

## SIXTEENTH DIVISION

[ CA-G.R. CR No. 34884, November 19, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARISSA M. DEL ROSARIO, ACCUSED-APPELLANT.**

### DECISION

**ZALAMEDA, R.V., J.:**

Before Us is an Appeal<sup>[1]</sup> of the Judgment<sup>[2]</sup> dated 26 January 2012 rendered by Branch 255, Regional Trial Court of Las Piñas City,<sup>[3]</sup> finding accused-appellant Marissa M. Del Rosario<sup>[4]</sup> guilty beyond reasonable doubt of the crime of Estafa under Article 315, paragraph 1 (b) of the Revised Penal Code,<sup>[5]</sup> the dispositive portion of which states:

"X x x

**WHEREFORE**, premises considered, the Court finds accused Marissa M. Del Rosario **GUILTY** beyond reasonable doubt of the crime of *Estafa* under *paragraph 1 (b), Article 315 of the Revised Penal Code*. Consequently, after applying the Indeterminate Sentence Law, said accused sentenced to suffer the penalty of imprisonment of eight **(8) years** of *prision mayor* as **minimum** to **fourteen (14) years and eight (8) months** of *reclusion temporal* as **maximum**, plus the accessory penalties provided for by law.

Furthermore, said accused is ordered to pay private complainant Remus T. Taniegra, Jr. the amount of **One Hundred Fifteen Thousand Seven Hundred Fifty Five Pesos** (Php115,755.00), the equivalent of 300,000 Yen then, by way of actual damages.

SO ORDERED.

X x x"<sup>[6]</sup>

The facts, as culled from the records, are as follows:

Accused-appellant was charged with the crime of Estafa under Article 315, paragraph 1 (b) of the Revised Penal Code docketed as Criminal Case No. 09-0435 I. S. NO. LP 08-1602 in an Information which alleged:

"X x x

That on or about the **24<sup>th</sup> day of January 2008**, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the President of COMPLEAT SKILLS INC. received in trust from one **IRENE FURUZAWA, CASH MONEY** in the amount of **300,000 Yen**, with the express obligation to turn-over/remmit the same to complainant **REMUS T. TANIEGRA JR.** later but said accused, once in possession of said **cash money**, far from complying with her obligation, with abuse of confidence and intent to defraud, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to her own use and benefit the said cash **money** despite repeated demands, said accused failed and refused and still fails and refuses to remit the said cash money to **REMUS T. TANIEGRA JR.** to the damage and prejudice of said complainant in the aforementioned amount.

CONTRARY TO LAW.

X x x"<sup>[7]</sup>

On arraignment, accused-appellant, duly assisted by counsel, pleaded NOT GUILTY<sup>[8]</sup> to the charge. After pre-trial conference was conducted, trial on the merits ensued.

The prosecution presented private complainant Remus Taniegra, Jr.<sup>[9]</sup> as its lone witness and his testimony reveals:

Accused-appellant is the president of Compleat Skills, Inc. who deployed Remus to Japan, on behalf of its principal, Ueda Tekkin Steel, Co. Ltd.,<sup>[10]</sup> and Bunseki Kiki Kosei Kyodoo Kumiai,<sup>[11]</sup> as steel man under a three (3)-year contract with a monthly salary of eighty- five thousand (Y85,000.00) yen.<sup>[12]</sup>

Barely five (5) months after his deployment, Remus' contract of employment was terminated. He was promised one million (Y1,000,000.00) yen-- six hundred thousand (Y600,000.00) yen to be settled in Japan, while the remaining four hundred thousand (Y400,000.00) yen in the Philippines through accused-appellant, as compensation for the pre-termination of his employment contract. Initially, Remus did not agree to the terms of payment but eventually acceded after accused-appellant's assurance: "Remus, don't worry your money is with me;"<sup>[13]</sup> "as soon as you arrive in the Philippines on 22 December 2007, I will give you the money."<sup>[14]</sup> Remus then received from Ueda through one Irene Furuzawa six hundred thousand (Y600,000.00) yen in Japan and thereafter was sent home to the Philippines.<sup>[15]</sup>

On his arrival on 22 December 2007, accused-appellant met Remus at the airport but the latter failed to make good on her promise to pay the four hundred thousand (Y400,000.00) yen balance for the pre-termination of his contract.<sup>[16]</sup>

On 28 December 2007, Remus received an SMS (text) message from accused-appellant informing him that payment of the balance shall be made at the latter's

office. The next day, Remus went to accused-appellant and was paid eighty thousand (Y80,000.00) yen instead of four hundred thousand (Y400,000.00) yen. Remus demanded from accused-appellant full payment of the balance but the latter requested for additional period or until 15 January 2008 to settle the balance amounting to three hundred twenty thousand (Y320,000.00) yen as she was allegedly paying a lot of penalties in Japan. Accused-appellant generously granted her request for extension of payment but Remus still failed to settle her obligation on 15 January 2008.<sup>[17]</sup>

Through a messenger, accused-appellant subsequently paid Remus twenty thousand (Y20,000.00) yen but thereafter heard nothing from her. Remus sought the assistance of the Barangay officials of Almanza Uno, Las Piñas City for a possible settlement but during their meeting, accused-appellant told him to just see him in court. Hence, the present complaint for estafa filed against accused-appellant.<sup>[18]</sup>

After the prosecution rested its case, the defense moved for Leave of Court to File a Demurrer to Evidence<sup>[19]</sup> which motion the RTC denied in its Order<sup>[20]</sup> dated 09 February 2010. Thereafter, the defense presented one Cristina Limpin.<sup>[21]</sup> The substance of her testimony which constituted accused-appellant's defense is the alleged failure of the prosecution to establish that the former received in trust for him any sum of money from the latter's employer in Japan, thus –

Cristina was in charge of the daily operations of PNB's España, Manila Branch. According to her, accused-appellant opened a dollar account with their branch on 09 November 2007. From then on until 03 June 2008, the said account neither received inward remittance from Japan amounting to three hundred thousand (P300,000.00) pesos or its equivalent, nor credited a remittance amounting to six thousand (\$6,000.00) dollars.<sup>[22]</sup> Cristina further testified that accused-appellant has no yen account in the bank and that her dollar account was closed on 01 July 2008.<sup>[23]</sup>

In its assailed Judgment dated 26 January 2012, the RTC found accused-appellant guilty beyond reasonable doubt of committing the crime of Estafa punishable under Article 315 paragraph 1(b) of the RPC. Accused-appellant moved for reconsideration but to no avail.

Hence, accused-appellant appealed before this Court positing the following issue, viz:

WHETHER THE ELEMENTS OF THE CRIME OF ESTAFA HAVE BEEN PROVEN  
BEYOND REASONABLE DOUBT.<sup>[24]</sup>

We affirm accused-appellant's conviction.

Accused-appellant questions the credibility of the prosecution's witness, herein private complainant Remus. She asserts that the lone and uncorroborated testimony of Remus is insufficient to hold her liable for the crime of estafa.<sup>[25]</sup>

We disagree.

As a rule, credibility is the sole province of the trial court. It is well-settled that when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.<sup>[26]</sup>

In the present case, We see no reason to deviate from the trial court's factual findings that the accused-appellant defrauded Remus with unfaithfulness and abuse of confidence. In the absence of any evidence showing that the trial judge overlooked or misapplied some facts or circumstances of weight which would affect the result of the case, or that the judge acted arbitrarily, We are bound by the lower court's factual findings.

Accused-appellant argues that his constitutional right to due process was violated because the judge who heard and decided the case below was different from that who resolved the motion for reconsideration.<sup>[27]</sup>

The argument is specious.

The essence of due process is reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.<sup>[28]</sup>

In this case, the record reveals that, accused-appellant was able to participate in all the proceedings before the court a quo. She was accordingly represented by her counsel and was able to ventilate her cause by presenting her own witness after denial of her Demurrer to Evidence. Accused-appellant cannot thus claim denial of due process as she was given the chance to defend her interest in due course, for as mentioned above, it was such opportunity to be heard that was the essence of due process.

Accused-appellant strongly contends that she cannot be held liable for estafa for failure of the prosecution to prove beyond reasonable doubt that she received money in trust for Remus and thereafter misappropriated or converted the same to her own gain.<sup>[29]</sup>

We disagree.

Estafa, under Article 315 (1) (b) of the RPC, is committed by –

"X x x

ART. 315. *Swindling (estafa)*. – Any person who shall defraud another by any of the means mentioned hereinbelow:

x x x x