



CERTIFIED TRUE COPY  
*Wilfredo V. Luptan*  
WILFREDO V. LAPTAN  
Division Clerk of Court  
Third Division

AUG 17 2018

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

MARIA C. OSORIO  
Petitioner,

G.R. No. 207711

Present:

VELASCO, JR., J., *Chairperson*,  
BERSAMIN,  
LEONEN,  
MARTIRES, and  
GESMUNDO, JJ.

-versus-

PEOPLE OF THE PHILIPPINES  
Respondent.

Promulgated:

July 2, 2018

X-----*Wilfredo V. Luptan*-----X

DECISION

LEONEN, J.:

Persons who receive money for investment in a particular company but divert the same to another without the investor's consent may be held criminally liable for other deceits under Article 318 of the Revised Penal Code. Article 318 of the Revised Penal Code is broad in scope intended to cover all other kinds of deceit not falling under Articles 315, 316, and 317 of the Revised Penal Code.

For resolution is a Petition for Review on Certiorari<sup>1</sup> challenging the January 30, 2013 Decision<sup>2</sup> and June 14, 2013 Resolution<sup>3</sup> of the Court of

<sup>1</sup> *Rollo*, pp. 10–24.

<sup>2</sup> *Id.* at 26–39. The Decision was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios of the Second Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 41–42. The Resolution was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios of the Second Division, Court of Appeals, Manila.

Appeals in CA-G.R. CR No. 34274. The assailed judgments affirmed Maria C. Osorio's (Osorio) conviction for the crime of estafa.

In an Information, Osorio was charged with estafa, punished under Article 315, paragraph 2(a) of the Revised Penal Code, committed as follows:

That in or about and sometime during the period comprised from November 19, 2001 to January 11, 2002, in the City of Manila[,] Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud JOSEFINA O. GABRIEL, in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which she made to said JOSEFINA O. GABRIEL, prior to and even simultaneous with the commission of the fraud, to the effect that her money, if invested with Philamlife Fund Management will earn 20% interest per annum, and by means of other similar deceits, induced and succeeded in inducing the said JOSEFINA O. GABRIEL to give and deliver, as in fact, she gave and delivered to the said accused the total amount of Php200,000.00, on the strength of the manifestations and representations of said accused well knowing that the said manifestation and representation were false and fraudulent and were made solely for the purpose of obtaining, as in fact she did obtain the total amount of Php200,000.00, which amount once in her possession, with intent to defraud, willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of said JOSEFINA O. GABRIEL in the aforesaid amount Php200,000.00, Philippine Currency.

Contrary to law.<sup>4</sup>

Osorio pleaded not guilty upon arraignment. After pre-trial, trial on the merits ensued.<sup>5</sup>

The prosecution presented as witnesses private complainant, Josefina O. Gabriel (Gabriel), and Alberto G. Fernandez (Fernandez), head of Philam Life's Business Values and Compliance Department. Their collective testimonies produced the prosecution's version of the incident.<sup>6</sup>

Gabriel was a proprietor of a stall in Paco Market, Manila. Sometime in December 2000, Osorio visited Gabriel's store and introduced herself as an agent of the Philippine American Life and General Insurance Company (Philam Life). As proof, Osorio presented her company ID and calling card. During their meeting, Osorio offered insurance coverage to Gabriel. Gabriel told Osorio to come back at a later date as she needed more time to think about the offer.<sup>7</sup>

---

<sup>4</sup> Id. at 11-12.

<sup>5</sup> Id. at 12.

<sup>6</sup> Id. at 28.

<sup>7</sup> Id. at 12 and 28.

When Osorio returned, Gabriel availed Philam Life's Tri-Life Plan and Excelife Gold Package.<sup>8</sup> Gabriel consistently paid the quarterly premiums from February 2001 to November 2001.<sup>9</sup>

On November 19, 2001, Osorio offered Gabriel an investment opportunity with Philam Life Fund Management.<sup>10</sup> The proposed investment would be placed under a time deposit scheme<sup>11</sup> and would earn 20% annually. Osorio informed Gabriel that the proceeds of her investment may be channeled to pay for her insurance premiums. Enticed by the offer, Gabriel tendered ₱200,000.00 to Osorio, who in turn issued Philam Life receipts.<sup>12</sup>

