

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS IBIAS AND MELBA IBIAS DE VILLA, ACCUSED-APPELLANTS.

Ponente: LOPEZ, J.

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LOPEZ, J.:

All the constitutive elements of a crime must be alleged in the information and proven beyond reasonable doubt. We observe this dictum in this appeal assailing the December 15, 2010 Decision of the Regional Trial Court.

The antecedents follow.

On June 30, 2005,[1] siblings Jesus Ibias and Melba De Villa sold to Ruben Bagalacsa a riceland for P1,040,000.00 payable in two equal installments. Accordingly, Ruben paid P520,000.00[2] and agreed to deliver the balance on or before July 25, 2005.[3] Ruben also requested for documents pertaining to the ownership of the property and the siblings promised to give them upon full payment of the purchase price.

However, when Ruben was about to pay the remaining installment, Jesus and Melba informed him that the land was no longer for sale.[4] Dismayed, Ruben asked for the return of the amount paid but the siblings refused despite repeated demands.[5] Aggrieved, Ruben filed a complaint-affidavit for estafa through false pretenses and fraudulent acts against the siblings.[6] Finding probable cause,[7] the public prosecutor charged Jesus and Melba with the crime of estafa under Article 315, par. 2(a) of the Revised Penal Code before the RTC docketed as Criminal Case No. IR-7440, thus:

That sometime in [sic] 30 June 2005 at San Isidro, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused having received from the (sic) Mr. Ruben Bagalacsa of San Isidro, Iriga City the amount of Php 520,000.00 as initial payment for the parcel of land offered for sale by the accused with the express obligation on the part of the accused to deliver the documents/papers relative to the said land, upon full payment. When the balance is ready for payment, accused however, far from complying with their aforesaid obligation failed to produce the necessary documents and inspite of repeated demands to return the said amount of Php 520,000.00, did, then and there, willfully, unlawfully and feloniously, failed (sic) to return the said amount and with grave abuse of confidence, misappropriate (sic), misapply (sic) and convert (sic) to their own personal use and benefit, to private complainant's damage and prejudice in the aforesaid amount of Php 520,000.00 and such other damages as may be proven in court.

ACTS CONTRARY TO LAW.[8]

Jesus and Melba denied[9] any misrepresentation and claimed that they already returned the amount of P300,000.00 to Ruben. As proof, they presented a receipt[10] signed by Ruben, affidavits[11] of persons who witnessed the acceptance of payment and a certification[12] from the office of the punong barangay postponing the scheduled mediation between the parties.[13]

In a Decision[14] dated December 15, 2010, the RTC convicted Jesus and Melba of estafa through false pretenses. Dissatisfied, the accused moved for reconsideration[15] but was denied;[16] hence, this appeal.[17] Both accused claimed that the information was fatally defective and that the RTC erroneously convicted them of estafa through

false pretenses although the body of the information averred estafa involving unfaithfulness or abuse of confidence.[18]

We acquit.

Accused-appellants were convicted of the crime of estafa through false pretenses described in Article 315 paragraph 2(a) of the Revised Penal Code. Deceit is indispensable[19] under this class of estafa and requires the confluence of the following elements:

- (1) The accused used fictitious name or false pretense that he possesses (a) power, (b) influence, (c) qualifications, (d) property, (e) credit, (f) agency, (g) business or (h) imaginary transaction, or other similar deceits;
- (2) The accused used such deceitful means prior to or simultaneous with the execution of the fraud;
- (3) The offended party relied on such deceitful means to part with his money or property; and
- (4) The offended party suffered damage.[20]

It is fundamental that every element of the crime must be set out in the information[21] to avoid surprise on the part of the accused and to afford him the opportunity to suitably prepare his defense.[22] No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein.[23] More importantly, the allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived.[24]

Here, the prosecution failed to recite in the information the fraudulent acts that Jesus and Melba supposedly committed. Foremost, there was no allegation that the accused falsely represented themselves as owners of the thing sold or that they withheld any information affecting the status of the land. Absent such facts, the other elements of the crime cannot be established with certainty, particularly, that the accused employed false pretenses executed prior to or simultaneously with the commission of the fraud and that the offended party was induced to part his money because of deceitful means. Time-tested is the doctrine that the felony charged in the information cannot be broadened to include what is not alleged without violating the right of the accused to be informed of the nature and cause of the accusation against him.[25] With this failure, the presumption of innocence in favor of the appellants prevails warranting an acquittal for the crime of estafa through false pretenses.

Nonetheless, as can be gleaned from the information, We are inclined to agree that the appellants were charged with estafa involving unfaithfulness or abuse of confidence under Article 315 paragraph 1(b) of the Revised Penal Code, to wit:

xxx When the balance is ready for payment, accused however, far from complying with their aforesaid obligation failed to produce the necessary documents and inspite of repeated demands to return the said amount of Php 520,000.00, did, then and there, willfully, unlawfully and feloniously, failed (sic) to return the said amount and with grave abuse of confidence, misappropriate (sic), misapply (sic) and convert (sic) to their own personal use and benefit, to private complainant's damage and prejudice xxx. (Emphases Ours).

At this point, We stress that the real nature of a crime is determined by the actual recital of facts in the information and not from the caption nor from the specification of the provision of law alleged to have been violated.[26] Relevantly, the requirements to prove estafa under Article 315 paragraph 1(b) are the following: (a) that money, goods or other personal property is 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; (b) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such

receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) that there is a demand made by the offended party on the offender.[27] The prosecution, however, failed to prove these elements beyond reasonable doubt.

The records are bereft of evidence showing that Jesus and Melba received the P520,000.00 in a fiduciary capacity or under an obligation involving the duty to return the same. What was shown by the prosecution and admitted by the defense is that the amount was given as initial payment for the thing sold. It is settled that in a contract of sale, advance payment becomes the property of the seller and not one held in trust for the buyer.[28] Differently stated, ownership of the purchase price is transferred to the seller upon receipt and is subject to his disposal. Thus, it cannot be said that appellants misappropriated or converted the money. The words "convert" and "misappropriate" connote an 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.[29] Based on these considerations, appellants should be acquitted of estafa involving unfaithfulness or abuse of confidence.

Notwithstanding the reversal of the conviction of the appellants for estafa, they must still reimburse the partial payment since the transaction did not materialize.[30] As aptly held in *People v. Ma Su*,[31] if the thing sold is not delivered and the partial payment of the price is not returned, there is only civil liability.[32] Given that appellants had paid the amount of P300,000.00 to Ruben, they are required to return only the difference which is P220,000.00.

FOR THESE REASONS, the Decision dated December 15, 2010 of the Regional Trial Court is SET ASIDE. Accused-appellants Jesus Ibias and Melba De Villa are ACQUITTED for failure of the prosecution to prove their guilt beyond reasonable doubt. The bond filed by the appellants for their temporary liberty is CANCELED. Accused-appellants, however, are held solidarily liable to pay Ruben Bagalacsa the amount of P220,000.00 as actual damages which shall earn interest at the rate of 6% per annum from date of finality of the judgment until fully paid.[33]

SO ORDERED.

Reyes, J.C., JR., (Chairperson) and Inting, S.B. JJ., concur.

[1] TSN dated July 31, 2006, pp. 5-6. See also TSN dated April 25, 2007, pp. 2-3.

[2] Records, p. 15.

[3] TSN dated July 31, 2006, p. 9.

[4] *Id.*, p. 12. See also TSN dated April 25, 2007, pp. 5-6.

[5] Records, p. 16. See also TSN dated April 25, 2007, p. 7.

[6] *Id.*, pp. 13-14.

[7] *Id.*, p. 6.

[8] *Id.*, pp. 3-4.

[9] *Id.*, pp. 7-8.

[10] *Id.*, p. 344.

[11] *Id.*, pp. 9 and 11.

[12] Id., p. 343.

[13] See also TSN dated July 28, 2009, pp. 5-8.

[14] Records, pp. 356-361.

[15] Id., pp. 363-372.

[16] Id., pp. 377-379.

[17] Id., p. 380.

[18] Rollo, pp. 45-57.

[19] See *People v. Billaber*, 465 Phil. 726.

[20] See *Lopez v. People*, G.R. No. 199294, July 31, 2013; *Aricheta v. People*, G.R. No. 172500, September 21, 2007; and *Cosme, Jr. v. People*, G.R. No. 149753, November 27, 2006.

[21] See Rule 110, Section 8 of the Rules of Court.

[22] See *Pielago v. People of the Philippines*, G.R. No. 202020, March 13, 2013; *Malto v. People*, G.R. No. 164733, September 21, 2007; and *Andaya v. People*, G.R. No. 168486, June 27, 2006.

[23] See Rule 120, Section 4 of the Rules of Court.

[24] *Andaya v. People*, *supra*.

[25] See Section 14(2), Article III, 1987 Constitution; *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 512; *Burgos v. Sandiganbayan*, 459 Phil. 794, 806 (2003).

[26] See *People of the Philippines v. Escosio*, G.R. No. 101742, March 25, 1993. 220 SCRA 475; *Pilapil v. Sandiganbayan*, G.R. No. 101978. April 7, 1993.

[27] See *Jaud v. People of the Philippines*, G.R. No. 171121, August 26, 2008, citing *Chua-Burce v. Court of Appeals*, 387 Phil. 15 (2000); See also *Ceniza-Manantan v. People of the Philippines*, G.R. No. 156248, August 28, 2007.

[28] See *Esguerra v. People*, G.R. No. L-14313, July 26, 1960, citing *Abeto v. People*, 90 Phil. 581.

[29] See *Sy v. People*, G.R. No. L-85785, April 24, 1989; and *Serona v. Court of Appeals*, G.R. No. 130423, November 18, 2002.

[30] See *US v. Figueroa*, 22 Phil. 270.

[31] 90 Phil. 706.

[32] See *People v. Ma Su*, 90 Phil. 706.

[33] See *Nissan Gallery-Ortigas v. Felipe*, G.R. No. 199067, November 11, 2013 citing *Nacar v. Gallery Frames and/or Felipe Barley, Jr.*, G.R. No. 189871, August 13, 2013 citing BSP-MB Circular No. 799 dated May 16, 2013.

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