

## FIRST DIVISION

[ G.R. Nos. 209655-60, January 14, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PALMY TIBAYAN AND RICO Z. PUERTO, ACCUSED-APPELLANTS.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this ordinary appeal<sup>[1]</sup> filed by accused-appellants Palmy Tibayan (Tibayan) and Rico Z. Puerto (Puerto) (accused-appellants) is the Decision<sup>[2]</sup> dated June 28, 2013 of the Court of Appeals (CA) in CA-G.R. CR Nos. 33063, 33562, 33660, 33660, 33669, 33939, and 34398 which modified the Decisions dated December 4, 2009,<sup>[3]</sup> June 24, 2010,<sup>[4]</sup> August 2, 2010,<sup>[5]</sup> August 5, 2010,<sup>[6]</sup> January 21, 2011,<sup>[7]</sup> and August 18, 2011<sup>[8]</sup> of the Regional Trial Court of Las Piñas City, Branch 198 (RTC) and convicted accused-appellants of the crime of Syndicated *Estafa*, defined and penalized under Item 2 (a), Paragraph 4, Article 315 of the Revised Penal Code (RPC) in relation to Presidential Decree No. (PD) 1689.<sup>[9]</sup>

#### The Facts

Tibayan Group Investment Company, Inc. (TGICI) is an open-end investment company registered with the Securities and Exchange Commission (SEC) on September 21, 2001.<sup>[10]</sup> Sometime in 2002, the SEC conducted an investigation on TGICI and its subsidiaries. In the course thereof, it discovered that TGICI was selling securities to the public without a registration statement in violation of Republic Act No. 8799, otherwise known as "The Securities Regulation Code," and that TGICI submitted a fraudulent Treasurer's Affidavit before the SEC. Resultantly, on October 21, 2003, the SEC revoked TGICI's corporate registration for being fraudulently procured.<sup>[11]</sup>

The foregoing led to the filing of multiple criminal cases<sup>[12]</sup> for Syndicated *Estafa* against the incorporators and directors of TGICI,<sup>[13]</sup> namely, Jesus Tibayan, Ezekiel D. Martinez, Liborio E. Elacio, Jimmy C. Catigan, Nelda B. Baran, and herein accused-appellants.<sup>[14]</sup> Consequently, warrants of arrest were issued against all of them; however, only accused-appellants were arrested, while the others remained at large.<sup>[15]</sup>

According to the prosecution, private complainants Hector H. Alvarez, Milagros Alvarez, Clarita P. Gacayan, Irma T. Ador, Emelyn Gomez, Yolanda Zimmer, Nonito Garlan, Judy C. Rillon, Leonida D. Jarina, Reynaldo A. Dacon, Cristina Dela Peña, and Rodney E. Villareal<sup>[16]</sup> (private complainants) were enticed to invest in TGICI due to the offer of high interest rates, as well as the assurance that they will recover their investments. After giving their money to TGICI, private complainants received

a Certificate of Share and post-dated checks, representing the amount of the principal investment and the monthly interest earnings, respectively.<sup>[17]</sup> Upon encashment, the checks were dishonored, as the account was already closed, prompting private complainants to bring the bounced checks to the TGICI office to demand payment. At the office, the TGICI employees took the said checks, gave private complainants acknowledgement receipts, and reassured that their investments, as well as the interests, would be paid. However, the TGICI office closed down without private complainants having been paid and, thus, they were constrained to file criminal complaints against the incorporators and directors of TGICI.<sup>[18]</sup>

In their defense, accused-appellants denied having conspired with the other TGICI incorporators to defraud private complainants. Particularly, Puerto claimed that his signature in the Articles of Incorporation of TGICI was forged and that since January 2002, he was no longer a director of TGICI. For her part, Tibayan also claimed that her signature in the TGICI's Articles of Incorporation was a forgery, as she was neither an incorporator nor a director of TGICI.<sup>[19]</sup>

### **The RTC Rulings**

On various dates, the RTC issued six (6) separate decisions convicting Tibayan of 13 counts and Puerto of 11 counts of *Estafa* under Item 2 (a), Paragraph 4, Article 315 of the RPC in relation to PD 1689, to wit: (a) in a Joint Decision<sup>[20]</sup> dated December 4, 2009, the RTC found accused-appellants guilty beyond reasonable doubt of three (3) counts of *Estafa*, sentencing them to suffer the penalty of imprisonment for a period of 20 years of *reclusion temporal* for each count, and ordering them to pay the amounts of P1,500,000.00, to Hector H. Alvarez, and P119,405.23 and P800,000.00 to Milagros Alvarez;<sup>[21]</sup> (b) in a Joint Decision<sup>[22]</sup> dated June 24, 2010, the RTC acquitted Puerto of all the charges, but found Tibayan guilty beyond reasonable doubt of two (2) counts of *Estafa*, sentencing her to suffer the penalty of imprisonment for a period of 20 years of *reclusion temporal* for each count, and ordering her to pay the amounts of P1,300,000.00 and US\$12,000.00 to Clarita P. Gacayan and P500,000.00 to Irma T. Ador;<sup>[23]</sup> (c) in a Joint Decision<sup>[24]</sup> dated August 2, 2010, the accused-appellants were found guilty beyond reasonable doubt of two (2) counts of *Estafa*, and were sentenced to suffer the penalty of imprisonment for a period of 20 years of *reclusion temporal* for each count, and ordered to pay the amounts of P1,000,000.00 to Yolanda Zimmer and P556,376.00 to Nonito Garlan;<sup>[25]</sup> (d) in a Joint Decision<sup>[26]</sup> dated August 5, 2010, the RTC found the accused-appellants guilty beyond reasonable doubt of one (1) count of *Estafa*, sentencing them to suffer the penalty of imprisonment for a period of 20 years of *reclusion temporal*, and ordering them to pay Emelyn Gomez the amount of P250,000.00;<sup>[27]</sup> (e) in a Decision<sup>[28]</sup> dated January 21, 2011, accused-appellants were found guilty beyond reasonable doubt of one (1) count of *Estafa* each, and were sentenced to suffer the penalty of imprisonment for a period of 20 years of *reclusion temporal*, and ordered to pay Judy C. Rillon the amount of P118,000.00;<sup>[29]</sup> and (f) in a Joint Decision<sup>[30]</sup> dated August 18, 2011, accused-appellants were each convicted of four (4) counts of *Estafa*, and meted different penalties per count, as follows: (i) for the first count, they were sentenced to suffer the penalty of imprisonment for a period of four (4) years and two (2) months of *prision correccional* medium, as minimum, to fifteen (15) years of *reclusion temporal*

medium, as maximum, and to pay Reynaldo A. Dacon the amount of P100,000.00; to;(ii) for the second count, they were sentenced to suffer the penalty of imprisonment for a period of ten (10) years of *prision mayor* medium, as minimum, to twenty (20) years of *reclusion temporal* medium, as maximum, and to pay Leonida D. Jarina the amount of P200,000.00; (iii) for the third count, they were sentenced to suffer the penalty of imprisonment for a period of ten (10) years of *prision mayor* medium, as minimum, to twenty (20) years of *reclusion temporal* medium, as maximum, and to pay Cristina Dela Peña the amount of P250,000.00; and (iv) for the last count, they were sentenced to suffer the penalty of imprisonment for a period of four (4) years and two (2) months of *prision correccional* medium, as minimum, to fifteen (15) years of *reclusion temporal* medium, as maximum, and to pay Rodney E. Villareal the amount of P100,000.00. [31].

In the aforesaid decisions, the RTC did not lend credence to accused-appellants' denials in light of the positive testimonies of the private complainants that they invested their money in TGICI because of the assurances from accused-appellants and the other directors/incorporators of TGICI that their investments would yield very profitable returns. In this relation, the RTC found that accused-appellants conspired with the other directors/incorporators of TGICI in misrepresenting the company as a legitimate corporation duly registered to operate as a mutual fund, to the detriment of the private complainants. [32] However, the RTC convicted accused-appellants of simple *Estafa* only, as the prosecution failed to allege in the informations that accused-appellants and the other directors/ incorporators formed a syndicate with the intention of defrauding the public, or it failed to adduce documentary evidence substantiating its claims that the accused-appellants committed Syndicated *Estafa*. [33]

Aggrieved, accused-appellants separately appealed the foregoing RTC Decisions to the CA, docketed as CA-G.R. CR Nos. 33063, 33562, 336609, 336690, 33939, and 34398. Thereafter, the CA issued a Resolution [34] dated February 19, 2013 ordering the consolidation of accused-appellants' appeals.

### **The CA Ruling**

In a Decision [35] dated June 28, 2013, the CA modified accused-appellants' conviction to that of Syndicated *Estafa*, and accordingly, increased their respective penalties to life imprisonment for each count. [36] The CA also increased the amount of actual damages awarded to private complainant Clarita P. Gacayan from P1,300,000.00 to P1,530,625.90, apart from the award of US\$12,000.00. [37]

It held that TGICI and its subsidiaries were engaged in a Ponzi scheme which relied on subsequent investors to pay its earlier investors – and is what PD 1689 precisely aims to punish. Inevitably, TGICI could no longer hoodwink new investors that led to its collapse. [38] Thus, the CA concluded that as incorporators/directors of TGICI, accused-appellants and their cohorts conspired in making TGICI a vehicle for the perpetuation of fraud against the unsuspecting public.. As such, they cannot hide behind the corporate veil and must be personally and criminally liable for their acts. [39] The CA then concluded that since the TGICI incorporators/directors comprised more than five (5) persons, accused-appellants' criminal liability should be upgraded

to that of Syndicated *Estafa*, and their respective penalties increased accordingly.  
[40]

Undaunted, accused-appellants filed the instant appeal.

### **The Issue Before the Court**

The primordial issue for the Court's resolution is whether or not accused-appellants are guilty beyond reasonable doubt of the crime of Syndicated *Estafa* defined and penalized under Item 2 (a), Paragraph 4, Article 315 of the RPC in relation to PD 1689.

### **The Court's Ruling**

The Court sustains the convictions of accused-appellants.

Item 2 (a), Paragraph 4, Article 315 of the RPC provides:

Art. 315. *Swindling (estafa)*. – Any person who shall defraud another by any means mentioned herein below shall be punished by:

x x x x

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, business, or imaginary transactions; or by means of other similar deceits.

x x x x

The elements of *Estafa* by means of deceit under this provision are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage. [41]

In relation thereto, Section 1 of PD 1689 defines Syndicated *Estafa* as follows:

Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in