

ELEVENTH DIVISION

[CA-G.R. CR. NO. 34293, February 27, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REX INGLES Y DE OCAMPO, ACCUSED-APPELLANT.

DECISION

ANTONIO-VALENZUELA, J.:

This is the appeal filed by Rex Ingles y De Ocampo ("accused-appellant Ingles"), assailing the Decision dated 28 October 2010^[1] ("assailed Decision") issued by the Regional Trial Court, Branch 3, Baguio City ("RTC"), in Criminal Case Nos. 22938-R and 22939-R, which found accused-appellant Ingles guilty beyond reasonable doubt of the crime of *estafa*.

THE FACTS

On 16 February 2004, two Informations for *estafa* punished under Article 315 of the Revised Penal Code were filed against accused-appellant Ingles.

The Information in Criminal Case No. 22938-R read:

That sometime in the months of March 2003 to October 20, 2003, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, by means of false pretenses and fraudulent misrepresentations executed prior to or simultaneously with the commission of the fraud, did then and there wilfully, unlawfully and feloniously defraud GLADYS D. GOROSPE in the following manner, to wit: the said accused pretending and falsely representing themselves to be engaged in the sale of pre-paid cell phone cards, and that they possess power, influence, qualifications, property and business to supply cell cards at a price of Php 250.00 per card, induced the offended party to advance the payment of the cell cards with the promise by the accused to deliver the cell cards on a regular schedule but after gaining the trust and confidence of the offended party, and once the offended party has advanced the total amount of Php 500,000.00 for the cell cards because of the representation and assurance of the accused, the accused once in possession of the said amount and far from complying with their obligation to deliver the cell cards to the offended party, misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of the offended party in the total amount of FIVE HUNDRED THOUSAND PESOS (PHP 500,000.00), Philippine Currency.

CONTRARY TO LAW.^[2]

The Information in Criminal Case No. 22939-R read:

That sometime in the months of January 2003 to October 30, 2003, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, by means of false pretenses and fraudulent misrepresentations executed prior to or simultaneously with the commission of the fraud, did then and there wilfully, unlawfully and feloniously defraud CECEALE P. VILLAMIL in the following manner, to wit: the said accused pretending and falsely representing themselves to be engaged in the sale of pre-paid cell phone cards, and that they possess power, influence, qualifications, property and business to supply cell cards at a price of Php 250.00 per card, induced the offended party to advance the payment of the cell cards with the promise by the accused to deliver the cell cards on a regular schedule but after gaining the trust and confidence of the offended party, and once the offended party has advanced the total amount of Php 500,000.00 for the cell cards because of the representation and assurance of the accused, the accused once in possession of the said amount and far from complying with their obligation to deliver the cell cards to the offended party, misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of the offended party in the total amount of FIVE HUNDRED THOUSAND PESOS (PHP 500,000.00), Philippine Currency.

CONTRARY TO LAW.^[3]

At the arraignment on 3 August 2005, accused-appellant Ingles pleaded not guilty to the two Informations.^[4]

Pre-trial was terminated on 16 November 2005.^[5]

Joint trial was conducted.

EVIDENCE FOR PROSECUTION

The following persons testified for the Prosecution: Ceceale Villamil ("private complainant Villamil");^[6] Reggie Robles ("witness Robles");^[7] and Gladys Gorospe ("private complainant Gorospe").^[8]

The evidence for the Prosecution is summarized thus: accused-appellant Ingles fraudulently represented to private complainants Gorospe and Villamil that he and his family were one of the stockholders of SMART Telecommunications Corporation ("SMART"); accused-appellant Ingles, through his misrepresentations, convinced private complainants Gorospe and Villamil to engage in the business of buying and selling cellphone load cards ("cell cards"), and private complainants Gorospe and Villamil paid accused-appellant Ingles Php 500,000.00 representing the purchase price of the cell cards; accused-appellant Ingles failed to deliver the cell cards on the agreed date, and instead went into hiding; despite demands, accused-appellant Ingles failed to deliver the cell cards, or to return the money of private complainants Gorospe and Villamil.

Private complainant Villamil testified in Criminal Case No. 22939-R, that she met accused-appellant Ingles and his wife, Angelica Dialola ("Dialola") at the house of Vicky Jaraba ("Jaraba;" aunt of Dialola), in December 2002; accused-appellant

Ingles and private complainant Villamil met again in Dagupan City in January 2003; accused-appellant Ingles represented to private complainant Villamil that his family was one of the stockholders of SMART, and accused-appellant Ingles offered private complainant Villamil the business of buying cell cards at a low price, to be sold for profit; accused-appellant Ingles and private complainant Villamil agreed that the cell cards would be delivered within 10 days from payment, and they had several successful transactions (*i.e.*, first transaction, 100 cell cards for Php 255 each, in January 2003; second transaction, 500 cell cards for Php 250 each, in February 2003; third transaction, 1,000 cell cards for Php 250 each, in March 2003; fourth transaction, 1,000 cell cards for Php 250, in April 2003); for the fifth transaction on 18 June 2003, private complainant Villamil ordered 2,115 cell cards, and made a bank transfer of Php 528,000.00 to Dialola's Bank of the Philippine Island ("BPI") account, but despite payment of the Php 528,000.00, accused-appellant Ingles failed to deliver the cell cards within 10 days; private complainant Villamil called accused-appellant Ingles several times to follow-up the delivery, to no avail; on 18 August 2003, private complainant Villamil learned that accused-appellant Ingles was at the Manor Hotel in Baguio City, thus private complainant Villamil went there; at the Manor Hotel, accused-appellant Ingles executed the written compromise agreement,^[9] and gave private complainant Villamil, a post-dated check for Php 500,000.00;^[10] private complainant Villamil was unable to encash the check, because it was drawn on a closed account; private complainant Villamil tried calling accused-appellant Ingles several times, however accused-appellant Ingles did not respond; private complainant Villamil learned that accused-appellant Ingles transferred residence to the Wakat-Suello Subdivision, thus private complainant Villamil went there; during the meeting on 8 October 2003 at the Wakat-Suello residence, accused-appellant Ingles promised to return the money, however, accused-appellant Ingles reneged, thus private complainant Villamil sought assistance from the National Bureau of Investigation ("NBI"), and executed the sworn statement^[11] against accused-appellant Ingles; private complainant Villamil sent a letter to accused-appellant Ingles requiring him to pay, however the letter was returned to private complainant Villamil with the notation "*RTS, moved out.*"^[12]

Witness Robles testified that: accused-appellant Ingles opened a checking account with BPI, Abanao Branch, in July 2003; on 6 August 2003, the checking account of accused-appellant Ingles was closed, because the total amount of his account was used for a manager's check he had procured.

Private complainant Gorospe testified in Criminal Case No. 22938-R, that he met accused-appellant Ingles in March 2003, through private complainant Villamil; accused-appellant Ingles was able to convince private complainant Gorospe to join the business of buying and selling cell cards, upon the false representation of accused-appellant Ingles that his family was one of the stockholders of SMART, and could supply cell cards, at a lower price; on 5 June 2003, private complainant Gorospe ordered 2,000 cell cards at Php 250.00 each, and paid Php 500,000.00, but after 10 days, accused-appellant Ingles failed to deliver the cell cards; private complainant Gorospe called accused-appellant Ingles, to no avail, thus private complainant Gorospe went to Solibao to meet accused-appellant Ingles, but the latter did not show up; on 8 August 2003, private complainant Gorospe found accused-appellant Ingles in Loakan, and there private complainant Gorospe made a demand on accused-appellant Ingles to return the money and in turn, accused-appellant Ingles gave private complainant Gorospe the post-dated check worth Php

500,000.00;^[13] attempts to encash the check were futile because it was drawn on a closed account; after failed attempts to find accused-appellant Ingles, private complainant Gorospe also sought assistance from the NBI, and executed the sworn statement^[14] against accused-appellant Ingles.

EVIDENCE FOR ACCUSED-APPELLANT

Only accused-appellant Ingles^[15] testified for the Defense.

The evidence for the Defense is summarized as follows: in Criminal Case No. 22938-R, private complainant Gorospe requested accused-appellant Ingles if she (Gorospe) could purchase cell cards directly from him (accused-appellant Ingles), instead of purchasing from private complainant Villamil, and thereafter private complainant Gorospe and accused-appellant Ingles had several successful transactions of buying and selling cell cards; accused-appellant Ingles issued the check for Php 500,000.00 to private complainant Gorospe, in payment of her cash commissions, and not as payment for the cell cards ordered; in Criminal Case No. 22939-R, it was Jaraba who convinced private complainant Villamil to join the business of buying and selling cell cards; accused-appellant Ingles, upon discovering that there was shortage of cell cards, declined to accept orders from private complainant Villamil, however, Jaraba made accused-appellant Ingles believe that Jaraba was the one who placed the orders and not private complainant Villamil; accused-appellant Ingles informed Jaraba that the orders would be delayed because of lack of supply; accused-appellant Ingles signed the compromise agreement and issued the check for Php 500,000.00, as a favor to Jaraba.

Accused-appellant Ingles testified in relation to Criminal Case No. 22938-R, that he met private complainant Gorospe in January 2002 at the house of Jaraba; during the last week of February 2003, private complainant Gorospe called accused-appellant Ingles and asked for a meeting, which happened on 28 February 2003, and at the meeting, private complainant Gorospe asked accused-appellant Ingles if she could purchase cell cards directly from accused-appellant Ingles (because at that time private complainant Gorospe purchased cell cards only through private complainant Villamil); on 1 March 2003, accused-appellant Ingles delivered 1,000 pieces of cell cards, for Php 250.00 each, and private complainant Gorospe asked for a commission of Php 10.00 per cell card, and accused-appellant Ingles agreed, and gave private complainant Gorospe Php 10,000.00; thereafter, accused-appellant Ingles and private complainant Gorospe had several transactions (*i.e.*, 8 March 2003 transaction for 1,000 cell cards; and 15 March 2003 transaction for 2,000 cell cards); on 15 March 2003, private complainant Gorospe ordered 3,000 cell cards, and asked accused-appellant Ingles for a bigger commission, and accused-appellant Ingles agreed to give private complainant Gorospe 50 cell cards for every 1,000 cell cards ordered, as commission; on 22 March 2003, accused-appellant Ingles delivered 3,150 cell cards (which were already inclusive of private complainant Gorospe's commission), and private complainant Gorospe paid Php 750,000.00 for the order of 3,000 cell cards; on 29 March 2003, accused-appellant Ingles delivered 3,000 cell cards, but was not able to give private complainant Gorospe her commission (in the form of cell cards), and instead of cell cards, accused-appellant Ingles gave private complainant Gorospe Php 10,000.00 cash as commission; on 4 April 2003, accused-appellant Ingles delivered 3,000 cell cards to private complainant Gorospe, and gave Php 10,000.00 to private complainant Gorospe representing cash commission; private complainant Gorospe ordered 3,000 cell

cards and on 12 April 2003, accused-appellant Ingles delivered 3,000 cell cards, then private complainant Gorospe ordered 3,000 cell cards, and paid Php 750,000.00, however accused-appellant Ingles was not able to give cash commission; on 19 April 2003, accused-appellant Ingles delivered 3,000 cell cards to private complainant Gorospe, and gave Php 10,000.00 as cash commission, and private complainant Gorospe re-ordered 3,000 cell cards and paid Php 750,000.00; on 26 April 2003, accused-appellant Ingles delivered 3,000 cell cards, and private complainant Gorospe re-ordered 3,000 cell cards, and paid Php 750,000.00, however accused-appellant Ingles was also not able to give cash commission; on 3, 10, 17, 24 and 31 May 2003, and 7, 14 June 2003, accused-appellant Ingles delivered 3,000 cell cards, however accused-appellant Ingles was not able to give cell card commission to private complainant Gorospe because there were no available cell cards; thus, accused-appellant Ingles, all in all, was not able to deliver the total of 1,800 cell cards to private complainant Gorospe, valued at Php 495,000.00; accused-appellant Ingles delivered the check worth Php 500,000.00 sometime in August 2003 which represented the cash commission of private complainant Gorospe.

Accused-appellant Ingles testified in relation to Criminal Case No. 22939-R, that he met private complainant Villamil in December 2002 at the house of Jaraba; in January 2003, Jaraba invited accused-appellant Ingles to go to private complainant Villamil's house at Bunoan, Dagupan where Jaraba convinced private complainant Villamil to engage in the business of buying and selling cell cards; during the first week of January 2003, private complainant Villamil ordered 100 cell cards and paid to Jaraba Php 25,500.00 with Jaraba giving accused-appellant Ingles Php 25,000.00 for the purchase of cell cards, and Jaraba keeping Php 500.00 as her commission; within 10 days from payment, accused-appellant Ingles delivered the cell cards to private complainant Villamil; in March 2003, private complainant Villamil, through Jaraba, ordered 500 cell cards for Php 250 each, and accused-appellant Ingles delivered the cell cards within the agreed 2-week period; on the third week of May, Jaraba paid Php 375,000.00 to accused-appellant Ingles, for private complainant Villamil's purchase of 1,500 cell cards, and accused-appellant Ingles delivered the cell cards to private complainant Villamil in Dagupan; on the second week of June, private complainant Villamil through Jaraba paid Php 375,000.00, however, prior to the delivery, private complainant Villamil called and asked accused-appellant Ingles if she could order another batch of cell cards which should be delivered together with the prior order in June, but accused-appellant Ingles declined because he might not be able to deliver the cell cards on time and instead only delivered the cell cards ordered in June; when accused-appellant Ingles got home in Baguio, Dialola told accused-appellant Ingles that Jaraba had deposited Php 528,750.00 to Dialola's account for 2,115 cell cards, but accused-appellant Ingles had warned Dialola because at that time he was not anymore receiving orders from clients, but Dialola replied that it was Jaraba's money, and that Jaraba was willing to wait for the orders; sometime in July, Jaraba went to accused-appellant Ingles' residence, and asked from accused-appellant Ingles the advance of 115 cell cards, so Jaraba could already sell them in retail; accused-appellant Ingles gave Jaraba 115 cell cards with an understanding that Jaraba would wait for the balance of 2,000 cell cards; on 15 July 2003, accused-appellant Ingles gave Jaraba Php 40,000.00 representing Jaraba's earnings from the agreement that accused-appellant Ingles would sell the cell cards and give the profit to Jaraba; accused-appellant Ingles gave Jaraba another Php 40,000.00; in August 2003, Jaraba admitted to accused-appellant Ingles that the money used was not really hers, but that it came from private