

ELBERT TAN, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 110715. December 12, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When an accused files a demurrer to evidence without express leave of court, he is deemed to have waived his right to present his own evidence. Having been unequivocally warned by the trial court that the filing of a demurrer is a waiver of his right to present evidence, herein appellant cannot be allowed to adduce his own after his demurrer is denied.

The Case

Petitioner Elbert Tan assails Respondent Court of Appeals' [1] Decision in CA-G.R. CR No. 09883 promulgated on November 27, 1992 affirming in toto the Regional Trial Court's [2] decision [3] which disposed as follows:

“WHEREFORE, accused Elbert Tan is found guilty beyond reasonable doubt as principal in the crime of estafa as charged in the aforequoted Information; and in line with the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstance shown to have attended the commission of the crime, he is sentenced to suffer an indeterminate penalty of imprisonment from three (3) years, six (6) months and twenty-one (21) days of prision correccional, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and to pay complainant Mariano S. Macias the sum of P60,000.00 as reparation of the damage caused.

With costs de oficio.”

Also assailed in this petition is Respondent Court's [4] Resolution [5] promulgated on June 18, 1993 which denied petitioner's motion for reconsideration for lack of merit.

The Facts

Respondent Court reproduced the facts as found by the trial court, as follows: [6]

“The evidence shows that, sometime in December 1986, complainant [M]ariano S. Macias read an advertisement in a newspaper offering for sale certain four-wheeler Isuzu trucks. Calling up the advertised telephone number, he was able to talk with accused Elbert Tan, and thereafter, pursuant to their appointment, the complainant went to the place of the accused in Grace Park, presumably in Caloocan City.

Told by Tan that the Isuzu trucks for sale were at the two warehouses of the accused, one in Quezon City and the other in Taft Avenue, Pasay City, the complainant decided to see the trucks at the Pasay City warehouse of accused Tan. The complainant and the accused then went to the said warehouse where there were two (2) four-wheeler Isuzu trucks being assembled. Accused Tan represented to the complainant that he owned the trucks and that he was selling them. Macias chose one of the four-wheeler trucks being assembled as the unit he liked. The complainant and the accused then agreed that the complainant would buy the said vehicle at the

price of P92,000.00 with P17,000.00 as down payment and the complainant's school bus, valued at P65,000.00 to be traded in, and the balance of P10,000.00 to be paid to the accused upon the delivery of the truck to the complainant.

On December 15, 1986, complainant Macias paid to accused Tan the amount of P17,000.00 as down payment, and executed a deed of absolute sale transferring to Tan the complainant's school bus at the price of P65,000.00 to be applied as part of the purchase price of the four wheeler Isuzu truck which the complainant bought from the accused.

Subsequently, the mechanic of Macias who was supervising the assembling of the truck purchased by him told the complainant that he suspected that accused Tan was not the owner of the vehicle. Going to the shop where the truck was being assembled to make a verification, the complainant saw a china man named Johnny, supervising the entire shop. Johnny informed the complainant that the trucks in the shop were owned by him and not by accused Tan. Complainant immediately called up Tan and told him about what he learned from Johnny, at the same time advising Tan that he was ready to give the balance of P10,000.00. Tan promised to deliver the truck to the complainant but failed to do so. Thereafter, the complainant tried to contact Tan but the accused avoided and refused to see him.

During the preliminary investigation of the charge for estafa filed by Macias in the Office of the City Fiscal of Pasay City, accused Tan paid the complainant the total sum of P22,000.00 and they executed a compromise agreement where Tan promised to return to the complainant the sum of P45,000.00 instead of P65,000.00, corresponding to the value of the school bus of the complainant which the accused could no longer return. In view of this development, the fiscal's office dropped the charge of estafa against Tan. However, accused Tan failed to comply with the terms of [sic] the compromise agreement and the fiscal's office subsequently filed in court an information of estafa against him."

In an Information dated February 29, 1988, Petitioner Elbert Tan was charged with estafa under paragraph 2(a) of Article 315 of the Revised Penal Code allegedly committed as follows: [7]

"That on or about the 15th day of December, 1986, in Pasay City, Metro Manila, x x x, the above-named accused, Elbert Tan, defrauded and deceived Mariano S. Macias in the following manner to wit: that the herein accused, Elbert Tan, knowing fully well that he is not the owner of one Four-Wheeler Isuzu Truck, sold the same for P92,000.00 in favor of herein complainant Mariano S. Macias, and the latter believing the representation that he is the real owner of the four-wheeler Isuzu truck, in fact gave a cash amount of P17,000.00 and the possession and ownership of a second hand school bus, did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use, benefit and advantage the amount of P17,000.00 and the bus and despite repeated demand failed and refused and still fails and refuses to return the amount of P17,000.00 and the bus to the damage and prejudice of complainant in the total amount of P82,000.00."

