

SECOND DIVISION

[G.R. No. 159255, January 28, 2008]

**RODOLFO VASQUEZ vs. PEOPLE OF THE PHILIPPINES,
Respondent.**

D E C I S I O N

TINGA, J.:

Petitioner Rodolfo Vasquez seeks his acquittal of the crime of estafa punished under Article 315, par. 2(a)^[1] of the Revised Penal Code in this Petition for Review on Certiorari^[2] dated 15 September 2003. We affirm his conviction but deem it necessary to clarify the apparent jurisprudential contradiction in the imposition of the appropriate penalty for the crime.

The records show that Vasquez, together with his co-accused Filipina Antonio and Dolores Javier, was indicted in an Information which states:

That on or about the period commencing September 10, 1991 to September 27, 1991, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, by means of misrepresentations, false pretenses and fraudulent acts executed prior to or simultaneously with the commission of the fraud, did then and there willfully, unlawfully and feloniously defraud one GEMMA M. ARGOSO in the following manner to wit: the said accused induced the complainant to give and deliver to them the total sum of P748,000.00 by way of a loan, the amount of P408,000.00 of which was secured by Transfer Certificate of Title No. RT-4959 (T-230773) covering a 239,992 square meters land registered in the name of accused Rodolfo Vasquez, the accused representing thereby that the said loan will be devoted to finance their mango plantation on said land and that they have applied for loan with a bank for said purpose; and moreover the accused caused complainant to come with them and led her to tour another land already planted to mango trees thereby making her to believe that the mango plantation project is for real; thus, complainant gave and delivered to the accused the total sum of P708,000.00 and the accused once in receipt of the same absconded therewith to the damage, loss and prejudice of the complainant as all their representations were false and fraudulent, the land of accused Rodolfo Vasquez not being the land that was planted to mangoes nor the inspected land, and is in fact a barren land, there was no project or study nor bank loan application and were only resorted to by the accused in order to defraud the complainant GEMMA M. ARGOSO.

CONTRARY TO LAW.^[3]

During arraignment, Vasquez pleaded not guilty. His co-accused, however, remained at large. Trial then proceeded with the prosecution presenting private complainant, Gemma Argoso (Argoso), and Jane Araojo as its witnesses. The defense, on the other hand, presented Vasquez as its sole witness.

The trial court rendered a judgment of conviction against Vasquez, the dispositive portion of which states:

WHEREFORE, premises considered and finding accused Rodolfo Vasquez guilty beyond reasonable doubt of the crime of Estafa defined under Article 315, 2(a) of the Revised Penal Code and penalized under the first paragraph thereof, said accused is hereby sentenced to an indeterminate prison term of from [sic] seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as minimum to twenty (2) years of *reclusion temporal* as maximum and further said accused is hereby ordered to pay unto Gemma Argoso the sum of P708,000.00 consisting of the amount which he was able to obtain from said complainant by means of misrepresentation and deceit. With costs against Rodolfo Vasquez.

SO ORDERED.^[4]

The Court of Appeals affirmed the conviction but modified the penalty imposed upon Vasquez, as follows:

However, pursuant to case law, the penalty imposed against the accused-appellant should be modified, [viz]: an indeterminate penalty of twelve (12) years of prision mayor as minimum to thirty (30) years of *reclusion perpetua* as maximum. The indemnification to pay the amount of P708,000.00 stands.^[5]

The trial court and the Court of Appeals agree that Vasquez personally participated in the misrepresentation and deceit which led to his obtention of a loan in the amount of P708,000.00 from Argoso allegedly for the purpose of financing a mango plantation project on his property. Through connivance with his co-accused, Vasquez made Argoso believe that the property she saw and inspected, and whose title she verified with the Registry of Deeds, was the same property to be mortgaged to her by Vasquez.

These findings are fully supported by the evidence on record. It was proven that Vasquez employed the services of his co-accused, Filipina Antonio, to act as a broker in the transaction. Vasquez and Antonio showed the title of the property to Argoso and told the latter that they had already conducted a project study for the proposed mango plantation and had presented the same to a bank. The two also gave directions to enable Argoso to visit the property, telling her that it was located right beside Robina Farms in San Miguel, Bulacan. The property indicated indeed had mango trees planted on certain portions, which convinced Argoso that granting the loan to Vasquez was a good idea. It was only when Vasquez failed to pay the loan that Argoso discovered that the property mortgaged to her was not the property she inspected but actually sat on a barren, mountainous area.^[6]

Despite Vasquez's failure to raise the propriety of the penalty imposed by the Court

of Appeals as an issue in his petition, we shall modify the same to conform to the law and prevailing jurisprudence as it appears that the appellate court erroneously relied on the case of *People v. Hernando*^[7] in stating that the maximum period of the indeterminate penalty imposable on Vasquez should not exceed thirty (30) years.

The accused spouses in *People v. Hernando* were charged with estafa under Article 315, par. 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818 (PD 818), which increased the penalty only for estafa committed by issuing a check dishonored for lack or insufficiency of funds. Under PD 818, if the amount of the fraud exceeds P22,000.00, the penalty of *reclusion temporal* is imposed in its maximum period, adding one year for each additional P10,000.00, but the total penalty shall not exceed thirty (30) years which shall be termed as *reclusion perpetua*. Thus, the Court sentenced the accused to suffer an indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to thirty (30) years of *reclusion perpetua*, as maximum.

The amendment to the imposable penalty introduced by PD 818 clearly does not apply to the present case as it does not involve bouncing checks. The provisions of the Revised Penal Code remain applicable.

Article 315 of the Revised Penal Code provides that the proper imposable penalty for the crime of estafa under par. 2(a) thereof is *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over P12,000.00 but does not exceed P22,000.00. If such amount exceeds the latter sum, the penalty shall be imposed in its maximum period, adding one (1) year for each additional P10,000.00, provided that the total penalty which may be imposed shall not exceed twenty (20) years. In such cases, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be.

Under the Indeterminate Sentence Law, if the offense is punished by the Revised Penal Code, the court shall sentence the accused to an indeterminate penalty the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

In *People v. Gabres*,^[8] the spouses Gabres were found guilty of four (4) counts of estafa committed by means of deceit punishable under Article 315, par. 2(a) of the Revised Penal Code. The Court sustained the conviction but modified the penalties imposed by the trial court to reflect the view that the fact that the amounts involved in the case exceed P22,000.00 should not be considered in the initial determination of the indeterminate penalty.