

ELEVENTH DIVISION

[CA-G.R. CR No. 36360, March 05, 2015]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNOLD VILLASEÑOR, JUDITH MAGLONZO, MARIETTA ARCE, ANASTACIA PEREZ, ROMEO DOROMAL, LUZ DE LEON, PLENIO MORANTE, CESAR CACAYURIN, CHARINO* OCAMPO, ROBERT ABRUGAR, MEL REYES*** AND FERNANDO CHARVET, ACCUSED.**

CESAR CACAYURIN AND ROBERT ABRUGAR, ACCUSED-APPELLANTS.

DECISION

LIBREA-LEAGOGO, C.C., J.:

Before this Court is an appeal from the Decision^[1] dated 12 April 2013 of the Regional Trial Court, Fourth Judicial Region, Branch 68, Binangonan, Rizal in the case entitled "*People of the Philippines v. Arnold Villaseñor, Judith Maglonzo, Marietta Arce, Anastacia Perez, Romeo Doromal, Luz De Leon, Plenio Morante, Cesar Cacayurin, Charino Ocampo, Robert Abrugar, Mel Reyes and Fernando Charvet,*" docketed as *Criminal Case No. 01-216*, for *estafa* under Article 315 1(b) of the Revised Penal Code, the dispositive portion of which reads:

*"Based on the foregoing, we find accused Arnold Villaseñor, Marietta Arce, Romeo Doromal, Luz De Leon, Plenio Morante, Cesar Cacayurin, Charino Ocampo, Robert Abrugar, Mel Reyes and Fernando Charvet **GUILTY** beyond reasonable doubt of committing Estafa under Article 315(2[a]) of the Revised Penal Code and sentence them to each suffer an indeterminate penalty of 2 years, 11 months and 10 days of (p)rision (c)orreccional in its (m)inimum and (m)edium (p)eriods as minimum to 20 years of (r)eclusion (t)emporal as (m)aximum. We also **ORDER** them to remit or to pay Mabuhay Homes 2000 Homeowners Association the sum of P2,546,421.90 and costs.*

*However, we find accused Anastacia Perez and Judith Maglonzo **NOT GUILTY** because of reasonable doubt.*

The cases against accused Marietta Arce, Luz De Leon, and Charino Ocampo are hereby archived, (sic) issue alias warrants for their arrest.

SO ORDERED."^[2]

Accused-appellants filed a Motion for Bail^[3] dated 06 March 2014, to which plaintiff-appellee filed a Comment^[4] dated 08 May 2014. Accused-appellants filed a Reply^[5] dated 16 May 2014. In this Court's Resolution^[6] dated 04 June 2014, the Motion for

Bail was granted and accused-appellants were required to post bail in the amount of Php40,000.00 each. In another Resolution^[7] dated 23 June 2014, the temporary release pending appeal of accused-appellant Abrugar, after he posted a Php40,000.00 cash bail, was ordered. The temporary release of accused-appellant Cacayurin, after he posted a Php40,000.00 cash bail, was also ordered in the Resolution^[8] dated 30 June 2014.

Accused-appellants filed their Brief^[9] dated 10 August 2014. Plaintiff-appellee likewise filed its Brief^[10] dated 29 December 2014. Accused-appellants then filed a Reply Brief^[11] dated 13 January 2015. Thus, the case is submitted for decision.

FACTUAL ANTECEDENTS

Accused Arnold Villaseñor ("Villaseñor," for brevity), Judith Maglonzo ("Maglonzo," for brevity), Marietta Arce ("Arce," for brevity) Anastacia Perez ("Perez," for brevity), Romeo Doromal ("Doromal," for brevity), Luz De Leon ("De Leon," for brevity), Plenio Morante ("Morante," for brevity), Cesar Cacayurin ("Cacayurin," for brevity), Charina Ocampo ("Ocampo," for brevity), Robert Abrugar ("Abrugar," for brevity), Mel Reyes ("Reyes," for brevity) and Fernando Charvet ("Charvet," for brevity) were charged with estafa under Art. 315 paragraph 1(b) of the Revised Penal Code, in an Information^{xii} dated 30 April 2001 and later, in an Amended Information^[13] dated 27 July 2001, without accused Reyes and Charvet, docketed as *Criminal Case No. 01-216*, the accusatory portion of which reads:

"That sometime during the periods from October 1998 to December 1999, in the Municipality of Binangonan, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, being then the interim officers of Mabuhay Homes 2000 Homeowners Association, Inc, (MAHOA, Inc.) received in trust from the members of the Association and Extraordinary Development Corp. (formerly White House Development Corp.), the developer of the Mabuhay Homes Subd., the total amount of Php2,546,421.90, which was supposed to be used as seed money for the administration, management and operation of the homeowners association and projects within the subdivision for the benefit of all residents of Mabuhay Homes Binangonan, with the express obligation on the part of the accused to account for the said amount, but the accused once in possession of the said amount, far from complying with their obligation, with intent to defraud, with unfaithfulness and grave abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate and convert to their own personal use and benefit, and accused despite repeated demands to turn over and account for the said amount and or its equivalent amount of Php2,546,421.90 failed and refused and still fails and refuses to do so, to the damage and prejudice of the homeowners or members of the association, in the aforesaid amount of Php 2,546,421.90.

