

## THIRD DIVISION

[ G.R. No. 110715, December 12, 1997 ]

**ELBERT TAN, PETITIONER, VS. COURT OF APPEALS AND PEOPLE  
OF THE PHILIPPINES, RESPONDENTS.  
D E C I S I O N**

**PANGANIBAN, J.:**

When an accused files a demurrer to evidence without express leave of court, he is deemed to have waived his right to present his own evidence. Having been unequivocally warned by the trial court that the filing of a demurrer is a waiver of his right to present evidence, herein appellant cannot be allowed to adduce his own after his demurrer is denied.

**The Case**

Petitioner Elbert Tan assails Respondent Court of Appeals' [1] Decision in CA-G.R. CR No. 09883 promulgated on November 27, 1992 affirming in toto the Regional Trial Court's [2] decision [3] which disposed as follows:

"WHEREFORE, accused Elbert Tan is found guilty beyond reasonable doubt as principal in the crime of estafa as charged in the aforementioned Information; and in line with the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstance shown to have attended the commission of the crime, he is sentenced to suffer an indeterminate penalty of imprisonment from three (3) years, six (6) months and twenty-one (21) days of prision correccional, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and to pay complainant Mariano S. Macias the sum of P60,000.00 as reparation of the damage caused.

With costs de officio."

Also assailed in this petition is Respondent Court's [4] Resolution [5] promulgated on June 18, 1993 which denied petitioner's motion for reconsideration for lack of merit.

**The Facts**

Respondent Court reproduced the facts as found by the trial court, as follows: [6]

"The evidence shows that, sometime in December 1986, complainant [M]ariano S. Macias read an advertisement in a newspaper offering for

sale certain four-wheeler Isuzu trucks. Calling up the advertised telephone number, he was able to talk with accused Elbert Tan, and thereafter, pursuant to their appointment, the complainant went to the place of the accused in Grace Park, presumably in Caloocan City.

Told by Tan that the Isuzu trucks for sale were at the two warehouses of the accused, one in Quezon City and the other in Taft Avenue, Pasay City, the complainant decided to see the trucks at the Pasay City warehouse of accused Tan. The complainant and the accused then went to the said warehouse where there were two (2) four-wheeler Isuzu trucks being assembled. Accused Tan represented to the complainant that he owned the trucks and that he was selling them. Macias chose one of the four-wheeler trucks being assembled as the unit he liked. The complainant and the accused then agreed that the complainant would buy the said vehicle at the price of P92,000.00 with P17,000.00 as down payment and the complainant's school bus, valued at P65,000.00 to be traded in, and the balance of P10,000.00 to be paid to the accused upon the delivery of the truck to the complainant.

On December 15, 1986, complainant Macias paid to accused Tan the amount of P17,000.00 as down payment, and executed a deed of absolute sale transferring to Tan the complainant's school bus at the price of P65,000.00 to be applied as part of the purchase price of the four wheeler Isuzu truck which the complainant bought from the accused.

Subsequently, the mechanic of Macias who was supervising the assembling of the truck purchased by him told the complainant that he suspected that accused Tan was not the owner of the vehicle. Going to the shop where the truck was being assembled to make a verification, the complainant saw a china man named Johnny, supervising the entire shop. Johnny informed the complainant that the trucks in the shop were owned by him and not by accused Tan. Complainant immediately called up Tan and told him about what he learned from Johnny, at the same time advising Tan that he was ready to give the balance of P10,000.00. Tan promised to deliver the truck to the complainant but failed to do so. Thereafter, the complainant tried to contact Tan but the accused avoided and refused to see him.

During the preliminary investigation of the charge for estafa filed by Macias in the Office of the City Fiscal of Pasay City, accused Tan paid the complainant the total sum of P22,000.00 and they executed a compromise agreement where Tan promised to return to the complainant the sum of P45,000.00 instead of P65,000.00, corresponding to the value of the school bus of the complainant which the accused could no longer return. In view of this development, the fiscal's office dropped the charge of estafa against Tan. However, accused Tan failed to comply with the terms of [sic] the compromise agreement and the fiscal's office subsequently filed in court an information of estafa against him."

