



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **November 10, 2020** which reads as follows:

“G.R. No. 247587 (Grace Elizalde y Quibael (“Grace”) v. The People of the Philippines). – For resolution is the motion for reconsideration of this Court’s Resolution¹ dated September 16, 2019 denying the petition for review on *certiorari* of the Decision² dated July 14, 2017 and the Resolution³ dated May 24, 2019 of the Court of Appeals (CA) denying the motion for reconsideration thereof in CA-G.R. CR No. 38415. The CA affirmed with modification the Decision⁴ of the Regional Trial Court (RTC) finding petitioner Grace Elizalde y Quibael (“Grace”) guilty of the crime of *estafa* under Article 315, paragraph 2(a) of the Revised Penal Code (RPC) and was thereby sentenced to suffer the penalty of imprisonment of two (2) years, eleven (11) days of *prision correccional*, as minimum to seven (7) years, eight (8) months and twenty (20) days of *prision mayor*, as maximum.

Petitioner was charged with the crime of *estafa* under Article 315, paragraph 2(a) of the RPC in an Information, which reads:

On the 20th day of September 2011, in the [C]ity of Makati, the Philippines, accused did then and there willfully, unlawfully, and feloniously defraud Herald Black-Dacasin in the following manner: accused, by means of false pretenses or fraudulent acts executed prior to or simultaneous with the commission of [f] the fraud to the effect that she is in the business of supplying construction materials to various projects and contractors in the Islands of Boracay and in need of additional

- over – nine (9) pages ...

107-B

¹ Rollo, p. 349.

² Penned by Associate Justice Rodil V. Zalameda (now a Member of this Court) with Associate Justices Sesinando E. Villon and Maria Elisa Sempio Diy, concurring; *id.* at 59-72.

³ Rollo, pp. 74-78.

⁴ Penned by Presiding Judge Joselito C. Villarosa, RTC, Branch 66, Makati City; *id.* at 79-85.

investments to finance the project and promised earnings of 10% and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver, as in fact, the latter gave and delivered to accused the total amount of Php5,500,000 representing his investment in the said project, accused knowing fully well that the same were false and fraudulent as said project is a non-existent construction project and were made only to obtain, as in fact accused obtained the total amount of Php5,500,000 to the damage and prejudice of Herald Black-Dacasin.

CONTRARY TO LAW.

The facts, as narrated by the CA, are as follows:

Private complainant Herald Black-Dacasin was enticed by accused-appellant to invest in the latter's business of supplying construction materials to various projects and contractors. x x x. With accused-appellant's representations of having secured the contract to supply steel rebars to V Consunji Design and Corporation for the construction of Hyatt Hotel in Boracay Island, Dacasin was convinced to put up additional money investments for the business. As proof of his investments, accused-appellant executed a promissory note dated September 16, 2010, in favor of Dacasin in the amount of Php5,500,000.00. Also, she simultaneously issued a BPI check to cover the same amount payable to Dacasin.

Later Dacasin was further convinced by accused-appellant to apply the earnings on the amounts given purportedly to meet the increasing demand of materials. However, with no payments on the earnings made, the amount due reached Php10,717,944.05. When confronted, accused-appellant claimed that she was having problems collecting funds from Consunji. Dacasin agreed to modify the terms of the promissory note and as per agreement, accused-appellant issued ten (10) checks in the total amount of Php10,000,000.00 as replacement of the original check and another check in the amount of Php717,957.00.

However, when these checks were presented for payment, the same were all dishonored by the drawee bank for the reason, "ACCOUNT CLOSED". He immediately informed accused-appellant of the dishonor of the checks but the latter did not offer to replace the returned checks or make any cash payment in full.

x x x x

Dacasin made several demands upon accused-appellant to pay her obligation. Accused-appellant offered to pay Dacasin a minimum monthly payments (sic) of Php500,000.00 until she paid the entire amount of Php10,000,000.00 and even deposited a

- over -

107-B



manager's check in his account in the amount of Php2,500,000.00 but the same was dishonored when presented for payment for the reason "ACCOUNT CLOSED". x x x.

Testifying in defense, accused-appellant denied she misrepresented owning a business; also, she rejected private complainant's claim that her transaction was devised to defraud him into parting with his money, insisting her business was well known to her clients. x x x. According to her, the business was not registered to do away with taxes and the hassle of registrations and documentations. Instead, she was authorized to use the receipts of A7 Construction and Supply, a company owned by his friend, in dealing with her business.

During the latter part of 2010, she started having difficulty collecting payments from his clients which resulted to business reverses. Despite this, she managed to pay Dacasin his share of earnings as much as possible. However, as to his principal amount, accused-appellant confirmed not being able to pay the same.⁵

After trial on the merits, the RTC found petitioner guilty of the crime of *estafa*. The *fallo* of the RTC Decision dated November 13, 2015 reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused GRACE QUIBAEL ELIZALDE GUILTY BEYOND REASONABLE DOUBT of the crime of ESTAFA as defined and penalized under Article 315, par 2(a) of the Revised Penal Code and is hereby sentenced to suffer the penalty of imprisonment of (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, for the crime of *Estafa* under Art. 315, par. 2(a). She is further ordered to indemnify the private complainant Herald B. Dacasin, the sum of Php5,500,000.00 with legal interest of six percent (6%) per annum until fully paid and further ordered to pay private complainant attorney's fees in the amount of Php100,000.00 and costs of suit.

SO ORDERED.⁶

On appeal, the CA affirmed⁷ *in toto* the ruling of the RTC.

Subsequently, petitioner filed a motion for reconsideration which was denied by the CA in its Resolution⁸ dated May 24, 2019. The CA, however, modified the penalty, the dispositive portion of which reads:

- over -

107-B

⁵ *Rollo*, pp. 61-63.

⁶ *Id.* at 85.

⁷ Decision dated July 14, 2017; *id.* at 59-72.

⁸ *Rollo*, pp. 74-78.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby DENIED. However, the penalty imposed is MODIFIED in that the accused-appellant is sentenced to suffer an indeterminate penalty of imprisonment of 2 years, 11 months and 11 days of *prision correccional*, as minimum to 7 years, 8 months and 20 days of *prision mayor*, as maximum. (Emphasis supplied)

SO ORDERED.⁹

In this Court's Resolution¹⁰ dated September 16, 2019, the petition for review on *certiorari* was denied for petitioner's failure to sufficiently show any reversible error in the challenged decision as to warrant the exercise of the Court's discretionary appellate jurisdiction.

Aggrieved, petitioner filed the instant Motion for Reconsideration.

At the outset, the Court finds that the arguments of respondent are mere rehash of the issues previously raised in the petition for review on *certiorari*, which have already been correctly passed upon and resolved by this Court. There are no new and substantial matters discussed in the instant motion as compelling enough to reconsider, modify or reverse the assailed resolution. At any rate, the Court sees no cogent reason to deviate from the findings and conclusions of the CA and the RTC as to the presence of all the elements of the crime charged herein.

Petitioner was charged with *estafa* by means of deceit under Article 315 (2) (a) of the Revised Penal Code, committed as follows:

Article 315. *Swindling (Estafa)*. — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

- over -

107-B

⁹ *Id.* at 77.

¹⁰ *Id.* at 349.

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

To warrant conviction under this provision, the concurrence of the following elements must be present:

- (1) There must be a false pretense, fraudulent acts or fraudulent means;
- (2) Such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;
- (3) The offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and
- (4) As a result thereof, the offended party suffered damage.¹¹

Here, petitioner enticed Dacasin to invest in her supposed construction supply business that will earn interest. To guarantee that Dacasin will recoup his investment and earn profits in the form of interest, petitioner executed a promissory note in favor of Dacasin and simultaneously issued a check to Dacasin. Because of these prior false pretenses of petitioner, Dacasin was lured into investing his money to said construction supply business of petitioner. The postdated checks issued to him by petitioner were dishonored for the reason "ACCOUNT CLOSED." Dacasin demanded payment, but to no avail. Thus, Dacasin suffered financial loss. Evidently, contrary to the claims of petitioner, the prosecution sufficiently established the elements that Dacasin was specifically induced by petitioner's false pretense of having a construction supply company; that Dacasin parted with his money believing that his investment will earn him profits; that despite demands, petitioner failed to pay Dacasin the promised profits; and, as a result thereof, Dacasin suffered damage.

As aptly pointed out by the trial court, petitioner's own admission that she received investments for the supply company which she does not own, in addition to her deceitful conduct in dealing with Dacasin by way of obtaining his money under the guise of investment but later on failed to return the same or any of its supposed earnings all point to petitioner's criminal liability.¹² Besides, it is of no moment that petitioner was able to adduce

- over -

107-B

¹¹ *Maria Lourdes Artates y Gallardo v. People*, G.R. No. 235724, March 11, 2020.

¹² *Rollo*, p. 84.

Certifications showing her supposed transactions with steel corporations. Indeed, the fact remains that petitioner does not own a supply company, nor is she authorized to transact business in behalf of A7 Construction and Supply.¹³ Yet, petitioner misrepresented herself as having one. Dacasin parted with his money and suffered damage by reason of petitioner's deceitful and illegal scheme. Clearly, all the elements for the crime of *estafa* under paragraph 2(a) of Article 315 of the RPC are present in this case. Hence, petitioner's conviction for *estafa* was proper.

The penalty, however, must be modified.

With the amendment of Article 315 of the RPC,¹⁴ in view of the enactment of R.A. 10951,¹⁵ the imposable penalty for *estafa* is as follows:

SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

"ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

"1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is

- over -
107-B

¹³ *Id.* at 85.

¹⁴ Article 315. *Swindling (estafa)*. Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. 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 pesos 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 cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) **By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.**

¹⁵ *An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based, and the Fines Imposed under the Revised Penal Code, amending for the Purpose Act No. 3815, otherwise known as "The Revised Penal Code".*

over Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000), 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 Two million pesos (P2,000,000); but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the 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.

"2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).

"3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

"4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (P40,000) x x x."
(Emphasis ours)

xxx

On the other hand, Section 100 of R.A. No. 10951 provides:

Section 100. *Retroactive Effect.* This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.

Applying paragraph 2(a) of Article 315 of the RPC, as amended by R.A. No. 10951, and considering that the amount defrauded is ₱5,500,000.00, the imposable penalty shall be *prision correccional* in its maximum period to *prision mayor* in its minimum period.

While the CA aptly based its imposition of penalty on R.A. No. 10951, the Court deems it necessary to modify the indeterminate penalty the CA imposed in accordance with the Indeterminate Sentence Law. Applying the Indeterminate Sentence Law, the minimum term shall be within the range of the penalty next lower to that prescribed by the RPC, which is *prision correccional* minimum to

- over -

107-B



prision correccional medium, or from six (6) months and one (1) day to four (4) years and two (2) months. The maximum term, on the other hand, shall be that which could be properly imposed under the rules of the RPC, which is *prision correccional* maximum to *prision mayor* minimum, or from four (4) years, two (2) months and one (1) day to eight (8) years. However, because the amount exceeded ₱4,400,000.00 the appropriate penalty should be the maximum term of the penalty, which is eight (8) years.


Thus, in this case, the proper indeterminate penalty to be imposed is four (4) years and two (2) months of *prision correccional* medium, as the minimum term, to eight (8) years of *prision mayor* minimum, as the maximum term. The imposition by the CA of the penalty of 2 years, 11 months and 11 days of *prision correccional*, as minimum to 7 years, 8 months and 20 days of *prision mayor*, as maximum, must, therefore, be modified.

WHEREFORE, the Motion for Reconsideration is **DENIED**. Petitioner Grace Elizalde y Quibael is **GUILTY** beyond reasonable doubt of the crime of *estafa* under Article 315, paragraph 2 (a) of the Revised Penal Code. The Decision of the Court of Appeals dated July 14, 2017 in CA-G.R. CR No. 38415, and its Resolution dated May 24, 2019 are **AFFIRMED** with the **MODIFICATION** that petitioner is sentenced to suffer imprisonment of four (4) years and two (2) months of *prision correccional* medium, as minimum, to eight (8) years of *prision mayor* minimum, as maximum.

Petitioner Elizalde is further **ORDERED** to **PAY** the amount of ₱5,500,000.00 to Dacasin, with legal interest of six percent (6%) *per annum* until fully paid, as well as attorney's fees in the amount of ₱100,000.00, and costs of suit.

SO ORDERED.” *Zalameda, J., no part; Lopez, J., designated Additional Member per Raffle dated November 9, 2020.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
#12411

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
107-B

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107-B

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