

## FIRST DIVISION

[ G.R. No. 218830, September 14, 2017 ]

**JESUS V. COSON, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

This Petition for Review under Rule 45 of the Rules of Court assails the January 30, 2015 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 35837 which affirmed *in toto* the February 27, 2013 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Dagupan City, Branch 44, in Criminal Case No. 2005-0498-D finding Jesus V. Coson (petitioner) guilty beyond reasonable doubt of the crime of estafa. Also assailed is the June 4, 2015 CA Resolution<sup>[3]</sup> which denied petitioner's Motion for Reconsideration.

#### ***Factual Antecedents***

Petitioner is the Chairman and Chief Executive Officer (CEO) of Good God Development Corporation (GGDC), a corporation engaged in the business of developing subdivisions and building houses/condominiums therein for sale to the general public.<sup>[4]</sup>

On December 21, 2001, GGDC, through its President Jack Christian Coson, borrowed P2,522,000.00 from private complainant Atty. Nolan Evangelista (hereinafter "private complainant"). The purpose of the loan was to buy the land owned by the First eBank Corporation ("First eBank") and covered by Transfer Certificate Title (TCT) No. 250201, which is adjacent to GGDC's property situated in Barrio Maningding, Sta. Barbara, Pangasinan and covered by Transfer Certificate of Title (TCT) No. 252245. A Deed of Real Estate Mortgage<sup>[5]</sup> was executed by the parties whereby the property owned by GGDC was put up as collateral for the loan.

After the sale of First eBank's property was consummated, title thereto was transferred in the name of GGDC under TCT No. 261204.<sup>[6]</sup>

On May 29, 2003, another Deed of Real Estate Mortgage<sup>[7]</sup> was executed by GGDC through petitioner by virtue of Board Resolution No. 0093, series of 2002,<sup>[8]</sup> in favor of private complainant for a loan of P4,784,000.00. The land covered by TCT No. 261204 was given as security for the said loan. On the same date, petitioner executed a Promissory Note<sup>[9]</sup> acknowledging his indebtedness of P4,784,000.00 and promising to pay the said amount in accordance with the schedule mentioned in the Deed of Real Estate Mortgage dated May 29, 2003.

On July 29, 2003, petitioner and private complainant executed a Memorandum of

Agreement<sup>[10]</sup> (MOA) stipulating, *inter alia*, that petitioner was desirous of borrowing the mortgaged TCT No. 261204 to be surrendered to the Home Development Mutual Fund or PAG-IBIG Fund<sup>[11]</sup> to obtain a loan the proceeds of which shall be paid to private complainant in satisfaction of petitioner's obligation; that the parties shall open a joint account with a reputable banking institution where the proceeds of the PAG-IBIG Fund loan shall be deposited; and that petitioner shall make 11 installment payments as per schedule set forth in the said MOA. Pursuant to the MOA, petitioner issued 11 postdated Banco de Oro checks, the first check for P3,000,000.00 and the other 10 checks, a uniform amount of P185,000.00 for each check.

On September 8, 2003, GGDC, through petitioner and PAG-IBIG Fund, executed a Loan Agreement<sup>[12]</sup> whereby GGDC, as borrower, was granted a developmental loan by PAG-IBIG Fund in an amount not exceeding P30,000,000.00 to finance the development of Carolina Homes subject of the MOA<sup>[13]</sup> of the same date (September 8, 2003) executed by the parties.

On October 7, 2003, the first tranche of the P30,000,000.00 loan in the amount of P9,000,000.00 was released by PAG-IBIG Fund to GGDC.<sup>[14]</sup> In view of the failure of petitioner to pay the loan of P4,784,000.00 to private complainant despite repeated demands therefor, or to return TCT No. 261204 as agreed upon in the MOA dated July 29, 2003, private complainant filed a complaint against petitioner for estafa under Article 315, paragraph 1(b) of the Revised Penal Code (RPC). Subsequently, on August 5, 2005, an Information<sup>[15]</sup> dated July 19, 2005 was filed by the City Prosecutor of Dagupan City with the RTC of Dagupan City, docketed as Criminal Case No. 2005-0498-D charging petitioner with the crime of estafa allegedly committed as follows:

That on or about the 29<sup>th</sup> day of July 2003, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JESUS V. COSON, received in trust and confidence from one NOLAN R EVANGELISTA the title of the land, TCT No. 261204 which he had given as a security to the P4,784,000.00 mortgage secured from the latter, alleging that he would use it in obtaining a loan from the [Home Development Mutual Fund (HDMF)] and promising the latter that he would pay him the mortgage consideration upon release of the proceeds of the loan by the said agency, but upon receipt of the proceeds, with intent to gain, by means of unfaithfulness or grave abuse of confidence, the herein accused, did then and there willfully, unlawfully and criminally, renege on his promise and refuse to perform his obligation to pay NOLAN [R.] EVANGELISTA despite demands made on him to do so, thereby misappropriating and converting the said amount for his own personal use and benefit, to the damage and prejudice of NOLAN R. EVANGELISTA, in the aforesaid amount of P4,784,000.00 and for other consequential damages sustained.

Contrary to Article 315, par. 1(b) of the Revised Penal Code.<sup>[16]</sup>

### ***Ruling of the Regional Trial Court***

On February 27, 2013, the RTC rendered its Decision<sup>[17]</sup> in Criminal Case No. 2005-

0498-D finding petitioner (accused therein) guilty as charged, ratiocinating as follows:

The only issue to be resolved in the case at bench is whether accused Coson is guilty of the crime charged. As earlier stated, Coson is being charged and tried with the crime of Estafa defined and penalized under second element of estafa with abuse of confidence under paragraph (b), subdivision No. 1, Article 315. The elements of estafa under paragraph 1(b), Article 315 of the Revised Penal Code are:

- (1) the offender receives the money, goods or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same;
- (2) the offender misappropriates or converts such money or property or denies receiving such money or property;
- (3) the misappropriation or conversion or denial is to the prejudice of another; and
- (4) the offended party demands that the offender return the money or property.

The essence of this kind of estafa is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words '*convert*' and '*misappropriate*' connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.

In the case at bench, from the testimony and evidence on record, the prosecution was able to establish beyond reasonable doubt all the elements of the crime charged as shown by the following circumstances.

First, a loan in the amount of [P4,750,000.00] secured by a real estate mortgage was constituted over a piece of land registered in the name of herein accused Coson covered by Transfer Certificate of Title No. 261204 was entered between him and Atty. Nolan Evangelista. Coson was not able to pay the loan but Evangelista did not foreclose the real estate mortgage.

Records of this case further show that Coson sought Evangelista thru a common-friend, Atty. Alejandro Fernandez, and made representation if Evangelista could lend the title to him as he was trying to find source of money to pay his loan from Evangelista and the title shall be used to secure a loan from the [Home Development Mutual Fund (HDMF)] from where [the] accused could realize loan releases sufficient to pay his

obligation to Evangelista.

Evangelista agreed to the proposal of accused Coson and delivered to the former TCT No. 261204 to secure [the] loan from the [HDMF]. The proposal and the mechanics of their agreement are contained in a document designated as Memorandum of Agreement. Accused issued various checks in favor of Evangelista, to wit: Check No. 492550 for P3 million pesos; Check No. 492551 for P185,000.00 pesos; Check No. 492552 for P185,000.00 pesos; Check No. 492553 for P185,000.00 pesos; Check Nos. 492554 to 492560. These checks are supposed to be funded from the loan which Coson will be obtaining from the [HDMF].

It has been further established by the evidence on record that after sufficient time had lapsed, Evangelista asked Atty. Fernandez to deposit in the latter's account check No. 492551 in the amount of P185,000.00 but it was dishonored by the drawee bank. Evangelista and Atty. Fernandez tried to inform accused of the dishonor of his check but both could not locate his whereabouts until one time Atty. Fernandez chanced upon him somewhere in Quezon City where the former informed the latter of the dishonor of his check.