In an Information dated February 29, 1988, Petitioner Elbert Tan was charged with

estafa under paragraph 2(a) of Article 315 of the Revised Penal Code allegedly committed as follows: [7]

“That on or about the 15th day of December, 1986, in Pasay City, Metro Manila, x x x, the above-named accused, Elbert Tan, defrauded and deceived Mariano S. Macias in the following manner to wit: that the herein accused, Elbert Tan, knowing fully well that he is not the owner of one Four-Wheeler Isuzu Truck, sold the same for P92,000.00 in favor of herein complainant Mariano S. Macias, and the latter believing the representation that he is the real owner of the four-wheeler Isuzu truck, in fact gave a cash amount of P17,000.00 and the possession and ownership of a second hand school bus, did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use, benefit and advantage the amount of P17,000.00 and the bus and despite repeated demand failed and refused and still fails and refuses to return the amount of P17,000.00 and the bus to the damage and prejudice of complainant in the total amount of P82,000.00.”

During arraignment, petitioner pleaded not guilty. Trial ensued in due course. After the prosecution rested its case, petitioner filed a Motion for Leave to File Demurrer to Evidence dated July 25, 1988. In its Order dated July 29, 1988, [8] the trial court disposed of petitioner’s motion in this wise:

“The accused has filed a Motion for Leave to File Demurrer to Evidence, dated July 25, 1988. The Court believes that, under Section 15 of Rule 119 of the 1985 Rules on Criminal Procedure, leave of court to file a demurrer to evidence is not necessary. It lies solely within the discretion of the accused whether or not to file a demurrer to evidence. However, the accused is warned that, pursuant to the said section, if he files a demurrer to evidence, he is deemed to have waived his right to adduce evidence.

WHEREFORE, the instant motion for leave of court to file a demurrer to evidence is not given due course. The Court is leaving it to the discretion of the accused whether or not to file a demurrer to evidence. x x x.”  
(Underscoring supplied.)

Notwithstanding the said order, petitioner subsequently filed a demurrer “on the ground of insufficiency of evidence.” [9] The prosecution opposed the demurrer contending that the evidence presented could sustain conviction and that the compromise agreement between private complainant and petitioner did not extinguish his criminal liability.

In an Order dated December 9, 1988, the trial court denied petitioner’s demurrer to evidence: [10]

"In view of all the foregoing, the Demurrer to Evidence dated August 19, 1988, is denied.

Since under section 15, Rule 119, of the 1985 Rules on Criminal Procedure, an accused who files a demurrer to evidence is deemed to have waived his right to present evidence, and under the same section, as amended, which amendment took effect on October 1, 1988, an accused who files a demurrer to evidence without leave of court is also considered to have abandoned his right to adduce evidence, this case is considered submitted for decision on the basis of the proofs submitted by the prosecution.

However, the prosecution and the defense may submit their respective memoranda within ten (10) days from receipt of a copy of this order."

Petitioner's motion for reconsideration of the above order was likewise denied. On April 28, 1989, the trial court convicted petitioner of the crime charged. His appeal to Respondent Court proved unavailing. Hence, this petition for review. [11]

### **The Issues**

Petitioner assails Respondent Court's Decision on the following grounds: [12]

"17. The Honorable Court of Appeals has committed grave abuse of discretion amounting to lack of jurisdiction in affirming in toto the decision of the trial court.

18. The Honorable Court of Appeals has decided questions of substance in a way not in accord with law or with the applicable decisions of this Honorable Court.

19. The Honorable Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision."

The Solicitor General clarifies the issues as follows:

1. Whether or not there was novation in the case at bar. [13]
2. Whether petitioner has lost his right to present evidence. [14]

We will first resolve the second issue before we examine the substantive defense raised by petitioner.

### **The Court's Ruling**

The petition is not meritorious.