

THIRD DIVISION

[G.R. No. 115054-66, September 12, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICENTE MENIL, JR., ACCUSED-APPELLANT.**

DECISION

GONZAGA-REYES, J.:

On appeal is the joint decision^[1] dated 16 August 1993, of the Regional Trial Court of Surigao City, Branch 30, in Criminal Case Nos. 2948, 2956, 3000, 3001, 3013, 3020, 3021, 3022, 3026, 3028, 3052, 3053, 3054, and 3058, convicting accused-appellant Vicente "Boy" Menil, Jr. of one (1) count of large scale swindling and thirteen (13) counts of estafa.

The facts of the case are as follows:

Vicente Menil, Jr. and his wife, Adrian B. Menil, were the proprietors of a business operating under the name ABM Appliance and Upholstery with offices at the Denso Building, Capitol Road, Surigao City. On July 15, 1989, they, through ushers and sales executives, began soliciting investments from the general public in Surigao City and its neighboring towns. They assured would-be investors that their money would be multiplied ten-fold after fifteen (15) calendar days. In other words, if a person invested P100.00, they claimed that after fifteen (15) calendar days the investor would get the amount of P1,000.00 in return. Each investor may invest a maximum amount of P1000.00 for which they were reportedly assured a return of P10,000.00. With respect to their ushers and sales executives, they were given a 10% commission from the total amounts they remitted to the business.

The people who invested in the business were issued coupons which merely indicated the date of entry, the due date of the investment, the amount given, the amount to be received, the name and address of the investor and the name of the sales executive. Sales executives appointed by accused-appellant were given these coupons which they, in turn, gave to the people they solicited from as proof of their investment. The sales executives likewise wrote down on a piece of yellow pad paper the details of the investments they received during a particular day. These sales executives were required to remit the investments they collected daily at the offices of ABM Appliance and Upholstery by presenting the money and the yellow pad containing the names of the investors. A representative of ABM Appliance and Upholstery then received the money and signed the yellow pad paper. The sales executives were then immediately given their 10% commission from the amount remitted. When the investments matured, a lump sum representing the total return of the investments were given to the sales executives who were given the task of distributing them to the investors they dealt with.

Initially, the operation started with a few investors who invested small amounts. On

the day of the start of the operations, for example, less than P200.00 were invested at their offices. Gradually, the amounts invested and the number of depositors increased. On June 30, 1989 alone, the business was able to attract more than 200 investors and the total amount of investments they received was more than P40,000.00. Because of the small amounts initially involved, accused-appellant and his wife were able to pay the returns on the investments as they fell due.

Sometime during the first week of August, 1989, accused-appellant and his wife, apparently to clothe their operations with legitimacy, caused the incorporation of their business, under the name ABM Development Center, Inc. with the Securities and Exchange Commission. As registered under S.E.C. Reg. No. 167274,^[2] the ABM Development Center, Inc. was a non-stock corporation with twelve (12) incorporators and trustees, including accused-appellant Vicente Menil, Jr. and his wife, Adriana B. Menil. Adriana B. Menil was likewise appointed as the treasurer of the non-stock corporation. The corporation had a total capitalization of P12,000.00 and its purposes, as stated in its Articles of Incorporation,^[3] are as follows:

- "1. To assist in the total development of community members morally, physically, educationally and economically and socially towards their present and future progress;
2. To operate, coordinate and/or organize community development centers;
3. To make or coordinate in the making of studies and researches;
4. To solicit, receive, channel and/or distribute donations, economic aids, grants, investments in money or in kind;
5. To help train community members in newly acquired knowledge, modern trends and techniques;
6. To promote brotherhood, fellowship and unity among ourselves; and
7. To negotiate, represent, and deal with government and other agencies for the benefit and in behalf of the members as well as for the community."

