

FIRST DIVISION

[G.R. No. 185129, June 17, 2013]

ABELARDO JANDUSAY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

REYES, J.:

Before the Court is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court, assailing the Decision^[2] dated March 4, 2008 and Resolution^[3] dated October 23, 2008 of the Court of Appeals (CA) in CA G.R. CR No. 29850 which affirmed the Decision^[4] dated August 12, 2005 of the Regional Trial Court (RTC) of Valenzuela City, Branch 172 in Criminal Case No. 278-V-02 convicting Abelardo Jandusay (petitioner) for *estafa*.

The courts *a quo* arrived at similar factual findings, viz:

In the year 1999, petitioner was elected as the treasurer of Canumay, Lawang Bato, Punturin, Paso de Blas Tricycle Operators and Driver's Association, Inc. (CALAPUPATODA), herein referred as "association", a duly registered non-stock association of tricycle operators and drivers in Valenzuela City. He was re-elected to the same position in the year 2000.

According to the association's by-laws, the petitioner's position as treasurer entailed being "in charge of the funds, moneys, valuables, receipts and disbursements of the association, 'the books of accounts', 'an account of financial condition', and of all transactions made by him as treasurer."^[5] Relative thereto, he maintained a "blue book" which reflected the association's income derived from membership dues, motor and driver's fees and the *butaw*, an amount collected from members on a daily basis. It also indicates the expenses of the association.

Consequent to the election of the new set of officers for the year 2001, a turnover meeting was held between the outgoing and incoming officers on April 3, 2001. During the meeting, the petitioner turned over to the incoming officers the so-called "blue book" which contained entries of the income and expenses of the association for the year 2000. Based thereon, the net remaining funds of the association for the year 2000 is P661,015.00 which, the petitioner, however failed to turn-over despite written and verbal demands.

On March 4, 2002, the petitioner was formally charged with *estafa* or violation of paragraph 1(b), Article 315 of the Revised Penal Code (RPC) before the RTC.

During trial, the prosecution presented a copy of the minutes of the April 3, 2001 meeting which contained an undertaking signed by the petitioner that he will return the P661,015.00 by the end of September 2001.

The petitioner denied signing the undertaking and claimed that the same was merely inserted on top of his signature when he was asked to sign the minutes. He averred that finances of the association were never subjected to audit. He also endeavoured to establish that it was the association's President, Dionisio Delina (Delina) and not him who handled the funds of the association for the year 2000 as shown by the Memorandum issued by Delina himself in January 2000. Apparently, Delina assumed such responsibility because the petitioner then had a pending criminal case for estafa in relation to the association's funds in 1999.

The RTC accorded merit to the minutes presented by the prosecution, and together with the other evidence proffered, found the petitioner guilty of misappropriating the association's funds. The RTC rejected the petitioner's contentions and held that an examination of the minutes show that there is no indication that the undertaking reflected therein was merely inserted after the petitioner signed the same. There is no logical explanation for the petitioner to sign at least ten (10) line spaces below the last entry. Anent the memorandum allegedly issued by Delina, the RTC found the same to be of dubious origin and at best only self-serving. Thus, in its Decision^[6] dated August 12, 2005, the RTC disposed as follows:

WHEREFORE, judgment is hereby rendered finding accused ABELARDO JANDUSAY guilty beyond reasonable doubt and as principal of the crime of estafa as defined in and penalized under Article 315, par. 1(b), of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to suffer the indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *reclusion temporal* as maximum. Further, the accused is sentenced to pay the CALAPUPATODA the amount of [P]661,015.00 without subsidiary imprisonment in case of insolvency. Finally, the accused is sentenced to pay the costs of suit.

SO ORDERED.^[7]

The CA affirmed the petitioner's conviction, but modified the penalty imposed by the lower court. In its Decision^[8] dated March 4, 2008, the CA thus held:

WHEREFORE, premises considered, the Decision of the RTC of Valenzuela City, Branch 172, dated August 12, 2005, in Criminal Case No. 278-V-02, is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant ABELARDO JANDUSAY is hereby sentenced to an indeterminate penalty of 2 years and 11 months of *prision correccional* as minimum, to 8 years of *prision mayor* as maximum, plus 1 year for every [P]10,000.00 in excess of [P]22,000.00 but not to exceed 20 years, or the maximum of 20 years. The rest of the Decision stands.

SO ORDERED.^[9]

The appellate court agreed with the RTC that the elements of the crime of *estafa* were adequately established by the prosecution. In an attempt to overturn the decision of the CA, petitioner filed a Motion for Reconsideration on April 14, 2008 and a Motion for New Trial on May 18, 2008. The CA denied both motions in a