During arraignment, petitioner pleaded not guilty. Trial ensued in due course. After the prosecution rested its case, petitioner filed a Motion for Leave to File Demurrer to Evidence dated July 25, 1988. In its Order dated July 29, 1988, [8] the trial court disposed of petitioner's motion in this wise:

"The accused has filed a Motion for Leave to File Demurrer to Evidence, dated July 25, 1988. The Court believes that, under Section 15 of Rule 119 of the 1985 Rules on Criminal Procedure, leave of court to file a demurrer to evidence is not necessary. It lies solely within the discretion of the accused whether or not to file a demurrer to evidence. However, the accused is warned that, pursuant to the said section, if he files a demurrer to evidence, he is deemed to have waived his right to adduce evidence.

WHEREFORE, the instant motion for leave of court to file a demurrer to evidence is not given due course. The Court is leaving it to the discretion of the accused whether or not to file a demurrer to evidence. x x x." (Underscoring supplied.)

Notwithstanding the said order, petitioner subsequently filed a demurrer “on the ground of insufficiency of evidence.” [9] The prosecution opposed the demurrer contending that the evidence presented could sustain conviction and that the compromise agreement between private complainant and petitioner did not extinguish his criminal liability.

In an Order dated December 9, 1988, the trial court denied petitioner’s demurrer to evidence: [10]

“In view of all the foregoing, the Demurrer to Evidence dated August 19, 1988, is denied.

Since under section 15, Rule 119, of the 1985 Rules on Criminal Procedure, an accused who files a demurrer to evidence is deemed to have waived his right to present evidence, and under the same section, as amended, which amendment took effect on October 1, 1988, an accused who files a demurrer to evidence without leave of court is also considered to have abandoned his right to adduce evidence, this case is considered submitted for decision on the basis of the proofs submitted by the prosecution.

However, the prosecution and the defense may submit their respective memoranda within ten (10) days from receipt of a copy of this order.”

Petitioner’s motion for reconsideration of the above order was likewise denied. On April 28, 1989, the trial court convicted petitioner of the crime charged. His appeal to Respondent Court proved unavailing. Hence, this petition for review. [11]

The Issues

Petitioner assails Respondent Court’s Decision on the following grounds: [12]

“17. The Honorable Court of Appeals has committed grave abuse of discretion amounting to lack of jurisdiction in affirming in toto the decision of the trial court.

18. The Honorable Court of Appeals has decided questions of substance in a way not in accord with law or with the applicable decisions of this Honorable Court.

19. The Honorable Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision.”

The Solicitor General clarifies the issues as follows:

1. Whether or not there was novation in the case at bar. [13]
2. Whether petitioner has lost his right to present evidence. [14]

We will first resolve the second issue before we examine the substantive defense raised by petitioner.

The Court’s Ruling

The petition is not meritorious.

First Issue: May Petitioner Be Allowed to

Present His Evidence?

Petitioner contends that the trial court, “instead of granting or denying the ‘Motion for Leave of Court to File Demurrer to Evidence’ expressly[,] did not give due course to it.” Thus, in his memorandum submitted to the trial court, he prayed that the order “denying” the demurrer be reconsidered or, as an alternative, that the act of “not giving due course” to the motion for leave to file demurrer “be considered an implied leave of court.” [15]

The Solicitor General, representing the People of the Philippines, argues that petitioner “cannot avail of the October 1, 1988 amendment [to the Rules of Court] because the same requires that the demurrer to evidence should be made with leave of court”; in the present case, the motion for leave was “denied” by the trial court. [16] The Solicitor General contends further that *Oñas vs. Sandiganbayan* [17] is inapplicable because the demurrer in that case contained a reservation that it was “without prejudice to her right to adduce evidence.” Because petitioner in the present case did not make a similar reservation, he “has already lost his right to present evidence.” [18]