CONTRARY TO LAW. ^[14]

In an Order^[15] dated 04 June 2001, accused Doromal, Abrugar, Villaseñor, Cacayurin, and Morante appeared voluntarily and posted the required bail bond for their temporary liberty in the amount of Php40,000.00 (for each accused), thus the order for their arrest was lifted.

A Motion to Suspend and Defer Proceedings^[16] dated 05 June 2001, as well as a Motion for Reconsideration^[17] dated 04 June 2001 were filed by accused Perez and De Leon. Accused Villaseñor, Cacayurin, Doromal, Abrugar, Morante, Reyes, Charvet, Ocampo, Maglonzo and Arce also filed a Motion to Defer Proceedings^[18] dated 14 June 2001.

In an Order^[19] dated 26 June 2001, warrants of arrest were ordered issued against accused Arce, De Leon, Ocampo, Reyes and Charvet; and considering that accused Villaseñor, Perez, Maglonzo, Morante, Doromal, Cacayurin and Abrugar have already posted their respective bonds for their provisional liberty, their arraignment was set on 26 July 2001. Accused Reyes filed an Urgent Motion to Suspend Proceedings and Issuance of Warrant of Arrest^[20] dated 21 June 2001.

In an Order^[21] dated 16 July 2001, the warrant of arrest issued against Charvet was recalled, it appearing that he posted a bailbond for his provisional liberty. A Motion for Re-Investigation and Deferment of Arraignment^[22] dated 20 July 2001 was filed by Charvet. In an Order^[23] dated 26 July 2001, the arraignment was reset to 27 August 2001. As to the Motion for reinvestigation filed by accused Charvet, the trial court held in abeyance the ruling on the same.

A Motion for Leave of Court to Amend Information^[24] dated 27 July 2001 was filed by the public prosecutor, stating that the prosecution resolves to dismiss the case of Imelda Reyes Pardilla* and Charvet, and to exclude them from the Information. An Amended Information^[25] dated 27 July 2001 was filed. In an Order^[26] dated 09 August 2001, the Motion was granted and the Amended Information was admitted.

In an Order^[27] dated 27 August 2001, the bond secured by accused Charvet was cancelled; and the arraignment was reset to 03 September 2001. When arraigned on 03 September 2001, accused Villaseñor, Doromal, Morante, Cacayurin and Abrugar entered their pleas of not guilty.^[28]

In an Order^[29] dated 03 September 2001, the trial court stated that with respect to accused Perez and Maglonzo, their arraignment was deferred, considering the pendency of their Petition for Review before the Department of Justice. When arraigned on 03 December 2001, accused Maglonzo and Perez pleaded not guilty.^[30]

Pre-trial was held and a Pre-Trial Order^[31] dated 04 March 2002 was issued. The following admissions were made, viz: as to the identities of the officers of the Mabuhay Homes 2000 Homeowners Association, Inc. ("MAHOA," for brevity) for the period of October 1998 to December 1999, being accused, Villaseñor-President, Maglonzo-Public Relation Officer, Perez-Treasurer, Doromal-Director of Phase 1-A, Morante-Director, Cacayurin-Vice President, and Abrugar-Director Phase 4; and the principal office of MAHOA is in Binangonan, Rizal.

Trial ensued.

The prosecution presented its lone witness Luzviminda Arada ("Arada," for brevity). She testified, *inter alia*, that: they filed a case against the former officers of MAHOA, namely, Villaseñor, Maglonzo, Arce, Perez, Doromal, De Leon, Morante, Cacayurin, Ocampo and Abrugar; she is the newly elected Auditor of MAHOA; they filed a case against the accused because the former MAHOA officers received a sum of money from their developer, the Extraordinary Development Corporation ("EDC," for brevity); the money was supposed to be spent for the improvements of the Mabuhay Homes, but they did not see any improvements that is why they were looking where the sum of money went; from the records of EDC, the first voucher was dated 15 October 1998 and the former officers received the money on 27 October 1998 in the sum of Php800,000.00, on 12 November 1998 in the sum of Php117,000.00, on 10 December 1998 in the sum of Php679,190.00, on 22 May 1999 in the sum of P34,528.52 and on 08 June 1999 in the sum of Php162,703.43; the total amount is Php2,546,421.95; they asked the former officers where they put the money and in what projects they spent the same; the Php800,000.00 represents their membership fee which the residents were required to pay before transferring to Mabuhay Homes; after several letters sent to Villaseñor, they were only given xerox copies of the logbook which contained expenses that were not official; the same was only on a scratch paper where they wrote their expenses and they were told that the paper represents the amount that they were looking for; Board Resolution No. 07S2001 was for them to turn over all the documents regarding the association; the proper turn over of the official documents and financial statements that they need were denied; they have evidence that the accused received the total amount of Php2,546,421.90; the checks were received by the president of MAHOA, the then treasurer and the PRO signed in the acknowledgment receipt; they also have the financial statement of the Land Bank of the Philippines showing that Php700,000.00 was received by the accused and deposited in Land Bank, Binangonan branch;^[32] they have other check vouchers to show who actually received the amounts of Php800,000.00, Php170,000.00, Php679,190.00; Php700,000.00, Php34,528.52, and Php162,703.43;^[33] she does not have personal knowledge as to who personally received the amount of Php34,528.52; she does not have a document to show as to who received the amount of Php162,703.43; she claims these particular amounts only in accordance with the Statement of Accounts of the developer EDC; she implicated accused Morante but she does not have any document to show that he received any amount from EDC; she cannot show proof that Morante took part in the alleged misappropriation but because he was one of the officers of MAHOA; she did not witness the receipt of the money by accused Abrugar, Cacayurin and Doromal but she has in her possession the check issued to them personally in the amount of Php204,000.00; she requested the accused to turn over these amounts and because they were not able to turn over the same, she filed a case for *estafa* after several demands;^[34] Mabuhay Home Owners Association is the same as Mabuhay Homes 2000 phases 1-A, 3-A, 4-A, 1-B, 2-B Homeowners Association Incorporated; as she understands, EDC and White Home Development Corp. ("WHDC," for brevity) is one and the same;^[35] she has been a resident of Mabuhay Homes since July 1997; since 1997, she noticed that a guard has been posted at the gate of Mabuhay Homes and there were streetlights; there were no streetlights insofar as Phase 1 of Mabuhay Homes; when she took over as president of Phase 1A for the year 2000,

Meralco cut off the streetlights because the bills for streetlights were not paid; when she assumed office in year 2000 there were streetlights operating in Phase 1 and to her knowledge, it is the association per phase which pays the same; prior to her assumption as president of Phase 1, the water services were operated by the interim officers of MAHOA; the interim officers of MAHOA pays for the water and electric services, as claimed by them;^[36] the amount of Php800,000.00 was received by Villaseñor as evidenced by his signature in the acknowledgment receipt of the developer; the amount of Php170,000.00 was only taken by her from the statement coming from the developer; Php700,000.00 was received by Maglonzo; she does not have proof as to who received the amounts of Php34,528.52, Php162,703.43 and Php34,000.00; she has the original copies of the checks issued to accused Abrugar, signed by Perez, Villaseñor and Ocampo in the amount of Php201,000.00; she has twenty (20) checks and their machine copies; the checks were issued personally by the interim officers and pay to cash; the accused's allegations that the money was actually spent for security, electricity and other water services maybe true but the sum of money that they received from the developer was more than enough to pay for the necessary electricity, water and security services; since September 1999, they have not paid for streetlights, water and security services that is why they received a copy of a Decision from MTC, Branch 72 that they have arrears with Capitol Security and Allied services ("Capitol Security," for brevity); the 20 checks were encashed by the accused as reflected at the back of the checks; Checks (Exhs. M-5 and M-6) were encashed by Abrugar; Exh. M-7 was encashed by Villaseñor, while Exh. M-8 was encashed by Cacayurin; Exh. M-9 was encashed by Abrugar; Exh. M-12 was encashed by Cacayurin, Exh. M-13 was encashed by Doromal, Exh. M-14 was encashed by Abrugar, Exh. M-15 was encashed by Cacayurin, Exh. M-16 was encashed by Doromal, Exh. M-17 by Abrugar, and Exh. M-18 was encashed by Villaseñor;^[37] the 20 checks are all checks of MAHOA with Land Bank, Binangonan branch; these checks were given to her by MAHOA Vice President Bong Bordanada; some of the checks were issued to Meralco and Capitol Security, as indicated therein; 7 checks were issued to either Meralco or Capitol Security; as shown on the checks, some money of the association were paid for electricity and security services; when she said they were looking for the money, she means that she has receipts that accused were collecting water bills, and yet the developer turned over to them an amount of money which were intended to pay for water bills and other expenses but accused still collected from them;^[38] and the amount defrauded is more or less Php2.5 million.^[39]

Plaintiff filed its Formal Offer of Evidence^[40] dated 12 January 2005, offering Exhibits "B" to "P". A Comment, Manifestation and Objections to the Formal Offer of Evidence^[41] dated 28 January 2005 was filed by accused Villaseñor, Cacayurin, Abrugar and Doromal. A Comment/Objection to the Formal Offer of Evidence for the Prosecution^[42] dated 28 January 2005 was also filed by accused Perez and Maglonzo. Accused Perez and Maglonzo filed a Motion for Leave of Court to File Demurrer to Evidence^[43] dated 29 March 2005. In an Order^[44] dated 30 March 2006, the trial court admitted the prosecution's exhibits. In an Order^[45] dated 15 August 2006, the trial court denied the Motion for Leave of Court to File Demurrer to Evidence.

The defense presented its witness Anastacia Perez ("Perez," for brevity). She testified, *inter alia*, that: as interim treasurer of MAHOA, her duties were to take