A few months later, Gabriel discovered that her insurance policies had lapsed due to non-payment of premiums. When Gabriel confronted Osorio about the matter, Osorio assured Gabriel that she would take responsibility.<sup>13</sup>

Meanwhile, in May 2002, Gabriel received a letter from Philippine Money Investment Asset Management (PMIAM), thanking her for investing in the company. In the same letter, PMIAM informed Gabriel that her investment would earn interest on a semi-annual basis starting June 20, 2002.<sup>14</sup> Gabriel confronted Osorio on why her investment was diverted to PMIAM. Osorio explained that PMIAM investments would yield a higher rate of return. Displeased with what had happened, Gabriel asked for a refund of her initial investment.<sup>15</sup>

On August 2, 2002, Gabriel received ₱13,000.00 from PMIAM as evidenced by PMIAM Voucher No. 001854.<sup>16</sup> In spite of this, Gabriel insisted on the refund.<sup>17</sup>

Later, PMIAM informed Gabriel that her initial investment and unpaid interest income would be released to her on May 14, 2004. Unfortunately, she was unable to recover it. She then visited the Philam Life office to see Osorio but she was nowhere to be found. Philam Life referred Gabriel to a certain Atty. Cabugoy<sup>18</sup> who sent a demand letter to Osorio.<sup>19</sup>

---

<sup>8</sup> Id. at 12.

<sup>9</sup> Id. at 62.

<sup>10</sup> Id. at 64.

<sup>11</sup> Id. at 29.

<sup>12</sup> Id. at 12 and 29.

<sup>13</sup> Id. at 12.

<sup>14</sup> Id. at 95.

<sup>15</sup> Id. at 30.

<sup>16</sup> Id.

<sup>17</sup> Id. at 64.

<sup>18</sup> Id. at 63.

<sup>19</sup> Id. at 30-31.

Fernandez testified that Osorio was a Philam Life agent and that she was allowed to engage in other lines of work. He stated that Osorio should not have issued Philam Life receipts for Gabriel's ₱200,000.00 investment.<sup>20</sup> Although the receipts were genuine, Fernandez claimed that they should only be issued for insurance premium payments.<sup>21</sup>

The defense presented Osorio as its sole witness. Osorio admitted that aside from being a Philam Life agent, she was also a referral agent of PMIAM. She received ₱4,000.00 from the company as commission for Gabriel's investment.<sup>22</sup> She asserted that she initially planned to place Gabriel's investment in Philam Life but decided later on to divert it to PMIAM since the latter offered a higher rate of return.<sup>23</sup> When Osorio informed Gabriel of her decision, Gabriel allegedly gave her consent.<sup>24</sup> Osorio claimed that her husband also failed to recover his ₱300,000.00 investment in PMIAM<sup>25</sup> due to internal problems with its mother company in the United States.<sup>26</sup>

On April 19, 2011, the Regional Trial Court rendered judgment finding Osorio guilty beyond reasonable doubt of estafa.<sup>27</sup> It ruled that Gabriel was induced to part with her money through Osorio's misrepresentation that it would be invested in Philam Life, a company with an established reputation. It rejected Osorio's defense that Gabriel later on consented to the placement. When she was informed of the placement with PMIAM, Gabriel had no other choice but to agree.<sup>28</sup>

The dispositive portion of the Regional Trial Court April 19, 2011 Decision stated:

WHEREFORE, the court finds the accused MARIA C. OSORIO GUILTY beyond reasonable doubt of Estafa punishable under Article 315 par. 2 (a) of the Revised Penal Code and hereby sentences her to an indeterminate penalty of imprisonment ranging from four (4) years and two (2) months of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum.

Accused MARIA C. OSORIO is also directed to reimburse the private complainant, Josefina Gabriel the sum of Php200,000.00, with legal rate of interest fixed at 6% per annum from the date of filing of the

---

<sup>20</sup> Id. at 64.

<sup>21</sup> Id. at 31.

<sup>22</sup> Id. at 32.

<sup>23</sup> Id. at 31.

<sup>24</sup> Id.

<sup>25</sup> Id. at 32.

<sup>26</sup> Id. at 13.

<sup>27</sup> Id. at 60–69. The Decision, docketed as Criminal Case No. 06-246346, was penned by Judge Antonio M. Rosales of Branch 52, Regional Trial Court, Manila.

<sup>28</sup> Id. at 66–68.

complaint until the same is fully settled, which the accused received from the offended party.

With costs against the accused.

SO ORDERED.<sup>29</sup>

Osorio was sentenced to suffer an indeterminate penalty of imprisonment of four (4) years and two (2) months of *prisión correccional* as minimum to 20 years of *reclusión temporal* as maximum. She was also directed to pay ₱200,000.00 plus six percent (6%) legal interest per annum from the date of the filing of the complaint until satisfaction.<sup>30</sup>

Osorio appealed the Decision of the Regional Trial Court, arguing that her act of investing Gabriel's money with PMIAM was done in good faith.<sup>31</sup>

On January 30, 2013, the Court of Appeals rendered judgment affirming Osorio's conviction.<sup>32</sup> Osorio moved for reconsideration but her motion was denied.<sup>33</sup>

On August 8, 2013, Osorio filed a Petition for Review before this Court<sup>34</sup> to which the People of the Philippines, through the Office of the Solicitor General, filed a Comment.<sup>35</sup>

In its February 10, 2014 Resolution, this Court required petitioner to file a reply to the comment on the petition.<sup>36</sup> On April 24, 2014, petitioner manifested that she would no longer file a reply.<sup>37</sup>

On June 18, 2014, this Court gave due course to the petition and required both parties to submit their respective memoranda.<sup>38</sup> However, both parties manifested that they would no longer file their memoranda.<sup>39</sup>

In praying for her acquittal,<sup>40</sup> petitioner asserts that not all the elements of estafa under Article 315(2)(a) of the Revised Penal Code were established by the prosecution. Only damage on the part of the private

---

<sup>29</sup> Id. at 68–69.

<sup>30</sup> Id.

<sup>31</sup> Id. at 57.

<sup>32</sup> Id. at 36–39.

<sup>33</sup> Id. at 41–42.

<sup>34</sup> Id. at 10.

<sup>35</sup> Id. at 93–106.

<sup>36</sup> Id. at 107.

<sup>37</sup> Id. at 108–112.

<sup>38</sup> Id. at 114–114-A.

<sup>39</sup> Id. at 115–118, Office of the Solicitor General's Manifestation, and *rollo*, pp. 120–124, Osorio's Manifestation.

<sup>40</sup> Id. at 18.

complainant was proven. Petitioner argues that she did not employ any deceit in soliciting private complainant's investment as nothing in the records shows that she used a fictitious name or that she pretended to possess power, agency, or certain qualifications. Fernandez, one of the prosecution's witnesses, even admitted that she was a Philam Life agent.<sup>41</sup>

Furthermore, petitioner claims that she acted in good faith when she decided to place private complainant's investment in PMIAM. She adds that she did not conceal this from private complainant, who later on agreed to the placement.<sup>42</sup>

In its Comment,<sup>43</sup> respondent claims that the main issue raised by petitioner is factual in nature. Thus, it is beyond the scope of review in a Rule 45 petition. Respondent argues that even if this Court undertakes a factual review in this case, the lower courts did not err in convicting petitioner of estafa.<sup>44</sup> Petitioner misrepresented to private complainant that the latter's investment would be placed in Philam Life and that its proceeds would be channeled to pay for her insurance premiums. This misrepresentation caused private complainant to part with her money.<sup>45</sup>

The principal issue presented by this case is whether or not petitioner's acts constitute estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code.

The rule with respect to petitions for review brought under Rule 45 of the Rules of Court is that only questions of law may be raised.<sup>46</sup> The factual findings of the trial court, as affirmed by the Court of Appeals, are binding on this Court and will not be disturbed on appeal.<sup>47</sup>

There is a question of law when "doubt or difference arises as to what the law is on a certain set of facts or circumstances."<sup>48</sup> On the other hand, there is a question of fact when "the issue raised on appeal pertains to the truth or falsity of the alleged facts."<sup>49</sup> This includes an assessment of the probative value of evidence presented during trial.<sup>50</sup> If the principal issue

---

<sup>41</sup> Id. at 17.

<sup>42</sup> Id. at 17-18.

<sup>43</sup> Id. at 93-106.

<sup>44</sup> Id. at 97-98.

<sup>45</sup> Id. at 101-102.

<sup>46</sup> RULES OF COURT, Rule 45, sec. 1.

<sup>47</sup> *Pascual v. Burgos*, 776 Phil. 169, 182 (2016) [Per J. Leonen, Second Division].

<sup>48</sup> *Spouses Miano v. Manila Electric Company*, G.R. No. 205035, November 16, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/205035.pdf>> 4 [Per J. Leonen, Second Division] citing *Bases Conversion Development Authority v. Reyes*, 711 Phil. 631 (2013) [Per J. Perlas-Bernabe, Second Division].

<sup>49</sup> Id.

<sup>50</sup> *Pascual v. Burgos*, 776 Phil. 169, 183 (2016) [Per J. Leonen, Second Division].

may be resolved without reviewing the evidence, then the question before the appellate court is one of law.

Petitioner claims that the prosecution failed to prove her guilt beyond reasonable doubt on the ground that she did not employ deceit in soliciting private complainant's funds. The determination of whether the element of deceit or fraud is present in a charge for estafa is a question of fact as it involves a review of the lower court's appreciation of the evidence.<sup>51</sup>

Petitioner concedes that the case involves mixed questions of fact and law. However, she claims that this Court is authorized to undertake a factual review if the findings of the lower courts do not conform to the evidence on record.<sup>52</sup> Her contention is well-taken.

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

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

.....

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.

In sustaining a conviction under this provision, the following elements must concur:

(a) [T]hat 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.<sup>53</sup>

There are different modalities of committing the crime of estafa under Article 315(2)(a). The false pretense or fraudulent representation referred to

<sup>51</sup> See *Quesada v. Department of Justice*, 532 Phil. 159, 166 (2006) [Per J. Sandoval-Gutierrez, Second Division].

<sup>52</sup> *Rollo*, p.15.

<sup>53</sup> *Sy v. People*, 632 Phil. 276, 284 (2010) [Per J. Nachura, Third Division].

under the first element exists when the accused uses a fictitious name, pretends to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions, or when the accused commits other similar deceits.

There is no evidence to prove that petitioner committed any of these acts when she obtained private complainant's money.

Petitioner neither used a fictitious name nor misrepresented herself as an agent of Philam Life. During her first meeting with private complainant, petitioner presented her company ID and calling card as proof of her identity and employment.<sup>54</sup> Fernandez, head of Philam Life's Business Values and Compliance Department, even admitted during trial that petitioner had been a Philam Life agent as of December 2000.<sup>55</sup>

There is also no proof that petitioner pretended to possess the authority to solicit investments for Philam Life Fund Management. All that Fernandez stated was that the issuance of Philam Life receipts to private complainant was improper because the receipts only cover insurance premium payments.<sup>56</sup> Thus, in the absence of contrary evidence, it is presumed that petitioner was authorized to solicit money for investment purposes.

In estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code, the element of deceit consisting of the false pretense or representation must be proven beyond reasonable doubt. Otherwise, criminal liability will not attach. In *Aricheta v. People*,<sup>57</sup> the accused was charged of estafa for selling property that she had previously sold to a third party. She allegedly misrepresented to the buyer that she was still the owner at the time of the sale.<sup>58</sup> In acquitting the accused, this Court found that the prosecution failed to prove the alleged false representation she made:

As can be gleaned from the allegations in the information, petitioner was charged with Estafa for allegedly selling to private complainant the subject property knowing fully well that she had already sold the same to a third party. From this, it is therefore clear that the supposed false representation or false pretense made by petitioner to private complainant was that she was still the owner of the property when she sold it to private complainant.

....

---

<sup>54</sup> *Rollo*, p. 28.

<sup>55</sup> *Id.* at 64.

<sup>56</sup> *Id.* at 31.

<sup>57</sup> 560 Phil. 170 (2007) [Per J. Chico-Nazario, Third Division].

<sup>58</sup> *Id.* at 175.

The question to be resolved is whether the prosecution was able to prove beyond reasonable doubt the alleged false representation or false pretense contained in the information.

