

## FIRST DIVISION

[ G.R. NO. 160540, March 22, 2007 ]

**VICIA D. PASCUAL, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CORONA, J.:**

This is a petition for review under Rule 45 of the Rules of Court assailing the decision<sup>[1]</sup> and resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 25992 entitled *People of the Philippines v. Vicia D. Pascual*.

The facts follow.

Petitioner was elected vice-president of the Assumption College Parents Council for the school year 1996-1997. When the council's president suffered a stroke, she took over as acting president from October 1996-June 1997. The council's funds, at that time deposited in the United Coconut Planters Bank (UCPB) and Asianbank, were entrusted to her.

In 1998, when Joyce M. O'Hara became president, petitioner was requested to turn over the council's money to the new set of officers but despite several demands, petitioner failed to do so. Later, O' Hara discovered that petitioner had already withdrawn the money from UCPB and Asianbank. Although petitioner opened a new account in the council's name at Philippine National Bank, she, however, failed to deposit about P578,208.96 of the council's money.

Two criminal cases for estafa were filed in the Regional Trial Court of Makati City, Branch 135, against petitioner, Criminal Case No. 98-1014 and Criminal Case No. 98-1015.

In Criminal Case No. 98-1014, Asianbank accused petitioner of falsely representing to it that she had been authorized by the council to withdraw the latter's deposits from the bank. On the other hand, in Criminal Case No. 98-1015, the council charged petitioner with misappropriating the money entrusted to her as acting president.

When arraigned, petitioner pleaded not guilty to the twin charges. A joint trial ensued.

At the trial, Ms. O'Hara presented the following as evidence: (1) statements of account issued by UCPB and Asianbank showing the amounts withdrawn by petitioner; (2) the council's checks issued by petitioner, payable to herself and (3) demand letters asking petitioner to return the money.<sup>[3]</sup>

Petitioner, who was also the defense's sole witness, denied the charges against her. She claimed that the council authorized her to withdraw the money from UCPB and Asianbank to finance the construction of a covered walk in Assumption College. To support this claim, she presented a Secretary's Certificate signed by a certain Marietta Veneracion.

On the other hand, Asianbank failed to continue participating in the trial of Criminal Case No. 98-1014; hence, this case was dismissed for failure to prosecute. On manifestation of petitioner's former counsel, the evidence in Criminal Case No. 98-1014 was adopted and offered as the defense's evidence in Criminal Case No. 98-1015.

After trial, the court *a quo* found petitioner liable for estafa under Article 315, paragraph 1(b)<sup>[4]</sup> of the Revised Penal Code (RPC). Accordingly, the trial court declared:

WHEREFORE, premises considered, it having been proven beyond reasonable [doubt] the guilt of [petitioner] VICIA DAVID PASCUAL in Criminal Case No. 98-1015, for the crime of estafa under [Article 315,] paragraph 1 [b], as principal, with no aggravating and mitigating circumstances, she is hereby sentenced to an indeterminate prison term penalty of four <sup>[4]</sup> years two <sup>[2]</sup> months of *prision correccional* in its medium period, as minimum to twenty <sup>[20]</sup> years of reclusion temporal in its medium period, as maximum; to indemnify complainant Assumption College Parents Council the amount of P578,208.96 with legal interest thereon from the date of the filing of the information until fully paid; and to pay the costs.

For failure to prosecute, Criminal Case No. 98-1014 is hereby dismissed.

SO ORDERED.<sup>[5]</sup>

Petitioner moved for new trial and offered to submit to the trial court her affidavit that she gave the council's money to a contractor hired to build a covered walk for Assumption College and that this contractor supposedly ran away with the money. Attached to this affidavit were documents which she claimed were newly-discovered evidence, namely: (1) the approved resolution of the council and a sketch of the proposed construction of the covered walk; (2) approval of the project by the president of Assumption College; and (3) approval by the San Lorenzo Village Association of the covered walk project.<sup>[6]</sup>

When the trial court denied petitioner's motion for new trial, she appealed to the CA. There, she argued that, due to her former lawyer's negligence, she failed to submit her affidavit during the trial proper. Although petitioner averred that she gave the money to the contractor, she claimed she could no longer locate the receipt issued to her.

Except for the penalty imposed by the trial court, the CA affirmed petitioner's conviction for estafa. The CA held:

The alleged loss of receipt is unbelievable as it is not duly proven. And the construction for which payment was allegedly made turned out to be

non-existent. There is no other logical conclusion save that she merely misappropriated the money. Otherwise stated, [petitioner] abused the confidence the Council reposed on her by misusing and/or detaining its money from the use it was intended to be applied.

...[A]fter a thorough review, [w]e find no cogent reason to disturb the findings and conclusion of the trial Court, save as to the penalty imposed upon [petitioner].

The penalty for estafa is *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over [P]12,000 but does not exceed [P] 22,000; and if such amount exceeds the latter sum, the penalty provided shall be imposed in its maximum period, adding one year for each additional [P]10,000; 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 other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

Considering the amount of P 578,208.96 misappropriated by [petitioner], the corresponding penalty obviously reached the twenty-year limit. Absent any modifying circumstance, the maximum should be within the maximum twenty years of *reclusion temporal* while the minimum term should be anywhere within *prision mayor*, the penalty next lower in degree from *reclusion temporal*.

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WHEREFORE, the appealed decision is hereby AFFIRMED with the MODIFICATION that [petitioner] VICIA D. PASCUAL is sentenced to an indeterminate penalty of EIGHT (8) Years and ONE (1) Day of *prision mayor*, as minimum, to TWENTY (20) Years of *reclusion temporal*, as maximum. All other aspects of the decision are maintained.<sup>[7]</sup>

Petitioner moved for reconsideration of the above decision but the same was denied,<sup>[8]</sup> thus this petition.

Petitioner essentially argues that the CA erred in affirming her conviction. She reiterates her arguments in the lower courts that: (1) she was denied her constitutional right to due process because of her former counsel's failure to present the necessary evidence on her behalf and (2) the CA erred in not giving credence to her affidavit attesting that she did not misappropriate the money.<sup>[9]</sup> She added that the notice of preliminary investigation was defective and the trial court never acquired jurisdiction over her person.

The petition must fail.

**PETITIONER WAS ACCORDED HER  
CONSTITUTIONAL RIGHT TO DUE  
PROCESS**