

THIRD DIVISION

[G.R. No. 174405, August 26, 2008]

**FLORA BAUTISTA, PETITIONER, VS. FELICIDAD CASTILLO
MERCADO, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which assails the Decision^[1] of the Court of Appeals in CA-G.R. CR No. 25426 which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of Manila, Branch 36, finding petitioner Flora Bautista y Maniego (Flora) guilty beyond reasonable doubt of the crime of Estafa under Article 315, par. 1(b) of the Revised Penal Code.

On 13 February 1976, an Information for Estafa was filed before the RTC against petitioner, which was docketed as Criminal Case No. 82-3506. The accusatory portion of the Information reads:

That sometime in the month of January, 1972, in the City of Manila, Philippines, the accused did then and there willfully, unlawfully and feloniously defraud one Felicidad Castillo Mercado in the following manner to wit: the said accused received in trust from the said Felicidad Castillo Mercado Transfer Certificate of Title No. 4031 covering a parcel of land located at Barrio Ulat, Silang, Cavite, containing an area of 29,234 sq. m. more or less, with the understanding and under express obligation on the part of said accused of mortgaging the same as evidenced by Special Power of Attorney executed by Felicidad Castillo Mercado in favor of said accused and turning over the proceeds of the said loan, if mortgaged, or of returning the said certificate of titles to said Felicidad Castillo Mercado, if unable to do so, upon demand, but the said accused hence, having successfully mortgaged the above described property and having thereby received the loan in the amount of P100,000.00 far from applying with her aforesaid obligation, despite repeated demands made upon her to do so, with intent to defraud, willfully, unlawfully and feloniously misapplied, misappropriated and converted the proceeds of the said loan in the amount of P100,000.00 to her own personal use and benefit to the damage and prejudice of the said Felicidad Castillo Mercado, in the aforesaid sum of P100,000.00, Philippine Currency.^[3]

When arraigned, petitioner pleaded not guilty, whereupon trial was held.

At the trial, the prosecution presented the following witnesses: (1) Technical Sergeant (T/SGT.) Romeo Cudia, the Office of the Criminal Investigation Service (CIS), Camp Crame, Quezon City, who investigated the complaint for Estafa filed by

respondent Felicidad Castillo Mercado against Flora; (2) Alicia Ignacio, representative of Feati Bank and Trust Company (Feati Bank), who testified that Flora was able to obtain P100,000.00 loan by means of a special power of attorney signed by Felicidad with TCT No. 4031 as collateral, and that the said amount was released to Flora; (3) Felicidad Castillo Mercado (Felicidad), the alleged victim in this case, who testified that she and Flora agreed to enter into a piggery business together and that pursuant thereto, she gave to the petitioner two titles to her lands and executed a special power of attorney in favor of petitioner to use the same as collaterals for a loan, with the understanding that the latter would turn over to her the proceeds thereof; (4) Francisca Mercado Abinante (Francisca), the sister in-law of Felicidad, whose testimony corroborated that of the victim; (5) Atty. Tomas Torneros Jr., the Acting Register of Deeds of Tagaytay City, whose testimony confirmed that Transfer Certificate of Title No. 4031 was mortgaged to Feati Bank, that the mortgage was executed by Felicidad through her attorney-in-fact Flora Bautista, and that said property was foreclosed and sold at public auction to Feati Bank.

As documentary evidence, the prosecution offered the following: Exhibit "A" - Transfer Certificate of Title No. 4031; Exhibit "A-6" - the Special Power of Attorney executed by Felicidad in favor of Flora; Exhibit "C" - the Real Estate Mortgage executed between Flora, as attorney-in-fact, and Feati Bank; Exhibit "D" - the Notice of Sale of the land covered by TCT No. 4031; and Exhibit "E" - the Final Deed of Sale of the mortgaged property covered by TCT NO. 4031 in favor of Feati Bank.

The collective evidence adduced by the prosecution shows that in the afternoon of the last week of January 1972, Felicidad, a resident of Silang, Cavite, went to the nearby house of her sister-in-law Francisca. Francisca and Flora were conversing when Felicidad arrived. In the course of their conversation, Flora introduced her plan to engage in a piggery business and to obtain the capital thereof from a loan to be granted by the Development Bank of the Philippines (DBP) and to be collateralized by a real estate mortgage. Upon knowing that Felicidad had titled parcels of land, Flora invited her to be part of the business plan. Flora urged Felicidad to have her real properties mortgaged with DBP and use the proceeds of the loan as capital for the business proposal. Felicidad told Flora that she had no time to process the papers for the loan application. Flora, however, responded that she would be the one to take care of the loan application. Flora also requested Felicidad to execute a Special Power of Attorney (SPA) in her favor authorizing her to use the two parcels of land (covered by Transfer Certificate of Title [TCT] Nos. 4030 and 4031, both located in Tagaytay City) as collaterals for the loan application. Before signing the SPA, Felicidad made it clear that she wanted the proceeds of the loan handed to her. With Flora's assurance that she would take steps towards the procurement of the loan, and that she would turn over the proceeds of the loan to Felicidad, the latter signed the SPA. Felicidad then delivered the titles covering the two parcels of land to Francisca who, in turn, gave the same to Flora. Whenever Flora visited Felicidad, she would tell her that the loan application was already being processed by the DBP. After several months had elapsed, Flora stopped visiting and informing Felicidad of the status of the loan. Suspicious of Flora's disappearance, Felicidad sent Francisca to the DBP to withdraw the loan application. Francisca discovered that only one parcel of land covered by TCT No. 4030 was used in the loan application with the DBP; hence, only one title was returned by the bank. Later, Felicidad received a demand letter dated 9 March 1973 from Feati Bank and Trust Company, informing her of her failure to settle her obligations with the said bank in the amount of

P73,000.00.