As above explained, the alleged false representation or false pretense made by petitioner to private complainant was that she was still the owner of the property when she sold it to private complainant. To prove such allegation, the prosecution should first establish that the property was previously sold to a third party before it was sold to private complainant. The prosecution utterly failed to do this. The fundamental rule is that upon him who alleges rests the burden of proof. It made this allegation but it failed to support it with competent evidence. Except for private complainant's bare allegation that petitioner told her that she (petitioner) sold the property to another person, the records are bereft of evidence showing that the property was indeed previously sold to a third person before it was sold again to private complainant. What was shown by the prosecution and admitted by the defense is the fact that the property is being currently occupied by a person other than private complainant. This fact does not prove that the property was previously sold to another person before being sold again to private complainant.<sup>59</sup> (Citation omitted)

In this case, although there is no proof that petitioner used a fictitious name or pretended to possess power, influence, qualifications, property, credit, agency, or business in soliciting private complainant's money, petitioner should nevertheless be held criminally liable for misrepresenting to private complainant that the latter's money would be invested in Philam Life Fund Management and that its proceeds may be utilized to pay for private complainant's insurance premiums.

Private complainant accepted the investment opportunity offered by petitioner due to the promise that her money would be invested in Philam Life, a company with which she had existing insurance policies. She parted with her funds because of the representation that her investment's earnings would be conveniently channeled to the payment of her insurance premiums. As a result of petitioner's representations, private complainant no longer saw the need to pay for the succeeding insurance premiums as they fell due.<sup>60</sup> Moreover, petitioner's issuance of Philam Life receipts<sup>61</sup> led private complainant to believe that her money was already as good as invested in the company.

The false representations committed by petitioner in this case fall beyond the scope of "other similar deceits" under Article 315(2)(a) of the Revised Penal Code. The phrase "other similar deceits" in Article 315(2)(a) of the Revised Penal Code has been interpreted in *Guinhawa v. People*<sup>62</sup> as limited to acts of the same nature as those specifically enumerated. Under

---

<sup>59</sup> Id. at 182–183.

<sup>60</sup> *Rollo*, p. 67.

<sup>61</sup> Id. at 29.

<sup>62</sup> 505 Phil. 383 (2005) [Per J. Callejo, Sr., Second Division].

the principle of *ejusdem generis*, “other similar deceits” cannot be construed in the broadest sense to include all kinds of deceit:

[T]he petitioner’s reliance on paragraph 2(a), Article 315 of the Revised Penal Code is misplaced. The said provision reads:

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.

The fraudulent representation of the seller, in this case, that the van to be sold is brand new, is not the deceit contemplated in the law. Under the principle of *ejusdem generis*, where a statement ascribes things of a particular class or kind accompanied by words of a generic character, the generic words will usually be limited to things of a similar nature with those particularly enumerated unless there be something in the context to the contrary.<sup>63</sup> (Citation omitted)

Nevertheless, petitioner may be held criminally liable for other deceits under Article 318 of the Revised Penal Code.

Article 318 of the Revised Penal Code is broad in application. It is intended as a catch-all provision to cover all other kinds of deceit not falling under Articles 315, 316, and 317 of the Revised Penal Code.<sup>64</sup>

For an accused to be held criminally liable under Article 318 of the Revised Penal Code, the following elements must exist:

(a) [The accused makes a] false pretense, fraudulent act or pretense other than those in [Articles 315, 316, and 317]; (b) such false pretense, fraudulent act or pretense must be made or executed prior to or simultaneously with the commission of the fraud; and (c) as a result, the offended party suffered damage or prejudice.<sup>65</sup> (Citation omitted)

All the elements of Article 318 of the Revised Penal Code are present in this case.

Petitioner, in soliciting private complainant’s money, falsely represented that it would be invested in Philam Life and that its proceeds

---

<sup>63</sup> Id. at 401.

<sup>64</sup> Id.

<sup>65</sup> Id. at 400.

would be used to pay for private complainant's insurance premiums. This false representation is what induced private complainant to part with her funds and disregard the payment of her insurance premiums. Since petitioner deviated from what was originally agreed upon by placing the investment in another company, private complainant's insurance policies lapsed.

The present case is different from money market transactions where dealers are usually given full discretion on where to place their client's investments. In *MERALCO v. Atilano*,<sup>66</sup> this Court explained the nature of money market transactions and the corresponding liabilities that dealers may face when dealing with their clients' investments:

[I]n money market transactions, *the dealer is given discretion on where investments are to be placed*, absent any agreement with or instruction from the investor to place the investments in specific securities.

Money market transactions may be conducted in various ways. One instance is when an investor enters into an investment contract with a dealer under terms that oblige the dealer to place investments only in designated securities. Another is when there is no stipulation for placement on designated securities; thus, the dealer is given discretion to choose the placement of the investment made. Under the first situation, a dealer who deviates from the specified instruction may be exposed to civil and criminal prosecution; in contrast, the second situation may only give rise to a civil action for recovery of the amount invested.<sup>67</sup> (Emphasis in the original)

Although petitioner was charged of estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code, she may be convicted of other deceits under Article 318 of the Revised Penal Code.

As a rule, an accused can only be convicted of the crime with which he or she is charged. This rule proceeds from the Constitutional guarantee that an accused shall always be informed of the nature and cause of the accusation against him or her.<sup>68</sup> An exception to this is the rule on variance under Rule 120, Section 4 of the Revised Rules of Criminal Procedure, which states:

RULE 120  
*Judgment*

Section 4. *Judgment in Case of Variance Between Allegation and Proof.*  
— When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or

---

<sup>66</sup> 689 Phil. 394 (2012) [Per J. Brion, Second Division].

<sup>67</sup> Id. at 409.

<sup>68</sup> *Navarrete v. People*, 542 Phil. 496, 504 (2007) [Per J. Corona, First Division].

necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Rule 120, Section 4 of the Revised Rules of Criminal Procedure simply means that if there is a variance between the offense charged and the offense proved, an accused may be convicted of the offense proved if it is included in the offense charged. An accused may also be convicted of the offense charged if it is necessarily included in the offense proved.

In *Sales v. Court of Appeals*,<sup>69</sup> the accused was charged with estafa by means of deceit under Article 315(2)(d) of the Revised Penal Code. She was convicted of other deceits under Article 318 of the Revised Penal Code. In holding that there was no violation of the accused's constitutional right to be informed of the accusation against her, this Court held that the elements of the crime of other deceits under Article 318 of the Revised Penal Code also constitute one (1) of the elements of estafa by means of deceit under Article 315(2)(d) of the Revised Penal Code:

In the information filed against her, the petitioner with the crime of estafa under Article 315, paragraph 2(d) of the Revised Penal Code which reads:

....

“(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. (As amended by Rep. Act No. 4885, approved June 17, 1967.)”

Under the aforequoted provision, the elements of estafa as defined therein are as follows: (1) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack or insufficiency of funds to cover the check and (3) damage to the payee thereof . . . Basically, the two essential requisites of fraud or deceit and damage or injury must be established by sufficient and competent evidence in order that the crime of estafa may be established.

On the other hand, Article 318 of the same Code partly provides that:

“*Other deceits.* — The penalty of arresto mayor and a fine of not less than the amount of the damage caused and not

<sup>69</sup> 247-A Phil. 38 (1988) [Per J. Gutierrez, Jr., Third Division].

more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.”

.....

Clearly, the principal elements of deceit and damage are likewise present in the preceding article cited. The petitioner’s conviction under the latter provision instead of that with which she was charged was merely an application of the rule on variance between allegation and proof defined under Rule 120, Section 4 of the Revised Rules of Court which states that:

*“Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the defendant shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved.”*

Simply put, an accused may be convicted of an offense proved provided it is included in the charge or of an offense charged which is included in that which is proved. In the case at bar, the petitioner was convicted of the crime falling under “Other deceits” which is necessarily included in the crime of estafa under Article 315, paragraph 2(d) considering that the elements of deceit and damage also constitute the former. Hence, the petitioner’s right to be properly informed of the accusation against her was never violated.<sup>70</sup> (Citation omitted)

In the present case, the crime of other deceits under Article 318 of the Revised Penal Code is necessarily included in the crime of estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code. Therefore, petitioner may be convicted of other deceits under Article 318 of the Revised Penal Code.

