

## **SPECIAL FOURTH DIVISION**

**[ CA-G.R. CR-HC NO. 05725, May 27, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICO Z. PUERTO AND PALMY B. TIBAYAN, ACCUSED-APPELLANTS.**

### **D E C I S I O N**

**TOLENTINO, A.G., J.:**

On appeal is the decision<sup>[1]</sup> dated August 10, 2012 of the Regional Trial Court (RTC) of Las Piñas City, Branch 198, in Criminal Case No. 11-0087, finding the accused-appellants guilty beyond reasonable doubt of the crime of estafa in relation to Presidential Decree (P.D.) No. 1689.

The antecedents of the case are as follows:

Rico Z. Puerto and Palmy B. Tibayan (accused-appellants), together with five other co-accused who are at-large were charged with the crime of estafa under Article 315, paragraph 2(a) of the Revised Penal Code in relation to P.D. No. 1689 in an Information which reads:

"That on or about and during the period comprised between June 2002 and November 2002 or on dates prior and subsequent thereto, in Las Piñas City, Philippines, within the jurisdiction of this Honorable Court, the above-named accused being the owners/ operators/ officers/ directors/ stockholders/ employees and/or agents of Tibayan Group Investment Co., Inc. ('TIBAYAN') and/or its affiliates/subsidiaries Matcor Holdings Co., Ltd. (MATCOR), formed with the intention of carrying out unlawful or illegal acts, transaction, enterprise, or scheme of soliciting finds (sic) from the general public by way of investments, conspiring, confederating and mutually helping one another, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud that they have the power, influence, qualifications, property, credit, agency, business or imaginary transactions to solicit and accept investments from the general public and by means of other deceits or similar import, did then and there willfully, unlawfully and feloniously induce, lure and convince the following, namely:

INVESTOR'S NAME	AMOUNT INVESTED
1.	Php
EVANGELINE T. SISON	1,000,000.00
2. RAQUEL I. CACHOLA	100,000.00
3. LORNA C. SINGCA	200,000.00

4. CATALINA C. BURGOS	100,000.00
5. REMEDIOS R. MALICSE	100,000.00
6. ARNEL BEQUILLO	200,000.00
7. GLORIA N. LASTRA	300,000.00
8. ILDEFONSO LASTRA	100,000.00
9. RONALDO JOVERO	150,000.00
10. AGUSTINA Q. NANA	100,000.00
11. ANGELINA R. MORAL	100,000.00
12. ALLAN A. ROSALIN	100,000.00
13. CHERYL R. FRANZIA	200,000.00
14. RODOLFO BUENAVISTA	100,000.00
15. HERNANDO T. RASCO	1,200,000.00
16. JOCELYN C. FELICIANO	150,000.00
17. MARCELINA V. TEVES	100,000.00
18. SONIA B. DURAN	700,000.00
19. VICTOR VILLAGRACIA ROSA VILLAGRACIA	100,000.00
20. ANTONIO A. GARCIA	<u>2,000,000.00</u>

Total Amount                      Php  
5,300,000.00

With a promise of huge interest, to invest, give and deliver, as in fact, they invested, gave and delivered to the said accused, the amounts opposite their names which reached the total amount of FIVE MILLION

THREE HUNDRED THOUSAND PESOS (Php5,300,000.00), but the said accused once in possession of such amount, fraudulently misapplied, misappropriated and converted the same, to their own personal use and benefit, and despite repeated demands failed to return such amount together with the promised interests thereon, said accused failed and refused, and still fail and refused to return the same, to the damage and prejudice of the aforementioned investors/persons.

CONTRARY TO LAW.”<sup>[2]</sup>

During their arraignment, the accused-appellants pleaded not guilty to the offense charged in the Information.<sup>[3]</sup> After the pre-trial order<sup>[4]</sup> was issued on March 10, 2011, trial ensued.

