten per centum (10%) for one month, at the end of which, his money plus interest earned shall be returned to him.

When petitioner returned to the Philippines, it was Manuel's turn to persuade him to part with his money under the said investment scheme. Eventually convinced by the private respondents' representations and assurances, petitioner agreed to invest the total amount of US \$34,000.00 which he entrusted to his aunt, Liwayway Dee Tanzo, who was residing in the U.S.A. Thus, petitioner issued several personal checks made out to Liwayway Dee Tanzo,^[1] or to "Calfed"^[2], or payable to cash^[3], to wit:

**California Federal Savings and
Loan Asso.
Check Numbers**

Date of Check

Amount

319	August 04, 1989	US\$ 5,000.00
320	August 09, 1989	9,000.00
321	August 09, 1989	9,000.00
322	August 08, 1989	2,000.00
323	August 10,1989	4,000.00
324	August 14, 1989	<u>.5,000.00</u>
Total		US\$34,000.00 ^[4]

Except for California Federal Check No. 322 which was encashed by Mario himself, private respondents received the proceeds of the above checks through Liwayway Dee Tanzo on several occasions in August 1989.

Meanwhile, Mario encountered serious liquidity problems^[5] that prompted him to petition the U.S. Bankruptcy Court for a release from his debts on September 27, 1990. He was ordered "released from all dischargeable debts" by the said court on January 25, 1991.^[6]

Upon the expiration of the thirty (30) day investment period, petitioner demanded from Mario in the States and Manuel in Quezon City proper accounting of his financial investment and/or the return of his capital plus interest earned. At the outset, private respondents avoided their obligation to petitioner by making various excuses but after persistent demands by the latter, Manuel finally admitted that their shipments had encountered some problems with the Bureau of Customs. Thus, on January 29, 1990, Manuel executed a letter authorizing the petitioner to withdraw documents to assist in the release of their shipments from the Bureau of Customs. However, when petitioner attempted to secure the release of the "balikbayan" boxes from the Bureau of Customs, he discovered that the same had actually contained smuggled goods and were accordingly seized and forfeited in favor of the government.

When private respondents continued to ignore petitioner's demand for the return of his money, the latter filed, on June 31, 1991, a complaint-affidavit for estafa against private respondents before the Office of the Quezon City Prosecutor (hereinafter "prosecutor"). In a resolution dated September 4, 1991 , the prosecutor dismissed the said complaint on the ground that "[t]he Quezon City Prosecutor's Office has no territorial jurisdiction over the offense charged as it was committed not in Quezon City, Philippines."^[7] Petitioner's motion for reconsideration of the said resolution was denied by the prosecutor on the same ground.^[8]

Petitioner then filed a petition for review of the dismissal of his complaint for estafa against private respondents with then Secretary of Justice, Franklin M. Drilon. On April 10, 1992, Acting Secretary of Justice, Eduardo G. Montenegro dismissed the said petition for review in a resolution which reads:

X X X.....X X X.....X X X

An evaluation of the records of the case disclosed that the incident complained of took place in the United States, and under Article 2 of the Revised Penal Code, our courts have no jurisdiction over offenses committed outside the territory of the Philippines. While the rule allows certain exceptions, the facts do not show that the case falls within any of said exceptions. Hence, we are convinced, and hereby hold, that there is no cogent reason to disturb the findings of the Quezon City Prosecutor's Office in the questioned resolution.

ACCORDINGLY, your petition is dismissed for lack of merit.^[9]

Dissatisfied, petitioner sought a reconsideration of the above resolution. However, the Secretary of Justice denied petitioner's motion for reconsideration, and stated In a resolution dated August 6, 1992 that:

X X X.....X X X.....X X X

After a careful analysis of the issues raised in your motion and a re-evaluation of the evidence on record, we find no valid reason to justify a reversal of our previous resolution.

Aside from your bare allegations that there was a trust agreement between you and the respondents, and that deceit and misappropriation which are the important elements of estafa were committed by them in the Philippines, you did not present any concrete or convincing evidence to support the same. On the contrary, your own evidence shows that you transacted with Mario Salazar through your aunt, Liwayway Dee Tanzo. This bolsters the claim of Manuel Salazar that the sums of money received by Mario from Liwayway in Los Angeles, California, U.S.A., were simple loans as shown by the loan contracts executed by them in the said place.

WHEREFORE, your motion for reconsideration is hereby denied.^[10]

Hence, this petition.

Petitioner contends that the Secretary of Justice committed grave abuse of discretion in dismissing the criminal case for estafa against the private respondents on the ground of lack of jurisdiction as the crime charged was actually committed in the United States.^[11]

At the outset, we must point out that the Secretary of Justice dismissed the criminal charges against the respondents not only for lack of jurisdiction but also, and more importantly, because it found petitioner's evidence insufficient to support his charge of estafa against the private respondents. Thus, the immediate issue for the determination of this Court is whether *prima facie* evidence exists that the private respondents had committed the crime of estafa and should be held for trial. After

all, a finding that petitioner's complaint for estafa is not supported by that quantum of evidence necessary to justify the filing of a criminal case in court shall render irrelevant the question of territorial jurisdiction over the offense charged.

A judicious scrutiny of the evidence on record leads us to agree with the Secretary of Justice that the transactions between private respondents, particularly, Mario and the petitioner, were simple loans, and did not constitute a trust agreement, the violation of which would hold the private respondents liable for estafa.

Petitioner failed to present evidence other than his bare assertion that he had invested money in private respondents' business on the basis of a trust agreement. The photocopies of the checks allegedly subject of the trust agreement did more damage than good to petitioner's proposition. None of these checks were issued to either Mario or Manuel and were in fact payable to "Liwayway Dee Tanzo", "Calfed" or "Cash". Moreover, only one of these checks was actually encashed by Mario, the rest by Liwayway Dee Tanzo. On the basis of the foregoing alone, private respondents could have completely denied the existence of their liability to petitioner as neither proof in writing nor witnesses exist to substantiate petitioner's claim of a trust agreement between himself and the private respondents. On the contrary, Manuel does not deny that Mario had indeed received money from the petitioner, *albeit* claiming that the latter's liability thereunder is purely civil in nature for being rooted in a simple loan contract. Manuel offered in evidence copies of the contracts of loan entered into between M.J.S. International and Liwayway Dee Tanzo.^[12] We agree with the petitioner that these loan contracts do not by themselves prove that his agreement with the private respondents was also a loan. As correctly pointed out by the petitioner, he is not a party to these contracts that clearly stipulate "Liwayway Dee Tanzo" as creditor and "M.J.S. International represented by its General Manager, Mario J. Salazar" as debtor.

These loan contracts may, however, be given evidentiary value in support of Manuel's claim that the agreement with petitioner was no different from the loan contracts with Liwayway Dee Tanzo. Under the rule of *res inter alios acta*, evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.^[13]

Elaborating thus, we have held that:

[C]ollateral facts may be received as evidence under exceptional circumstances, as when there is a rational similarity or resemblance between the conditions giving rise to the fact offered and the circumstances surrounding the issue or fact to be proved. Evidence of similar acts may frequently become relevant, especially in actions based on fraud and deceit, because it sheds light on the state of mind or knowledge of a person; it provides insight into such person's motive or intent; it uncovers a scheme, design or plan; or it reveals a mistake.^[14] (Underscoring supplied).

The series of transactions between M.J.S. International and Liwayway Dee Tanzo