The impossible penalty for other deceits under paragraph 1 of Article 318 of the Revised Penal Code<sup>71</sup> has been retained by Republic Act No. 10951.<sup>72</sup> Accordingly, petitioner should suffer the penalty of *arresto mayor*

<sup>70</sup> Id. at 42–43.

<sup>71</sup> REV. PEN. CODE, art. 318 provides:

Article 318. Other Deceits. — The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of *arresto menor* or a fine not exceeding 200 pesos.

<sup>72</sup> Rep. Act No. 10951, sec. 86 provides:

Section 86. Article 318 of the same Act is hereby amended to read as follows:

Article 318. Other deceits. — The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who

and pay a fine, which should neither be less than nor more than twice the amount of the damage caused. The amount of damage caused against private complainant in this case is ₱200,000.00.

As a final note, the defense that private complainant eventually consented to the investment in PMIAM deserves scant consideration. Records show that private complainant asked petitioner for a refund of her initial investment when she discovered that her investment was placed in PMIAM.<sup>73</sup> The ratification allegedly given by private complainant hardly qualifies as genuine consent. When private complainant discovered the transaction, her insurance policies had already lapsed. She was trapped in a difficult situation where she could potentially lose another investment. Thus, she had no other choice but to agree to the placement. The lack of genuine consent is further evidenced by private complainant's repeated requests for a refund of her initial investment even after she received the first tranche of interest income.<sup>74</sup>

**WHEREFORE**, the Court of Appeals January 30, 2013 Decision and the June 14, 2013 Resolution in CA-G.R. CR No. 34274 are **AFFIRMED** with **MODIFICATION**. Petitioner Maria C. Osorio is **GUILTY BEYOND REASONABLE DOUBT** of other deceits under Article 318 of the Revised Penal Code. There being no aggravating or mitigating circumstances, petitioner is sentenced to suffer the penalty of two (2) months and (1) day to four (4) months of *arresto mayor* in its medium period,<sup>75</sup> and to pay a fine of ₱200,000.00.

**SO ORDERED.**

  
MARVIC M.V.F. LEONEN  
Associate Justice

---

shall defraud or damage another by any other deceit not mentioned in the preceding articles of this Chapter.

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of *arresto mayor* or a fine not exceeding Forty thousand pesos (₱40,000).

<sup>73</sup> *Rollo*, p. 29-30.

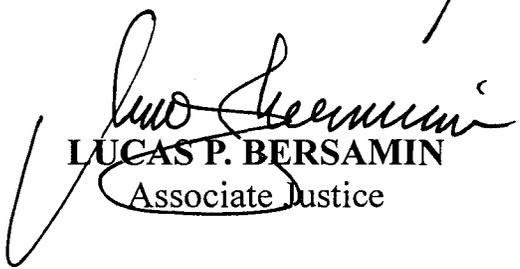
<sup>74</sup> *Id.*

<sup>75</sup> The Indeterminate Sentence Law is inapplicable because the maximum term of imprisonment does not exceed one year.

WE CONCUR:



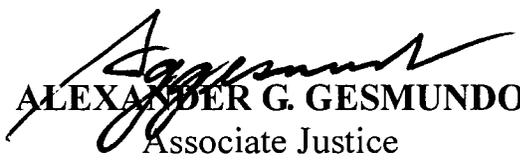
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**LUCAS P. BERSAMIN**  
Associate Justice



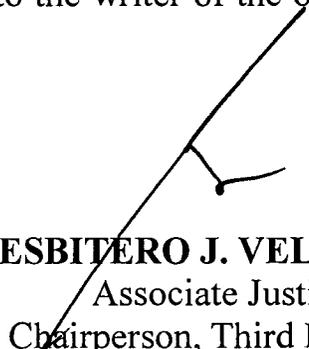
**SAMUEL R. MARTIRES**  
Associate Justice



**ALEXANDER G. GESMUNDO**  
Associate Justice

**ATTESTATION**

I attest 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.

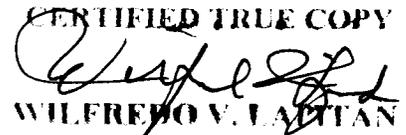


**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

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

CERTIFIED TRUE COPY



**WILFREDO V. LATTIAN**  
Division Clerk of Court  
Third Division



**ANTONIO T. CARPIO**  
Acting Chief Justice

AUG 17 2018