

## THIRD DIVISION

[ G.R. No. 105213, December 04, 1996 ]

**ERLINDA DE LA CRUZ, PETITIONER, VS. COURT OF APPEALS AND  
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**PANGANIBAN, J.:**

Denial of the instant appeal is appropriate in light of the well-entrenched doctrine upholding factual findings of the trial court when affirmed by the Court of Appeals. This Court likewise takes occasion to reiterate the computation of the indeterminate penalty to be applied in estafa cases where the amount defrauded exceeds P22,000.00.

This petition for review on certiorari seeks a review and reversal of the February 28, 1992 Decision<sup>[1]</sup> of the respondent Court of Appeals<sup>[2]</sup> which affirmed petitioner's conviction for estafa under Article 315, paragraph 2(a) of the Revised Penal Code. Insisting on her innocence, petitioner claims that the aforesaid Decision is "contrary to the rules of evidence and established jurisprudence".<sup>[3]</sup>

#### The Facts

On February 21, 1990, the City Prosecutor of Quezon City filed an Information charging petitioner with the crime of estafa, thus:<sup>[4]</sup>

"That in or about and during the period comprised from August 28, 1989, to September 4, 1989, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent of gain, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, did then and there wilfully, unlawfully and feloniously defraud one VICTOR V. BELLOSILLO, in the following manner, to wit: on the dates and place aforementioned, said accused by means of false manifestations and fraudulent representations to the effect that she had the power, influence and capacity to secure and effect the release of five (5) container vans of used engines of different brands with the Bureau of Customs, knowing said manifestations and representations to be false and fraudulent, induced the said complainant to give and deliver, as in fact, the latter gave and delivered to said accused the total sum of P715,000.00, Philippine Currency, as payment for the demurrage and storage dues for the five (5) container vans of used engines, which amount once in possession and far from complying with her aforesaid obligation, despite repeated demands therefor, with intent to defraud, the said accused misapplied, misappropriated and converted the same to her own personal use and benefits, to the damage and prejudice of said offended party in

the total amount aforementioned and in such amount as may be awarded to him under the provisions of the New Civil Code."

The respondent Court adopted the statement of facts prepared by the trial court,<sup>[5]</sup> as follows:<sup>[6]</sup>

"Sometime in August, 1989, the private complainant was introduced to the accused by Johny Cruz and Gabby Viudez at the Maxim's Restaurant located at the corner of T.M. Kalaw Street and Roxas Boulevard, Manila.

This meeting resulted into the accused proposing to the private complainant a business transaction which was reduced into an Agreement of Undertaking dated August 16, 1989, between them, whereby the accused, as seller, undertook to cause the release from the Bureau of Customs of 832 pieces of used gasoline engines and spare parts which the private complainant, as buyer, agreed to pay for P700,000.00. (Exh. 1).

As agreed therein, after the accused explained to the private complainant the procedure of the transaction, the private complainant paid to the accused the amount of P300,000.00, upon the signing of the agreement on August 16, 1989, the balance of P400,000.00, payable within three (3) day(s) after the date of the completion of the delivery of the merchandise. (Exh. 1-E).

The next day, the accused and the private complainant met at Gate 1 of the South Harbor to facilitate the release of the merchandise. Because the merchandise cannot be released for lack of certain signatures, the accused did not pay the storage fees to the 7-R Port Services, Inc. at the Port of Manila, and she, consequently, told the private complainant to wait for three (3) days. But the private complainant cannot wait. Consequently, the Agreement of Undertaking was not consummated.

So, the accused, showing the bill of lading to the private complainant, propositioned (to) him that she will, instead, work for the release of used engines contained in five (5) container vans which she pointed to him.

The private complainant told the accused that he will think about it.

Later, however, the accused was able to convince the private complainant after telling him that an importer who owns the five (5) vans will pay her the amount of P1.8 million after their release which she can easily do so as a custom's broker considering that she has influence and connections in the Bureau of Customs having been connected there as a representative of a broker. She told the private complainant that if he will fund the payment of the demurrage and storage fees of the five (5) container vans, his money will be doubled.

For this purpose, the accused gave to the private complainant a calling card wherein it is stated that she is the General Manager of the E.B. Gardiola Customs Brokerage, the licensed broker.

Because of these representations made by the accused to the private complainant, the latter agreed to fund the release of the five (5) container vans containing used engines.

As a consequence, the private complainant, in addition to the amount of P300,000.00 which was already given by the private complainant to the accused because of the Agreement of Undertaking, gave an additional amount of P100,000.00 to the accused at Santie's Restaurant at Timog Avenue, Quezon City, for which the accused signed a receipt for P400,000.00 on August 28, 1989, as having received the said amount from the private complainant as expenses for the payment of demurrage and storage fees for the release of five (5) container vans of used gasoline engines from the Bureau of Customs, to be delivered on or before that week. (Exh. A, Exh. 2).

The accused failed, however, to deliver the used engines as he (sic) committed. And, when the private complainant asked her why, the accused said that the transaction was not yet facilitated at the Bureau of Customs.

Meanwhile, the accused also interested the private complainant for the release of a Mercedes Benz car which she said can be done together with the five (5) container vans of used engines, if the additional amount of P140,000.00 is given by the private complainant.

The private complainant raised this amount by pawning certain valuables, for which the accused signed a receipt on August 31, 1989, for P140,000.00, as expenses for demurrage and storage fees for the release of the Mercedes Benz car. (Exh. B, Exh. 4).

But, still the Mercedes Benz car and the five (5) container vans of used engines were not delivered by the accused, on the excuse that there was still lacking the amount of P175,000.00 for demurrage and storage fees.

The private complainant also gave this amount to the accused who signed a receipt for P175,000.00, on September 4, 1989, as additional storage fees of the five (5) container vans for used engines. (Exh. C, Exh. 3).

But neither the five (5) container vans of used engines or the Mercedes Benz car was delivered by the accused to the private complainant up to the present, notwithstanding her promises to do so, and in spite of the repeated demands from the private complainant."

The trial court, in its decision dated November 29, 1990, found petitioner guilty:<sup>[7]</sup>

"ACCORDINGLY, judgment is hereby rendered convicting the accused, ERLINDA DE LA CRUZ, of the crime of Estafa, defined and penalized in Article 315, paragraph 2 (a) of the Revised Penal Code, and in accordance therewith, taking into consideration the Indeterminate Sentence Law, there being no mitigating or aggravating circumstances which attended the commission of the offense, the said accused is

sentenced to suffer an indeterminate penalty of imprisonment of from FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* in its medium period, as the minimum, to EIGHT (8) YEARS of *prision mayor* in its minimum period, as the maximum, plus 69 years considering that the amount defrauded by the accused exceeds the sum of P22,000.00, computed at one (1) year for each additional P10,000.00 out of the P693,000.00 excess thereof, but the penalty to be suffered by the accused shall not exceed twenty (20) years; with all the accessory penalties provided for by law; to indemnify private complainant Victor B. Bellosillo the amount of P715,000.00, and to pay the costs."

Petitioner appealed the foregoing judgment of conviction to respondent Court. But finding her allegations superficial, contradicted by the sincere and candid testimony of the complainant and unsupported by the evidence established on record, respondent Court disposed of the appeal as follows:<sup>[8]</sup>

"WHEREFORE, the judgment of conviction herein appealed from is AFFIRMED, and the indeterminate penalty imposed by the lower court on appellant is clarified so as to read:

'From four (4) years and two (2) months of prision correccional as minimum to 20 years of reclusion temporal as maximum.'

The same judgment is AFFIRMED in all other respects, with costs against appellant Erlinda de la Cruz."

Petitioner's motion for reconsideration was denied by respondent Court in two Resolutions dated April 23, 1992 and May 15, 1992.<sup>[9]</sup>

### **The Issues**

The petitions flails the respondent Court for the following errors:<sup>[10]</sup>

- "1. Respondent Court of Appeals erred in holding that accused employed false pretense or influence and connection as a way of defrauding the private complainant.
2. The respondent Court of Appeals erred in holding that the business transaction entered into by the accused with the private complainant was fraudulently designed to damage the latter.
3. Respondent Court of Appeals erred in holding that there was no error in the judgment of the trial court."

In her petition, which she adopted as her memorandum,<sup>[11]</sup> petitioner discusses these alleged errors simultaneously. At bottom, she merely challenges the factual findings of the trial court, as affirmed by the respondent Court of Appeals. In her 3-page "Arguments and Discussions," she claims that the prosecution FAILED to prove its affirmative allegations in the indictment regarding the elements of the crime as well as the attendant circumstances."