

FIRST DIVISION

[G.R. NO. 149753, November 27, 2006]

**MIGUEL COSME, JR., PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision^[1] of the Court of Appeals (CA) dated June 22, 2001 in CA-G.R. CR No. 23015 which affirmed with modification the Decision of the Regional Trial Court (RTC) of Manila, Branch 1, finding herein Miguel Cosme, Jr. (petitioner) guilty beyond reasonable doubt of the crime of Estafa; and the CA Resolution dated September 10, 2001, denying petitioner's motion for reconsideration.

An Information dated January 16, 1996, was filed against petitioner, alleging as follows:

That in [sic] or about and during the period comprised between September 12, 1994 and October 13, 1994, inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully [sic] unlawfully and feloniously defraud Paul P.A. Bunda in the following manner, to wit: the said accused received in trust from the said Paul P.A. Bunda the sum of P1,800,000.00, under the express obligation on the part of the said accused to settle and clear the accrued real estate taxes of 231,707 square meters of land covered by PSU-20888 located at Almanza, Las Pinas, Metro Manila, but said accused once in possession of the said amount, far from complying with his aforesaid obligation, failed and refused and still fails and refuses to settle and clear the accrued real estate taxes of the aforesaid lot despite repeated demands made upon him to that effect, and with intent to defraud and with grave abuse of confidence, he thereafter misappropriated, misapplied and converted the same to his own personal use and benefit, to the damage and prejudice of the said Paul P.A. Bunda in the aforesaid amount of P1,800,000.00, Philippine currency.

Contrary to law.^[2]

On June 3, 1997, upon being arraigned, petitioner with the assistance of a counsel *de oficio* pleaded not guilty.^[3] Thereafter, trial ensued, after which, the RTC rendered its Decision with the following findings and disposition:

Records disclose that on April 9, 1993, Judith Rodriguez and the private complainant, Paul Bunda, entered into a Memorandum Agreement concerning lots nos. 1 and 2, PSU-208888, with an aggregate area of

231,907 sq.m., situated at Barrio Almanza, Las Pinas, Metro Manila, Exhibit "G". Under the agreement, Judith agreed to assign and convey 40% of the aforementioned lots in favor of the complainant as consideration for the payment by the latter of the accrued real estate taxes on the property.

Sometime in August, 1994, the complainant visited the property and, for the first time, met the accused who represented himself as the overseer of the property where he also resided.

Sometime in September 1994, the complainant and the accused met at the Aurelio Hotel on Roxas Blvd., Manila. It was in this meeting that accused succeeded in convincing the complainant to entrust to him Two Million (P2,000,000.00) Pesos for the payment of the accrued real estate taxes on the property, telling the complainant that he was a nephew of the then incumbent mayor of Las Pinas and had good connections with the Mayor's Office as well as with the Offices of the Treasurer and of the Assessor of Las Pinas.

On September 12, 1994, the complainant again met the accused at the same hotel and gave to the latter an initial amount of One Hundred Thousand (P100,000.00) Pesos for the payment of the accrued real estate taxes on the property. Another One Hundred Thousand (P100,000.00) Pesos in cash was given to the accused by the complainant on September 14, 1994. Both payments were unreceipted because the accused told the complainant that it was no longer necessary.

Again, on two separate occasions thereafter, complainant handed to the accused two checks both payable to cash, dated September 28 and October 13, 1994, in the respective sums of One Million (P1,000,000.00) Pesos and Six Hundred Thousand (P600,000.00) Pesos, Exhibits "B" and "C", which checks were later encashed by the accused, Exhibits "B-3", "B-4", "C-3" and "C-4". Accused, however, did not use the money for the payment of the accrued real estate taxes on the property in question, but instead misappropriated it for his own use and benefit.

The court has judiciously examined the evidence on record and finds that the prosecution has established beyond reasonable doubt that the accused committed estafa under Article 315 (b) of the Revised Penal Code x x x.

x x x x

WHEREFORE, the court finds the accused, Miguel Cosme, Jr., guilty beyond reasonable doubt of the crime of Estafa and, as a consequence, sentences him to suffer the indeterminate penalty of twelve (12) years of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum and to pay the costs.

Further, accused is ordered to pay the complainant actual damages in the total amount of P1,800,000.00 with interest thereon at the legal rate

from date of filing of this action until fully paid.

SO ORDERED.^[4]

Petitioner appealed the case to the CA.

On June 22, 2001, the CA rendered its Decision with the following dispositive portion:

WHEREFORE, foregoing considered, the appealed Decision dated October 20, 1998 is hereby AFFIRMED with the modification that the amount of actual damages be reduced to P1,600,000.00 with legal rate of interest from the date of filing of the action until fully paid.^[5]

Petitioner filed a Motion for Reconsideration but the same was denied by the CA in its Resolution of September 10, 2001.

Hence, herein petition with the following assignment of errors:

I

THE COURT OF APPEALS LIKE THE COURT A QUO ERRED IN GIVING CREDENCE TO THE SOLE, UNCORROBORATED, VARIABLE AND INCOHERENT TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE COURT OF APPEALS LIKE THE COURT A QUO ERRED IN FINDING THAT THE ALLEGED DEMAND LETTER WAS RECEIVED BY THE PETITIONER.