On August 15, 1989, accused-appellant and his wife held a meeting with the sales executives and ushers of the ABM Development Center, Inc. at the Provincial Convention Center. At this meeting, accused-appellant informed the sales executives that the business of ABM Development Center, Inc. was proceeding normally and that investments were coming in. He advised the sales executives however that beginning that date, all investments accepted by the business would only have returns of 1:7 which investors will receive after fifteen (15) working days, excluding weekends and holidays. As such, if a person gave P100.00, his investment will mature only after fifteen (15) working days and he will receive only P700.00. This change of policy was contained in a Memorandum dated August 24, 1989.^[4]

After this August 15, 1989 meeting, the sales executives continued accepting investments from the general public and the offices of accused-appellant kept on accepting the remittances of the sales executives. By this time, daily investments amounting to millions of pesos were pouring into the offices of ABM Development

Center, Inc. and payments of the returns became delayed. Allegedly due to the delay in the counting of the money for release to investors, the payments which were set for release on August 28, 1989 were completely paid only on September 18, 1989.

On September 19, 1989, the ABM Development Center, Inc. stopped releasing payments. The sales investors went to the offices of ABM Development Center, Inc. to inquire about the release of payments but there was no one around to address their complaints. The whereabouts of accused-appellant and his wife was also unknown.

On October 10, 1989, accused-appellant and his wife made an announcement over the radio that payments were forthcoming and that the investors should have no cause for alarm. They also repeated their announcement on television. Despite these assurances and despite repeated demands made by the investors, accused-appellant released no further payments and neither did he refund any investment remitted to him. Accused-appellant and his wife went into hiding in Davao City but eventually they were arrested by police authorities led by a certain Colonel Panchito.

Consequently, a case for large scale swindling was filed by the City Prosecutor of Surigao City against the accused-appellant and his wife. Additionally, twenty cases for estafa were filed against accused-appellant and his wife by the Provincial Prosecutor's Office. Of these twenty (20) cases, seven (7) were provisionally dismissed on October 21, 1991 for failure to prosecute.

In Criminal Case No. 2948, the information^[5] charging accused-appellant and his wife with the crime of large scale swindling was filed on December 14, 1989. The information in this case reads as follows:

"That in or about the month of August, 1989, and/or sometime prior or subsequent thereto, in the city of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously defraud thousands of investors using as instruments innocent and defrauded sales executives and/or ushers, in the following manner, to wit: the above-named accused, pretending to possess credit, property and a secret formula in their pyramiding business scheme, enticed the general public to invest with ABM Development Center, Incorporated, thru false manifestations and representations that the amount they would invest would earn seven hundred percent (700%) after fifteen (15) working days from date of investment, by which enticing offer, the general public was persuaded to invest large sums of money thru the innocent sales executives and/or ushers, amounting to more than ONE HUNDRED THOUSAND PESOS (P100,000.00), Philippine Currency, which were duly remitted to and received by the accused, doing business under the name and style ABM Development Center, Incorporated, which was the front of their illegal transactions, but the accused once in the possession of the amounts invested and far from complying with their aforesaid obligation, with deceit aforethought, misapplied, misappropriated, converted and absconded the amounts received as investments to their own personal use and benefit and despite repeated demands made for the payment of

the benefits of the investments and/or the return of the amounts invested, said accused failed and refused, and still fail and refuse to do so, to the damage and prejudice of the investors in such sums as may be proven and such other damages as may be allowed by law.

Contrary to Article 315 of the Revised Penal Code, in relation to paragraph 2 of Presidential Decree No. 1689.”

In Criminal Case No. 2956, accused appellant and his wife were charged with violation of Article 315 of the Revised Penal Code. The information in this case reads as follows:

“That from July 26, 1989 to September 13, 1989, at Placer, Surigao del Norte, Philippines, xxx, the above-named accused xxx with deliberate criminal intent to defraud the general public by pretending to have a huge amount as sinking fund but later on was found out to be a pyramiding scam, accused Vicente Menil, Jr., being the Manager, and his wife accused Adriana B. Menil, being the Treasurer of their association known as ABM Development Center, Inc., xxx operating on funds solicited from the general public in the form of investments with the enticing return of 10 times then later reduced to 7 times the investment after due date and having successfully solicited thru their sales executive, Zohar Mondaya, the total amount of P610,046.00, did then and there xxx misappropriate xxx the said amount xxx remitted to them subject to the condition that xxx after the lapse of 15 working days from remittance, said investment would be returned in seven folds to the investors, but xxx repeated demands made xxx said accused failed and refused to pay or give as agreed upon by them xxx to the damage and prejudice of the investors in the said amount P610,046.00 xxx resulting to more financial difficulties of the general public and therefore constitutes economic sabotage that threatens the stability of the nation.

Contrary to Art. 315 of the Revised Penal Code.” [6]

Similarly worded informations were filed against the accused-appellant and his wife in Criminal Case Nos. 3000, 3001, 3013, 3020, 3021, 3022, 3026, 3028, 3052, 3053, 3054, and 3058. These informations likewise charged accused-appellant and his wife with violations of Article 315 of the Revised Penal Code and differed only in the amount allegedly swindled, the names of the complainants and the sales executives, and the time and place where the alleged swindling occurred.

Accused-appellant and his wife, upon being arraigned on April 4, 1990, pleaded not guilty to all the charges leveled against them. [7]

In the case for large scale swindling and in the thirteen (13) cases for estafa, a pre-trial was conducted. The pre-trial order [8] in Criminal Case No. 2948, for large scale swindling, shows the following stipulations:

1. That the accused Vicente Menil, Jr. and Adriana Menil are the General Manager and Treasurer, respectively of the ABM Appliances and Upholstery with Assurances and Privileges which later on changed to ABM Development

Center;

2. That the ABM Development Center was operating business in Surigao City, particularly at the Capitol Road; that it was duly registered with the Securities and Exchange Commission and was duly issued a Mayor's Permit to operate the same;
3. That the ABM Appliances and Upholstery with Assurances and Privileges, and later ABM Development Center were merged into one, under one sanitary permit to operate as one entity;
4. That on August 24, 1989, Vicente Menil, Jr., the General Manager, issued a Memorandum to all investors thereof regarding the decrease of the proceeds of the investment from one thousand percent to 700% so that the P10.00 investment will get only the proceeds of P70.00; and,
5. That what remain to be proved in the trial on the merits will be limited only to the names of the sales executives/investors and amounts of investment.

For the thirteen estafa cases, the following facts were stipulated:

1. That the accused operated the ABM Appliance and Upholstery with Assurance Privileges and ABM Development Center, Inc., the latter being duly registered with the Securities and Exchange Commission;
2. That accused Vicente Menil, as General Manager, and Adriana Menil, as Treasurer, operating through the sales executives who solicited/received investments from the general public and remitted to the corporation;
3. That the listed sales executives and the amounts claimed remitted and received are qualifiedly admitted; and
4. That the operation of ABM stopped on September 18, 1989.^[9]

Thereafter, trial on the merits in the fourteen (14) cases commenced.

During the trial of the case, accused Adrian B. Menil, the wife of accused-appellant, died of tuberculosis on November 5, 1992 and accordingly, the trial court dismissed the cases as against her in an Order dated November 12, 1992.^[10]

In all the fourteen (14) cases before the trial court, the documentary evidence for the prosecution was similar, consisting mainly of the investment records containing a listing of remittances made by the sales executives/ushers of ABM Appliance and Upholstery and ABM Development Center, Inc. Likewise, the testimonial evidence for the prosecution consisted mainly of the testimonies of the sales executives/ushers of ABM Appliance and Upholstery and ABM Development Center, Inc., who testified on the mode of operations, the respective amounts which they solicited from the public, and the places where they solicited^[11]

In Criminal Case No. 2948, for violation of P.D. 1689, due to the large number of witnesses listed in the complaint and information (91 in all), the prosecution and defense agreed to limit the number of witnesses to only four (4) sales executives.