Upon verification, it was disclosed that the other piece of land owned by Felicidad and covered by TCT No. 4031 was used by Flora as a collateral for two loan applications dated 5 April 1972 and 14 June 1972 for the amounts of P30,000.00 and P70,000.00, respectively, with Feati Bank. It was also revealed that the proceeds of the two loans were released by the bank to Flora.

Felicidad requested Francisca to look for Flora. When Francisca finally located Flora, she and Felicidad confronted Flora who admitted that she had already spent the proceeds of the loans and promised to pay the loans with Feati. A year elapsed, and Felicidad received a notice from the provincial sheriff of Cavite informing her that her property covered by TCT No. 4031 would be foreclosed and sold at public auction. Felicidad and Francisca again tried to approach Flora, who was nowhere to be found. This prompted Felicidad to bring the matter to the CIS for investigation. After investigating the case, the CIS endorsed the same to the Office of the Prosecutor.

The defense presented Flora, its lone witness. Flora testified that she knows Felicidad and Francisca, the latter being the aunt of her husband. She came to know Felicidad because Francisca introduced Felicidad to her. Flora averred that she and Francisca were engaged in the rice-dealing business, she being the supplier of Francisca. For every delivery, Francisca paid Flora on installment. This transaction lasted for two or three years until Francisca incurred obligations to Flora in the amount of P30,000.00 for the rice deliveries.^[4] In order to pay off her debts to Flora, Francisca delivered to the former two titles to lands which were in the name of Felicidad. In order to make use of the titles, Flora asked Francisca to obtain an SPA from Felicidad authorizing her to mortgage the two parcels of land. She, however, stressed that the transaction was between her and Francisca only. After Francisca delivered to her the titles and the SPA, Flora used the titles and the SPA to obtain personal loans with the Feati Bank in the total amount of P100,000.00.

On 2 June 2000^[5], the RTC rendered a decision finding Flora guilty beyond reasonable doubt of the crime charged. The decretal portion of the RTC decision reads:

WHEREFORE, the penalty that should be imposed upon accused Flora Bautista is the indeterminate penalty of Three (3) Years, Two (2) Months and Eleven (11) Days of prision correccional as minimum to Twelve (12) Years, Four (4) Months and One (1) Day of reclusion temporal, as maximum. Accused Flora Bautista is also ordered to indemnify the complaining witness, Felicidad Castillo Mercado the sum of P100,000.00 and to suffer the accessory penalties provided for by law and to pay the costs.^[6]

Dissatisfied with the ruling of the RTC, Flora elevated the case to the Court of Appeals. In a decision dated 30 January 2006, the Court of Appeals affirmed the decision of the RTC, with modification on the penalty imposed, thus:

WHEREFORE, above premises considered, the Decision appealed from convicting accused-appellant Flora Bautista y Maniego of the crime of Estafa is AFFIRMED with MODIFICATION that accused-appellant shall

suffer the indeterminate penalty of imprisonment ranging from THREE (3) YEARS, TWO (2) MONTHS and ELEVEN (11) DAYS of prison correccional as minimum to FIFTEEN (15) YEARS of reclusion temporal as maximum. All the other aspects of the judgment STAND.^[7]

On 25 April 2006, Flora filed a Motion for Reconsideration, which was denied by the Court of Appeals in a Resolution dated 18 August 2006.

Hence, the instant recourse.

Flora asserts that the RTC erred in declaring that the P100,000.00 loan was granted by Feati Bank in favor of Felicidad and not in her own. She also insists that she has no obligation to account for the proceeds of the loan she obtained from the bank, since it was contracted for her personal benefit. Absent such obligation to account for the proceeds of the said loan, she could not have committed the crime of estafa through misappropriation or conversion as charged. Stated otherwise, she maintains that the first element of estafa under Article 315 paragraph 1(b) is lacking.

Flora's arguments are not persuasive.

Flora is charged with committing the crime of estafa under paragraph 1(b), Article 315 of the Revised Penal Code, which provides:

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

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be;

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

- (a) By altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration;
- (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;

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.^[8]

Petitioner wants this Court to weigh the credibility of the prosecution witnesses *vis-a-vis* the defense witnesses. It has often been said, however, that the credibility of witnesses is a matter best examined by, and left to, the trial courts.^[9] When the factual findings of the trial court are affirmed by the appellate court, the general rule applies.^[10] This Court will not consider factual issues and evidentiary matters already passed upon. The petitioner raises the same issues she brought before the appellate court, which gave credence to the findings and decision of the trial court.

Factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts or circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case.^[11] The assessment by the trial court of the credibility of a witness is entitled to great weight. It is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.

In the case under consideration, we find that the trial court did not overlook, misapprehend, or misapply any fact of value for us to overturn the findings of the trial court.

Contrary to Flora's claim, the prosecution was able to establish the first element of