

## SECOND DIVISION

[G.R. NO. 128513. December 27, 2000]

### **EMMA OFFEMARIA MARCELO, *petitioner*, vs. COURT OF APPEALS and THE PEOPLE OF THE PHILIPPINES, *respondents*.**

#### **D E C I S I O N**

**DE LEON, JR., J.:**

Before us is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals dated October 23, 1996 in its affirmance of the Decision of the Regional Trial Court of Manila, Branch 8 dated June 18, 1991<sup>[2]</sup> in Criminal Case No. 84-25822 finding petitioner Emma Offemaria Marcelo guilty beyond reasonable doubt of the crime of Estafa as defined and penalized under Art. 315 (2) (a) of the Revised Penal Code.

The facts, as borne by the records, are as follows:

On May 7, 1982, private complainant Clarita Mosquera was at home when her cousin Milagros Gasmen<sup>[3]</sup> arrived with Nemia Magalit Diu.<sup>[4]</sup> Nemia Magalit Diu presented herself as one authorized to recruit baby-sitters for the United States and convinced Clarita to apply. Clarita applied because of the attractive salary of about \$300.00 a month.<sup>[5]</sup>

On May 15, 1982, Clarita Mosquera together with her aunt, Helen Paminsan, and joined by co-accused Nemia Magalit Diu and herein petitioner Emma Marcelo went to the office of Angelica C.J. Offemaria, mother of petitioner, at 2170 Karapatan St., Sta. Cruz, Manila.<sup>[6]</sup> Emma Marcelo introduced the two to Angelica Offemaria who presented herself as the General Manager of the Office and allegedly authorized to recruit baby-sitters for the United States and that they are in need of two baby-sitters.<sup>[7]</sup> In the process she required the applicants to deposit P5,000.00 each.<sup>[8]</sup>

Private complainant Clarita Mosquera and her aunt, Helen Paminsan, gave P8,925.00 to accused Angelica Offemaria as evidenced by the May 20, 1982 receipt signed by Angelica Offemaria in their presence.<sup>[9]</sup> Angelica Offemaria told them that they lacked P2,500.00 so they went home and returned with the amount giving it to her as evidenced by the receipt dated May 20, 1982<sup>[10]</sup> signed by Angelica Offemaria in their presence<sup>[11]</sup> and after having completed the amount as deposit, accused told them to wait for the good news so they waited until June and July 1992.<sup>[12]</sup>

On July 15, 1982, Angelica Offemarias nieces, Flor Nocete and Leila<sup>[13]</sup> Briones, went to private complainants house and told them to pay the balance of P18,000.00 to Angelica Offemaria so that the latter could get their plane tickets for the United States.<sup>[14]</sup> On July 17, 1982, private complainant, upon instructions of Angelica

Offemaria, went to Phil-Am Life Bldg., U.N. Ave., Manila, and in the presence of co-accused Nemia Magalit Diu, Flor Nocete, Leila Briones and petitioner Emma Marcelo, she gave the amount of P15,000.00 and another P1,500.00, or a total of P16,500.00, which, Angelica Offemaria, upon receipt divided into two batches and she then wrapped in two yellow pad paper sheets. She wrote on the wrapper of one batch the date July 17, and on the other the amounts given by complainant as evidenced by the receipt dated July 17, 1982.<sup>[15]</sup> Thereafter, private complainant was told to wait for the good news.<sup>[16]</sup>

After one week of waiting without receiving any news, private complainant went to Offemarias office only to find out that she had already left for abroad. Thus, she looked for the co-accused Nemia Magalit Diu, Emma Marcelo, Leila Briones and Flor Nocete and they too were nowhere to be found.<sup>[17]</sup> Thereafter, she went to the Department of Labor and Employment. A POEA certification dated December 20, 1982 signed by Luzviminda Padilla, Director of Licensing and Regulation Office, stating that Angelica Offemaria was not at all authorized to recruit workers, was issued to her.<sup>[18]</sup>

On February 13, 1984, an information for the crime of Estafa was filed against Angelica C.J. Offemaria, Emma Offemaria Marcelo, Nemia Magalit Diu, Leila Briones and Flor Nocete. The information reads:

That in (sic) or about and during the period comprised between May 20, 1982 and July 17, 1982, inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously defraud CLARITA MOSQUERA in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which they made to the said CLARITA MOSQUERA to the effect that they have the power and capacity to recruit and employ said CLARITA and her aunt, HELEZ (sic) PAMINSAN in the United States as baby-sitters, and could facilitate the processing of pertinent papers if given the necessary amount to meet the requirements thereof, and by means if other similar deceits, induced and succeeded in inducing the said CLARITA MOSQUERA to give and deliver, as in fact she gave and delivered to said accused the total amount of P27,925.00 on the strength of such manifestations and representations, said accused well knowing, that the same were false and fraudulent and were made solely to obtain, as in fact they did obtain the amount of P27,925.00, which amount once in their possession, with intent to defraud, they wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of the said CLARITA MOSQUERA in the aforesaid amount of P27,925.00, Philippine Currency.<sup>[19]</sup>

When duly arraigned on June 5 and 10, 1985, petitioner Emma Marcelo and one of her co-accused, Nemia Magalit Diu, respectively, through their counsels, pleaded Not

guilty to the crime charged. The other accused, Angelica C.J. Offemaria, Leila Briones and Flor Nocete, remain at-large.

Denial of any culpability for the crime charged was the main thrust of the defense of petitioner Marcelo and Diu. Petitioner Marcelo denied having known private complainant Clarita Mosquera before the filing of this case. Her main defense is that she only met Mosquera at the Fiscals Office,<sup>[20]</sup> though she admitted having seen complainant Mosquera together with her mother and her co-accused at the office of Angelica Offemaria.<sup>[21]</sup> Accused Diu, for her part, admitted that while she brought and introduced the private complainant and her cousin, Milagros Gasmen, to Angelica Offemaria,<sup>[22]</sup> she claimed that it was actually private complainant, accompanied by Gasmen, who initially went to her place seeking assistance regarding complainants plan to go abroad.<sup>[23]</sup>

Following trial, the lower court found petitioner Marcelo and Diu guilty beyond reasonable doubt of the crime of estafa as charged and sentenced them thus:

WHEREFORE, in view of the foregoing consideration, the Court finds accused EMMA OFFEMARIA MARCELO of 38 Sauyo St., Novaliches, Quezon City and accused NEMIA MAGALIT DIU of 28 6<sup>th</sup> Ave., Murphy, Quezon City GUILTY beyond reasonable doubt of the crime of Estafa as defined and penalized by Art. 315, par. 2(a), 1<sup>st</sup> Instance, Rev. Penal Code and applying the Indeterminate Sentence Law, hereby sentences them to suffer an imprisonment each of FOUR (4) YEARS and TWO (2) MONTHS, as minimum to SIX (6) YEARS, EIGHT (8) MONTHS AND TWENTY-ONE (21) DAYS as maximum, with the accessory penalties of the law; to pay private complainant CLARITA MOSQUERA the amount of P27,925.00 in solidum with legal rate of interest per annum reckoned from date of Information until fully paid, plus 25% of the sum of P27,925.00 for and as Attorneys fees, without subsidiary imprisonment in case of insolvency; and finally to pay their proportionate share of the costs of the proceedings.

IT IS SO ORDERED.<sup>[24]</sup>

From the judgment of conviction, only Marcelo appealed<sup>[25]</sup> to the Court of Appeals, which affirmed the trial courts decision.<sup>[26]</sup> Petitioner sought reconsideration of the appellate courts affirmance of the trial courts decision but the same was denied in a resolution dated March 4, 1997.<sup>[27]</sup>

Hence, the instant petition.

Petitioner contends that she should not be held guilty as principal for the crime of estafa since the established facts fail to prove beyond reasonable doubt the allegation of conspiracy between her and the other accused. Under the factual backdrop of the case, the decision states only two occasions when petitioner was allegedly present: (1) on May 15, 1982, when she, together with Clarita Mosquera, Helen Paminsan and Nemias Magalit Diu, went to the office of co-accused Angelica C.J. Offemaria; and (2) on

July 17, 1982, when Clarita Mosquera allegedly gave the amount of P15,000.00 and P1,500.00 or a total of P16,500.00 to Angelica C.J. Offemaria at the Phil-Am Life Bldg. at U.N. Avenue, Manila.<sup>[28]</sup> Petitioner strongly submits that her mere presence is insufficient to render her guilty as principal of estafa, for conviction as a conspirator in the crime of estafa must be drawn from positive and conclusive evidence and not from mere inference.<sup>[29]</sup>

Petitioners contention is devoid of merit.

The elements of the crime of estafa under Art. 315 (2) (a) of the Revised Penal Code are: (a) that the accused defrauded another by abuse of confidence or by means of deceit; and (b) that damage or prejudice capable of pecuniary estimation is thereby caused to the offended party or third person. Both elements have been proven in this case. The evidence for the prosecution shows that the accused were able to make private complainant part with her money upon their fraudulent misrepresentation that they can provide her and her aunt with work abroad.

Accused-petitioners protestation that her direct participation in the crime has not been established is contradicted by the complainants testimony that it was accused-petitioner who introduced the complainant to her mother and co-accused, Angelica C.J. Offemaria. That was her direct participation in the crime. Petitioner was present with her mother when Angelica C.J. Offemaria made representation that they are in need of two baby-sitters for the United States and that petitioner required them to make an initial deposit of P5,000.00 each; but subsequently, they have actually paid P27,925.00 in all. Her presence anew at Phil-Am Life Bldg. when another payment was given by the private complainant who was then told to wait for the good news serves only to further show her participation in the fraudulent misrepresentation that they could send complainant abroad to work as a baby-sitter. Notwithstanding non-participation in every detail in the execution of the crime, still the culpability of the accused exists.<sup>[30]</sup>

There is no clear showing that the complainant and her witnesses had any ill motive to single-out and testify falsely against petitioner. It is generally observed that it is against human nature and experience to conspire and accuse another stranger of a most serious crime just to mollify their hurt feelings.<sup>[31]</sup> As aptly expressed by the appellate court:

Why would [private complainant] Mosquera include [petitioner] and exclude the latters half-sister Bituin dela Torre who was then the clerk of Angelica and who was even involved in following-up Mosqueras travel papers with a certain travel agency. (TSN, November 29, 1991, pp. 19, 20 and 22, January 10, 1992, pp. 13-14). The only plausible explanation is that it was really [petitioner] together with the accused Diu, Briones and Nocete who actively persuaded Mosquera to part with her money.<sup>[32]</sup>

Thus, the Court finds it hard to accept the claim of petitioner that private complainant had prevaricated the evidence to implicate the petitioner, simply because private complainant could not locate petitioners mother, Angelica C.J. Offemaria. It is, of

course, unfortunate that Angelica C.J. Offemaria and the other accused, Leila Briones and Flor Nocete, at least momentarily, are able to avoid arrest and ward off the long arm of the law.

Moreover, this Court sees no reason to discount the trial courts appreciation of the complainants and her witnesses truthfulness, honesty and candor. For such appreciation deserves the highest respect, since the trial court is best equipped to make the assessment of the witnesses credibility and demeanor on the witness stand, and its factual findings are generally not disturbed on appeal.<sup>[33]</sup>

Petitioner failed to present evidence to rebut the evidence of the prosecution. She failed to present her mother and co-accused, Angelica C.J. Offemaria, nor the other accused, Leila Briones and Flor Nocete, who are the persons whom she claims are allegedly responsible for the crime against the private complainant. In fact, notwithstanding the seriousness of the charge against her, when petitioners mother, Angelica C.J. Offemaria, called her up on September 16, 1990 she made no mention of the case of estafa filed against her and her mother.<sup>[34]</sup> Such actuation is clearly contrary to human experience; a guiltless person would certainly exert every effort to prove her innocence. Because of her failure to do so, she risked the adverse inference and legal presumption that she did not present such witnesses because their testimonies would actually be adverse if produced.<sup>[35]</sup> For, indeed, petitioner could have presented her mother to rebut the claims of private complainant. Instead, she merely interposed denials in her defense. As against the positive and categorical testimonies of the complainant, petitioners mere denial cannot prevail.

The penalty for the crime of estafa is prescribed by paragraphs 1 to 4 of Article 315 of the Revised Penal Code as follows:

1<sup>st</sup>. 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 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;

2<sup>nd</sup>. 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;

3<sup>rd</sup>. 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

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

In the case of *People v. Gabres*,<sup>[36]</sup> the Court had occasion to so state that

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code, and the minimum shall be within the range of the penalty next lower to that prescribed for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

The fact that the amounts involved in the instant case exceed P22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium. Thus, **the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months x x x.**<sup>[37]</sup>

In *People v. Saley*,<sup>[38]</sup> the Court further added that, in fixing the maximum term, the prescribed penalty of *prision correccional* maximum period to *prision mayor* minimum period should be divided into three equal portions of time, each of which portion shall be deemed to form one period; hence -

Minimum Period	Medium Period	Maximum Period
From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days	From 5 years, 5 months and 11 days to 6 years, 8 months and 20 days	From 6 years, 8 months and 21 days to 8 years

in consonance with Article 65<sup>[39]</sup> in relation to Article 64<sup>[40]</sup> of the Revised Penal Code.

When the amount involved in the offense exceeds P22,000.00, the penalty prescribed in Article 315 of the Revised Penal Code *shall be imposed in its maximum period*, adding one year for each additional P10,000.00 although the total penalty which



may be imposed shall not exceed 20 years. The maximum penalty should then be termed as *prision mayor* or *reclusion temporal* as the case may be. In fine, the one year period, whenever applicable, shall be added to the maximum period of the principal penalty of anywhere from 6 years, 8 months and 21 days to 8 years.<sup>[41]</sup>

Applying the foregoing to the present case, the Court thus finds some need to modify the penalty imposed by the trial court. Inasmuch as the amount involved in Criminal Case No. 84-25822 is P27,925.00, the minimum penalty should be reduced to one (1) year, eight (8) months and twenty-one (21) days of *prision correccional* and the maximum penalty should be six (6) years eight (8) months and twenty-one (21) days of *prision mayor minimum*, aside from payment of actual damages of P27,925.00 in solidum with co-accused Nemia Magalit Diu. The lowering of the penalty, being favorable to Nemia Magalit Diu who did not interpose an appeal, should likewise be applied as to her,<sup>[42]</sup> pursuant to Section 11, Rule 122 of the 1985 Rules of Criminal Procedure.<sup>[43]</sup>

**WHEREFORE**, the appealed Decision of the Court of Appeals finding accused-petitioner Emma Offemaria Marcelo and co-accused Nemia Magalit Diu guilty beyond reasonable doubt of the crime of Estafa under Art. 315 (2) (a) of the Revised Penal Code is hereby **AFFIRMED** with the modification that each of them is sentenced to an indeterminate penalty of one (1) year, eight (8) months and twenty-one (21) days of *prision correccional* minimum period as MINIMUM, to six (6) years, eight (8) months and twenty-one (21) days of *prision mayor* minimum period as MAXIMUM. Costs against petitioner.

**SO ORDERED.**

*Bellosillo, (Chairman), Mendoza, and Quisumbing, JJ., concur.*  
*Buena J., no part, ponente in CA decision.*

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<sup>[1]</sup> Penned by Associate Justice Arturo M. Buena (now Associate Justice of the Supreme Court) and concurred in by Associate Justices Angelina Sandoval Gutierrez and Conrado M. Vasquez, Jr., Third Division, in CA-G.R. CR No. 13770, *Rollo*, pp. 21-31.

<sup>[2]</sup> Penned by Judge Arsenio M. Gonong, Court of Appeals (CA) *Rollo*, pp. 92-108.

<sup>[3]</sup> Spelled in TSN as Gasmet and Gasmin.

<sup>[4]</sup> TSN, Mosquera, June 9, 1987, pp. 16-18.

<sup>[5]</sup> *Id.*, pp. 19-22.

<sup>[6]</sup> *Id.*, pp. 23-30.

<sup>[7]</sup> *Id.*, pp. 30-31.

<sup>[8]</sup> *Id.*, p. 31.

<sup>[9]</sup> Exhibits A and A-1, *Id.*, pp. 31-35.

<sup>[10]</sup> Exhibits B and B-1.

<sup>[11]</sup> Exhibits B-2, TSN, Mosquera, July 21, 1987, p. 7.

<sup>[12]</sup> *Id.*, pp. 8-9.

<sup>[13]</sup> Spelled in TSN as Laila.

<sup>[14]</sup> *Id.*, pp. 10-11.

<sup>[15]</sup> Exhibits C, C-1, and C-2, *Id.*, pp. 14-15.

<sup>[16]</sup> *Id.*, p. 19.

<sup>[17]</sup> *Id.*, pp. 20-21.

<sup>[18]</sup> *Id.*, pp. 21-22; Exhibits D and D-1.

<sup>[19]</sup> Records, p. 1.

<sup>[20]</sup> TSN, October 11, 1990, p. 5.

<sup>[21]</sup> TSNs, October 23, 1990, p. 35 and 38-40; April 4, 1991, p. 5.

<sup>[22]</sup> *Ibid.*, pp. 8-11.

<sup>[23]</sup> TSN, May 16, 1991, p. 7.

<sup>[24]</sup> See Note No. 2, *supra*.

<sup>[25]</sup> CA *Rollo*, pp. 56-91; Diu filed a Notice of Appeal but failed to submit an appeal brief and consequently her appeal was dismissed for failure to prosecute.

<sup>[26]</sup> See Note No. 1, *supra*.

<sup>[27]</sup> *Rollo*, p. 32.

<sup>[28]</sup> *Id.*, p. 13.

<sup>[29]</sup> *Id.*, p. 14.

<sup>[30]</sup> *People v. Medina*, 292 SCRA 436 [1998].

<sup>[31]</sup> *People v. Yabut*, 316 SCRA 237, 249 [1999] citing *People v. Guevarra*, 306 SCRA 111 [1999].

<sup>[32]</sup> *Rollo*, p. 28.

<sup>[33]</sup> *People v. Hernandez*, 304 SCRA 186, 195 [1999].

<sup>[34]</sup> TSN, October 23, 1990, pp. 26, 33.

<sup>[35]</sup> *People v. Ong*, G.R. No. 119594, January 18, 2000.

<sup>[36]</sup> 267 SCRA 581[1997].

<sup>[37]</sup> *Id.*, pp. 595-596 (Underscoring supplied).

<sup>[38]</sup> 291 SCRA 715 [1998].

<sup>[39]</sup> Art. 65. *Rule in cases in which the penalty is not composed of three periods.* In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions.

<sup>[40]</sup> Art. 64. *Rules for the application of penalties which contain three periods.* In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Article 76 and 77, the courts shall observe for the application of the penalty the following rules according to whether there are or are no mitigating or aggravating circumstances:



1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its minimum medium period.
2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.
3. When only an aggravating circumstances is present in the commission of the act, they shall impose the penalty in its maximum period.
4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.
5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.
6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.
7. Within the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime.

<sup>[41]</sup> *Supra.*, at 753-755.

<sup>[42]</sup> People v. Rodriguez, G.R. No. 129211, October 2, 2000; People v. Macaliag, G.R. No. 130655, August 9, 2000; People v. De Lara, G.R. No. 124703, June 27, 2000; People v. Caballes, 274 SCRA 83, 100 [1997]; Ladino v. Garcia, 265 SCRA 422, 427-428 [1996]; People v. Ganan, Jr., 265 SCRA 260, 298 [1996].

<sup>[43]</sup> Sec. 11. Effect of appeal by any of several accused.

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, *except insofar as the judgment of the appellate court is favorable and applicable to the latter*; xxx (underscoring supplied).