

## SIXTH DIVISION

[ CA-G.R. CR NO. 35265, June 23, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
VIRGILIO DE JESUS, JR., ACCUSED-APPELLANT.**

### D E C I S I O N

**BARZA, J.:**

This is an appeal from the *Decision*<sup>[1]</sup> of the Regional Trial Court, Branch 269, Valenzuela City, in Criminal Case No. 907-V-11, finding accused Virgilio de Jesus, Jr. guilty beyond reasonable doubt of the crime of Estafa, under Article 315 (1) (b) of the Revised Penal Code and sentencing him to suffer the Indeterminate Prison Sentence of Four Years, Two Months and One Day of *prision correccional*, as minimum, to Fourteen Years, Eight Months and Twenty One Days of *reclusion temporal*, as maximum.

The Information<sup>[2]</sup> reads:

"That sometime in October 2007, in Valenzuela City, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud and deceived one GILBERT MADULA RIVERA (complainant), in the following manner to wit: said complainant for and in consideration of P10,000.00 pawned his Kawasaki Barako motorcycle with plate number UW-9674 in favor of said accused who undertook to return said motorcycle upon full payment of the loaned amount, but said accused once in the possession of said motorcycle, with abuse of trust and confidence, misappropriated and misapplied said motorcycle to his own personal use and benefit and despite repeated demands to return said motorcycle, said accused refused and failed and still refuses and fails to do so, to the damage and prejudice of the said complainant in the aforementioned amount of P140,000.00.

CONTRARY TO LAW."

Upon arraignment, de Jesus pleaded not guilty.<sup>[3]</sup> As Mediation failed<sup>[4]</sup>, pre-trial conference proceeded with the parties agreeing that the issue in this case is whether, under the obtaining circumstances, the accused is guilty of the crime charged against him.<sup>[5]</sup>

For the prosecution, the complainant Gilbert Rivera testified. He is 38 years old, married, a tricycle driver from Bignay, Valenzuela City. He owns a Kawasaki Barako 175 which used to have a side car.<sup>[6]</sup> The said motorcycle amounted to P141,000.00, having been purchased on installment basis.

At about 11 o'clock in the morning of 26 October 2007, Rivera and his wife were in the house of de Jesus, herein accused, in Sitio Galas, Bignay, Valenzuela City. They went there to borrow money from the accused because their child was sick. Before going to accused's house, Rivera secured a certification from the barangay in order to convert the motorcycle's yellow plate into a single motorcycle. Rivera and the accused are childhood friends, former classmates and "*kumpare*", as the accused stood as godfather of Rivera's child.

On the said date, the Riveras were able to talk to the accused and the latter's wife. Rivera pleaded with accused to lend him money in the amount of P10,000.00, at the same time pledging the said motorcycle. Accused agreed and inquired into the barangay permit converting the motorcycle into single motorcycle. With that agreement, the Riveras left the motorcycle with the accused. They went home and brought their child for medical check-up.

After several times that Rivera went to see the accused at the latter's house and failed, the two finally met on 20 May 2011<sup>[7]</sup>. Rivera wanted to redeem his motorcycle. However, the accused told him that he (accused) had already sold it. Thereafter, the accused would ignore Rivera every time they would see each other.

Rivera then decided to file charges against the accused with the Prosecutor's Office. <sup>[8]</sup> Rivera sent two (2) demand letters to the accused, one was sent through mail<sup>[9]</sup> and the other was sent through the *barangay* staff,<sup>[10]</sup> as the accused was then a member of the *barangay* council. At the stand, Rivera identified the accused.

On cross-examination, Rivera admitted that there was no time limit agreed upon to redeem the motorcycle.

Annabelle Rivera, wife of complainant, also testified. She confirmed that she and her husband went to accused's house sometime in October 2007 to borrow money and to leave their motorcycle with the accused. Accused and his wife lent them P10,000.00. She heard her husband tell the accused to take care of the motorcycle as he (Rivera) will come back to redeem it. Not far away from where they were talking was one Joaquin Sabangan.

When her husband came back to the accused to redeem the property, they found out that the accused had sold the motorcycle. Annabelle does not know where the said motorcycle is.

Virgilio de Jesus, Jr., the accused, 38 years old, married, and a *barangay* staff, testified for his defense. Prior to being a *barangay* staff, he worked as FX driver, real estate agent and *barangay* kagawad. He confirmed that Rivera is his kumpadre, being the godfather of the latter's child.

The accused denied that Rivera pledged a motorcycle to him for the amount of P10,000.00. They never had the chance to talk as he was always in the *barangay* hall. He found out that a case has been filed against him when a police officer went to his house and brought a subpoena on 28 October 2011. At the police precinct, the investigator talked to him about the case, then brought him to his detention cell. On 2 November 2011, he posted bail.