In the meantime, Evangelista was able to discover that Coson had obtained [a] loan from the [HDMF], La Union Branch, but accused used the loan [proceeds] to pay some of his obligations but did not fund the checks he issued in accordance with their memorandum of agreement or the purpose for which Evangelista entrusted TCT No. 261204.

In fact, a certain Macy Jane Laron, Officer-in-Charge, Loan and Contribution, Management Loan and Recovery Division, [HDMF], La Union Branch, testified that Coson was able to realize initial loan release in the amount of P9 million.

Nonetheless, as admitted by Jill Catherine Coson, witness for the defense, x x x the joint account of [the] accused and Evangelista was not funded contrary to the memorandum of agreement between the two despite the initial release of the nine (9) million pesos. Thus, **two (2) demand letters were sent to the accused either to return the title or pay the amount of P4,784,000.00 pesos.** However, **Coson** can no longer return the title of the property as Arthur David, record custodian of the Register of Deeds, Lingayen, Pangasinan, testified that TCT No. 261204 has already been cancelled and anew title has already been issued covering the land described in said title.

[The a]ccused averred in his defense that Evangelista did not entrust the title to him to be used as collateral for a loan he filed with the [HDMF] but he asked Evangelista for the title to be submitted to the Land Registration Authority (LRA) for cancellation and re-distribution to the various lot purchasers.

He further averred that he was not able to settle his original obligation to Evangelista because he suffered business reverses and encountered personal problems.

Accused's defense of the need to submit the title to the Land Registration Authority for cancellation and distribution to the lot purchasers could not be taken seriously for the simple reason that accused did not present any document that would show that indeed the title has to be submitted to the LRA. Furthermore, accused had not presented [any] document that Evangelista is his partner in [the] housing business or has interest in accused's housing venture.

On the same breath, the averments of accused that he suffered business reverses and personal problems would not inure to [the] accused['s] advantage. On the contrary, such declaration is equivalent to admission of liability.

The issuance of the checks in favor of Evangelista is not in payment of the original obligation accused contracted from the former but to assure Evangelista that he will not be holding an "*empty bag*" if and when accused reneged on his undertaking to use the title as collateral to secure [a] loan from the [HDMF] because if the checks were intended as payment for the original obligation, it would simply be an exchange of the title which is still in the name of the corporation of the accused and the checks accused issued in favor of Evangelista.

On his part, accused interjected transactions between him and Atty. Fernandez which pertained to a two million (P2,000,000.00) peso loan extended by the latter to him. Nonetheless, he admitted that the Deed of Mortgage is four million and seven hundred fifty (P4,750,000.00) pesos. He testified that he did not pay Evangelista from the first release of Nine Million (P9,000,000.00) pesos because he has to pay the Rural Bank of Sta. Barbara. He further averred that he did not inform Evangelista when he signed the memorandum of agreement that he still [had] some unpaid creditors.

In view of the admission of the accused himself that he reneged on his undertaking to use the title entrusted to him to secure a loan from [HDMF] to pay his obligation to Evangelista, his admission that he had received P9,000,000.00 million pesos from the [HDMF] but did not pay Evangelista, and instead paid other creditors like the Sta Barbara Rural Bank, and the testimony of Arthur David that TCT No. 261204 [has] already been cancelled and a new title has been issued covering the land described in said title, the Court finds and so holds that he is liable for Estafa defined under Article 315 1(b) of the Revised Penal Code, penalized by Reclusion Temporal with a duration of Twelve (12) Years and One (1) Day to Twenty (20) Years considering that the amount is P4,784,000.00. Nonetheless, applying the Indeterminate Sentence Law, accused Coson should be sentenced to suffer an indeterminate penalty ranging from Ten (10) Years of Prison Mayor as minimum to Fourteen (14) Years, Eight (8) Months and One (1) Day of Reclusion Temporal as maximum.

It appearing that Evangelista had previously made reservation of filing an independent civil action arising from the incident subject matter of this