

## SIXTEENTH DIVISION

[ CA-G.R. CR. NO. 29135, August 15, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CARLOS P. GO, ACCUSED-APPELLANT.**

### D E C I S I O N

**DE LOS SANTOS, J.:**

On November 27, 1998, an Information for estafa, defined and penalized under Article 315, paragraph 1 (b) of the Revised Penal Code, was filed against accused-appellant Carlos P. Go, to wit:

"That in or about the period comprised from April 14, 1997 up to June 21, 1998, in Quezon City, Philippines, the said accused, being then appointed as PCSO On-Line Lottery (LOTTO) agent and as such is authorized to sell and collect lottery tickets for and in behalf of the PCSO, did then and there wilfully, unlawfully and feloniously defraud the PCSO and its beneficiaries represented by Reynaldo Martin, in the following manner, to wit: said accused, got and received in trust from the said offended party, PCSO lottery tickets for the purpose of selling the same on commission basis, under the express obligation on the part of the said accused of turning over the proceeds of the sale to the PCSO, but said accused, once in possession of the said lottery tickets, far from complying with his obligation as aforesaid, with intent to defraud, unfaithfulness and grave abuse of confidence, failed and refused and still fails and refuses to fulfill his aforesaid obligation despite repeated demands made upon him to do so and instead misapplied, misappropriated and converted the proceeds thereof, to his own personal use and benefit, to the damage and prejudice of the said offended party in the amount of P5,102,235.00 Philippine Currency.

"Contrary to law." <sup>[1]</sup>

The accused pleaded not guilty to the crime charged and trial ensued. **Private complainant Philippine Charity Sweepstakes Office (PCSO)** was represented by the Office of the Government Corporate Counsel before the trial court. PCSO is the government agency authorized under Republic Act No. 1169, as amended, to hold and conduct the Philippine On-Line Lottery, more popularly known as the Lotto.

The antecedent facts show that **accused Carlos P. Go** filed an application<sup>[2]</sup> to be an agent of a lotto outlet through a letter received at the Office of the PCSO Chairman and General Manager Manuel Morato on June 27, 1996. Accused also submitted a lease contract of a building known as Aurora Merchandising located at the Tarlac Public Market and its location map as a proposed site of his lotto operation.<sup>[3]</sup>

In an Evaluation Report dated October 10, 1996, Gen. Rogelio Martin, the Officer-In-Charge for PCSO Angeles City District wrote Chairman Morato that a site inspection of Go's proposed lotto outlet was conducted, that it met the Criteria for Agency Location and he recommended the approval for terminal installation.<sup>[4]</sup> On January 22, 1997, Chairman Morato approved the application and informed Mr. Edgardo Ibañez, Vice President for Technical Services of the Philippine Gaming Management Corporation (PGMC), to implement the terminal installation of Go's outlet.<sup>[5]</sup> Based on the Rules and Regulations governing the On-Line Lottery, a terminal is defined as a device authorized by the PCSO to function in an on-line, interactive mode with the PCSO on-line lottery computer system, for the purpose of issuing lottery tickets and entering, receiving and processing lottery transactions, including purchases, voiding purchases, validating tickets and transmitting report.<sup>[6]</sup>

On April 14, 1997, accused Carlos P. Go, with Agency No. 55-04-02- 3, began to operate his lotto outlet. It was agreed that he remit 95% of his collections to PCSO while retaining 5% as his commission. His initial remittance was paid directly to the collecting officer of the PCSO Treasury Department in Manila.<sup>[7]</sup> He started filling out the "Agent's Settlement Form"<sup>[8]</sup> on April 23, 1997. The forms contained Go's "Agency Number" and the weekly summary report of sold, cancelled and claimed winning tickets. These forms were signed by Go and his representatives and were received by PCSO Angeles District Office. <sup>[9]</sup>

Earlier, on December 16, 1996, a Memorandum of Agreement<sup>[10]</sup> was signed by the PCSO and the Land Bank of the Philippines authorizing the PCSO sales agents to deposit the lotto ticket proceeds by either cash, cashier's or manager's checks to the account of PCSO maintained at Land Bank. Pursuant to such agreement, accused was required to remit his collection through the Land Bank Angeles City Branch where PCSO opened a sub-account with his name as its agent.

