



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

CONRADO FERNANDO, JR. G.R. No. 255180
Petitioner,

Present:

CAGUIOA, J., *Chairperson,*
 INTING,
 GAERLAN,
 DIMAAMPAO, and
 KHO, JR.*. *JJ.*

- versus -

Promulgated:

PEOPLE OF THE
 PHILIPPINES Respondent.

January 31, 2024

X-----X

RESOLUTION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ assailing the Decision² dated January 7, 2021, of the Court of Appeals (CA) in CA-G.R. CR No. 39899. The CA affirmed with modification the Decision³ dated November 24, 2016, and the Omnibus Order⁴ dated March 8, 2017, of Branch 216, Regional Trial Court (RTC) of Quezon City in Criminal Case No. Q-07-148522. The CA found Conrado Fernando, Jr. (petitioner) guilty beyond reasonable doubt of the crime of Estafa, but it deleted the award of actual damages in the amount of PHP 37,400.00.

* Designated as additional member per Raffle dated January 24, 2024, *vice* Associate Justice Maria Filomena D. Singh, who recused herself from the case due to her prior action in the Court of Appeals.

¹ See Petition for Review on *Certiorari* filed on March 8, 2021; *rollo*. pp. 9–17.

² *Id.* at 18–34. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Gabriel T. Robeniol and Carlito B. Calpatura.

³ *Id.* at 70–78. Penned by Presiding Judge Alfonso C. Ruiz II.

⁴ *Id.* at 80–82.

The Antecedents

The case stemmed from an Information⁵ dated July 30, 2007, that charged petitioner with the crime of Estafa, defined and penalized under Article 315 (2) (a) of the Revised Penal Code (RPC). The accusatory portion of the Information reads:

That on or about the 1st day of August, 2006 in Quezon City, Philippines, the said accused, did, then and there willfully, unlawfully and feloniously defraud one DOROLIZA REYROSO DIN, in the following manner, to wit: the accused, by means of false manifestations and fraudulent representations which he made to the complainant, to the effect that he could facilitate the processing of the pertinent papers of the promo package which the accused offered to the complainant in a four (4) day tour in Hongkong Disneyland, for the amount of ₱37,400.00, Philippine Currency, induced and succeeded in inducing said complainant to give and deliver, as in fact Doroliza R. Din gave and delivered to the accused the amount of ₱37,400.00, Philippine Currency, to meet the requirements thereof, said accused well knowing that the same were false and fraudulent but were made solely to obtain, as in fact the said accused did obtain the amount of ₱37,400.00, Philippine Currency, which amount once in possession thereof, with intent to defraud, misapplied, misappropriated and converted the same to his own personal use and benefit, despite demand made upon him, to the damage and prejudice of the said offended party in the amount aforementioned.

CONRARY TO LAW.⁶

Upon arraignment, petitioner entered a plea of “Not Guilty” to the crime charged.⁷

Trial ensued.

Version of the Prosecution

The prosecution presented two witnesses: (1) Doloriza Din⁸ (private complainant) and (2) Natalie Arevalo (Arevalo).⁹

⁵ Records, pp. 1-2. Signed by Assistant City Prosecutor Juan T. Rodulfo and approved by 2nd Assistant City Prosecutor, Chief, Division II Delio M. Aseron.

⁶ *Id.* at 1.

⁷ *Rollo*, p. 19.

⁸ Also referred to as Doroliza Reyroso Din in some parts of the *rollo*, *id.* at 19.

⁹ *Id.*

On August 1, 2006, private complainant read an advertisement regarding a package tour to Hong Kong offered by Airward Travel and Tours (Airward). The package tour was good for two persons. It consisted of a four-day stay in Hong Kong with an overnight stay in Disneyland Hotel for the total consideration of PHP 37,400.00. Private complainant inquired about it through phone and petitioner, after introducing himself as a travel agent of Airward, informed her of the details of the tour *via* Book and Buy package. Petitioner informed private complainant that for her to avail herself of the package tour, she had to pay in full the tickets and all other items included in the package.¹⁰

On August 4, 2006, petitioner informed private complainant that she was booked on August 22 to 25, 2006 through Airward's Book and Buy Promo arrangement. Thereafter, private complainant went to Airward's office and paid PHP 25,000.00 in cash and PHP 12,400.00 in post-dated check, which was cleared on its due date, or on August 10, 2006. Petitioner handed to private complainant a Guaranty Deposit Receipt and travel itinerary which indicated the latter's flight to Hong Kong *via* Cebu Pacific Airlines. Petitioner also instructed private complainant to pick up the tickets and travel documents from Airward's office on August 19, 2006.¹¹

On August 19, 2006, private complainant called petitioner over the phone to confirm her booking on the dates mentioned. However, petitioner informed her that the schedule would not push through because Disney's Hollywood Hotel could no longer accommodate her. Private complainant agreed to the re-booking of her flight on August 23, 2006 with return flight on August 26, 2006 *via* Philippine Airlines (PAL) instead. However, without any valid explanation, petitioner informed private complainant that the intended flight was cancelled again.¹²

Private complainant talked to one of PAL's supervisors; she was surprised to find out that PAL granted her travel request and confirmed her flight to Hong Kong on August 23, 2006. Thereafter, she informed petitioner that she was able to secure a flight and asked the latter to secure her a travel booking. However, petitioner refused by saying that Airward encountered a problem with Guandong Hotel, which was supposed to accommodate private complainant.¹³

¹⁰ *Id.* at 20.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 21.

Consequently, private complainant asked petitioner for a refund of the amount she paid for the package tour. Meanwhile, private complainant and her father successfully travelled to Hong Kong through Great Pacific Travel Corporation (Great Pacific Travel).¹⁴

Private complainant alleged that petitioner, through deception and false representation, induced her to avail herself of the package tour and to part with her money which she did. Later, she found out that the assurance and information coming from petitioner were all lies. She averred that she would have not parted with her money were it not for petitioner's false pretenses and deceit.¹⁵

The prosecution proved that petitioner failed to refund private complainant the amount of PHP 37,400.00. While it was true that petitioner issued private complainant a post-dated Bank of Commerce Check dated August 25, 2006 for the amount of PHP 37,400.00, the check bounced when presented for payment due to insufficient funds; that when private respondent made several demands, all fell on deaf ears.¹⁶

Hence, the case for Estafa.¹⁷

Arevalo, the owner of Great Pacific Travel, testified that sometime in August 2006, private complainant bought from her travel agency two round trip tickets to Hong Kong and paid PHP 65,600.00 under their Book and Buy Package arrangement.¹⁸

Version of the Defense

Petitioner denied the charge against him. He alleged as follows: He worked at Airward as a reservation officer. Airward is not a member of the International Air Transportation Association (IATA); thus, Airward cannot issue directly airline tickets. Instead, Airward endorses the request for reservation to an IATA-member travel agency. Then, the IATA-member travel agency will check whether the reservation is feasible or not. If the reservation is approved, Airward will then have to pay for the airline

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

tickets so that the IATA-member travel agency will issue the airline tickets on Airward's behalf.¹⁹

Regarding private complainant's package tour, petitioner admitted that he was the one who received the cash and check from private complainant. However, petitioner alleged that the transaction was not yet final; that the PHP 37,400.00 which private complainant paid was only a deposit and not the full payment for the package tour; and that the approval of the package tour was subject to the IATA-member travel agency's issuance of airline tickets. Petitioner further alleged that he forwarded private complainant's deposit to the IATA-member travel agency.²⁰

On re-cross examination, petitioner testified that he returned the amount of PHP 37,400.00 in view of the Batas Pambansa Bilang 22 (BP 22) case which private complainant filed against him before the Metropolitan Trial Court (MeTC).²¹

Rolando Albano Fernando (Fernando), another defense witness, corroborated petitioner's testimony. He also testified that Melinda Estanislao owns Airward.²²

The Ruling of the RTC

In the Decision²³ dated November 24, 2016, the RTC found petitioner guilty beyond reasonable doubt of the crime of Estafa. It sentenced petitioner to suffer an indeterminate penalty of imprisonment ranging from two years and two months of *prision correccional* as minimum, to nine years as maximum. It also ordered petitioner to reimburse private complainant the amount of PHP 37,400.00 as and by way of actual damages.²⁴

Briefly, the RTC ruled that the prosecution was able to establish all the elements of Estafa. It further found that petitioner misrepresented to private complainant that he was duly authorized to make promotional package tours through book and buy arrangement; that because of

¹⁹ *Id.* at 22.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 23.

²³ *Id.* at 70-78.

²⁴ *Id.* at 77.

petitioner's misrepresentations, private complainant was enticed and induced to purchase a package tour to Hong Kong by way of the book and buy arrangement; and private complainant paid the amount of PHP 37,400.00.²⁵ However, despite private complainant's payment of the total package price, private complainant's supposed tour in Hong Kong did not push through; and when she demanded for a refund from petitioner, the latter failed to comply.²⁶

Petitioner filed his Motion for Reconsideration²⁷ and averred, among others, that: (1) he is a mere employee of Airward, a legitimate travel agency registered in 2004; (2) Airward is a non-IATA member, but even non-members are allowed to sell tour packages; (3) he did not make the promotional tour packages; and (4) he has already paid the amount of PHP 37,400.00 by way of actual damages in the BP 22 case filed against him.

On the other hand, private complainant, with the conformity of the public prosecutor, filed her Motion for Partial Reconsideration,²⁸ and contended that the RTC erred in failing to order petitioner to reimburse her for the roundtrip tickets she bought for Hong Kong, award moral damages in her favor, and direct petitioner to pay costs of the suit.²⁹

In its Omnibus Order³⁰ dated March 8, 2017, the RTC held that petitioner's motion for reconsideration was considered *pro forma* as it was not set for hearing in violation of Sections 4 and 5 of Rule 15, Rules of Procedure.³¹ As regards private complainant's motion for partial reconsideration, the RTC denied her prayer for reimbursement of the roundtrip tickets she bought and stressed that private complainant had a choice not to proceed with her travel.³² Nonetheless, the RTC agreed with private complainant that she should be awarded moral damages and that petitioner should be made liable to pay the costs of suit.³³ Thus,

WHEREFORE, the Motion for Reconsideration dated December 7, 2016 is denied.

²⁵ *Id.* at 74-75.

²⁶ *Id.* at 75.

²⁷ *Id.* at 83-91.

²⁸ *Id.* at 92-98.

²⁹ *Id.* at 24.

³⁰ *Id.* at 80-82.

³¹ *Id.* at 80.

³² *Id.* at 81.

³³ *Id.*

The Motion for Partial Reconsideration dated December 8, 2016 is partially granted. The Decision is modified to include an award of P20,000 moral damages. The accused Conrado Fernando, Jr. is likewise ordered to pay the costs of suit.

SO ORDERED.³⁴

Hence, the appeal before the CA.

The Ruling of the CA

In its Decision³⁵ dated January 7, 2021, the CA denied petitioner's appeal for lack of merit. It affirmed with modification the Decision dated November 24, 2016, and Omnibus Order dated March 8, 2017, of the RTC and found petitioner guilty beyond reasonable doubt of the crime of Estafa. However, in view of petitioner's full payment of the actual damages in the amount of PHP 37,400.00 under the BP 22 case, the CA deleted the RTC's award because of the prohibition on double recovery as provided under Article 2177³⁶ of the Civil Code.³⁷ The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the appeal is DENIED for lack of merit. Accordingly, the November 24, 2016 Decision and the March 8, 2017 Omnibus Order of the Regional Trial Court of Quezon City, Branch 216, in Criminal Case No. Q-07-148522 are AFFIRMED with MODIFICATION in that this Court finds accused-appellant Conrado Fernando, Jr. GUILTY beyond reasonable doubt of the crime of Estafa. He is hereby sentenced to suffer a straight penalty of six (6) months of *arresto mayor*. Said accused-appellant is further DIRECTED to pay private complainant Doloriza Din moral damages in the amount of ₱20,000.00, and to pay the costs of the suit. Legal interest of six percent (6%) per annum is likewise imposed on said moral damages awarded from the date of finality of this Decision until fully paid. The award of actual damages in the amount of ₱37,400.00 is DELETED.³⁸ (Emphasis omitted)

³⁴ *Id.*

³⁵ *Id.* at 18-34.

³⁶ Article 2177 of the Civil Code provides:

ART. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

³⁷ *Rollo*, p. 32.

³⁸ *Id.* at 33.

The Issues

1. Is private complainant guilty of forum shopping?
2. Is petitioner guilty of the crime of *estafa* under Article 315 (2) (a) of the RPC?

The Court's Ruling

At the outset, the Court notes that Atty. Valentino K. Villaluz, counsel for petitioner, has failed to comply with the Resolution³⁹ dated August 31, 2022 which required him to submit within five days from notice the following:

(1) a soft copy of the petition in portable document format as required under the Rules in E-Filing (A.M. No. 10-3-7-SC) and the Efficient Use of Paper Rule (A.M. No. 11-9-4-SC); (2) a certification against forum shopping; (3) a valid verification of the petition with (a) the additional attestations in the verification of the petition as required under Section 4, Rule 7 of the 2019 Amended Rules of Court; and (b) a properly accomplished *jurat* with affiant's current identification document issued by an official agency bearing his photograph and signature; pursuant to Secs. 2, 6, and 12, Rule II of the 2004 Rules on Notarial Practice, as amended by A.M. No. 02-8-13-SC; and (4) a valid affidavit of service with a properly accomplished *jurat* with affiant's current identification document issued by an official agency bearing his/her photograph and signature, pursuant to Secs. 2, 6, and 12, Rule II of the 2004 Rules on Notarial Practice, as amended by A.M. No. 02-8-13-SC.⁴⁰ (Emphases omitted)

However, considering that petitioner's liberty is at stake, the Court resolves to brush aside the procedural infirmities of the petition and give due course to the petition in the higher interest of substantial justice.

The Court shall now delve into the merits of the present petition. Petitioner filed a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. For the petition to prosper, Section 5 (2) of Rule 45 of the Rules of Court states that the questions raised in the petition should be of such substance as to warrant consideration. Also, Section 6 of the same Rules provides the reasons which will be considered by the Court —

³⁹ *Id.* at 129--130.

⁴⁰ *Id.*

SEC. 6. Review discretionary. . . .

- (a) When the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or
- (b) When the court *a quo* has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

In the present case, the Court finds that the RTC's factual findings, as affirmed by the CA, are not in accordance with law and recent jurisprudence.

First, on the issue of whether private complainant is guilty of forum shopping, the Court answers in the negative.

Petitioner submits that private complainant is guilty of forum shopping when she failed to advise the RTC, where the Estafa case was lodged, that he already paid the actual damages in the amount of PHP 37,400.00 pursuant to the Decision⁴¹ dated October 15, 2012 rendered in the BP 22 case filed against him.

In the case of *Rodriguez v. Ponferrada*,⁴² the Court ratiocinated that a single act of issuing a bouncing check may give rise to two distinct criminal offenses: Estafa and violation of BP 22.⁴³ As these remedies are simultaneously available to a party, there can be no forum shopping.⁴⁴ However, the Court proscribes double recovery for the same act or omission, thus:

[T]he recovery of the single civil liability arising from the single act of issuing a bouncing check in either criminal case bars the recovery of the same civil liability in the other criminal action. While the law allows two simultaneous civil remedies for the offended party, it authorizes recovery in only one. In short, while two crimes arise from a single set of facts, only one civil liability attaches to it.⁴⁵

⁴¹ *Rollo*, pp. 100–108; penned by Presiding Judge Juris S. Dilinila-Callanta of Branch 42, Metropolitan Trial Court (MeTC), Quezon City.

⁴² 503 Phil. 306 (2005).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 309.

....

A recovery by the offended party under one remedy, however, necessarily bars (recovery) under the other. Obviously stemming from the fundamental rule against unjust enrichment, this is in essence the rationale for the proscription in our law against double recovery for the same act or omission.⁴⁶

Therefore, there is no merit in the petitioner's allegation that private respondent is guilty of forum shopping.

Now, on the more important issue of whether petitioner is guilty of Estafa, the Court finds petitioner's guilt unsupported by the evidence on record.

In *People v. Sison*,⁴⁷ the elements of Estafa by means of deceit under Article 315 (2) (a) of the RPC are as follows:

- (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions;
- (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud;
- (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and
- (d) that, as a result thereof, the offended party suffered damage.⁴⁸

All the elements are wanting in this case.

Briefly, the CA ruled that it sees no reason to deviate from the factual findings of the RTC and affirmed that: (1) petitioner misrepresented that he was duly authorized to make promotional tour packages under a book and buy arrangement; (2) with this representation, private complainant was enticed and induced to purchase a tour package to Hong Kong and paid PHP 37,400.00; (3) despite the payment of the total tour package price, private complainant failed to leave for Hong

⁴⁶ *Id.* at 320.

⁴⁷ 816 Phil. 8 (2017).

⁴⁸ *Id.* at 26.

Kong; and (4) when private complainant demanded for a refund, petitioner failed to give back her money.⁴⁹ Likewise, the CA affirmed the RTC's findings that based on the evidence presented: (1) petitioner personally transacted with private complainant; (2) petitioner enticed private complainant in availing herself of the tour package; (3) petitioner personally and actually received the money from private complainant; and (4) petitioner prepared private complainant's travel schedule.⁵⁰

However, the Court finds all the aforementioned circumstances not sufficient to establish petitioner's guilt beyond reasonable doubt.

First. The Court is not convinced that just because Airward is not a member of IATA, petitioner's representation that Airward was duly authorized to make promotional tour packages under a book and buy arrangement is fraudulent. The RTC erred when it failed to appreciate that, as testified by Arevalo, the owner of Great Pacific Travel, even travel agencies that are not IATA members are authorized to sell tickets; thus:

(CROSS EXAMINATION OF NATALIE AREVALO BY
ATTY. VILLALUZ)

Q: Do you have travel agencies who are not members of IATA and they are authorized to sell tickets having tour packages also through IATA members?

A: Yes, sir.

(REDIRECT EXAMINATION OF NATALIE AREVALO BY
ATTY. ESPINA)

Q: Madam witness, if you authorized a none (sic) IATA member to sell tour packages, at the end of the day, who is responsible once that non-IATA agent sells tour packages for your behalf?

A: The agent, the non-IATA agent.

....

(COURT TO NATALIE AREVALO)

Q: Who is responsible to the passenger, to the one who purchased ticket from that non-IATA agent who sold tour packages?

A: The non-IATA agent, sir⁵¹

⁴⁹ *Rollo*, pp. 27–28.

⁵⁰ *Id.* at 28.

⁵¹ TSN, Natalie Arevalo, December 4, 2012, pp. 18–20.

From Arevalo's testimony, it can be concluded that Airward's promotional tour packages through the book and buy arrangement with an IATA-member travel agency is an accepted practice among travel agencies.

The RTC likewise erred when it failed to appreciate petitioner's defense that he was a mere employee of Airward.⁵² The fact that petitioner was indeed an employee of Airward was confirmed by Fernando, who was a bookkeeper in Airward from 2004 to 2007.⁵³ Also, from the records, Fernando was presented in court to prove that Airward is a legitimate business entity owned by Melinda Estanislao.⁵⁴

Considering the foregoing, petitioner can be said to have only acted for and on behalf of Airward when he transacted with private complainant and when he received from the latter the amount of PHP 37,400.00. Thus, petitioner cannot be faulted when private complainant's trip to Hong Kong, which was originally booked in Airward, did not materialize.

Likewise, petitioner's attempt to reimburse private complainant through his personal check cannot be taken against him. This fact is not enough in establishing the guilt of petitioner for the crime of Estafa.

Second. The prosecution failed to establish that Airward's advertisement regarding its promotional tour packages to Hong Kong is false. The mere fact that private complainant failed to travel to Hong Kong through Airward is not sufficient to establish that there is no truth to their advertisement, or that the same is not valid.

*"To sustain a conviction, the prosecution has the heavy burden of proving that the accused committed the crime beyond reasonable doubt. Even an iota of doubt on the guilt of the accused will warrant his acquittal therefrom."*⁵⁵ In the present case, the absence of the first two elements warrants the acquittal of petitioner.

⁵² *Rollo*, p. 76. *See also* TSN, Rolando Albano Fernando, April 16, 2013, p. 13.

⁵³ TSN, Rolando Albano Fernando, February 28, 2013, p. 3.

⁵⁴ *Id.* at 2.

⁵⁵ *Lisaca v. People*, G.R. No. 251131, July 6, 2021.

WHEREFORE, the petition is **GRANTED**. The Decision dated January 7, 2021 of the Court of Appeals in CA-G.R. CR No. 39899 is **REVERSED** and **SET ASIDE**. Petitioner Conrado Fernando, Jr. is **ACQUITTED** of the crime of Estafa in Criminal Case No. Q-07-148522 as his guilt was not proven beyond reasonable doubt. The Branch 216, Regional Trial Court, Quezon City is **ORDERED** to **CANCEL** the cash bail bond and return the same to petitioner.

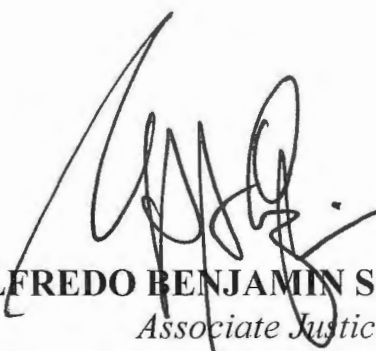
Let entry of judgment be issued immediately.

SO ORDERED.




HENRI JEAN PAUL B. INTING
Associate Justice


WE CONCUR:



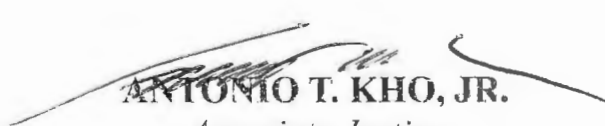
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



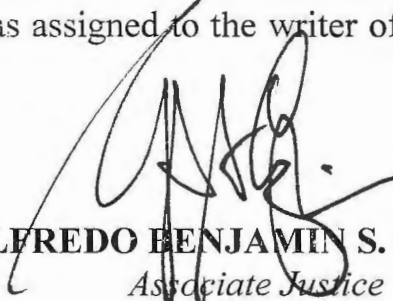
JAFAR B. DIMAAMPAO
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

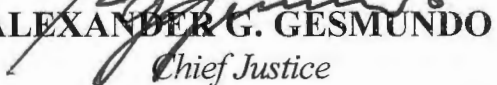
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



ALEXANDER G. GESMUNDO
Chief Justice

