

## SECOND DIVISION

[ G.R. No. 156558, June 14, 2004 ]

**GEORGE VINCOY,<sup>[1]</sup> PETITIONER, VS. HON. COURT OF APPEALS  
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**PUNO, J.:**

This is a petition for review of the Decision dated December 20, 2002 of the Court of Appeals in CA-G.R. CR No. 24316<sup>[2]</sup> affirming that of the Regional Trial Court of Pasig, Branch 268, in Criminal Case No. 112432 finding petitioner George Vincoy guilty beyond reasonable doubt of estafa under Art. 315, par. 2(a) of the Revised Penal Code.

The Information reads:

On or about March 14, 1996, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, by means of deceit and false pretenses executed to or simultaneously with the commission of the fraud, did, then and there willfully, unlawfully and feloniously defraud Lizah C. Cimafranca and Rolando Flores, in the following manner, to wit: the said accused represented that he could mobilize thirty (30) dump trucks and two (2) payloaders for use of the complainant[s] subject to the payment of P600,000.00 mobilization fund and, believing this representation to be true, the said complainants paid and delivered the said amount to the accused at Banco de Oro Bank, Pasig City Branch, which representation accused knew well to be false and fraudulent and were (*sic*) only made to induce the complainants to give and deliver as in fact they gave and delivered the said amount of P600,000.00 to the respondent (*sic*), and accused once in possession of said amount, misappropriated, misapplied and converted the same to his own personal use and benefit, to the damage and prejudice of the complainants, Lizah C. Cimafranca and Rolando Flores, in the amount of P600,000.00.

Pasig City, May 28, 1997.<sup>[3]</sup>

Petitioner pleaded not guilty to the charge. Hence, trial ensued.

The prosecution evidence established that private complainants Rolando Flores and Lizah Cimafranca are business partners and contractors. They approached petitioner George Vincoy, proprietor of Delco Industries Phils., Inc., in March 1996 for dump trucks and payloaders which they needed to haul silica in Bulacan. Petitioner represented that he could mobilize thirty (30) dump trucks and two (2) payloaders upon payment of a P600,000.00 mobilization fund by complainants at P20,000.00 per dump truck. Pursuant to their verbal agreement, private complainants paid an

initial P200,000.00 cash to the petitioner on March 9 or 10, 1996 for which they were issued a receipt by the petitioner. To pay the balance of P400,000.00, complainant Rolando Flores, with the help of his wife Carolina, borrowed from a client of Banco de Oro, Pasig City Branch, of which his wife was the Manager. Carolina personally guaranteed the loan. For the purpose, Rolando bought a manager's check from Banco de Oro which issued to him Manager's Check No. 011543 for P400,000.00. On March 14, 1996, Rolando, Lizah, and petitioner went to the bank to encash the check. After Rolando encashed the check, Carolina Flores personally handed over the proceeds to petitioner. Petitioner issued Official Receipt No. 085 but wrote therein the amount of P600,000.00, not P400,000.00, to include the P200,000.00 which he previously received from the complainants. The previous receipt for the P200,000.00 was thus cancelled. Despite the payment, only one (1) dump truck was delivered in the evening of March 14, 1996. Private complainants demanded the return of their money but they were either ignored or refused entry at petitioner's office premises. After some time, petitioner offered to complainants PCIBank Check No. 022170A as reimbursement. The check was for P715,000.00 issued by one Luzviminda Hernandez payable to cash and/or to Delco Industries. It was understood that the difference would be turned over to petitioner. Eager to have their money back and pay their obligation to their creditor, private complainants accepted the check and returned Official Receipt No. 085 which petitioner requested. The check, however, was dishonored upon presentment for payment. Private complainants again demanded the return of their money but petitioner could no longer be contacted. As a result, Carolina Flores was terminated from her job as Manager of Banco de Oro, Pasig City Branch, for guaranteeing her husband's loan.

In May 1996, Lizah Cimafranca filed a complaint for estafa against petitioner with the Office of the City Prosecutor of Pasay City docketed as I.S. No. 96-1946. It was, however, dismissed in a Resolution dated August 21, 1996 on the ground that petitioner's obligation was purely civil in nature and for complainant's failure to attend the hearings.<sup>[4]</sup> On October 8, 1996, Lizah Cimafranca, joined by Rolando Flores, re-filed the complaint charging the same offense against petitioner with the Office of the City Prosecutor of Pasig City which filed the corresponding information in court, root of the present petition.

Petitioner denied that he received P600,000.00 from the private complainants. He alleged that he was only given a Banco de Oro Manager's Check for P400,000.00 which was not even issued in his name. Failing to notice that the check was not in his name, he issued Official Receipt No. 085<sup>[5]</sup> for P600,000.00, not P400,000.00, to include the overprice for complainants' commission in the amount of P200,000.00. When he noticed that the check was issued in the name of complainant Rolando Flores, he arranged for his driver to return the check to complainants for encashment and to take back O.R. No. 085. As a result, his transaction with the private complainants was cancelled because they did not turn over the proceeds of the check to him.

The trial court sustained the version of the prosecution. The trial judge found incredible petitioner's averment that he failed to notice that the check in question was not issued in his name. Petitioner was a seasoned businessman. A judgment of conviction was rendered on February 23, 2000, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused GEORGE VINGCOY guilty beyond reasonable doubt of the crime of ESTAFA defined and penalized under Art. 315 of the Revised Penal Code and hereby sentences him to suffer the penalty of imprisonment from fourteen (14) years, eight (8) months and one (1) day to twenty (20) years of *Reclusion Temporal* in its medium and maximum period (sic) and to indemnify the offended party in the amount of P600,000.00. With costs.

SO ORDERED.<sup>[6]</sup>

Accused appealed to the Court of Appeals to no avail.<sup>[7]</sup> Hence, this petition for review.

Petitioner insists that his guilt has not been proven beyond reasonable doubt. He contends that the trial court and the Court of Appeals erred in concluding that he received payment from the private complainants considering that Official Receipt No. 085 was admittedly returned to him and marked "cancelled" while PCIBank Check No. 022170A for P715,000.00 was not presented and marked as an exhibit and was only surreptitiously included as Exh. "B" during the prosecution's formal offer of evidence. He also argues that his identity was not even established since his pictures,<sup>[8]</sup> although presented and marked as Exhs. "B," "B-1" and "B-2," were not included in the prosecution's formal offer of evidence. Further, he points out that the dismissal of the previous complaint for estafa filed by Lizah Cimafranca by the City Prosecutor's Office of Pasay City supports his acquittal.

Petitioner's contentions are not well-taken. The fact that his pictures were not formally offered as evidence although they were presented and marked as exhibits, is not fatal to the prosecution's cause. There is no question as to petitioner's identity as the accused. He himself admitted that he transacted with the private complainants although the transaction was cancelled for failure of complainants to pay the mobilization fund. This admission that he personally dealt with the complainants in regard to the transaction in question renders his identification a non-issue.

The dismissal of a similar complaint for estafa filed by Lizah Cimafranca before the City Prosecutor's Office of Pasay City will not exculpate the petitioner. The case cannot bar petitioner's prosecution. It is settled that the dismissal of a case during its preliminary investigation does not constitute double jeopardy<sup>[9]</sup> since a preliminary investigation is not part of the trial and is not the occasion for the full and exhaustive display of the parties' evidence but only such as may engender a well-grounded belief that an offense has been committed and accused is probably guilty thereof.<sup>[10]</sup> For this reason, it cannot be considered equivalent to a judicial pronouncement of acquittal. Hence, petitioner was properly charged before the Office of the City Prosecutor of Pasig City which is not bound by the determination made by the Pasay City Prosecutor who may have had before him a different or incomplete set of evidence than that subsequently presented before the Pasig City Prosecutor.

Lastly, whether or not petitioner indeed received payment from private complainants is a question of fact best left to the determination of the trial court. We quote with