The prosecution presented the following witnesses, to wit: private complainants Hernando T. Rasco, Sonia B. Duran, Arnel A. Bequillo and Lorna C. Singca and adopted the testimony<sup>[5]</sup> of Atty. Loeulla Jacob-Mella of the Securities and Exchange Commission (SEC) who was presented in another Criminal Case No. 03-0523 involving the said corporation.

1) Hernando T. Rasco (Mr. Rasco) testified that he was introduced to Ms. Myla Sales, an account officer of the Tibayan Group Investment, Co. (TGIC) by his co-manager, Mr. Villamor; that Ms. Sales called him up several times about making an investment in TGIC; that, upon verification from the SEC, he learned that TGIC is an existing corporation; that he was eventually convinced by Ms. Sales to make an investment with TGIC because the latter offered 3% interest per month and some kind of a bonus; and that he invested Php1,000,000.00 and another Php200,000.00 with TGIC as evidenced by the a) Pre-Transactional Business Partner's Data<sup>[6]</sup> dated July 2, 2002 issued by Matcor Holdings, Co. Ltd. (MHCL), which was signed by Rico Z. Puerto, MHCL's Manager, and the b) Certificate of Share<sup>[7]</sup> dated September 16, 2002, respectively.<sup>[8]</sup>

Mr. Rasco further testified that he was issued 6 checks in the amount of Php30,000.00 and another check for Php1,000,000.00; and that the first five checks with nos. 92685-92689 were honored by the drawee bank, but the Prudential Bank Check No. 92691<sup>[9]</sup> dated January 3, 2003 in the amount of Php1,000,000.00, and Prudential Bank Check No. 92690<sup>[10]</sup> dated January 3, 2003 in the amount of Php30,000.00 were dishonored for the reason of "Account Closed".<sup>[11]</sup>

Mr. Rasco likewise testified that the Prudential Bank Check No. 42916<sup>[12]</sup> dated March 30, 2003 in the amount of Php200,000.00, Prudential Bank Check No. 42914<sup>[13]</sup> dated February 18, 2003 in the amount of Php11,000.00, and Prudential Bank Check No. 42915<sup>[14]</sup> dated March 20, 2003 in the amount of Php11,000.00 were also dishonored by reason of "Account Closed"; that he called the account officer who told him that something went wrong; that he called MHCL in its office in Alabang which assured Mr. Rasco that he will be paid, however, MHCL failed to return his investment; and so he went to the Department of Justice to file a complaint against the accused-appellants.<sup>[15]</sup>

2) Sonia B. Duran testified that his husband's friend asked her if she and her husband wanted to invest for a higher income; that she and her husband, Antonio

Duran, went to TGIC's office where they met Ms. Melin Cagastian, a financial adviser, who told them about the high interest offered by TGIC; that they agreed to invest the following amounts, to wit: a) Php100,000.00, as evidenced by the TGIC Mutual Fund Certificate of Share<sup>[16]</sup> dated August 28, 2002, b) Php500,000.00, as evidenced by the TGIC Mutual Fund Certificate of Share<sup>[17]</sup> dated September 25, 2002, and c) Php100,000.00, as evidenced by the TGIC Mutual Fund Certificate of Share<sup>[18]</sup> dated November 5, 2002; that TGIC issued several checks to pay for the principal investment and interests, i.e. a) Prudential Bank Check No. 25015<sup>[19]</sup> dated March 1, 2003 in the amount of Php100,000.00, b) Prudential Bank Check No. 50842<sup>[20]</sup> dated May 12, 2003 in the amount of Php100,000.00, and c) Prudential Bank Check No. 49949 dated March 29, 2003 in the amount of Php500,000.00; that the said checks were dishonored for the reason of "Account Closed"; that she went to the office of Tibayan to inquire as to what happened to their investments; and that she went to the Department of Justice (DOJ) to file a case.<sup>[21]</sup>

3) Arnel Bequillo testified that he came to know about the TGIC from a neighbor who invested in TGIC; that, upon learning that TGIC was giving high interest for every investment, he invested the amount of Php200,000.00, which was evidenced by a TGIC Certificate of Share<sup>[22]</sup> dated August 19, 2002; that he was not able to recover his investment as covered by Prudential Check No. 00317<sup>[23]</sup> dated February 10, 2003 in the amount of Php200,000.00 and the interests for two months in the amount of Php6,000.00 each as covered by Prudential Check Nos. 00315-16<sup>[24]</sup> dated January 11, 2003 and February 10, 2003; and that he went to the National Bureau of Investigation (NBI) to seek help in filing a case.<sup>[25]</sup>

4) Lorna Singca testified that she came to know about TGIC from her neighbor, Catalina Burgos, who told about TGIC giving high interest of 3% a month for six months; that she was convinced to invest the amount of P200,000.00 with TGIC for which she was issued a Pre-Transactional Business Partner's Data<sup>[26]</sup> dated July 5, 2002 to January 2003; that she was issued seven checks; that the first four checks were honored by the bank; that the original checks covering the principal and interests were taken from them by TGIC who simply gave them a photocopy<sup>[27]</sup> of Prudential Bank Check No. 91901 dated January 6, 2003 in the amount of Php200,000.00 and Prudential Bank Check No. 91900 dated January 6, 2003 in the amount of Php6,000.00.; and that she filed a complaint against TGIC.<sup>[28]</sup>

On the other hand, the accused-appellants testified in their behalf.

1) Rico Z. Puerto testified that he was assigned as the president of the Rural Bank of San Pablo by TGIC; that he does not know the private complainants in the case; that he did not have any personal dealing with the private complainants; and that his duty was merely to run and manage the operation of the bank in San Pablo.<sup>[29]</sup>

2) Palmy Tibayan testified that she was not involved in the solicitation of the investments from the private complainants because her duty was merely to monitor the business under the name of Tibayan; that she has no participation with MHCL; that she did not have any transaction with the private complainants; and that she would not be able to identify the private complainants because she really does not know them; that, only Jesus Tibayan is involved in this case.<sup>[30]</sup>

On August 10, 2012, the RTC rendered a decision finding the accused-appellants guilty beyond reasonable doubt of the crime of estafa, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds accused PALMY TIBAYAN and RICO PUERTO GUILTY of the crime of Estafa in relation to Presidential Decree No. 1689 for defrauding private complainants Hernando T. Rasco and Sonia B. Duran in the amounts of One Million Two Hundred Thousand Pesos (Php1,200,000.00) and Seven Hundred Thousand Pesos (Php700,000.00), respectively, or a total of One Million Nine Hundred Thousand Pesos (Php1,900,000.00), and both accused are hereby sentenced to the penalty of life imprisonment, pursuant to Section 1, PD 1689.

The accused are also ordered to reimburse and to pay the private complainants the amounts of their unrecovered investments to wit:

1. To Hernando T. Rasco, the amount of One Million Two Hundred Thousand Pesos (Php1,200,000.00); and
2. To Sonia B. Duran, the amount of Seven Hundred Thousand Pesos (Php700,000.00).

Considering that the other accused in this case, namely: JESUS V. TIBAYAN, EZEKIEL D. MARTINEZ, LIBORIO E. ELACIO, JIMMY C. CATIGAN and NELDA BARAN are still at-large, let alias warrants of arrest issue against them and let this case be placed in the ARCHIVES so as not to clog the docket of the court, subject to revival upon the arrest of the said accused.

SO ORDERED."<sup>[31]</sup>

Aggrieved, the accused-appellants interposed the instant appeal raising the following Assignment of Errors, to wit:

"I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF SYNDICATED ESTAFA UNDER PRESIDENTIAL DECREE NO. 1689.

III. THE TRIAL COURT SERIOUSLY ERRED IN THE IMPOSITION OF THE PROPER PENALTY."<sup>[32]</sup>

THE APPEAL IS NOT MERITORIOUS.

The accused-appellants basically allege that the prosecution failed to show the specific positions that they held in TGIC; that the accused-appellants have never met the complainants; that they did not induce the complainants to invest in TGIC; and that it was not shown that they were the ones who received the money from the investors. Thus, the accused-appellants contend that the prosecution failed to