



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ABELARDO JANDUSAY,
Petitioner,

G.R. No. 185129

Present:

- versus -

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO
VILLARAMA, JR.,
PEREZ,* and
REYES, JJ.

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent.

JUN 17 2013

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RESOLUTION

REYES, J.:

Before the Court is a petition for review on *certiorari*¹ under Rule 45 of the Rules of Court, assailing the Decision² dated March 4, 2008 and Resolution³ dated October 23, 2008 of the Court of Appeals (CA) in CA G.R. CR No. 29850 which affirmed the Decision⁴ dated August 12, 2005 of the Regional Trial Court (RTC) of Valenzuela City, Branch 172 in Criminal Case No. 278-V-02 convicting Abelardo Jandusay (petitioner) for *estafa*.

The courts *a quo* arrived at similar factual findings, viz:

* Additional member per Raffle dated October 11, 2012 *vice* Associate Justice Lucas P. Bersamin.

¹ *Rollo*, pp. 19-54.

² Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Portia Aliño-Hormachuelos (now retired) and Lucas P. Bersamin (now a member of this Court), concurring; *id.* at 60-66.

³ *Id.* at 71-72.

⁴ *Id.* at 80-85.

In the year 1999, petitioner was elected as the treasurer of Canumay, Lawang Bato, Punturin, Paso de Blas Tricycle Operators and Driver's Association, Inc. (CALAPUPATODA), herein referred as "association", a duly registered non-stock association of tricycle operators and drivers in Valenzuela City. He was re-elected to the same position in the year 2000.

According to the association's by-laws, the petitioner's position as treasurer entailed being "in charge of the funds, moneys, valuables, receipts and disbursements of the association, 'the books of accounts', 'an account of financial condition', and of all transactions made by him as treasurer."⁵ Relative thereto, he maintained a "blue book" which reflected the association's income derived from membership dues, motor and driver's fees and the *butaw*, an amount collected from members on a daily basis. It also indicates the expenses of the association.

Consequent to the election of the new set of officers for the year 2001, a turnover meeting was held between the outgoing and incoming officers on April 3, 2001. During the meeting, the petitioner turned over to the incoming officers the so-called "blue book" which contained entries of the income and expenses of the association for the year 2000. Based thereon, the net remaining funds of the association for the year 2000 is ₱661,015.00 which, the petitioner, however failed to turn-over despite written and verbal demands.

On March 4, 2002, the petitioner was formally charged with *estafa* or violation of paragraph 1(b), Article 315 of the Revised Penal Code (RPC) before the RTC.

During trial, the prosecution presented a copy of the minutes of the April 3, 2001 meeting which contained an undertaking signed by the petitioner that he will return the ₱661,015.00 by the end of September 2001.

The petitioner denied signing the undertaking and claimed that the same was merely inserted on top of his signature when he was asked to sign the minutes. He averred that finances of the association were never subjected to audit. He also endeavoured to establish that it was the association's President, Dionisio Delina (Delina) and not him who handled the funds of the association for the year 2000 as shown by the Memorandum issued by Delina himself in January 2000. Apparently, Delina assumed such responsibility because the petitioner then had a pending criminal case for *estafa* in relation to the association's funds in 1999.

⁵

Id. at 74-75.

The RTC accorded merit to the minutes presented by the prosecution, and together with the other evidence proffered, found the petitioner guilty of misappropriating the association's funds. The RTC rejected the petitioner's contentions and held that an examination of the minutes show that there is no indication that the undertaking reflected therein was merely inserted after the petitioner signed the same. There is no logical explanation for the petitioner to sign at least ten (10) line spaces below the last entry. Anent the memorandum allegedly issued by Delina, the RTC found the same to be of dubious origin and at best only self-serving. Thus, in its Decision⁶ dated August 12, 2005, the RTC disposed as follows:

WHEREFORE, judgment is hereby rendered finding accused ABELARDO JANDUSAY guilty beyond reasonable doubt and as principal of the crime of estafa as defined in and penalized under Article 315, par. 1(b), of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to suffer the indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum. Further, the accused is sentenced to pay the CALAPUPATODA the amount of [P]661,015.00 without subsidiary imprisonment in case of insolvency. Finally, the accused is sentenced to pay the costs of suit.

SO ORDERED.⁷

The CA affirmed the petitioner's conviction, but modified the penalty imposed by the lower court. In its Decision⁸ dated March 4, 2008, the CA thus held:

WHEREFORE, premises considered, the *Decision* of the RTC of Valenzuela City, Branch 172, dated August 12, 2005, in Criminal Case No. 278-V-02, is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant ABELARDO JANDUSAY is hereby sentenced to an indeterminate penalty of 2 years and 11 months of *prision correccional* as minimum, to 8 years of *prision mayor* as maximum, plus 1 year for every [P]10,000.00 in excess of [P]22,000.00 but not to exceed 20 years, or the maximum of 20 years. The rest of the *Decision* stands.

SO ORDERED.⁹

The appellate court agreed with the RTC that the elements of the crime of *estafa* were adequately established by the prosecution. In an attempt to overturn the decision of the CA, petitioner filed a Motion for

⁶ Id. at 80-85.

⁷ See CA Decision dated March 4, 2008; id. at 60-61.