From December 1997 to May 1998, accused failed to make good his obligation on certain weeks since some of his personal checks deposited at the Land Bank Tarlac Branch covering his remittances were dishonored for insufficient funds. On June 16, 1998, the Chief Lottery Operations Officer of PCSO Pampanga Provincial District Office Reynaldo Martin sent accused a demand letter for the amount of P4,833,690.70 still unremitted as of May 31, 1998.<sup>[11]</sup> For the period of June 1998, accused failed to remit the sales proceeds in the amount of P389,982.60. Subsequently, the PCSO issued a memorandum recommending the suspension of the accused as its authorized on-line lottery agent and the immediate switch-off of his lotto terminal. <sup>[12]</sup>

On July 20, 1998, in behalf of the PCSO, the Office of the Government Corporate Counsel sent a final demand letter to accused Go.<sup>[13]</sup> PCSO's records revealed that accused's Tarlac outlet collected a total amount of P34,516,733.00 from the lotto ticket sales since April 14, 1997 until June 21, 1998. However, out of the said amount, accused failed to remit the amount of **P5,102,235.00** as of July 15, 1998 despite demands by the PCSO.<sup>[14]</sup> In a letter dated August 10, 1998, Land Bank Department Manager III Rufino S. Cortez informed Mr. Reynaldo Martin that the accused deposited, for the account of the PCSO, nine (9) checks which were dishonored and returned to Go for having been drawn against insufficient funds

(DAIF).<sup>[15]</sup> Due to the accused's failure to fulfill his obligation, the PCSO filed the complaint at the Office of the City Prosecutor in Quezon City.

During trial, Reynaldo Martin testified that the standard procedure for application of lottery agents was done away with respect to accused Go because he was referred by one Captain Jun Santiago of the Presidential Security Group who was a close-in security officer of President Ramos.<sup>[16]</sup> That was the reason why Go was not made to sign a written agency contract with the PCSO. It was upon his review of the Agent's Settlement Forms against the bank statements that he discovered that some of the accused's remittances were covered by personal checks which were later dishonored for insufficient funds. It was not detected earlier since accused regularly submits the Forms together with valid deposit slips from Land Bank. PCSO presumed that these checks were funded and in the form of either cashier's or manager's checks per MOA with Land Bank.<sup>[17]</sup> However, these personal checks were returned to accused Go instead of being forwarded to PCSO.<sup>[18]</sup> PCSO and its beneficiaries incurred losses due to accused's continued failure to pay remittances despite demand.

On March 13, 2001, accused-appellant filed a motion for leave to file his demurrer to evidence. In his demurrer to evidence,<sup>[19]</sup> he prayed for the dismissal of the complaint on the grounds that the alleged offense was not committed within the territorial jurisdiction of the Quezon City trial court and that he was not an agent of PCSO but an independent retailer of lotto tickets, to which the Court a quo denied in an Order dated July 25, 2001.<sup>[20]</sup>

During trial, accused testified that he was able to obtain the lotto business by approaching Captain Francisco Santiago of the Presidential Security Group who then brought the matter to Chairman Morato. He (Go) was ordered to apply at the PCSO and to submit an application letter with a lease contract and a vicinity map. He was simply told that his site was inspected and approved. He did not receive or sign any documents pertaining to the rules and regulations on on-line lottery allegedly given to lotto operators. He started operating the outlet in April 1997. He had a verbal agreement with the OIC of the PCSO Regional Branch in Pampanga that 95% of the proceeds would be paid to PCSO and 5% would go to him as his profit for selling lottery tickets. He deposited the daily proceeds to his personal account and, as per verbal agreement, deposited 95% of the proceeds every Friday with the Land Bank Tarlac Branch for account of PCSO. The machines were actually operated by his two employees, Agnes Lacsamana and Shalimar, who are now abroad.<sup>[21]</sup>

He admitted that it was the PCSO which supplied him the tickets but it was the PGMC which actually installed the machines, entrusted them to him and later retrieved them from his store. On January 20, 1998, the Tarlac City Public Market was burned, his lotto outlet was ransacked and the collection of P100,000.00 for that day was taken away. He was informed by the PCSO that he would still be liable for the collections he lost. In November 1997, he started to look for leaders in his campaign for the position of a board member in Tarlac for the May 1998 elections. He was busy campaigning and was not able to monitor his business operations. He admitted that he drafted the application letter to be an agent of a lotto outlet but, at that time, he thought it meant he would just be a seller of lottery tickets.<sup>[22]</sup>

On September 7, 2004, the trial court convicted accused, thus:

"xxx    xxx    xxx

"Although no agency agreement was executed by and between PCSO and the accused, there is no reason to doubt that accused was made and considered an agent and he acted as an agent of the PCSO up to the termination of his contract. The absence of a written agreement does not negate the existence of an agency contract. Article 1869 of the Civil Code provides that '**agency may be express or implied from the acts of the principal, from his silence or lack of action or his failure to repudiate the agency xxx**' Article 1870 of the same code provides that '**acceptance by the agent may also be express or implied from his acts which carry out the agency or from his silence or inaction according to the circumstances.**'

"The offense charged falls under Article 315, paragraph 1( b) of the Revised Penal Code. The elements of the offense are as follows:

- 1. That money, goods, or other property be received by the offender in trust or on commission, or for administration or under any other obligation involving the duty to make delivery of, or to return the same;*
- 2. That there be misappropriation or conversion of any such money or property by the offender or denial on his part of such receipt;*
- 3. That such misappropriation or conversion or denial is to the prejudice of another;*
- 4. That there is demand made by the offended party to the offender (Tubo vs. People, et. al., 101 Phil 114)*

"The above elements are all present in the instant case. Thus, it was proven that accused Go received in trust and on commission lotto tickets with obligation to remit to the PCSO 95% of his collections. Accused misappropriated, misapplied or converted the amount to his own use and benefit to the prejudice and damage of his principal, the PCSO, and that accused failed and refused to remit the amount despite demands by the PCSO (Exh[s]. 'I' and 'O').

"The contention of the accused that he was an independent retailer of lotto tickets is not supported by the evidence. He was treated as an agent throughout the whole period of his dealings with the PCSO. There is no evidence that the PCSO ever operated through independent retailers.

"Accused Go vigorously contends that the instant case does not fall within the jurisdiction of this Court as all the transactions he made with the PCSO were done outside Quezon City. He points out that the Agent's Settlement Form and the receipts of his payments (Exhs. "3" to "62") were all addressed at San Marcelino St., Ermita, Manila. The Court finds

no merit on this posture of the accused. While indeed the address of the PCSO main office was in Manila when he started his operations, the PCSO office was moved to E. Rodriguez St., Quezon City sometime in November 1997. The use of old forms by the PCSO collecting agents will not alter the fact that during the later part of his operations, the PCSO main office was already located in Quezon City. The defense' own evidence (Exhibit "I") indicate that the Office of the PCSO is located in Quezon City and the venue of litigations between the PCSO and its agents shall be in Quezon City. Moreover, the Office of the Government Corporate Counsel which made the final demand upon the accused is located in Quezon City. In short, the violation of complainant's right committed by the accused extended not only to all the places in Central Luzon where parts of the transaction were done, but also to Quezon City where accused failed to settle his obligations. This in essence is the ruling of the Supreme Court in the case of **Barrameda vs. Court of Appeals and Lolita Watanabe (G.R. 96428, Sept. 2, 1999)** where part of the offense happened in Japan, but demand was made upon the accused in Pasay City when she arrived from Japan. It was held that that the Pasay City RTC had jurisdiction to try the case.

"The penalty for the crime of estafa by misappropriation or conversion by an agent, is defined in Article 315 of the Revised Penal Code as follows:

*'The penalty of prision correccional in its maximum period to prision mayor in its minimum period if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos, but the total penalty which may be imposed shall not exceed twenty years. In such case, and in connection with accessory penalties which may be imposed and for the purpose of the other provisions of this code, the penalty shall be termed prision mayor or reclusion temporal as the case may be.'*

"In addition to the Criminal liability, the accused shall be civilly liable to the extent of P5,102,235.00 less any payment he may have made after the filing of the instant case.

"WHEREFORE, premises considered, judgment is hereby rendered finding the accused Carlos Go guilty beyond reasonable doubt of the crime of estafa defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code and hereby sentences him to suffer the penalty of twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum and to indemnify the PCSO the amount of P5,102,255.00 less any payment he may have made after the filing of this case.

"SO ORDERED."<sup>[23]</sup>

Hence, this appeal where appellant raises the following errors allegedly committed by the Court *a quo*: