Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ISAGANI Q. LISACA, Petitioner,	**G.R. No. 251131**
	Present:
	GESMUNDO, *C.J.*, *Chairperson*,
- versus -	CAGUIOA, CARANDANG, INTING,* ZALAMEDA, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated: JUL 06 2021

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D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated August 16, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 38396 finding Isagani Q. Lisaca (petitioner) guilty of *estafa* defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code (RPC), as amended.

Facts of the Case

This case stemmed from two Information against petitioner charging him of *estafa* under Article 315, paragraph 1(b) of the RPC, the accusatory portion thereof reads:

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* Designated as Additional Member.

1 *Rollo*, pp. 23-50.

2 Penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Samuel H. Gaerlan (now a Member of this Court); id. at 55-64.

In Criminal Case No. 02-597:

> That in or about and sometime during the month of February, 2001, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then the Chief Executive Officer of El Nino Ruis Insurance Agency, Inc. and as commission agent of complainant The Imperial Insurance Inc., herein represented by Florita Suba received in trust for account and commission accountable insurance policies in the total amount of P96,984,047.65 with the express obligation on the part of the accused to remit to complainant the said amount of collected premiums, but the said accused far from complying with his obligation, with intent of gain, abuse of confidence and to defraud the said complainant, did then and there willfully, unlawfully, and feloniously misappropriate, misapply and convert to his own personal use and benefit the said total amount of P96,984,047.65, and despite demands, failed and refused and still fails and refuses to remit the said amount, to the damage and prejudice of complainant in the aforementioned sum of P96,984,047.65.
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> CONTRARY TO LAW.[3]

In Criminal Case No. 02-598:

> That in or about and sometime during the month of February, 2001, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then the Chief Executive Officer of El Nino Ruis Insurance Agency, Inc. and as commission agent of complainant The Imperial Insurance Inc., herein represented by Florita Suba received and collected premiums for insurance policies in the total amount of P20,035,067.93 with the express obligation on the part of the accused to remit to complainant the said amount of collected premiums, but the said accused far from complying with his obligation, with intent of gain, abuse of confidence and to defraud the said complainant, did then and there willfully, unlawfully, and feloniously misappropriate, misapply and convert to his own personal use and benefit the said total amount of P20,035,067.93, and despite demands, failed and refused and still fails and refuses to remit the said amount, to the damage and prejudice of complainant in the aforementioned sum of P20,035,067.93
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> CONTRARY TO LAW.[4]

When arraigned, petitioner pleaded not guilty to both charges.[5]

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3 Records, p. 2.
4 Id. at 4.
5 *Rollo*, p. 4.

According to the prosecution, petitioner was the Chief Executive Officer and/or President of Al Niño Ruis Insurance Agency Inc. (Al Niño), a commissioned agent of private complainant Imperial Insurance Inc. (Imperial). Imperial is engaged in the insurance business. As commission agent, Al Niño is contracted to sell insurance policies to owners of motor vehicles on behalf of Imperial. Al Niño is given blank insurance forms by Imperial which it sells to clients. As a consequence, Al Niño receives the premium payment for the sale of the insurance policies, reports the completed insurance forms and remits the premiums less deductions to Imperial.[6]

Imperial alleges that from May 9, 1996 up to December 1999, Al Niño failed to return a total of 2,998 blank insurance forms with an estimated valuation of ₱96,984,047.65. From these unreturned insurance forms, Imperial contends that it settled several insurance claims, despite the fact that it was Al Niño that issued them without remitting the corresponding premiums to these insurance policies, to the damage and prejudice of Imperial.[7]

Further, Imperial avers that Al Niño collected and received premiums from the sale of its insurance policies in the total amount of ₱20,035,067.97. However, it failed to remit the said premiums to Imperial, despite several demands made to it by Imperial, the last of which was on February 26, 2001.[8]

During trial, Imperial presented the following witnesses: Florentino A. Agapay (Agapay), Fernando Niño Tasic (Tasic), Edna Quiñones Mancilla (Mancilla), Josie Tonog Castillo (Castillo), and Florila Lucas Suba (Suba).[9]

Agapay testified that he was the supervisor of Imperial who was in charge of the accountable insurance forms, including its release, safekeeping and accounting. Also, he was in charge of the custody of the returned unused accountable insurance forms. He testified that petitioner requested, on behalf of Al Niño, for the accountable insurance forms as evidenced by the requisition slips petitioner filled up. However, petitioner failed to return 2,998 sets of accountable insurance forms, to the damage and prejudice of Imperial.[10]

Tasic corroborated the testimony of Agapay. Tasic was the stock clerk of Imperial who was in charge of posting entries in the subsidiary ledger of the company. He tallies the in and out movement of the issued accountable insurance forms or policies of each commission agent.[11] He testified that petitioner had unreported accountable insurance forms/policies.[12]

Meanwhile, Mancilla testified that the accountable insurance forms were submitted to her for valuation which Imperial used as the basis for the

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6 Id. at 57.
7 Id.
8 Id.
9 Id.
10 Records, p. 359.
11 Id. at 363.
12 Id. at 365-366.

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premium computation of the unreturned accountable insurance forms.[13] The valuation was based on insurance tariff rates. Mancilla was the underwriting manager of Imperial in the Motor Car Division. She testified that she was in custody of the production reports of Al Niño which reflects the accountable insurance policies petitioner requested to be issued to policyholders with the express obligation on his part to remit the collected premiums to Imperial. She also testified that Imperial paid several claims from petitioner's unreported accountable insurance forms.[14]

The prosecution presented the testimony of Castillo, who was the agency manager of Imperial in charge of collection, to prove that Al Niño failed to remit the ₱20,035,067.93 premiums collected as evidenced by the Statement of Accounts[15] she prepared.[16] Lastly, Suba, who was the Vice President for Finance of Imperial, was presented to testify on the liability of petitioner. She corroborated the statements of the other prosecution witnesses.[17]

On the other hand, the petitioner vehemently denies the charges against him. He presented the following witnesses to support his defense: Victorino S. Villanueva (Villanueva), Maria Milagros R. Lisaca (Milagros), Atty. Salvador Britanico (Atty. Britanico) and himself.[18]

Villanueva, the general manager of Al Niño, testified that Al Niño replied to the demand letter sent by Imperial wherein it claims that it has an over remittance to Imperial amounting to ₱2,505,112.02 and thus, Al Niño cannot be held liable for the alleged unremitted ₱20,035,067.93 premium collections.[19]

Milagros, the accountant of Al Niño, corroborated the statement of Villanueva. As the accountant, she was in charge of issuing checks for the payment of expenses and remittances, coordinating with banks on deposits and of other accounting matters. She testified that she prepared the remittance of premiums or payment of accounts to Imperial as evidenced by the summary of transactions for January to December 1998.[20]

Atty. Britanico, the external legal counsel of Al Niño, testified that he was the one who advised petitioner to deny and ignore the demand letter sent by Imperial and instead, for them to file a complaint against Imperial for Declaratory Relief, Accounting, Sum of Money and Damages before the Regional Trial Court of Manila, which petitioner followed. Atty. Britanico likewise testified that a Motion to Transfer Venue and for Consolidation was

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13 Id.
14 Id. at 367-370.
15 Id. at 105.
16 Id. at 369-370.
17 Id. at 372-378.
18 *Rollo*, p. 71
19 Id.
20 Id. at 72; records, pp. 647-649.

filed before the court handling the criminal case was filed and later on, granted that's why he no longer pursued the civil case before the RTC of Manila.[21]

Lastly, petitioner testified that he nor Al Niño received in trust, for account, or on commission, insurance policies for private cars, commercial vehicles and Land Transportation Office (LTO) Operators from Imperial in the amount of ₱96,984,047.65. The accusations against him were bereft of any supporting evidence and were made merely to harass him and destroy his reputation. The valuations of the unused insurance forms were made without any basis. Further, Al Niño remitted all the net premiums it collected on behalf of Imperial. As a matter of fact, Al Niño even made an overpayment in the amount of ₱2,505,112.02.[22] The evidence presented by the prosecution were mere unused Imperial policies and previously cancelled policies.[23]

Ruling of the Regional Trial Court

In a Decision[24] dated January 6, 2015, the RTC found petitioner guilty beyond reasonable doubt of two counts of *estafa* under Article 315, paragraph 1 (b), ruling in this wise:

> **WHEREFORE**, in **Criminal Case No. 02-597**, the Court finds the accused **GUILTY** beyond reasonable doubt for Estafa under Article 315 (1)(b) of the Revised Penal Code hereby sentencing him to suffer an imprisonment of **six (6) years, eight (8) months and twenty-one (21) days to eight (8) years** and to indemnify the private complainant the amount of **NINETY-SIX MILLION NINE HUNDRED EIGHTY FOUR THOUSAND FOURTY-SEVEN*(sic)* PESOS AND SIXTY-FIVE CENTAVOS (Php96,984,047.65)** and to pay the cost of suit.
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> In **Criminal Case No. 02-598**, the Court likewise, finds him guilty beyond reasonable doubt for Estafa under Article 315 (1)(b) of the Revised Penal Code and sentences him to suffer an imprisonment of **six (6) years, eight (8) months and twenty-one (21) days to eight (8) years** and to indemnify the private complainant the amount of **TWENTY MILLION THIRTY-FIVE THOUSAND SIXTY-SEVEN PESOS AND NINETY-THREE CENTAVOS (Php20,035,067.93)** and to pay the cost of suit.
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> The sentence rendered by the Court on both cases shall be served successively by accused Isagani Q. Lisaca.
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> **SO ORDERED**.[25] (Emphasis in the original)

In convicting petitioner, the RTC found that all the elements of *estafa* were duly established and proven by the prosecution. *First*, the RTC found,

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21 Id.
22 TSN dated February 27, 2013, pp. 12-14.
23 *Rollo*, p. 71
24 Penned by Judge Winlove M. Dumayas; id. at 67-76.
25 Id. at 76.

through the testimonies of prosecution witnesses Agapay, Tasic and Mancilla, that petitioner received in trust, for account and commission, accountable insurance policies from Imperial with the express obligation on his part to report the sale of the insurance and remit the collected premiums to Imperial. However, petitioner failed to do so. The RTC gave credence to the testimonies of the prosecution witnesses establishing that petitioner had unreported accountable insurance forms which he received from Imperial.[26]

Second, the RTC held that petitioner received the premiums paid by the buyers of the insurance policies on behalf of Imperial but failed to remit the same, as evidenced by the Summary of Unreported Forms[27] prepared by Tasic and certified correct by Suba. Because of these acts, damage was caused to Imperial, establishing the third element. Lastly, there was a demand letter[28] sent to petitioner on February 26, 2001 asking him to settle his accountability to Imperial but he failed to settle his accounts.[29]

Aggrieved, petitioner filed an appeal before the CA.

Ruling of the Court of Appeals

In a Decision[30] dated August 16, 2019, the CA affirmed with modification the RTC judgment, ruling in this wise:

> **WHEREFORE**, premises considered, the instant appeal is **PARTIALLY GRANTED.**
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> In Criminal Case No. 02-597, the 6 January 2015 Judgment of the Regional Trial Court of Makati City, Branch 59 is **AFFIRMED** with **MODIFICATION** in that accused-appellant Isagani Q. Lisaca is **SENTENCED** to suffer 4 months of *arresto mayor* as minimum, to 1 year and 8 months of *prision correccional* as maximum and to **PAY** Imperial Insurance, Inc. the amount of P1,094,281.50. In addition, the amount of P1,094,281.50 shall earn an interest of 6% *per annum* from the date of finality of this judgment until fully paid.
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> In Criminal Case No. 02-598, the 6 January 2015 Judgment of the Regional Trial Court of Makati City, Branch 59 is **REVERSED** and **SET ASIDE** and accused-appellant Isagani Q. Lisaca is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.
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> **SO ORDERED.**[31] (Emphasis in the original)

The CA found that petitioner is guilty of *estafa* under Criminal Case No. 02-597 wherein petitioner failed to return the unused insurance forms to

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26 Id. at 74-75.
27 Records, pp. 155-275.
28 Id. at 103-104.
29 *Rollo*, pp. 74-75.
30 Supra note 2.
31 *Rollo*, pp. 63-64.

which Imperial settled several insurance claims from policyholders. However, the CA ruled that Imperial cannot put value on the blank insurance forms without knowing whether they were sold or not. Hence, petitioner cannot be held liable for the 2,998 blank insurance forms but only for the sold insurance policies. Upon review of the list of unreported insurance forms, the CA found that only 8 of the 17 insurance claims were unreported to Imperial with a total claim amount of ₱1,094,281.50. Petitioner was held criminally liable for his failure to report the insurance policies and remit the insurance premiums thereof, which the CA considered as misappropriation, an element of the crime of *estafa* under Article 315, paragraph 1(b). The amount of ₱1,094,281.50, which was the amount of damage to Imperial, became the basis for the penalty imposable to petitioner.[32]

However, with respect to Criminal Case No. 02-598, the CA ruled that the prosecution failed to prove that petitioner is liable for the unremitted premiums of the reported insurance policies. The prosecution presented no evidence other than the statement of account prepared by its Finance Head Flor Suba. CA considered the statement of account as self-serving and it held that the element of damage was not sufficiently proven by the prosecution.[33]

Undeterred, accused-appellant filed a Petition for Review on *Certiorari* under Rule 45 before this Court.

In a Resolution[34] dated September 2, 2020, the Court directed the respondent to file a Comment on the petition for review within 10 days from notice. On February 10, 2021, the respondent filed its Comment.[35]

Issue

The issue in this case is whether petitioner has been proven guilty beyond reasonable doubt of the crime of *estafa* defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code?

In his petition for review, petitioner argues that the prosecution failed to prove that he received the amount of ₱1,094,281.50 and that he misappropriated or converted the same. In the crime of *estafa* through misappropriation, the prosecution has to prove that the accused receives money, goods or personal property and that he converts, misappropriates or denies to receive the same. In this case, there was no proof that petitioner misappropriated the net premiums due to Imperial. What the prosecution proved is that it paid insurance claims in the amount of ₱1,094,281.50. The prosecution failed to provide proof of the net premiums received from the insurance policies it settled. Hence, petitioner cannot be found guilty of *estafa*

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32 Id. at 61-62.
33 Id. at 62-63.
34 Id. at 80-81.
35 Id. at 90-103.

through misappropriation because he did not receive the amount of ₱1,094,281.50.[36]

Likewise, he argues that Al Niño remitted all the net premiums collected on behalf of Imperial. As a matter of fact, Al Niño had an overpayment of ₱2,585,112.07 which Imperial did not object or disprove.[37]

In its Comment,[38] the prosecution avers that under Rule 45, no questions of fact may be raised but only questions of law. Petitioner raises questions of fact which are not proper in a petition for review.[39] Further, the evidence on record supports the finding of guilt beyond reasonable doubt of petitioner. Petitioner admits that he received accountable insurance policies from Imperial. His failure to report or account for these policies amounts to misappropriation. Further, Imperial settled 8 separate claims from these unaccounted and unreported policies which proves the element of damage. Lastly, Imperial demanded from petitioner to settle his accounts but the latter failed to do so.[40]

Ruling of the Court

After review of the records, the Court reverses the Decision of the CA and acquits petitioner of the crime of *estafa* for failure of the prosecution to prove his guilt beyond reasonable doubt.

Prefatorily, the Court shall discuss the procedural issue raised by the respondent that the petition raises factual issues which is not within the purview of a petition for review under Rule 45. Indeed, as a general rule, a petition for review on *certiorari* is limited only to questions of law. Time and again, jurisprudence has established that the Court is not a trier of facts.

The determination of guilt of an accused is based on the appreciation of evidentiary matters by the court with respect to the elements of the crime, which is fundamentally a factual issue. Thus, the determination of guilt is a question of fact, not entertained in a petition for review under Rule 45.

It is only in exceptional circumstances that this Court admits and reviews questions of fact under Rule 45, which exceptions include: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings of the CA are contrary to those of the trial court;

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36 Id. at 37-39.
37 Id. at 45-46.
38 Id. at 90-99.
39 Id. at 95-96.
40 Id. at 97-98.

(8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the finding of fact of the CA is premised on the supposed absence of evidence and is contradicted by the evidence on record.[41] In this case, the Court finds that the first and eight exceptions are present.

Petitioner argues that the CA erred in concluding that he committed *estafa* through misappropriation by failing to return the unused insurance forms through which Imperial paid several claims amounting to ₱1,094,281.50. He avers that he cannot be held criminally liable for *estafa* since he or Al Niño did not receive the amount of ₱1,094,281.50. Not having received the said money, he cannot have misappropriated or converted the same for his benefit. Hence, according to petitioner, the prosecution failed to provide evidence to establish the elements of the crime.

Petitioner's arguments are well-taken.

The elements of *estafa* through misappropriation under Article 315, paragraph 1(b) are: (a) the offender's receipt of 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; (b) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the prejudice of another; and (d) demand by the offended party that the offender return the money or property received.

In finding that the first and second elements are present, the CA relied on the Summary of Unreported Forms[42] submitted by the prosecution wherein it found that several insurance policies were unreported by Al Niño to which Imperial paid 8 claimants in the total amount of ₱1,094,281.50. CA ruled that there was misappropriation when petitioner failed to report the insurance policies and to remit the insurance premiums thereof.

However, the Court rules that the findings of the CA are not supported by the evidence on record.

In establishing the first element of *estafa* through misappropriation, the prosecution has to show proof of receipt of the money, goods, or other personal properties 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.

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41 *Miano v. Manila Electric Co.*, 800 Phil. 118, 123 (2016).

42 Records, p. 154

The prosecution submitted the Requisition Slips for Insurance Forms signed by petitioner[43], Summary of Unreported Forms by Al Niño[44], Inventory Computation of Unreported Accountable Insurance Policies (Used and Unused Accountable Insurance Forms of Al Niño),[45] Schedule of Claims Paid/Settled[46], and Premium Computation of the Unreported Accountable Insurance Forms or Policies prepared by Imperial.[47] According to the prosecution, all these evidence prove that Al Niño received, through petitioner, blank insurance forms for motor vehicles with the express obligation to remit the premiums received less allowable deductions from the sale of these insurance forms. However, these do not establish that petitioner actually received money, good or personal property on behalf of Imperial.

A blank insurance form is not considered money, good or personal property. As correctly found by the CA, it is only upon the sale of the insurance form that it becomes an accountable insurance policy where Imperial could put a value on it. That is why the CA did not give credence to the argument of Imperial that the 2,998 blank insurance forms were valued at ₱96,984,047.65 absent any proof that these forms were actually sold and issued as accountable insurance policy.

However, the CA erred in concluding that petitioner could be held liable for *estafa* for the 8 claims paid by Imperial in the total amount of P1,094,281.50. The basis of *estafa* is the money, good or personal property received in trust or on commission or for administration by an accused which he converts or misappropriates. The amount of ₱1,094,281.50 represents the claims paid by Imperial and not the premium payments received by petitioner or Al Niño in trust or on commission or for administration. The CA misconstrued the amount of claims paid with the amount of premium payments received as basis for the conviction. Hence, petitioner cannot be held criminally liable for the ₱1,094,281.50 since this amount does not represent the premiums he or Al Niño actually received on behalf of Imperial. Having established that Al Niño, through petitioner, only received blank insurance forms and not the accountable insurance policy or the premiums thereof, the prosecution has failed to show that petitioner received any money, good, or personal property in trust, or on commission or for administration.

Imperial could have submitted copies of the insurance policies issued to the policyholders whose claims they have paid or settled to prove that Al Niño issued the same but failed to remit the premiums received therefrom. The insurance policies contain the type of insurance, amount of insurance coverage, and amount of premiums paid, which information are necessary to prove the first element of the offense. However, Imperial failed to provide these policies. Instead, Imperial submitted summary reports of the used and

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43 Id. at 276-355; exhibits M to M-26, N to N-28, O to O-20, and P to P-2.
44 Id. at 154; exhibit J.
45 Id. at 155-275; exhibits J-1 to J-121.
46 Id. at 129-148; exhibits F-1 to F-19.
47 Id. at 107-108; exhibit D-5 and D-6.

unused insurance forms issued to Al Niño and list of claims Imperial paid or settled.

Upon review of these records, the Court found that these documents were solely prepared by Imperial without the verification or confirmation of Al Niño or of an independent third party such as the LTO, which has information on insurance policies of motor vehicles. These pieces of evidence are not sufficient to uphold petitioner's conviction. Aside from being self-serving, these cannot be used as basis to establish that petitioner or Al Niño received the premiums from the unreported insurance forms without proof that these forms were actually sold by Al Niño. What the Court can only conclude from the prosecution's evidence is that Imperial incurred damage from settling the claims of several policyholders, whose claims may have been from the insurance policies sold by Al Niño. However, there is no direct proof to show that Al Niño actually sold these insurance policies to the said claimants. There being no proof of sale of insurance out of these insurable forms issued to Al Niño to the claimants, it cannot be presumed that petitioner received the insurance premiums corresponding thereto.

Further, as raised by petitioner, it is not only Al Niño who was commissioned as agents of Imperial. There are other insurance companies who were also sub-agents of Imperial such as R-Gen Insurance. Hence, the Schedule of Claims Paid/Settled submitted by the prosecution could have been derived from these other sub-agents and not just from Al Niño. Since the schedule of claims was solely prepared by Imperial, the same cannot be fully relied upon to establish petitioner's criminal liability absent any supporting independent evidence establishing that those claimants derived their insurance policies from the sale of insurance forms made by Al Niño. Thus, the prosecution failed to prove the first element of the crime.

With respect to the second element, the CA relied on the legal presumption of misappropriation when petitioner failed to report the insurance policies and remit the insurance premiums thereof. 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.[48] However, the evidence on record does not support the finding that petitioner failed to remit the premiums to Imperial or that he failed to report sold insurance policies.

Imperial cannot claim the presumption of conversion or misappropriation when it failed to show that petitioner took for himself the premiums received from the unreported insurance forms. As previously mentioned, Imperial did not even provide the evidence to establish that these unreported insurance forms were actually sold by Al Niño or petitioner. Imperial could have established the sale of the insurance forms by presenting the insurance policies of the claimants it settled, which policies can be

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48 *Pamintuan v. People*, 635 Phil. 514, 522 (2010).

obtained from the claimant himself or through the records of the LTO. Thus, the prosecution also failed to establish the element of conversion or misappropriation.

According to the CA, Imperial settled claims of several policyholders in the total amount of ₱1,094,281.50 with the following policy numbers, to wit: 188876, 137918, 212317, 154563, 221931, 244769, 224986, and 231393. However, upon review of the records, the Court finds that there is no direct basis for such claim and that the evidence submitted is insufficient to support it. Upon verifying these policy nos. from the Schedule of Claims Paid/Settled, only Policy No. 188876 issued to Winnie Usui was listed.[49] The CA did not provide a reference with respect to the other policy nos. Thus, the Court cannot rely on the CA's finding when it is not supported by the evidence on record. Further, the Schedule of Claims Paid/Settled cannot be considered as a primary evidence to prove the damage Imperial incurred.

To duly prove the damage element, Imperial should have submitted the copies of receipts it issued to the claimants by virtue of the settlement of insurance claim, or copies of the insurance policies or even the checks it issued to these claimants representing the amount of claims paid. However, all that Imperial provided was a summary of settled claims it prepared, which the Court considers as self-serving. Hence, the element of damage caused by the accused was also not sufficiently established.

It is incumbent upon the prosecution to establish, through proof beyond reasonable doubt, that the accused committed the crime being charged. There being no proof of the receipt of the premiums on the unreported insurance forms and the amount of the premiums in the insurance policies of the claimants settled or paid by Imperial issued/sold by Al Niño, the prosecution failed to prove beyond reasonable doubt that petitioner is guilty of *estafa* through misappropriation. The CA erred in holding that petitioner is criminally liable for the ₱1,094,281.50 insurance claims paid for by Imperial from the alleged unreported insurance forms from Al Niño. As correctly argued by petitioner, he did not receive such amount and the prosecution failed to provide any proof that he or Al Niño received it from the clients. As a matter of fact, the prosecution failed to show that the claims it settled derived their insurance policies from Al Niño since it did not provide any proof of the sale of insurance forms from Al Niño to these claimants. There was also no evidence submitted to show that petitioner misappropriated the premiums received by Al Niño from the clients. As a matter of fact, Al Niño claims that it had an over remittance of ₱2,585,112.07[50] which the prosecution did not contend or object to.

In the absence of the first three elements, there can be no crime of *estafa* through misappropriation. Petitioner's acquittal must follow as a matter of course.

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49 Records, p. 131.
50 Id. at 699.

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Lastly, the Court notes that there is a huge variance in the date of the commission of the crime as alleged in the Information and as established during the trial. While the date of commission is not a material element of the crime of *estafa*, it must still be approximated in order to notify the accused of the transactions referred to. Generally, the allegation in an information of a date of commission different from the one eventually established during the trial would not, as a rule, be considered as an error fatal to prosecution.[51]

However, it becomes fatal when such discrepancy is so great that it induces the perception that the information and the evidence are no longer pertaining to one and the same offense. In this event, the defective allegation in the information is not deemed supplanted by the evidence nor can it be amended but must be struck down for being violative of the right of the accused to be informed of the specific charge against himm,[52] such as in this case. In the Information, the prosecution alleged that the crime was committed on or about the month of February 2001. On the other hand, during trial, the prosecution presented evidence to prove that the transactions occurred from 1996 to 1999. This huge variance in the date of the commission of the offense violates the accused's constitutional right to be informed of the charge against him. The prosecution should have indicated the proper period covering the transactions involved in the crime being charged.

To sustain a conviction, the prosecution has the heavy burden of proving that the accused committed the crime beyond reasonable doubt. Even an iota of doubt on the guilt of the accused will warrant his acquittal therefrom. Much more when the prosecution fails to provide evidence that the accused actually perpetrated the crime and the information charging the accused is defective in violation of his constitutional right to be informed of the specific charge against him. Thus, for failure of the prosecution to prove that he committed *estafa*, the Court acquits petitioner.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 16, 2019 and the Resolution dated December 13, 2019 of the Court of Appeals in CA-G.R. CR No. 38396 are **REVERSED** and **SET ASIDE**. Petitioner is **ACQUITTED** of the crime of *estafa* defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code.

SO ORDERED.

ROSMARI D. CARANDANG
Associate Justice

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51 *Rocaberte v. People*, 271 Phil. 154 (1991)

52 *See People v. Opemia*, 98 Phil. 698 (1956), cited in *People v. Hon. Reyes*, 195 Phil. 94, 100 (1981).

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
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.

ALEXANDER G. GESMUNDO
Chief Justice