

NAPOLEON ANTAZO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. L-45278. August 28, 1985

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

This is a petition for certiorari directed against the decision dated October 21, 1976 rendered by, the Court of Appeals, affirming the conviction of the petitioner herein for the crime of estafa by the Court of First Instance of Rizal, in Criminal Case No. 3-26-M. Petitioner prays that the judgment of the courts below which he assails be set aside, and that his acquittal be decreed by this Court.

The antecedent facts of this case disclose that petitioner Napoleon Antazo, a resident of Binañgonan, Rizal, a lawyer and a retired municipal judge, was the owner of a parcel of land known with an area of 1,452 square meters known as Lot No. 2 of Psd-9594, situated at Barrio Calumpang, Binañgonan, Rizal and covered by TCT No. 147525.

In May, 1965, Mariano Medina expressed his interest to buy a portion of said lot from Napoleon Antazo. Antazo and Medina proceeded to the site of the lot and the latter decided to buy a portion of said property, more particularly described as Lot No. 2-A-2 which has an area of 295 square meters.

Subsequently, Antazo and Medina entered into a contract of Purchase and Sale on June 18, 1965. Under this contract, Napoleon Antazo in consideration of the amount of P4,277.00 to be paid to him in installment by the spouses Medina, bound himself to sell the aforementioned Lot 2-A-2; Napoleon Antazo likewise obliged himself to deliver to the said Spouses Medina the title to this portion of land "free from all liens and encumbrances" upon full payment by the said vendees of the purchase price. In their said contract of purchase and sale, it was, however, expressly stipulated therein that before the completion of the installment payments by the vendees, the ownership of the property would remain with Napoleon Antazo.

On August 19, 1965, the vendor, Napoleon Antazo, without the knowledge or consent of Mariano Medina, mortgaged to the Binañgonan Rural Bank for the amount of THREE THOUSAND (P3,000.00) PESOS, the entire Lot No. 2-A, thus including Lot 2-A-2 which earlier, was agreed to be sold to the Medinas. This mortgage to the Binañgonan Rural Bank significantly was discharged only on August 14, 1971.

On July 16, 1966 the Medinas completed their payment of the installments on Lot 2-A-2. Thereupon they demanded from Napoleon Antazo, the delivery of the title for Lot 2-A-2 and the execution of the corresponding absolute Deed of Sale for said property.

On August 12, 1966 Napoleon Antazo executed a deed of absolute sale for the lot in question with a statement in his Deed of Conveyance that the subject land sold is "free from all liens and encumbrances". At that point of time, there was, however, still an existing mortgage thereon in favor of the Binañgonan Rural Bank.

Despite several demands by the vendees Medinas on vendor Antazo, said vendor failed to deliver to them a

separate title covering Lot 2-A-2. Sometime in 1970, the Medinas went to the Register of Deeds of Rizal to investigate the title of the land sold to them by Antazo and it was then that they discovered that there was a mortgage lien on said land in favor of the Binañgonan Rural Bank and that aside from this encumbrance, there was also a levy on execution upon the same land by virtue of the decision of the City Court of Manila, in Civil Case No. 134430, entitled Philippine National Bank, versus Napoleon Antazo, inscribed on September 27, 1967 on the title of the land.

The Medinas through their lawyer, wrote a letter on February 2, 1970, to Napoleon Antazo demanding the delivery to them of a clear title to Lot No. 2-A-2. No reply was made by Antazo to said letter-demand notwithstanding his receipt thereof. Thus, on May 4, 1971, predicated on the facts above-recited, Napoleon Antazo was charged with the crime of estafa before the Court of First Instance of Rizal, Branch VI, Makati. Said criminal case was docketed as Criminal Case No. 326-M.

After trial, the Court of First Instance of Rizal rendered its decision on August 14, 1971, the dispositive portion of which is hereunder quoted:

"WHEREFORE, the Court finds the accused Napoleon Antazo guilty beyond reasonable doubt as principal of the crime of estafa, defined and penalized under paragraph 2, Article 316, Revised Penal Code and there being no mitigating or aggravating circumstance, hereby sentenced him to suffer an imprisonment of two (2) months and one (1) day of arresto mayor and to pay a fine of P4, 277.00 representing the price of the purchased lot paid by Mariano Medina to the defendant with subsidiary imprisonment in case of insolvency at the rate of P2.50 a day, but shall not exceed 1/3 of the principal penalty, nor shall it be more than one (1) year and to pay the costs. "

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The petitioner herein appealed the aforestated decision to the Court of Appeals. On October 21, 1976, the Fifth Division of said Appellate Court affirmed the decision of the trial court with modification but only as to the subsidiary imprisonment of the accused-appellant in case of his failure to pay the imposed fine due to his insolvency, which the Court of Appeals fixed at the rate of EIGHT (P8. 00) PESOS for every day he should serve, but not to exceed one-third of the principal penalty, which shall not also exceed one year.

The facts of this case do not appear to be disputed. The principal issue that should be resolved is whether on the facts found by the courts below, the petitioner, Napoleon Antazo, should be adjudged guilty of misrepresentation, fraud or deceit. The Court of Appeals in its decision stated the following:

"We fully agree with the observation of the trial court that 'as a lawyer and an ex-municipal judge at that, who is conversant with the intricacies of the law, it is likely that the accused inserted the aforementioned phrase to fully convince the complainant of the supposed non-existence of any liability on the disputed property.'

"In his fourth assignment of error, defendant-appellant Napoleon Antazo vainly tried to raise an issue by pointing out that the trial court erred in not applying the ruling of the Court of Appeals — decided case of *People vs. Pedrasa* (62 O.G. 5571). But we have scrutinized the facts involved in both cases — in that and in the instant case — and We cannot but fully agree with the argument of the Solicitor General that the ruling of this Court in *People vs. Pedrasa* cannot be made to apply in the present case. Even assuming 'that the case of *People vs. Guanio* (CA 67 O.G. 4231) did not expressly supersede the *Pedrasa* case, still, the facts of this case and the *Pedrasa* case differ substantially. In the latter case the appellant (*Pedrasa*) was no longer the owner of the land at the time he sold it to the complainant (*Vera*). Neither was the mortgage on the same land valid. x x x". (Decision of the Court of Appeals; CA-G.R. No. 15653-CR, Rollo, pp. 34-35).

We are in complete accord with the observation and pro-nouncements made by the court below in its decision.

Petitioner, however, has raised as before this Court the following questions which he submits to be a legal issue.

"Was there fraud and deceit constitutive of Estafa under Article 316, paragraph 2 of the Revised Penal Code committed by Petitioner when he entered into a Contract of Purchase and Sale on June 18, 1965, on installment basis, and thereafter executing a Deed of Absolute Sale on August 12, 1966 upon completion of the installment payments but prior to the redemption of the mortgage constituted on the entirety of the subdivision lot of which the property in question was included?" (Memorandum for Petitioner, Rollo, p. 119).

The submission of the petitioner herein is that the instant case estafa has not been committed. Petitioner contends that during the execution of the Deed of Absolute Sale, no payment was made either coetaneously or subsequently by the private complainant as full payment had already been made in accordance with the Contract of Purchase and Sale of June 18, 1965. Although Petitioner acknowledges his failure to comply with his obligation to deliver the title of the purchased lot free from all liens and encumbrances, he argues that he is NOT guilty of the fraud or deceit for which he could be indicted for estafa because a mere promise to perform a thing is not a representation which constitutes a deceit, and failure to perform such promise does not change its character. Petitioner maintains that the intention to defraud must exist coetaneous with the alleged deceitful act, citing the pronouncements in this regard made in the case of *People vs. Villarín*, CA-G.R. No. 10598-R, October 31, 1953, 50 O.G. 262).

We find these contentions of Petitioner untenable. We uphold rather the argument of the public respondent *People* that there are two stages in the sales transaction involved in this case, namely: the first stage was when Medina entered into a contract of Purchase and Sale on June 18, 1965, with the Appellant herein, for the purchase of the lot in question for P4,277.00, of which P1, 500. 00 was to be paid in advance by Medina; that this Contract of Purchase and Sale is, merely a contract to sell for it is expressly stated therein that ownership of the property would be retained by Vendor Napoleon Antazo, until the full payment of the price has been made by the Medinas. Until the full price is paid, the obligation of the seller to transfer ownership and deliver a clear title to the property would not yet arise. It is our view however that there already attaches even at that time the inherent commitment of the vendor that the corresponding clear and valid title would be transferred by him to his vendee upon accomplishment by the latter of the stipulated conditions agreed upon by them.

The second stage would be on August 19, 1965 when appellant mortgaged the property to the Binañgonan Rural Bank, presumably with the intention of redeeming it prior to the completion of the installment payments by complainant. When complainant Medina paid the last installment on the purchase price on July 16, 1966, and then demanded the execution of an absolute deed of sale covering the purchased property and the delivery of the title of said land to him, Petitioner Napoleon Antazo prepared and executed the Deed of Absolute Sale (Exhibit B) containing the express warranty that the lot in question is free from all liens and encumbrances when it was not in fact so at that time. It was then still mortgaged in favor of the Binañgonan Rural Bank and there was also a levy on execution on the same land on account of the decision of the City Court of Manila in Civil Case No. 134430, entitled "*Philippine National Bank vs. Napoleon Antazo*" (Exhibit C-2), duly inscribed on the title of said property on September 27, 1967. It cannot be said that there was no money or consideration paid for when the deed of Absolute Sale was executed on August 12, 1966. Such document of sale or conveyance was executed by petitioner because full payment had already been effected previously by complainant Medina, who therefore demanded that the corresponding deed of sale be made.

It would be at this second stage of the transaction when deceit was exercised by Appellant Antazo, a former Municipal Judge of Angono, Rizal. He placed an express warranty in the Deed of Absolute Sale that the lot in question is free from all, liens and encumbrances, when it was not so in fact.

As fraud involves acts or spoken or written words by a party to mislead another into believing a fact to be true when it is not in fact — that express warranty in the Deed of Absolute Sale covering the lot in question (Exhibit B)

that said land is "free from all liens and encumbrances" constitutes the false representation or deceit and one of the elements giving rise to the crime of estafa. (People vs. Galsim, 107 Phil. 303).

Petitioner Antazo cannot rightfully claim that no damages on Complainant Medina was brought about by the false warranty made in the Deed of Absolute Sale. Mariano Medina's damage inherently consists in his inability to receive a property free from encumbrances. As the rightful vendee, he would acquire title to the property but subject to the restrictions of the existing liens. When Mariano Medina entered into a contract of purchase and sale on June 18, 1965 he did not expect that the petitioner herein would later impose encumbrances on the property. It can be logically assumed that herein vendees would have refrained from buying the land or declined to pay the installments agreed upon if they had any inkling that encumbrances would later be imposed on the property by their vendees. For this Court to condone the conduct of the petitioner-appellant would encourage mischievous practices, conducive of much harm to prospective real estate buyers.

The other argument of the petitioner is that the complainant Mariano Medina must be considered to be fully aware of the encumbrances of title of the property in question as such facts are recorded in the Register of Property of Rizal at the time of the execution of the Deed of Absolute Sale on August 12, 1966. On the premise that the registration of the mortgage in favor of the Binañgonan Rural Bank in the Register of Deeds is a notice to the whole world of its existence, petitioner therefore submits that complainant must be presumed in law to have already knowledge of said encumbrance before he completed his payments for the land, negating any inference of deceit for which he could be held criminally liable for.

This contention of petitioner is devoid of merit. For said offense to be committed, it is only enough to consider his false pretenses or misrepresentations in the deed of sale that the subject Lot No. 2-A-2 is unencumbered when in fact a mortgage lien still exists in favor of the rural bank. That such encumbrance is recorded assumes no significance. What is pertinent and relevant is the fact that such false representations of petitioner no less served as the ingredients of deceit foisted on the complainant vendee. Our laws do not compel a vendee to make an inquiry or to undertake an investigation in the Office of the Register of Deeds, to ascertain the status of the property involved. The vendee can rely on the manifestations made to him by his vendor whom he can presume to be trustworthy. What is important is that the vendee must be dealt within good faith by his vendor and the conduct of the petitioner herein in connection with the sale of the subject lot manifestly disclose the contrary. The suppression of material information and the false representations by petitioner that the property which complainant paid for is free from liens and encumbrances is clearly a deception to put off or forestall the petitioner's appellants' concomittant obligation to deliver a clear title to the land sold.

WHEREFORE, the petition for certiorari in this case is hereby dismissed for lack of merit.

SO ORDERED.

Melencio-Herrera, Plana, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

Teehankee, (Chairman), J., no part.

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