As a rule, the resolution of a motion to dismiss or a demurrer to evidence is left to the exercise of sound judicial discretion. Unless there is a grave abuse thereof amounting to lack or excess of jurisdiction, the trial court’s denial of a motion to dismiss may not be disturbed. [19] The trial court did not give due course to petitioner’s Motion for Leave to File Demurrer to Evidence. It could not have done otherwise; granting or denying the motion would have served no purpose. The Rules of Court, which were in effect when the trial court acted on the motion for leave to file a demurrer, did not distinguish a demurrer filed with leave of court from one filed without leave. Section 15 of Rule 119 of the Rules of Court at that time read:

“Section 15. Demurrer to Evidence. -- When after the prosecution has rested its case, the accused files a motion to dismiss the case on the ground of insufficiency of evidence, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.”

In unmistakable terms, the foregoing rule provided that a demurrer to evidence constituted a waiver of the right to adduce evidence. It was immaterial whether a leave of court to file a demurrer was obtained or not.

Thus, the trial court prudently warned petitioner in its Order dated July 29, 1988, that “pursuant to the said section, if he files a demurrer to evidence, he is deemed to have waived his right to adduce evidence.” [20] Petitioner ignored such warning and filed a demurrer. In light of the rule in effect at that time, petitioner is deemed to have waived his right to adduce evidence for his defense.

Petitioner prays that the Order of the trial court dated July 29, 1988 be considered an implied grant of a leave of court and calls for the application of the new amendments to the Rules of Court in respect of the filing of a demurrer to evidence. [21] Section 15 of Rule 119 of the Rules of Court as amended in 1988 [22] reads:

“Sec. 15. Demurrer to evidence. -- After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.” (Underscoring supplied.)

On the basis of the foregoing underscored portion of the Rules, it is clear that petitioner’s argument is completely bereft of merit. As noted earlier, the July 29, 1988 Order of the trial court was explicit in warning petitioner that the filing of a demurrer was a waiver of his right to adduce evidence. In no way can this order be interpreted as giving petitioner a leave, even an implied one, to present evidence in the event the trial court denied his demurrer. Nevertheless, petitioner counters that he is merely praying for said order to be considered as an implied leave. We rule, however, that the amendments to Section 15, Rule 119 of the Rules of Court, allows an accused to adduce evidence on his behalf only when he obtained an express leave of court prior to the filing of his demurrer. Hence, even if the July 29, 1988 Order of the trial court were to be interpreted as an implied leave, petitioner would still not acquire the right to present evidence. In clear and unequivocal language, the Rules of Court as amended allow such right only when there is an express leave of court.

Oñas vs. Sandiganbayan [23] is not applicable to the present case. Oñas' demurrer contained a reservation that the demurrer was "without prejudice to her right to adduce evidence." When the trial court overruled Oñas' demurrer, she seasonably took an appeal by certiorari to this Court pleading for a reversal of her conviction or for a remand of the case to the trial court to enable her to adduce her evidence. This Court, applying the 1988 amendments to the Rules of Court, granted the petition of Oñas and remanded the case to the trial court for reception of her evidence. The Court interpreted such reservation as a prayer for explicit leave to present evidence in case of denial of her demurrer to evidence. In the case at bar, petitioner's motion did not contain a similar reservation. Quite the contrary, it bears repeating that the trial court warned petitioner that filing a demurrer to evidence was a waiver of the right to present evidence.

Second Issue: Is Novation a Defense in Estafa?

We now deal with the substantive aspect of the case.

Petitioner contends that "novation or compromise agreement took place before the criminal information was filed in court." [24] Thus, he maintains that he did not incur any criminal liability, "because up to that time, the original trust relation may be converted x x x into an ordinary creditor-debtor situation, where complainant is barred to insist on the original trust."

Again, petitioner's contention is not meritorious. In the first place, novation is not one of the grounds prescribed by the Revised Penal Code for the extinction of criminal liability. [25] In the second place, it was not shown that there was an unmistakable intent to extinguish the original relationship. Such intent cannot be inferred from the partial satisfaction or payment of the hoodwinked amount. In any event, novation could not extinguish petitioner's criminal liability for a public offense. Thus, we held in *People vs. Nery*: [26]

"x x x, it is well-settled that criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion though complete reparation should have been made of the damage suffered by the offended party (*U.S. vs. Mendozona*, 2 Phil. 353; *U.S. vs. Ontengco*, 4 Phil. 144; *U.S. vs. Rodriguez*, 9 Phil. 153; *People vs. Leachon*, 56 Phil. 739; *Javier vs. People*, 70 Phil. 550). As was said in the case of *People vs. Gervacio* (G.R. No. L-7705, December 24, 1957), 'a criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense.' The fact, therefore, that the accused herein had, with the consent of the offended party, assumed the obligation of paying the rentals, which he collected, out of his own salary after he had committed the misappropriation does not obliterate the criminal liability already incurred' (*People vs. Benitez*, L-15923, June 30, 1960)."

In this case, the prosecution was able to establish the elements of estafa: (1) the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) the offended party or third party suffered damage or prejudice capable of pecuniary estimation. [27] Estafa was consummated when petitioner falsely pretended to complainant that he owned the Isuzu truck he was selling, and when private complainant delivered the down payment and his school bus to petitioner.

Such liability cannot be modified or extinguished by the execution of a compromise agreement or by the partial payment of the sum of P22,000, representing the reimbursement for the down payment of P17,000 and the expense of P5,000 for the transport of the school bus to Manila. The payment merely lessened, but did not extinguish, the civil liability of accused. Hence, in *Nery*, the subsequent agreement of the accused and the complainant for the payment of the defrauded amount and the partial payment thereof did not totally extinguish the civil liability of the accused. The trial court ordered the accused to indemnify the sum of the unpaid balance, and this award was affirmed by the Supreme Court.

WHEREFORE, premises considered, the petition is DENIED and the assailed Decision is AFFIRMED in toto. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Eleventh Division composed of J. Justo P. Torres, Jr. (subsequently appointed as Supreme Court Justice), ponente; and JJ. Manuel C. Herrera and Pacita Cañizares-Nye, concurring.

[2] Branch 116 of Pasay City.

[3] Penned by Judge Alfredo J. Gustilo.

[4] With J. Reynato S. Puno, now a member of this Court, signing in lieu of J. Manuel C. Herrera.

[5] Rollo, p. 60.

[6] Petitioner does not dispute these facts and raises only questions of law in accordance with Rule 45.

[7] Rollo, p. 32.

[8] Ibid., p. 22.

[9] Rollo, p. 23.

[10] December 9, 1988 Order, p. 6; Rollo, p. 37.

[11] The case was deemed submitted for resolution upon receipt by the Court on April 22, 1996 of petitioner's manifestation stating that he was adopting his petition as his memorandum.

[12] Petition, p. 4; Rollo, p. 15.

[13] Solicitor General's Comment, p. 10; Rollo, p. 84.

[14] Ibid., p. 13; Rollo, p. 87.

[15] Petition, pp. 7-8; Rollo, pp. 18-19.

[16] Solicitor General's Comment, p. 14; Rollo, p. 88.

[17] 178 SCRA 261, October 2, 1989; per Narvasa, J (now Chief Justice).

[18] Solicitor General's Comment, p. 16; Rollo, p. 90.

[19] *People vs. Mercado*, 159 SCRA 453, 459, March 30, 1988. On judicial discretion see also *People vs. Tami*, 244 SCRA 1, 24, May 2, 1995; *Re: Judge Silverio S. Tayao, RTC, Br. 143, Makati*, 229 SCRA 723, 729, February 7, 1994 citing in turn cases of *People vs. Raba*, 103 Phil. 384 (1958); *Ocampo vs. Bernabe*, 77 Phil. 55 (1946); *People vs. San Diego*, 26 SCRA 522 (1968); *Mendoza vs. Court of First Instance of Quezon*, 51 SCRA 369 (1973); *People vs. Sola*, 103 SCRA 393 (1981); *Allarde vs. Laggui*, 220 SCRA 1, 5, March 17, 1993.

[20] *Supra*.

[21] Petition, pp. 7-8; Rollo, pp. 18-19.

[22] The 1988 amendments took effect on November 13, 1988. (Resolution of the Court en banc dated 2 February 1989, cited in *Oñas vs. Sandiganbayan*, 178 SCRA 261, 265, October 3, 1989.)

[23] Supra, pp. 266-267.

[24] Petition, p. 6; Rollo, p. 17.

[25] Articles 89 & 94, Revised Penal Code.

[26] 10 SCRA 244, 248, February 5, 1964, per Reyes, J.B. L., J.

[27] People vs. Bautista, 241 SCRA 216, 222, February 9, 1995.

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