III

THE COURT OF APPEALS LIKE THE COURT A QUO ERRED IN FAILING TO GIVE CREDENCE TO THE DEFENSE OF THE PETITIONER.^[6]

In his first assigned error, petitioner argues that the private complainant's testimony is full of improbabilities, falsehoods and half-truths, to wit: (1) that it is highly improbable that the private complainant entrusted to him the amount of P200,000.00 cash which was allegedly given on two separate occasions; (2) it is irrational and improbable for private complainant, who is an experienced real estate dealer, to delegate and commission the petitioner, a mere overseer and security guard whom he hardly knows, to undertake the payment of real estate taxes with the Treasurer's Office considering that with his knowledge and experience he can do it himself; (3) it boggles the mind why private complainant could not care less even if petitioner allegedly had not told him the exact amount to be paid for the accrued real estate taxes and that notwithstanding the alleged lack of computation, he freely gave in to petitioner's demand and paid him P1,800,000.00 without demanding any receipt or written agreement as evidence to prove why he paid such amount; (4) it is difficult to believe that as an experienced real estate dealer private complainant does not know that real estate taxes cannot be paid on staggered or installment basis; (5) if indeed the check payments in the amount of P1,600,000.00 were intended as payment for accrued real estate taxes how come the checks were paid

to cash and not made specifically payable to the Municipal Treasurer's Office; (6) if it were true that petitioner told private complainant to prepare P2,000,000.00 as payment for the real estate taxes, how come the latter only paid P1,800,000.00; (7) if private complainant has indeed entered into an agreement with the owner of the property that the former shall be given 40% of the subject property in exchange for his payment of the accrued real estate taxes, he should have been aware of the actual real estate taxes due and that the amount of P1 ,800,000.00 would not suffice to cover the said taxes.

Anent the second assigned error, petitioner contends that no less than the evidence presented by the prosecution shows that he (petitioner) never received the demand letter sent by private complainant. Citing authorities on the rule on service of notice, petitioner argues that the prosecution cannot presume on the basis of the registry return receipt that the demand letter was sent through registered mail and that the same was actually received by petitioner or his agent, especially in the present case where petitioner denies having received the said demand letter.

As to the third assigned error, petitioner asserts that it is error on the part of the trial and appellate courts to rely hook, line and sinker on the inconsistent and uncorroborated testimony of the private complainant and at the same time brush aside as "difficult to believe" the defense of petitioner. Petitioner maintains that he has sufficiently shown that it is not far fetched for the complainant to commission petitioner to act as overseer of the subject property and facilitate its titling after the former pays the accrued real estate taxes considering that complainant claims to have an interest over 40% of the subject property; that the amount of P1,600,000.00 is given as payment for a "package deal" which includes the hiring of security guards to look after the property, the construction of a steel fence on portions of the same, the facilitation in the computation of accrued real estate taxes and the eventual titling of the property. Petitioner also contends that it is error on the part of the trial court to completely disregard the affidavit of denial executed by Judith Rodriguez considering that the prosecution admitted the existence, authenticity and genuineness of the said affidavit by way of stipulation.

In its Comment, the Office of the Solicitor General (OSG) contends at the outset that the petition should be dismissed as it essentially raises issues of fact which are not the proper subjects of a petition for review on certiorari under Rule 45 of the Rules of Court. On the trial court's act of giving credence to the testimony of private complainant, the OSG argues that under settled jurisprudence, the Supreme Court will not interfere in the judgment of the trial court in passing upon the credibility of witnesses unless there appears in the record some facts or circumstances of weight and influence which have been overlooked and, if considered, would affect the outcome of the case. The OSG submits that there is no reason to assail the credibility of the private complainant especially in the absence of any showing that he was motivated by bad faith. The OSG also contends that the testimony of a single witness, if found credible and positive is sufficient to convict.

The Court deems it proper to discuss first the issue whether the present petition should be dismissed on the ground that it raises issues of fact which are not proper subjects of a petition for review on *certiorari*.

Settled is the rule that the Supreme Court's jurisdiction in a petition for review on *certiorari* as a mode of appeal under Rule 45 of the Rules of Court, as amended, is

limited to reviewing only errors of law not of fact.^[7] The rationale of this rule is founded on the fact that the Supreme Court is not a trier of facts.^[8] However, as exceptions to this rule, the Court may pass upon questions of fact in a petition for review when, among others: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are premised on the absence of evidence; and (6) the findings of fact are contradicted by evidence on record.^[9] The Court finds that the present case does not fall under any of the foregoing exceptions. Thus, on this ground alone, the instant petition should be dismissed.

However, considering that an appeal in a criminal case opens the whole case for review,^[10] the Court deems it proper to delve into the merits of the present petition.

The Court notes, at the outset, that the RTC found petitioner guilty of Estafa by conversion or misappropriation under Article 315 (1) (b) of the Revised Penal Code, to wit:

Art. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x

- (b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property;

x x x x

On the other hand, the CA found petitioner guilty of Estafa as defined under Article 315 (2) (a) of the Revised Penal Code, to wit:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

- (a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency,