

## SECOND DIVISION

[ CA-G.R. CR. No. 35210, March 26, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE. VS.  
ROSARIO BALADJAY, ACCUSED-APPELLANT.**

### DECISION

**GONZALES-SISON, M., J.:**

We resolve the appeal<sup>[1]</sup> of accused-appellant Rosario Baladjay ("appellant") from the Decision<sup>[2]</sup> of the Regional Trial Court ("RTC"), Branch 141, of Makati City, finding appellant guilty beyond reasonable of the crime of estafa under Article 315, paragraph 2 (a) of the Revised Penal Code ("RPC") in relation to Presidential Decree ("P.D.") No. 1689.

The assailed Decision disposed:

"WHEREFORE, finding accused Rosario Baladjay GUILTY of Estafa under Article 315 (2) (a) of the Revised Penal Code in relation to P.D. No. 1689 in Criminal Case No. 09-2114, she is hereby sentenced to suffer the indeterminate penalty of imprisonment from ten (10) years one (*sic*) (1) day of *prision mayor* to sixteen (16) years and one (1) day of *reclusion temporal* and to indemnify the complainant the amount of Php1,000,000.00 representing the money fraudulently obtained from her by the said accused, Php50,000.00 as moral damages and Php50,000.00 as exemplary damages.

As regards Criminal Cases Nos. 09-2115 to 2118, accused Baladjay is ACQUITTED of the crime charged, for failure of the prosecution to prove her guilt beyond reasonable doubt. The claim for indemnification in these cases is dismissed for insufficiency of evidence.

In the meantime, as regards accused Gloria Taniajura and Ronda Karen Rubio who remain at large, the records of these cases are ordered archived to be reinstated upon their apprehension.

SO ORDERED."

The relevant antecedents are as follows:

The Information for Criminal Case No. 9-2114<sup>[3]</sup>, subject of this appeal, alleges:

"That on or about October 23, 2001, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, representing themselves as director, officers, stockholders and/or counselor for Multitel International Holding, Inc, solicited funds from the general public with the intention of carrying out unlawful or illegal act,

transaction, enterprise, or scheme, did then and there, willfully, unlawfully, and feloniously defraud complainant ROSIE LUANSING, by means of false pretenses or fraudulent acts executed prior to or simultaneous with the commission of the fraud to the effect that the investment would earn 4% interest per month, and by means of other deceits of similar import, induced and succeeded in inducing complainants to invest, give and deliver as in fact the latter gave and delivered to said accused the total amount of Php1,000,000.00 as investment, accused knowing fully well that said pretenses and representations are a fraudulent scheme to enable them to obtain as in fact they obtained the total amount of php1,000,000.00 to the damage and prejudice of ROSIE LUANGCO.

#### CONTRARY TO LAW.”

Appellant and her co-accused, Ronda Karen Rubio (“Rubio”) and Gloria Taniajura (“Taniajura”) were also charged with three other Informations for violating the same provision, which are similarly worded except for the amounts, which are as follows: 1) For Criminal Case No. 09-2115, \$15,000.00; 2) For Criminal Case No. 09-2116, \$10,000.00; 3) For Criminal Case No. 09-2117, \$30,000.00; and, 4) For Criminal Case No. 09-2118, Php15,000.00. In these criminal cases, appellant was acquitted.

With respect to Criminal Case No. 09-2114, the complainant, Rosie A. Luansing (“complainant”), alleged in her Affidavit-Complaint<sup>[4]</sup> that she was enticed by a colleague, Rebecca Gallur, to invest in Multinational Telecoms Investors Corporation, referred to in her affidavit as “Multitel”, and which maintains an office at the Multinational Telecommunications Enterprise Building, Makati City, and which was owned and operated by appellant, thru her managers and counselors.

She alleged that in October 2001, Gallur introduced her to Rubio, who claimed to be a Multitel advisor, under One Heart Multipurpose Cooperative (“One Heart”); that during her initial meeting with Rubio, the latter explained that Multitel engaged in various local and international businesses, particularly, telecommunications abroad; and that appellant was an honorable person and a successful businesswoman.

She averred that during this meeting, Rubio then encouraged her to invest in Multitel; that for such an investment, complainant will earn 4% interest on her investment per month; that Multitel was financially viable company, and that to guarantee her returns, appellant, for Multitel, would issue a post-dated check equivalent to appellant's principal investment, which may be encashed before the agreed maturity date or if appellant decides to pre-terminate her investment.

Complainant then alleged that she invested her hard earned savings with Multitel on 23 October 2001, through Rubio, at Multitel's office. Her investment amounted to One Million Pesos (Php1,000,000.00), delivered by way of a Manager's Check (No. 0006311732) complainant had purchased from Global Bank, Novaliches, Quezon City, and payable to appellant.<sup>[5]</sup>

In exchange for the check, Rubio issued to complainant a Peso Fund Deposit Slip, dated 23 October 2001, bearing the letterhead of One Heart.<sup>[6]</sup> On 29 November 2001, Rubio then delivered to complainant an Allied Bank postdated check dated 29

November 2001, amounting to Php1,000,000.00, issued by appellant and corresponding to complainant's principal investment.<sup>[7]</sup> As per company policy explained by Rubio, complainant received from Rubio on 22 August 2002 a Real Bank (Makati Branch) replacement check<sup>[8]</sup> for the same amount, again issued by appellant. Complainant averred that this check did not come on time, contrary to Rubio's assurance.

Complainant alleged that she received the promised returns until October 2002. When the payments to her stopped, she wrote demand letters to Multitel, appellant, Rubio, and their other associates and partners, demanding the return of her initial investment, but her letters went unheeded. She then initiated the filing of criminal charges against appellant, Rubio, and Taniajura.<sup>[9]</sup>

Warrants of arrest were issued but only appellant was arrested. Rubio and Taniajura remain at large.

When arraigned for Crim. Case No. 09-2114, appellant pleaded not guilty. <sup>[10]</sup>

In an Order<sup>[11]</sup> dated 11 November 2009, the RTC defined the issues as "whether or not the transactions subject matter of these four (4) counts of estafa charging all accused transpired between the private complainant and accused Rosario Baladjay; and whether or not as a consequence of these transactions, the accused is guilty of Violation of Art. 315, par. 2(a) of the Revised Penal Code in relation to P.D. 1689."

During trial, complainant testified on the matters stated in her affidavit-complaint. During her direct examination, she clarified that she initially received returns on her investment, and that she never deposited the check from appellant because she was informed by the drawee bank that appellant's account had closed. She was then cross-examined, wherein she admitted that she never saw appellant until during the pre-trial for the case.

The prosecution then presented Ramon R. Estevez ("Estevez"), branch head of Real Bank, Makati City. Estevez brought with him a Bank Statement<sup>[12]</sup> and identified the same as pertaining to appellant's account with Real Bank Makati. He testified that as of October 2002, the account had zero balance. On cross-examination, he testified that appellant's account only lasted for less than a year. On re-direct examination, Estevez confirmed that the Real Bank Check provided by Rubio to complainant was indeed drawn from appellant's account with them.

The prosecution then formally offered its exhibits<sup>[13]</sup>, which the RTC all admitted<sup>[14]</sup>, and rested its case.

The defense presented the appellant as its lone witness. She denied knowing Rubio, or about her transactions with complainant. She admitted being the President of Multitel International Holdings, Corporation, but denied being a member or being part of One Heart. At this point, We note that the parties referred to Multitel International Holdings Corporation also as "Multitel".

On cross, appellant testified that her corporation engaged in the business of realty and the sale of "benefon" cellphones; that she obtained initial funding from a friend

in Finland; that a lot of people invested in Multitel and they would gain by "commission basis"; that Multitel started operating in 8 December 2001, but the Securities and Exchange Commission ("SEC") had shut it down, and that Multitel's account was likewise closed by the Anti-Money Laundering Council ("AMLC").

Appellant denied knowing complainant,. She also denied that the signature on the Real Bank guarantee check was hers, but affirmed that the same was her check. She denied having any connection with One Heart.

Thereafter the defense rested its case.

Consequently, after hearing, the RTC convicted the appellant in Crim. Case No. 9-2114, and acquitted her in the other criminal cases.

The RTC concluded that based on the evidence of the prosecution, there was moral certainty that appellant participated in the fraudulent solicitation perpetrated against the complainant Rosie Luangco, despite appellant's denial. The RTC observed that complainant's Php1,000,000.00 investment went to appellant's account, having been named the payee of the check covering that amount, and that appellant even issued a replacement check in favor of complainant to cover the "invested" fund. Such issuance found confirmation in the testimony of Estevez, who affirmed that appellant maintained a checking account with Real Bank's Makati Branch. The RTC also considered that complainant met with the accused Rubio in Multitel's office in Makati, of which corporation appellant was President.

The RTC found that the solicitation of funds from complainant constituted fraud. It held that appellant had known that the investment was only a scheme to obtain money from complainant, but with no intent to return the same, based on the following: first, the 48% interest per annum was "way beyond" the legal rate of 12% per annum; second, that accused Rubio had actually misrepresented the status of the corporation as stable, as of October 2001, but appellant had admitted that Multitel operated only starting 8 December 2001; third, that Multitel was ordered closed by the SEC within less than a year from its opening; and fourth, Multitel's accounts were ordered closed by the AMLC for violation of the Anti-Money Laundering Act<sup>[15]</sup> ("AMLA").

The RTC also noted that accused Rubio advised complainant to make appellant the payee, even as the replacement check came from an entirely separate entity, One Heart.

The RTC, however, only found appellant guilty of estafa, and not syndicated estafa, considering that the commission of the crime by at least five persons was not established. Anent the other criminal cases, the RTC held that the prosecution failed to prove that appellant conspired with Rubio to deprive her of the sums stated in the Informations for Criminal Cases Nos. 09-2115 to 18.

Hence, this appeal.

In her Brief, appellant made a single assignment of error:

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN THE GUILT OF ACCUSED-APPELLANT

ROSARIO BALADJAY BEYOND REASONABLE DOUBT FOR ESTAFA IN  
CRIMINAL CASE NO. 09-2114.

First, appellant argues that the prosecution did not prove that appellant intended to deceive the complainant. She stresses that complainant only interacted with Rubio, and that she never handled complainant's funds. Appellant points out that she met complainant only during the preliminary trial of the criminal cases.

Second, appellant posits that, while admitting that the Global Bank Manager's Check named her as payee, that fact alone did not show her participation in the enticement or misrepresentation, if any, by Rubio. She asserts that she was never privy to the transactions between Rubio and complainant.

Third, appellant argues that there were actually no false pretenses when complainant was informed of the status of the company and the interest to be accrued by her investment. She urges that at the time of her initial deposit, Multitel was in fact stable, and asserts that investment is coupled with the risk of loss, that it was loss which wiped out complainant's Php1,000,000.00 investment, and not fraud, as complainant claims.

Thus, appellant prays that she be acquitted of estafa.

On 8 October 2013, the appellee, through the Office of the Solicitor General ("OSG") filed its Brief.<sup>[16]</sup>

The OSG argues that the RTC correctly convicted appellant of estafa.

It contends that it was appellant who engaged Rubio to induce complainant to "invest" substantially in Multitel, which appellant admitted to have headed as President and Board Member. Further, appellant's name and account were indicated as payee in the checks issued by the complainant. Such checks, the OSG points out, were part of the scheme proposed by Rubio, therefore revealing appellant's participation in Multitel's operations.

The OSG takes the position that the scheme of Rubio and appellant was fraudulent. It explains that the fraud consisted in Rubio's and appellant's deliberate misrepresentation to complainant that their proposed investment plan will garner certain profits. Consequently, this fraud drove complainant to part with her money, to appellant's gain and complainant's damage.

With respect to appellant's denials, the OSG stresses that these are but bare denials, which have no weight in law.

Thus, the OSG prays for this Court to affirm the RTC's ruling.

On 20 May 2014, appellant manifested<sup>[17]</sup> that she will no longer file a Reply Brief.

We now decide this appeal.

**After a thorough study of applicable law and jurisprudence, We deny the appeal and affirm appellant's conviction. We discuss below.**