Upon his release, he went to his mother-in-law, Rosalinda Lorenzo, and asked her about the motorcycle mortgaged to them by Rivera. He denied any knowledge about the incident. Lorenzo told him that Rivera approached her (Lorenzo) to mortgage his

(Rivera's) motorcycle. Rivera was allegedly into gambling. Lorenzo said that the motorcycle is in her possession and that Rivera never came back to talk with them anymore.

Rosalinda Lorenzo, 62 years old and married, testified that Rivera, accompanied by Dong Solboro, approached her sometime in April 2007 to ask for a loan amounting to P10,000.00 in exchange for his (Rivera's) motorcycle. Rivera is a former tricycle driver in their place and she came to know him when he went to her place in April 2007. She agreed to Rivera's request as he told her that it would only be for a month and that interest would be paid. However, after a month, Rivera failed to show up. She confirms that the motorcycle is in her possession.

Lorenzo was surprised by the arrest of her son-in-law, herein accused, because the motorcycle is in her possession. She did not execute an affidavit to show that it was to her that the motorcycle was pawned. But she executed an affidavit in the barangay. Lorenzo just relied on her son-in-law's plan that they will file counter charges against Rivera.

After trial, accused was convicted of the crime of estafa under Article 315, par. 1(b) of the Revised Penal Code as borne by the judgment of conviction rendered by the trial court in Criminal Case No. 907-V-11 on 10 September 2012. The dispositive portion reads:

"WHEREFORE, accused VIRGILIO DE JESUS, JR., is hereby found GUILTY beyond reasonable doubt of estafa under Article 315, paragraph 1 (b), of the Revised Penal Code, and is hereby imposed an indeterminate prison sentence of four years, two months and one day of prision correccional, as minimum, to 14 years, eight months and 21 days of reclusion temporal, as maximum. He may be credited with the corresponding period that he has served under preventive imprisonment, in accordance with Article 29 of the Revised Penal Code and applicable rules.

The accused is further ordered TO RETURN to private complainant Gilbert Rivera, within fifteen (15) days from finality of judgment, the Kawasaki Barako motorcycle with Plate No. UW- 9674 and Chassis No. BC175A-B18817, or PAY said complainant P102,000.00 in actual damages.

Costs against the accused.

SO ORDERED."

Hence, this appeal by de Jesus (now accused-appellant), on the lone assignment of error, thus:

THE TRIAL COURT GRAVELY ERRED IN THAT THE ACCUSED-APPELLANT IS GUILTY OF THE CRIME OF ESTAFA AS CHARGED IN THE INFORMATION.

According to the accused-appellant, to be held liable for the crime of estafa under Art. 315 par. 1 (b), there must be evidence that the alleged offender has the obligation to deliver or return the same money, goods or personal property that he received. It is the fraudulent misapplication, appropriation, or conversion of the property which really constitute the crime of estafa.

In this case, accused-appellant insists that he has no obligation to return the subject personal property. The subject motorcycle was used as security for the loan obtained by Rivera from Rosalinda Lorenzo and not from the accused-appellant. Accused-appellant claims that there is no fiduciary relationship between him and Rivera, which is an essential element of the crime of estafa by misappropriation or conversion.

Moreover, as argued, there is no evidence of conversion or misappropriation of the thing given to secure the obligation. Lorenzo testified that the motorcycle was still in her possession and she was holding on to it because there was no payment made yet.

It is also contended that even assuming for the sake of argument that the accused-appellant was the one to whom Rivera pledged his motorcycle for a borrowed sum of Ten Thousand Pesos (P10,000.00), accused-appellant is still not liable as there is no evidence that Rivera paid his debt or had tendered payment. Therefore, the obligation to deliver the thing has not yet arose.

The State, represented by the Office of the Solicitor General, agreed with the findings of the trial court that the evidence sufficiently established accused-appellant's guilt beyond reasonable doubt. The elements of estafa or swindling by abuse of confidence have been proven in this case. Accordingly, the OSG prays that the decision be affirmed in *toto*.

The Court finds no merit in the appeal.

It is axiomatic that appellate courts will usually not disturb the findings of the trial court, the latter being in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial, unless certain facts of substance and value had been overlooked which, if considered, might affect the result of the case.

In this case, the Court finds no reason to digress from the conclusion arrived at by the trial court. All the elements of Estafa, under Article 315, 1 (b) of the Revised Penal Code, have been sufficiently established, to wit:

- a) That personal property is received in trust, on commission, for administration or under any other circumstances involving the duty to make delivery or return the same, even though the obligation is guaranteed by a bond;
- b) That there is conversion or diversion of such property by the person who has so received it or a denial on his part that he received it;
- c) That such conversion, diversion or denial is to the injury of another; and
- d) That there be demand for the return of the property.

The Court gives the same credence as the trial court did to the testimonies of the prosecution witnesses that sometime in April 2007, Rivera and his wife approached the accused-appellant for a loan amounting to P10,000.00 with the motorcycle as security.