

## SECOND DIVISION

[ G.R. No. 124513, October 17, 2001 ]

**ROBERTO ERQUIAGA, AND GLENN OROSCO, PETITIONERS, VS.  
HON. COURT OF APPEALS, REGIONAL TRIAL COURT, BRANCH 24,  
NAGA CITY, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

For review is the decision<sup>[1]</sup> dated August 30, 1995, of the Court of Appeals in CA-GR No. 14904 affirming with modification the judgment of the Regional Trial Court of Naga City, Branch 24, dated March 31, 1993. The RTC of Naga City had found appellants guilty of *estafa*.

The facts of this case are as follows:

Honestal Bal is a businesswoman who owned a bookstore. Sometime in May 1989, she was contacted by Manuel Dayandante @ Manny Cruz who offered to buy her land in Pili, Camarines Sur. He told Honestal that the company he represented was interested in purchasing her property. On May 5, 1989, Honestal's daughter, Josephine Tapang, received a telegram from Dayandante informing Honestal that the sale had been approved and that he would arrive with the inspection team on May 12, 1989.<sup>[2]</sup> On May 19, 1989, Honestal received a call from Dayandante. Her daughter and she met Dayandante and a certain Lawas @ Rodolfo Sevilla at the Aristocrat Hotel. Dayandante and Lawas said they were field purchasing representative and field purchasing head, respectively, of the Taiwanese Marine Products. They persuaded Honestal to purchase cans of a marine preservative which, could be bought for P1,500 each from a certain peddler. In turn, they would buy these cans from her at P2,000 each.

The following day, May 20, 1989<sup>[3]</sup> Glenn Orosco, one of herein petitioners, appeared at Honestal's store and introduced himself as an agent, a.k.a. "Rey," who sold said marine preservative. Like a fish going after a bait, Honestal purchased a can which she sold to Dayandante for P1,900. The following day, May 21, Orosco brought five more cans which Honestal bought and eventually sold to Lawas. It was during this transaction that petitioner Roberto Erquiaga, a.k.a. "Mr. Guerrero," was introduced to Honestal to ascertain whether the cans of marine preservative were genuine or not.<sup>[4]</sup>

On May 24, Orosco delivered 215 cans to Honestal. Encouraged by the huge profits from her previous transactions, she purchased all 215 cans for P322,500. She borrowed the money from a Jose Bichara at 10% interest on the advice of Erquiaga who lent her P5,000.00 as deposit or earnest money and who promised to shoulder the 10% interest of her loan. Soon after the payment, Lawas, Dayandante, Erquiaga, and Orosco vanished. Realizing that she was conned, Honestal reported

the incident to the National Bureau of Investigation (NBI) which, upon examination of the contents of the cans, discovered that these were nothing more than starch. The NBI likewise uncovered that the *modus operandi* and sting operation perpetrated on Honesta had been going on in other parts of the country, in particular, Cebu, Batangas, Dagupan, Baguio and Olongapo.<sup>[5]</sup>

On December 4, 1989, an Information for *Estafa* under Article 315, paragraph 2 (a) of the Revised Penal Code, was filed against Roberto Erquiaga, Glenn Orosco, Pastor Lawas and Manuel Dayandante. Said information reads:

That on or about May 24, 1989, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating, conspiring and helping one another, under a common design or scheme, did then and there, by means of misrepresentation and deceit, wilfully, unlawfully and feloniously defraud herein complaining witness HONESTA P. BAL, in the following manner, to wit: accused above-named, well knowing that the two hundred fifteen (215) sealed tins they are selling contain only starch, misrepresented to the complaining witness that the same is made in Singapore as marine product preservative and relying on said deceitful misrepresentation, the latter paid the value of the two hundred fifteen (215) tins of said item at a unit price of P1,500.00 per can or for a total price of P322,500.00, which turned out to be only starch with no significant commercial value after the same were examined at the NBI Forensic Chemistry Examination Division, Manila, thereby defrauding said complaining witness in the aforesaid sum of THREE HUNDRED TWENTY TWO THOUSAND FIVE HUNDRED (P322,500.00) PESOS, Philippine Currency, to her damage and prejudice.

CONTRARY TO LAW.<sup>[6]</sup>

Upon arraignment, Erquiaga and Orosco pleaded not guilty to the offense charged. Dayandante was apprehended only during the latter part of 1992 and was tried separately, while Lawas is still at-large.

On March 31, 1993, the RTC promulgated its decision finding the petitioners guilty of *estafa*. The dispositive portion of said decision reads:

WHEREFORE, for all the foregoing, the Court finds accused Roberto Erquiaga, a.k.a. "Mr. Guerrero" and Glenn Orosco, a.k.a. "Rey" guilty of the offense of *estafa* as defined and penalized under Article 315, paragraph 2 (a) of the Revised Penal Code, beyond reasonable doubt and, in accordance with the provisions of the Indeterminate Sentence Law, hereby sentences them to suffer the penalty of ten (10) years of prison mayor in its medium period, as minimum penalty to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum penalty. The said accused are ordered to indemnify jointly and severally Honesta P. Bal, the herein offended party, the sum of Three Hundred Twenty Two Thousand and Five Hundred (P322,500.00)

Pesos, plus interest thereon at the rate of twelve (12%) percent per annum computed from May 24, 1989 up to the time the said amount shall have been paid in full, and to pay the costs.

SO ORDERED.<sup>[7]</sup>

The Court of Appeals affirmed the decision of the trial court but modified the penalty imposed. The dispositive portion of the appellate court's decision reads:

THE FOREGOING CONSIDERED, the appealed Decision, while affirmed, should be MODIFIED. The penalty should instead be FOUR (4) YEARS and TWO (2) MONTHS of prision correccional as the minimum, to TWENTY (20) YEARS of reclusion temporal as maximum; to indemnify, jointly and severally, Honesta Bal, the amount of P322,500.00 with interest at 12% per annum starting May 24, 1989 until full payment; and to pay the costs.

SO ORDERED.<sup>[8]</sup>

Petitioners filed their separate motions for reconsideration<sup>[9]</sup> which the appellate court denied "for lack of merit".<sup>[10]</sup> Petitioners now raise before us the following questions of law:

(1) Can the court validly render judgment of conviction based on mere conjectures, surmises that there was conspiracy to commit the offense, if the evidence presented by the prosecution is not strong enough to stand the test of reason?

(2) Can the legal maxim "flight is an evidence of guilt" prevail over the constitutional presumption of innocence accorded to all accused in criminal case?

(2.1) Are the petitioners duty bound to prove their innocence?

(3) Can the loss in a consummated sale be converted to damages in a criminal case for estafa without violating the maxim of "*caveat emptor*?"<sup>[11]</sup>

Petitioners contend that the trial court based its decision on mere conjectures and surmises and that it was biased against them. They likewise assail the finding of conspiracy.<sup>[12]</sup> Finally, they opine that private complainant should bear her losses under the doctrine of *caveat emptor*.<sup>[13]</sup>

The Office of the Solicitor General (OSG), for the State, dismisses the issues raised by petitioners as mere "rehash" of their previous arguments before the Court of Appeals, hence redundant.<sup>[14]</sup> In our view, the pertinent issue in this case is whether conspiracy to commit *estafa* and *estafa* itself had been adequately