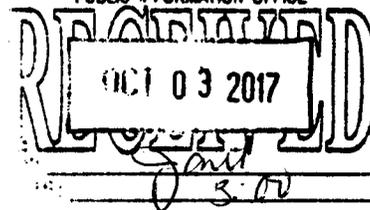




Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
 PUBLIC INFORMATION OFFICE



**FIRST DIVISION**

**JESUS V. COSON,**  
*Petitioner,*

**G.R. No. 218830**

Present:

- versus -

SERENO, *C.J.*,  
 LEONARDO-DE CASTRO,  
 PERALTA,\*  
 DEL CASTILLO, *and*  
 TIJAM, *JJ.*

**PEOPLE OF THE PHILIPPINES,**  
*Respondent.*

Promulgated:  
**SEP 14 2017**

X ----- X

**DECISION**

**DEL CASTILLO, J.:**

This Petition for Review under Rule 45 of the Rules of Court assails the January 30, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 35837 which affirmed *in toto* the February 27, 2013 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Dagupan City, Branch 44, in Criminal Case No. 2005-0498-D finding Jesus V. Coson (petitioner) guilty beyond reasonable doubt of the crime of estafa. Also assailed is the June 4, 2015 CA Resolution<sup>3</sup> which denied petitioner's Motion for Reconsideration.

***Factual Antecedents***

Petitioner is the Chairman and Chief Executive Officer (CEO) of Good God Development Corporation (GGDC), a corporation engaged in the business of developing subdivisions and building houses/condominiums therein for sale to the general public.<sup>4</sup>

\* Per raffle dated September 6, 2017 vice Justice Francis H. Jardeleza who recused due to prior action as Solicitor General.

<sup>1</sup> *Rollo*, pp. 41-57; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes.

<sup>2</sup> *CA rollo*, pp. 355-370; penned by Judge Genoveva Coching-Maranba.

<sup>3</sup> *Id* at 59-60.

<sup>4</sup> Records, Vol. II, pp. 369-381

On December 21, 2001, GGDC, through its President Jack Christian Còson, borrowed ₱2,522,000.00 from private complainant Atty. Nolan Evangelista (hereinafter “private complainant”). The purpose of the loan was to buy the land owned by the First eBank Corporation (“First eBank”) and covered by Transfer Certificate Title (TCT) No. 250201, which is adjacent to GGDC’s property situated in Barrio Maningding, Sta. Barbara, Pangasinan and covered by Transfer Certificate of Title (TCT) No. 252245. A Deed of Real Estate Mortgage<sup>5</sup> was executed by the parties whereby the property owned by GGDC was put up as collateral for the loan.

After the sale of First eBank’s property was consummated, title thereto was transferred in the name of GGDC under TCT No. 261204.<sup>6</sup>

On May 29, 2003, another Deed of Real Estate Mortgage<sup>7</sup> was executed by GGDC through petitioner by virtue of Board Resolution No. 0093, series of 2002,<sup>8</sup> in favor of private complainant for a loan of ₱4,784,000.00. The land covered by TCT No. 261204 was given as security for the said loan. On the same date, petitioner executed a Promissory Note<sup>9</sup> acknowledging his indebtedness of ₱4,784,000.00 and promising to pay the said amount in accordance with the schedule mentioned in the Deed of Real Estate Mortgage dated May 29, 2003.

On July 29, 2003, petitioner and private complainant executed a Memorandum of Agreement<sup>10</sup> (MOA) stipulating, *inter alia*, that petitioner was desirous of borrowing the mortgaged TCT No. 261204 to be surrendered to the Home Development Mutual Fund or PAG-IBIG Fund<sup>11</sup> to obtain a loan the proceeds of which shall be paid to private complainant in satisfaction of petitioner’s obligation; that the parties shall open a joint account with a reputable banking institution where the proceeds of the PAG-IBIG Fund loan shall be deposited; and that petitioner shall make 11 installment payments as per schedule set forth in the said MOA. Pursuant to the MOA, petitioner issued 11 postdated Banco de Oro checks, the first check for ₱3,000,000.00 and the other 10 checks, a uniform amount of ₱185,000.00 for each check.

On September 8, 2003, GGDC, through petitioner and PAG-IBIG Fund, executed a Loan Agreement<sup>12</sup> whereby GGDC, as borrower, was granted a developmental loan by PAG-IBIG Fund in an amount not exceeding

<sup>5</sup> Id. at 388-390.

<sup>6</sup> Id. at 366.

<sup>7</sup> Id. at 394-395.

<sup>8</sup> Id. at 367.

<sup>9</sup> Id. at 396.

<sup>10</sup> Id. at 397-399.

<sup>11</sup> Inadvertently referred to as PAG IBIG Loans, Inc. in the MOA.

<sup>12</sup> Records, Vol. II, pp. 369-382.

₱30,000,000.00 to finance the development of Carolina Homes subject of the MOA<sup>13</sup> of the same date (September 8, 2003) executed by the parties.

On October 7, 2003, the first tranche of the ₱30,000,000.00 loan in the amount of ₱9,000,000.00 was released by PAG-IBIG Fund to GGDC.<sup>14</sup> In view of the failure of petitioner to pay the loan of ₱4,784,000.00 to private complainant despite repeated demands therefor, or to return TCT No. 261204 as agreed upon in the MOA dated July 29, 2003, private complainant filed a complaint against petitioner for estafa under Article 315, paragraph 1(b) of the Revised Penal Code (RPC). Subsequently, on August 5, 2005, an Information<sup>15</sup> dated July 19, 2005 was filed by the City Prosecutor of Dagupan City with the RTC of Dagupan City, docketed as Criminal Case No. 2005-0498-D charging petitioner with the crime of estafa allegedly committed as follows:

That on or about the 29<sup>th</sup> day of July 2003, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JESUS V. COSON, received in trust and confidence from one NOLAN R. EVANGELISTA the title of the land, TCT No. 261204 which he had given as a security to the ₱4,784,000.00 mortgage secured from the latter, alleging that he would use it in obtaining a loan from the [Home Development Mutual Fund (HDMF)] and promising the latter that he would pay him the mortgage consideration upon release of the proceeds of the loan by the said agency, but upon receipt of the proceeds, with intent to gain, by means of unfaithfulness or grave abuse of confidence, the herein accused, did then and there willfully, unlawfully and criminally, renege on his promise and refuse to perform his obligation to pay NOLAN [R.] EVANGELISTA despite demands made on him to do so, thereby misappropriating and converting the said amount for his own personal use and benefit, to the damage and prejudice of NOLAN R. EVANGELISTA, in the aforesaid amount of ₱4,784,000.00 and for other consequential damages sustained.

Contrary to Article 315, par. 1(b) of the Revised Penal Code.<sup>16</sup>

### ***Ruling of the Regional Trial Court***

On February 27, 2013, the RTC rendered its Decision<sup>17</sup> in Criminal Case No. 2005-0498-D finding petitioner (accused therein) guilty as charged, ratiocinating as follows:

The only issue to be resolved in the case at bench is whether accused Coson is guilty of the crime charged. As earlier stated, Coson is being charged and tried with the crime of Estafa defined and penalized under second element of

<sup>13</sup> Id. at 400-409.

<sup>14</sup> Id. at 383.

<sup>15</sup> Records, Vol. I, p. 1.

<sup>16</sup> Id.

<sup>17</sup> *Rollo*, pp. 189-204; penned by Judge Genoveva Coching-Maramba.



estafa with abuse of confidence under paragraph (b), subdivision No. 1, Article 315. The elements of estafa under paragraph 1(b), Article 315 of the Revised Penal Code are:

- (1) the offender receives the money, goods or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same;
- (2) the offender misappropriates or converts such money or property or denies receiving such money or property;
- (3) the misappropriation or conversion or denial is to the prejudice of another; and
- (4) the offended party demands that the offender return the money or property.

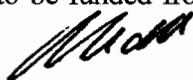
The essence of this kind of estafa is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words '*convert*' and '*misappropriate*' connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.

In the case at bench, from the testimony and evidence on record, the prosecution was able to establish beyond reasonable doubt all the elements of the crime charged as shown by the following circumstances.

First, a loan in the amount of [P4,750,000.00] secured by a real estate mortgage was constituted over a piece of land registered in the name of herein accused Coson covered by Transfer Certificate of Title No. 261204 was entered between him and Atty. Nolan Evangelista. Coson was not able to pay the loan but Evangelista did not foreclose the real estate mortgage.

Records of this case further show that Coson sought Evangelista thru a common-friend, Atty. Alejandro Fernandez, and made representation if Evangelista could lend the title to him as he was trying to find source of money to pay his loan from Evangelista and the title shall be used to secure a loan from the [Home Development Mutual Fund (HDMF)] from where [the] accused could realize loan releases sufficient to pay his obligation to Evangelista.

Evangelista agreed to the proposal of accused Coson and delivered to the former TCT No. 261204 to secure [the] loan from the [HDMF]. The proposal and the mechanics of their agreement are contained in a document designated as Memorandum of Agreement. Accused issued various checks in favor of Evangelista, to wit: Check No. 492550 for P3 million pesos; Check No. 492551 for P185,000.00 pesos; Check No. 492552 for P185,000.00 pesos; Check No. 492553 for P185,000.00 pesos; Check Nos. 492554 to 492560. These checks are supposed to be funded from the loan which Coson will be obtaining from the [HDMF].



It has been further established by the evidence on record that after sufficient time had lapsed, Evangelista asked Atty. Fernandez to deposit in the latter's account check No. 492551 in the amount of ₱185,000.00 but it was dishonored by the drawee bank. Evangelista and Atty. Fernandez tried to inform accused of the dishonor of his check but both could not locate his whereabouts until one time Atty. Fernandez chanced upon him somewhere in Quezon City where the former informed the latter of the dishonor of his check.

In the meantime, Evangelista was able to discover that Coson had obtained [a] loan from the [HDMF], La Union Branch, but accused used the loan [proceeds] to pay some of his obligations but did not fund the checks he issued in accordance with their memorandum of agreement or the purpose for which Evangelista entrusted TCT No. 261204.

In fact, a certain Mary Jane Laron, Officer-in-Charge, Loan and Contribution, Management Loan and Recovery Division, [HDMF], La Union Branch, testified that Coson was able to realize initial loan release in the amount of ₱9 million.

Nonetheless, as admitted by Jill Catherine Coson, witness for the defense, x x x the joint account of [the] accused and Evangelista was not funded contrary to the memorandum of agreement between the two despite the initial release of the nine (9) million pesos. Thus, **two (2) demand letters were sent to the accused either to return the title or pay the amount of ₱4,784,000.00 pesos.** However, **Coson** can no longer return the title of the property as Arthur David, record custodian of the Register of Deeds, Lingayen, Pangasinan, testified that TCT No. 261204 has already been cancelled and a new title has already been issued covering the land described in said title.

[The a]ccused averred in his defense that Evangelista did not entrust the title to him to be used as collateral for a loan he filed with the [HDMF] but he asked Evangelista for the title to be submitted to the Land Registration Authority (LRA) for cancellation and re-distribution to the various lot purchasers.

He further averred that he was not able to settle his original obligation to Evangelista because he suffered business reverses and encountered personal problems.

Accused's defense of the need to submit the title to the Land Registration Authority for cancellation and distribution to the lot purchasers could not be taken seriously for the simple reason that accused did not present any document that would show that indeed the title has to be submitted to the LRA. Furthermore, accused had not presented [any] document that Evangelista is his partner in [the] housing business or has interest in accused's housing venture.

On the same breath, the averments of accused that he suffered business reverses and personal problems would not inure to [the] accused's advantage. On the contrary, such declaration is equivalent to admission of liability.

The issuance of the checks in favor of Evangelista is not in payment of the original obligation accused contracted from the former but to assure Evangelista that he will not be holding an "empty bag" if and when accused reneged on his undertaking to use the title as collateral to secure [a] loan from the [HDMF] because if the checks were intended as payment for the original



obligation, it would simply be an exchange of the title which is still in the name of the corporation of the accused and the checks accused issued in favor of Evangelista.

On his part, accused interjected transactions between him and Atty. Fernandez which pertained to a two million (₱2,000,000.00) peso loan extended by the latter to him. Nonetheless, he admitted that the Deed of Mortgage is four million and seven hundred fifty (₱4,750,000.00) pesos. He testified that he did not pay Evangelista from the first release of Nine Million (₱9,000,000.00) pesos because he has to pay the Rural Bank of Sta. Barbara. He further averred that he did not inform Evangelista when he signed the memorandum of agreement that he still [had] some unpaid creditors.

In view of the admission of the accused himself that he reneged on his undertaking to use the title entrusted to him to secure a loan from [HDMF] to pay his obligation to Evangelista, his admission that he had received ₱9,000,000.00 million pesos from the [HDMF] but did not pay Evangelista, and instead paid other creditors like the Sta. Barbara Rural Bank, and the testimony of Arthur David that TCT No. 261204 [has] already been cancelled and a new title has been issued covering the land described in said title, the Court finds and so holds that he is liable for Estafa defined under Article 315 1(b) of the Revised Penal Code, penalized by Reclusion Temporal with a duration of Twelve (12) Years and One (1) Day to Twenty (20) Years considering that the amount is ₱4,784,000.00. Nonetheless, applying the Indeterminate Sentence Law, accused Coson should be sentenced to suffer an indeterminate penalty ranging from Ten (10) Years of Prison Mayor as minimum to Fourteen (14) Years, Eight (8) Months and One (1) Day of Reclusion Temporal as maximum.

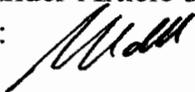
It appearing that Evangelista had previously made reservation of filing an independent civil action arising from the incident subject matter of this case, this Court finds and holds that no pronouncement can be had as to the civil liability of the accused.

**WHEREFORE, judgment is hereby rendered finding accused Jess “Jesus” Coson guilty beyond reasonable doubt of the crime of Estafa defined and penalized under Article 315, 1(b) and is hereby sentenced to suffer an Indeterminate penalty of Ten (10) Years of Prison Mayor as minimum to Fourteen (14) Years, Eight (8) Months and One (1) Day of Reclusion Temporal as maximum.**

So ordered.<sup>18</sup>

### ***Ruling of the Court of Appeals***

The CA found no reversible error in the ruling of the RTC and affirmed it *in toto*. In its Decision<sup>19</sup> dated January 30, 2015, the CA held that the prosecution had proven all the elements of estafa under Article 315, par. 1(b) charged against petitioner. The CA ruling is as follows:



<sup>18</sup> Id. at 200-204. Emphasis in the original.

<sup>19</sup> Id. at 41-57.

In this case, the prosecution has amply proven all the elements of estafa beyond moral certainty. Jesus acknowledged the receipt of the TCT No. 261204 from Nolan in trust for the latter. This act is evidenced by the Memorandum of Agreement, duly signed by the parties. The Memorandum of Agreement, shows that Jesus borrowed the TCT No. 261204 from Nolan for the purpose of using the same as collateral to his [HDMF] loan application, thus:

‘Direct Examination of Nolan Evangelista conducted by  
Pros. Bayubay:

Q: Do you have a copy of a memorandum of agreement?

A: Yes, sir.

Q: Attached to the record is a copy of a memorandum of agreement consisting of two (2) pages already marked as Exhibit C, what is the relationship of this memorandum of agreement with the one that you entered with the accused?

A: This is the Memorandum of Agreement evidencing our agreement wherein I would lend him the title and he could offer it as collateral to the Pag-ibig for the purpose of raising funds to pay me by funding the checks he issued to me and in the event that he would be unable to borrow from the Pag-ibig this memorandum of agreement also shows that he had to return to me the title that he was borrowing.

x x x x

Q: Now, was the accused able to secure [a] loan from the Pag-ibig as he proposed?

A: I have discovered that he was able to get a loan from the Pag-ibig.

Q: And did he pay his obligation to you as agreed upon?

A: He was not able to fund the checks that he issued to me as per agreement that he should fund it from the proceeds of his loan from the Pag-ibig.

Q: Why do you say that he did not fund the checks he issued to you Mr. Witness?

A: Because when the first check was deposited x x x that check bounced.’

Evidently, the testimony of Nolan shows the purpose of lending TCT No. 261204 to Jesus and the latter’s obligation to return the same. Despite the agreement, Jesus failed to return TCT No. 261204 to Nolan. Considering the testimony of Nolan, Jesus’ guilt for the crime of estafa was established beyond reasonable doubt.

x x x x

Further, Jesus converted TCT No. 261204 for a purpose other than that agreed upon in the Memorandum of Agreement. Jesus allowed the construction and sale of 139 residential units built on smaller lots covered by TCT No.



261204. This misappropriation or conversion of TCT No. 261204 to the prejudice of the owner constitutes estafa under Article 315, par. 1(b) of the Revised Penal Code.<sup>20</sup>

Petitioner filed a Motion for Reconsideration, but it was denied in the CA's Resolution<sup>21</sup> dated June 4, 2015.

Hence, the instant Petition for Review under Rule 45 raising as ground for its allowance the following:

The questioned Decision and Resolution of the Honorable Court of Appeals are patently erroneous and contrary to law and jurisprudence.<sup>22</sup>

Petitioner argues that he could not be held liable for estafa. He claims that the obligation to return TCT No. 261204 to private complainant is not absolute but conditional; *i.e.*, if the PAG-IBIG Fund approves the application for loan, the obligation to return TCT No. 261204 is extinguished. And since the PAG-IBIG Fund approved the loan and in fact already released the proceeds of the first tranche, petitioner insists that he is no longer obliged to return TCT No. 261204 to the private complainant.

Petitioner also contends that the RTC and CA erred in finding that he misappropriated or converted another's property for his personal use. He asserts that the CA erred in its finding that the subject property covered by TCT No. 261204 is owned by private complainant; that GGDC or petitioner disposed of it for a purpose other than what was agreed upon; or that petitioner failed to return or account the proceeds thereof. Petitioner posits that the Deed of Real Estate Mortgage was novated by the subsequent execution of the MOA. As such, when petitioner failed to pay the private complainant, the latter could no longer demand the return of TCT No. 261204 which was already surrendered to the PAG-IBIG Fund.

Moreover, petitioner assails the CA ruling that he used the proceeds of the PAG-IBIG Fund loan for a purpose other than what was stated in the MOA, which supposedly amounted to misappropriation. Petitioner posits that the CA failed to take into account the primary purpose of the loan from the PAG-IBIG Fund, that is, to fund GGDC's development and construction of a subdivision or the Carolina Homes project. Likewise, petitioner avers that private complainant was fully aware of said purpose.



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<sup>20</sup> Id. at 51-54.

<sup>21</sup> Id. at 59-60.

<sup>22</sup> Id. at 26.

Finally, petitioner claims that the CA totally forgot that GGDC is the owner of the property covered by TCT No. 261204, and not private complainant. Thus, there is no factual basis to its pronouncement that the misappropriation or conversion of TCT No. 261204 resulted in the prejudice of the owner (referring to private complainant) and such constitutes estafa. Petitioner contends that without the obligation to return or deliver, the relationship between private complainant and petitioner becomes one of debtor and creditor. "And the obligation of GGDC or petitioner under the [MOA] is not to return or deliver the money loaned from him but to pay [private complainant] from the proceeds of the [PAG-IBIG Fund] loan in order to satisfy the obligation owing him."<sup>23</sup>

Respondent, on the other hand, argues that only questions of law may be raised in a petition filed under Rule 45 thus, the factual questions raised by petitioner should not be entertained by the Court. In any event, the respondent alleges that even if the factual issues were to be considered, the CA committed no reversible error in affirming the findings of the RTC.

### The Issue

The issue to be resolved is whether or not the CA erred in affirming *in toto* the Decision of the RTC finding petitioner guilty beyond reasonable doubt of the crime of estafa defined and penalized under Article 315, par. 1(b) of the RPC.

### Our Ruling

The Petition has merit.

While it is jurisprudentially settled that findings of fact of the trial court, especially when affirmed by the CA, are accorded great weight and respect and will not be disturbed on appeal,<sup>24</sup> this rule admits of exceptions, as follows:

- (1) where the conclusion is a finding grounded on speculations, surmises and conjectures;
  - (2) where the inference made is manifestly mistaken;
  - (3) where there is grave abuse of discretion;
  - (4) where the judgment is based on misapprehension of facts; and
- 

<sup>23</sup> Id. at 33.

<sup>24</sup> *Plameras v. People*, 717 Phil. 303, 318 (2013); *Vergara v. People*, 491 Phil. 96, 102 (2005); *Tan v. People*, 542 Phil. 188, 196 (2007).

- (5) the findings of the trial court are premised on the absence of evidence and are contradicted by the evidence on record.<sup>25</sup>

The exceptions mentioned above are present here.

The rulings of both the RTC and the CA are anchored on their findings that all the elements of estafa under Article 315, par. 1(b) of the RPC have been proven by the prosecution.

We disagree.

The essential elements of estafa under Article 315, par. 1(b) are as follows:

1. [T]hat money, goods or other personal properties are 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. [T]hat there is a misappropriation or conversion of such money or property by the offender or denial on his part of the receipt thereof;
3. [T]hat the misappropriation or conversion or denial is to the prejudice of another; and
4. [T]hat there is a demand made by the offended party on the offender.<sup>26</sup>

Citing the case of *Pamintuan v. People*,<sup>27</sup> both courts (RTC and CA) found and concluded that petitioner has misappropriated the proceeds of the PAG-IBIG Fund loan, or converted TCT No. 261204 to a purpose other than that agreed upon. These finding and conclusion are not in accord with the evidence on record.

It is clear from the evidence on record that the Deed of Real Estate Mortgage<sup>28</sup> dated May 29, 2003 and the MOA dated July 29, 2003<sup>29</sup> were both executed by petitioner, as the duly authorized officer of GGDC. GGDC is also the borrower from the PAG-IBIG Fund. The May 29, 2003 Real Estate Mortgage expressly stated that petitioner was authorized to enter into such transaction by virtue of Board Resolution No. 0093, series of 2002<sup>30</sup> of GGDC; that GGDC is the registered owner of the property covered by TCT No. 261204; and, finally, petitioner signed said document as Chairman and CEO of GGDC, and not in his personal capacity. On the other hand, the first Whereas Clause of the MOA

<sup>25</sup> *Pareño v. Sandiganbayan*, 326 Phil. 255, 279 (1996), cited in *Uyboco v. People*, 749 Phil. 987, 992 (2014).

<sup>26</sup> *Gamaro v. People*, G.R. No. 211917, February 27, 2017.

<sup>27</sup> 635 Phil. 514 (2010).

<sup>28</sup> Records, Vol. II, pp. 394-395.

<sup>29</sup> Id. at 397-399.

<sup>30</sup> Id. at 367.

categorically stated that petitioner was expressly authorized by GGDC to enter into such transaction; and that GGDC, through petitioner, was desirous of borrowing TCT No. 261204 to be surrendered to PAG-IBIG Fund in support of its loan application.

The evidence on record also disclose that the loan granted by the PAG-IBIG Fund is a developmental loan to finance the housing project of GGDC on the two lots covered by TCT No. 252245 and TCT No. 261204 (the disputed title), both registered in the name of GGDC. Private complainant is not totally unaware of this fact as evidenced by the very MOA dated July 29, 2003 which was the basis of his complaint for estafa against petitioner. The pertinent provision of the said MOA reads:

5. In the event that after sixty (60) days of default, the FIRST PARTY shall not have paid the total accelerated amount, the FIRST PARTY shall surrender back Transfer Certificate of Title No. 261204 to the SECOND PARTY within a period of five (5) days after the aforementioned lapse of sixty (60) days. In the event further that the FIRST PARTY is unable to return Transfer Certificate of Title No. 261204 to the SECOND PARTY within the time prescribed, the FIRST PARTY shall within five (5) days therefrom execute and cause to be executed any and all documents assigning and conveying the property covered by Transfer Certificate of Title No. 261204 and the entire Good God Development Corporation Housing Project denominated as CAROLINA HOMES SUBDIVISION located at Barangay Maningding, Sta. Barbara, Pangasinan inclusive of all the project's appurtenants to the SECOND PARTY. For this purpose, the FIRST PARTY shall be obliged and hereby undertakes to execute and cause to be executed by the concerned entities and personalities all necessary documents, both principal and collateral, under the pain of fraudulent breach.<sup>31</sup>

Likewise on record are the letters of petitioner to private complainant updating the latter on the status or progress of the development of the subdivision project in Sta. Barbara, Pangasinan and his efforts at securing additional funding to settle his obligation with private complainant.<sup>32</sup>

Based thereon, there cannot be any misappropriation or conversion by petitioner to his own personal use, benefit or advantage, of TCT No. 261204 or the proceeds of the PAG-IBIG Fund loan granted to GGDC since private complainant is fully aware of the purpose of petitioner/GGDC for borrowing TCT No. 261204 and how the proceeds of the PAG-IBIG Fund loan should be applied. Moreover, TCT No. 261204 and the PAG-IBIG Fund loan proceeds are owned by GGDC and not by petitioner, and more so, not owned by private complainant. If there was any misappropriation or conversion of TCT No. 261204 or the PAG-IBIG Fund loan proceeds, the aggrieved party should be GGDC, and certainly not the

<sup>31</sup> Records, Vol. I, p. 17.

<sup>32</sup> Records, Vol. II, pp. 385-387.

private complainant. For his uncollected debt, private complainant's remedy is not a criminal action, but a civil action against petitioner. The MOA dated July 29, 2003 in fact clearly stipulates in Section 5 thereof<sup>33</sup> the remedy of private complainant in case of default by petitioner.

To stress, misappropriation or conversion refers to any disposition of another's property as if it were his own or devoting it to a purpose not agreed upon. It connotes disposition of one's property without any right.<sup>34</sup> As earlier stated, TCT No. 261204 and the PAG-IBIG Fund loan proceeds belong to and are owned by GGDC, and not by private complainant.

Other palpable mistakes or erroneous conclusions of fact of the RTC in its questioned Decision need be mentioned here:

In its Decision, the RTC erroneously stated that the loan "in the amount of [P4,750,000.00 was] secured by a real estate mortgage x x x constituted over a piece of land registered in the name of herein accused Coson covered by Transfer Certificate of Title No. 261204."<sup>35</sup> This is a manifest error since TCT No. 261204<sup>36</sup> as shown by the evidence on record is registered in the name of GGDC, and the amount of the mortgage loan is P4,784,000.00<sup>37</sup> and not "P4,750,000.00".

Likewise the RTC stated in its Decision that "accused did not present any document that would show that indeed the title has to be submitted to the Land Registration Authority (LRA). Furthermore, the accused had not presented any document that Evangelista (herein private complainant) is his partner in the housing business or has interest in accused's housing venture."<sup>38</sup> This finding is contrary to the evidence on record. Accused (petitioner herein) submitted in evidence the Loan Agreement<sup>39</sup> and Memorandum of Agreement<sup>40</sup> both dated September 8, 2003 executed by the petitioner and the PAG-IBIG Fund which stipulate that the PAG-IBIG Fund "will lend said Certificate of Title to the BORROWER so that the same may be cancelled and replaced with the individual titles corresponding to the smaller lots into which the land shall have been subdivided in accordance with the approved subdivision plan of the land."<sup>41</sup> Prosecution witness Arthur David, Records Custodian of the Register of Deeds of Lingayen, Pangasinan testified to the effect that TCT No. 261204 had been

<sup>33</sup> Records, Vol. I, p. 17.

<sup>34</sup> *Murao v. People*, 501 Phil. 53, 66 (2005).

<sup>35</sup> *Rollo*, p. 201. Emphasis supplied.

<sup>36</sup> Records, Vol. II, p. 366.

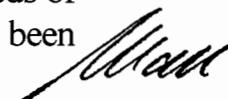
<sup>37</sup> *Id.* at 394.

<sup>38</sup> *Rollo*, p. 203. Emphasis supplied.

<sup>39</sup> Records, Vol. II, pp. 369-382.

<sup>40</sup> *Id.* at 400-409.

<sup>41</sup> Section 3.02[a], Loan Agreement; *id.* at 374.



cancelled and new titles had been issued covering the land.<sup>42</sup> This testimony corroborates the evidence of the petitioner.

Regarding the finding of the RTC that “accused had not presented the document that Evangelista is his partner in the housing business or has interest in accused’s housing venture,”<sup>43</sup> the three letters<sup>44</sup> of petitioner to private complainant on the status of the housing project of GGDC present ample proof of private complainant’s interest in the housing venture of GGDC.

Lastly, the conclusion of the RTC that the “issuance of the checks in favor of Evangelista is not in payment of the original obligation accused contracted from the former but to assure Evangelista that he will not be holding an ‘empty bag’ if and when accused reneged on his undertaking to use the title as collateral to secure a loan from the MHDF [sic]”<sup>45</sup> is a finding grounded on speculations, surmises and conjectures. The checks issued were really intended for the payment of the loan obligation of petitioner to private complainant and not merely to assure the latter that he would not be holding an “empty bag”. As per testimony of private complainant himself, when the first check became due, he deposited it but it was dishonored for lack of funds.<sup>46</sup>

In fine, based on all the foregoing, this Court finds and so holds that no estafa under Article 315, par. 1(b) was committed by petitioner. There was no misappropriation or conversion of TCT No. 261204 or the proceeds of the PAG-IBIG Fund loan by petitioner to his own personal use, benefit or advantage. In all his dealings with private complainant, he acted for and in behalf of GGDC which owns the title and the loan proceeds. The purpose of the loan from private complainant and from the PAG-IBIG Fund was in pursuance of the housing business of GGDC, which is not totally unknown to private complainant. Moreover, the Promissory Note dated May 29, 2003<sup>47</sup> of petitioner acknowledging his indebtedness and the demand letters of private complainant to petitioner to pay his obligation<sup>48</sup> clearly show that the obligation contracted by petitioner on behalf of GGDC is purely civil and for which no criminal liability may attach.

**WHEREFORE**, the Decision dated January 30, 2015 and Resolution dated June 4, 2015 of the Court of Appeals in CA-G.R. CR No. 35837 are **REVERSED** and **SET ASIDE**. A new judgment is hereby entered **ACQUITTING** petitioner Jesus V. Coson of the crime charged.

<sup>42</sup> TSN, July 11, 2007, pp. 3-4; *rollo*, p. 194.

<sup>43</sup> *Rollo*, p. 203. Emphasis supplied.

<sup>44</sup> Records, Vol. II, pp. 385-387.

<sup>45</sup> *Rollo*, p. 203.

<sup>46</sup> TSN, August 1, 2006, pp. 11-19; *Rollo*, p. 191, 289.

<sup>47</sup> Records, Vol. II, p. 396.

<sup>48</sup> *Rollo*, p. 191.

**SO ORDERED.**

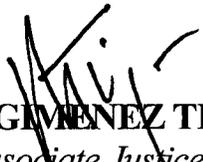
  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
*Chief Justice*

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*

  
**DIOSDADO M. PERALTA**  
*Associate Justice*

  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision 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*