

FIRST DIVISION

[CA – G.R. CR NO. 25780, August 18, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARINO BABAO Y TORRES AND FELIPE MENDOZA Y CAGADAS,
ACCUSED-APPELLANTS.**

D E C I S I O N

ROXAS, J.:

Legal Principles in this Case:

Spontaneous desistance could not prosper as a defense in a criminal case when it was established that the accused was present and he played a crucial role in the commission of the crime.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose. All the perpetrators in a conspiracy will be liable as principals.

The Case

The accused were able to persuade the victim to invest P150,000.00 in their supposed business called "Double Your Money." According to the accused, they would make money through a chemical process whereby a bill of any denomination could be multiplied just by injecting a certain chemical on blank pieces of paper which would miraculously turn into money. The process was demonstrated to the victim by the accused who was assisted by three (3) companions, and after they got the money of the victim which was intended as investment, they left ostensibly to get a dryer and promised to return afterwards, but they never returned and the victim's money was gone.

All the accused alleged that they spontaneously desisted from the commission of the crime before its execution. The accused were convicted of Estafa, as charged. The accused interposed this appeal.

The Facts

This is an appeal from the February 28, 2001 Decision^[1] of the Regional Trial Court (RTC) of Muntinlupa City, Branch 256, in Criminal Case No. 96-612, which convicted accused-appellants Marino Babao y Torres (BABAO) and Felipe Mendoza y Cagadas (MENDOZA) of the crime, Estafa.

On October 28, 1996, State Prosecutor Caroline Rivera-Colasito filed an

Information^[2] with the RTC of Muntinlupa City, Branch 256, docketed as Criminal Case No. 96-612, charging accused-appellants BABAO and MENDOZA with the crime of Estafa, committed as follows:

"That on or about the 9th day of September, 1996 to the 21st day of October, 1996 in the City of Muntinlupa, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with other persons whose identities and present whereabouts are still unknown and mutually helping and aiding one another, by means of deceit and false pretenses, made or executed prior to or simultaneous with the commission of the fraud, did then and there willfully, unlawfully and feloniously represent to one Lovelyn Baja y Villanueva that they have the capacity to double one's money by the use of a chemical applied to a paper bill and induce her to invest in their Double your money deal, which representations were false as the same were only to induce the complainant to part, as she indeed part with her money in the amount of P150,000.00 and accused, once in possession of said amount, willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to their own use and benefit and despite demands made upon them to return the aforesaid amount, they failed and refused and still fail and refuse to do so, to the damage and prejudice of the said Lovelyn Baja y Villanueva in the amount of P150,000.00.

CONTRARY TO LAW."

When arraigned on April 8, 1997, accused-appellants BABAO and MENDOZA, with the assistance of their counsel de parte, pleaded not guilty to the charge.^[3]

The prosecution established that on September 9, 1996, accused-appellant BABAO together with accused-appellant MENDOZA went to the bakery of his nephew, Agripino Babao (AGRIPINO), at No. 45 San Guillermo Street, Bayanan, Muntinlupa City for the purpose of meeting private complainant Lovelyn V. Baja (BAJA) to encourage her to invest in a business called "Double Your Money." Accused-appellant BABAO is the uncle-in-law of private complainant BAJA, the former being the first cousin of the latter's mother-in-law.

During that meeting, accused-appellant BABAO explained to the victim that in the proposed business, he would actually make money through a chemical process. Under this process, a bill of any denomination could be multiplied just by injecting a certain chemical on blank pieces of paper which would miraculously turn into money. Accused-appellant BABAO said that if he wanted to invest in the business, he had to give the accused the sum of P150,000.00 before he could join the business.

Thereafter, accused-appellants BABAO and MENDOZA met private complainant BAJA again in AGRIPINO's bakery to persuade her to invest. Accused-appellant BABAO even offered to invest P25,000.00, and accused-appellant MENDOZA offered to invest P10,000.00.

When accused-appellants BABAO and MENDOZA once again met private complainant BAJA on October 15, 1996, they were accompanied by 3 men: Rommel, Al and another whom they called "Engineer." At AGRIPINO's bakery, these 3 men

demonstrated the said process, where a P10 bill, a P20 bill and a P100 bill were allegedly doubled. Accused-appellant paid for the beer and *pulutan*. At that point, the victim, private complainant BAJA, agreed to invest his own P150,000.00 into the business.

On October 21, 1996, accused-appellants BABAO and MENDOZA and their 3 companions returned and private complainant BAJA gave the P150,000.00 to them. Accused-appellants began the "Double Your Money" process inside one of the rooms of the victim's house. Accused-appellants BABAO and MENDOZA alleged to the victim that they were not able to contribute because the wife of the accused-appellant BABAO did not agree to the investment, while the accused-appellant MENDOZA said that he was not able to invest because he used his money for the investment, to help somebody who died in the province.

The process they alleged worked like this: accused-appellants first cleaned the bills, inserted them in between bill-sized papers and then placed them inside the glass. Another glass was used to cover the first glass. It was later sealed by a masking tape. Since accused-appellants said that at this time they had to have a break and wait a while, accused-appellant went to the adjoining room to eat breakfast. While they were eating, accused-appellant Rommel informed everyone that his necklace was missing and that he had to return to the room where the process was being conducted to look for it. Accused-appellants BABAO and MENDOZA and his 2 other companions followed. Alarmed, private complainant BAJA rushed to the other room and saw Al injecting chemicals on the money and wrapping it with a towel. Accused-appellant BABAO handed the towel to private complainant BAJA and told her to put it in her bag before the chemical could evaporate. Accused-appellants BABAO and MENDOZA and their 3 companions left for Manila to get a money dryer and they promised to return at 10:00 in the morning. The victim realized that the afternoon had passed and it was already evening but accused-appellants BABAO and MENDOZA and their 3 companions had not yet returned. When private complainant BAJA opened the bag and unwrapped the glass, she was shocked to find only blank pieces of paper and her money was gone.

For their defense, accused-appellants BABAO and MENDOZA alleged that the "Double Your Money" scheme was the plan of Rommel and that they were also victims of Rommel because Rommel approached them to invest and accused-appellant BABAO said that maybe his relatives in Alabang would be interested. Thus, they went to Alabang to convince AGRIPINO and private complainant BAJA to invest. Accused-appellants BABAO and MENDOZA, however, later withdrew, because they did not have enough money to join.

Accused-appellants BABAO and MENDOZA also interposed the defense of alibi. Accused-appellant BABAO alleged that he was in Guinyungan, Quezon from October 20, 1996 to October 22, 1996 to attend a wedding, while accused-appellant MENDOZA claimed that he was at his home in Guadalupe the whole day of October 21, 1996. Moreover, accused-appellants BABAO and MENDOZA averred that they visited AGRIPINO and private complainant BAJA only once and they did not return to convince them.

Assailed Decision of the RTC

On February 28, 2001, the Regional Trial Court of Muntinlupa City, Branch 256,