⁸ Id. at 60-66.

⁹ Id. at 65-66.

Reconsideration on April 14, 2008 and a Motion for New Trial on May 18, 2008. The CA denied both motions in a Resolution dated October 23, 2008.

The Issue

The petitioner raises the issue of whether the CA committed a reversible error in affirming the judgment of the RTC finding him guilty of *estafa* beyond reasonable doubt.

The Court's Ruling

The petition is devoid of merit.

The petitioner argues that the prosecution failed to sufficiently prove the first element of *estafa* – that he received the money or funds of the association for the year 2000.

We disagree. The petitioner's allegations are nothing but feeble reiteration of the arguments unsuccessfully raised before the RTC and CA. It must be emphasized that the grounds raised by the petitioner involve factual issues already passed upon by the abovementioned courts, and are inappropriate in a petition for review on *certiorari* under Rule 45. The Court accords respect to the finding of the RTC that the bare denial of the petitioner cannot prevail over the evidence of the prosecution consisting not only of testimonies of witnesses but also documents establishing the guilt of the petitioner beyond reasonable doubt. It is a well-entrenched rule that the findings of facts of the CA affirming those of the trial court are binding on the Court.¹⁰

At any rate, the Court concurs with the remark of the RTC that the memorandum whereby Delina admitted to have handled the association's funds for the year 2000 is highly specious as to its authenticity in reflecting the actual dynamics between the petitioner and Delina as officers of the association.

The courts *a quo* were correct in convicting the petitioner of *estafa*. Under Article 315, paragraph 1(b) of the RPC, the elements of *estafa with abuse of confidence* are as follows: (1) that the money, goods or other personal property is 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 such money or property by the offender, or denial on his part

¹⁰ *Bank of Commerce v. Manalo*, 517 Phil. 328, 345 (2006).

of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is demand by the offended party to the offender.¹¹ As correctly found by the CA:

In the case at bar, the aforementioned elements have been sufficiently established by the prosecution. It cannot be denied that accused-appellant, as Treasurer of CALAPUPATODA, received and held money for administration and in trust for the association. He was thus under an obligation to turnover the same upon conclusion of his term as Treasurer. Instead, however, he misappropriated the same to the prejudice of the association and, despite demand, failed to account for or return them. Such failure to account, upon demand, of funds or property held in trust is circumstantial evidence of misappropriation.¹² (Citation omitted)

In addition, misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence. The “failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation.”¹³ As mentioned, the petitioner failed to account for, upon demand, the funds of the association of the year 2000 which were received by him in trust. This already constitutes circumstantial evidence of misappropriation or conversion of said properties to petitioner’s own personal use.

The penalty imposed by the CA ought to be modified to conform to prevailing jurisprudence. The maximum indeterminate penalty when the amount defrauded exceeds ₱22,000.00 is pegged at *prision mayor* in its minimum period or anywhere within the range of six (6) years and one (1) day to eight (8) years, plus one year for every ₱10,000.00 in excess of ₱22,000.00 of the amount defrauded but not to exceed twenty (20) years. In turn, the minimum indeterminate penalty shall be one degree lower from the prescribed penalty for estafa, which in this case is anywhere within the range of *prision correccional* in its minimum and medium periods or six (6) months and one (1) day to four (4) years and two (2) months.¹⁴ While the minimum indeterminate penalty meted out by the CA is within this range, recent jurisprudence of similar factual backdrop are uniform in imposing four (4) years and two (2) months as the minimum indeterminate penalty.¹⁵ Likewise, the maximum indeterminate penalty must be spelled out to mean twenty (20) years of *reclusion temporal*.

¹¹ *Asejo v. People*, 555 Phil. 106, 112-113 (2007).

¹² *Rollo*, p. 64.

¹³ *D’Aigle v. People*, G.R. No. 174181, June 26, 2012, 675 SCRA 206, 217, citing *Lee v. People*, 495 Phil. 239, 250 (2005).

¹⁴ *Magtira v. People*, G.R. No. 170964, March 7, 2012, 667 SCRA 607, 620.

¹⁵ *Id.* at 612-613, 621; *D’Aigle v. People*, *supra* note 13, at 219-220; *Brokmann v. People*, G.R. No. 199150, February 6, 2012, 665 SCRA 83, 88.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated March 4, 2008 and Resolution dated October 23, 2008 of the Court of Appeals in CA-G.R. CR Nò. 29850 are **AFFIRMED** except as to the indeterminate sentence imposed upon Abelardo Jandusay which is hereby **MODIFIED** to four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

SO ORDERED.



BIENVENIDO L. REYES

Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO

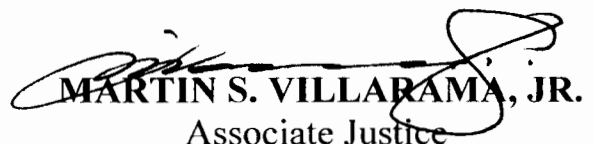
Chief Justice

Chairperson



TERESITA J. LEONARDO-DE CASTRO

Associate Justice



MARTIN S. VILLARAMA, JR.

Associate Justice

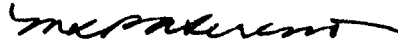


JOSE PORTUGAL PEREZ

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice