

## **SPECIAL NINETEENTH DIVISION**

**[ CA-G.R. CEB-CR. NO. 00370, June 30, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CONCORDIO TORING, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**LAGURA-YAP, J.:**

This appeal of Concordio Toring seeks for the reversal of the June 15, 2005 Decision<sup>[1]</sup> of the Regional Trial Court, Branch 55, Mandaue City convicting him of Estafa in Criminal Case No. DU-6013.

#### ***Antecedents***

On August 4, 1997, Concordio Toring (Toring) was charged before the RTC of Estafa. The Information<sup>[2]</sup> that was filed against him reads as follows:

“That on or about the 3<sup>rd</sup> day of December 1992, in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused after having been entrusted with Metrobank check no. 12211756 in the amount of P 200,000.00 belonging to Robert J. Dino for said accused to pay to the BIR the Capital Gains Tax, documentary stamps and other related expenses in connection with the transfer of ownership to private offended party's name of various properties, but far from complying with his obligation, accused failed and refused to return the same despite repeated demands and with grave abuse of trust and confidence and with fraudulent intent, did then and there willfully, unlawfully and feloniously misappropriate, misapply, embezzle and convert said amount to his own personal use, benefit and gains to the damage and prejudice of herein offended party in the amount aforestated.

CONTRARY TO LAW.”

On August 17, 2000, Concordio Toring was arraigned and entered the plea of “Not Guilty”<sup>[3]</sup>. Earlier on August 11, 1997, he posted cash bail bond before RTC, Lapu-Lapu City for his temporary liberty. Trial on the merits then ensued.

#### ***Version of the Prosecution***<sup>[4]</sup>

The private complainant Mr. Robert Dino testified that he had come to know the accused sometime in December 1992 when the latter acted as the agent or broker for the sale of real property. Mr. Dino further testified that he gave to the accused P 300,000.00 which amount was to be used xxx to pay the other related expenses arising out of the sale of real

properties. To evidence the receipt by the accused of the said amount, Mr. Dino presented a Memorandum Receipt (Exhibit "A") duly signed by the accused who undertook to transfer the ownership of the lots subject of the sale in the name of Mr. Robert Dino. However, the accused failed to comply with his undertaking to transfer the ownership of the lots in the name of Mr. Dino. xxx he likewise failed to return the amount of P 300,000.00 which was entrusted to him by Mr. Dino for the payment of the capital gains tax, documentary stamp tax and such other related expenses despite demands xxx.

#### *Version of the Defense*<sup>[5]</sup>

In his defense, the accused testified that he acted as the real estate broker for the Spouses Carlo and Marian Caparas who allegedly owned parcels of land which were subsequently sold to Mr. Dino. Accused further testified that Mr. Dino paid in check Mr. Caparas the consideration for the sale of the lots. xxx Mr. Dino handed over to Mr. Caparas a check for the amount of P 300,000.00. All this time, accused was present. xxx after receiving the check for P 300,000.00 from Mr. Dino, Mr. Caparas turned over the same to him. Thereafter, accused allegedly gave the amount to a certain Mr. Riel Inoc to whom the accused delegated the task of paying for the capital gains tax xxx other similar expenses. However, Mr. Inoc failed to pay the amount to the BIR xxx on account of which the accused filed a case for estafa against Mr. Inoc, who incidentally, took the witness stand and confirmed the testimony of the accused.

Accused also made mention of Civil Case No. MAN- 1786 which was filed by Mr. Dino against him and the Spouses Caparas. Mr. Dino and the Spouses Caparas amicably settled the case between themselves to the exclusion of the accused. The Spouses Caparas paid Mr. Dino the amount of P 3,500,000.00. Accused contended that the settlement made by the Spouses Caparas already included the amount of P 300,000.00 which accused owed Mr. Dino.

On June 15, 2005 the RTC rendered the assailed Decision, the decretal portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused Concordio Toring, GUILTY BEYOND REASONABLE DOUBT, as principal for the crime of ESTAFA. There being no modifying circumstance to consider and applying the provisions of the Indeterminate Sentence Law, the accused is hereby sentenced to suffer imprisonment of prision mayor or 12 years and 1 day as minimum to reclusion temporal medium or 17 year (sic) and 4 months as maximum. Accused is likewise ordered to indemnify private complainant Mr. Robert Dino in the amount of P 300,000.00. costs against the accused.

SO ORDERED."

Aggrieved, the accused immediately filed his Notice of Appeal<sup>[6]</sup> on August 1, 2005.

#### ***Assignment of Error***

Concordio Toring (accused-appellant) interposes a lone assignment of error, that is:

I. The trial court *erred* in ruling that the element of damage has been proven.

The accused-appellant expounds in his Brief that by private complainant's own admission in Civil Case No. MAN- 1786, the amount of P 300,000.00 was part of the consideration of the transaction between private complainant and Spouses Caparas. The private complainant stated that the capital gains tax, documentary stamps and other expenses in the BIR are to be taken from the consideration of P 2,580,000.00 given to the Spouses Caparas. The logical conclusion therefore is that the money given to the accused-appellant is the money of the Spouses Caparas and not of private complainant. Therefore, the latter was not defrauded by the accused-appellant because the money that he received belonged to the spouses.

Next, the accused-appellant theorizes that the compromise agreement between the private complainant and the Spouses Caparas extinguished his obligation to return the P 300,000.00. He benefited from it even if he was not a party thereto. Number 1 of the Compromise Agreement approved on December 13, 1996 provides that the defendants (Spouses Caparas) acknowledged receipt of P 1,350,000.00 in consideration of the two Deeds of Absolute Sale of two lots located in Calawisan/Babag, Lapu-Lapu City and one lot located in Sta. Rosa, Lapu-Lapu City. Defendants also acknowledged receipt of P 800,000.00 in consideration of the Deed of Absolute Sale of four lots in Agus, Maribago, Palu-Lapu City. These amounts when added, produce the sum of P2,450,000.00<sup>[7]</sup>. This sum is short of P 130,000.00<sup>[8]</sup> from the P2,580,000.00 which is alleged to be the consideration of the sale. The accused-appellant believes that the computation coincides with the private complainant's testimony that the P 300,000.00 given to him (accused-appellant) is part of the consideration of P 2,580,000.00.

The accused-appellant also points to paragraph 2(e) of the Compromise Agreement which states that defendants bind themselves to pay, refund and/or return to plaintiff the amount of P 3,250,000.00 representing the principal and the interest of the lot in Sta. Rosa, four lots in Agus, Lapu-Lapu City as full and final compensation to the latter of the lots returned or turned over to him by the defendants. According to the accused-appellant, this wiped out the cause of action against him and against the Spouses Caparas because what was returned to the private complainant Robert Dino included the P 300,000.00.

Last, the accused-appellant appeals to the human side and equity (of the law) because he is already 75 years old, sickly and could no longer walk.

The Solicitor General counters in his Brief that:

I.

APPELLANT'S GUILT FOR ESTAFA UNDER PARAGRAPH 1(b), ARTICLE 315 OF THE REVISED PENAL CODE HAD BEEN DULY PROVEN BEYOND REASONABLE DOUBT; HENCE, HIS CONVICTION IS IN ORDER.

II.