

ELIZA PABLO Y MARTIN, FELOMINA JACOB E Y MIRANDA, AND VICTORIA ROBERTO Y LIMMIPAO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 138090. November 11, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us for review is the decision[1] of the Court of Appeals promulgated on March 19, 1999, which affirmed in toto the judgment of the Regional Trial Court of Baguio City (Branch 5), convicting petitioners Eliza Pablo and Felomina Jacob e together with accused Victoria Roberto of the crime of Estafa.

Petitioners Eliza and Felomina together with accused Victoria were charged in the Information, to wit:

That on or about the 1[st] day of February, 1993, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, by means of deceit and misrepresentations, did then and there willfully, unlawfully and feloniously defraud one EVANGELINE BATES y YONGA-AN, in the total amount of P330,000.00, in the following manner, to wit: the said accused induced complainant to deliver to them the amount of P330,000.00 by convincing the complainant that the money will be used to pay the back taxes and defray the expenses for the processing of a land which the accused claimed they are working on to be titled and thereafter subdivide among themselves individually, and the complainant, misled by the representations of the accused delivered to them the amount of P330,000.00, which said accused received and thereafter misappropriated, misapplied and converted the amount to their own personal use and benefit and in spite of demands from them to return the amount upon discovery of the deceit, the accused failed to do so to the damage and prejudice of EVANGELINE BATES y YONGA-AN in the amount of THREE HUNDRED THIRTY THOUSAND (P330,000.00) PESOS, Philippine Currency.

CONTRARY TO LAW.[2]

Upon arraignment, petitioners Eliza and Felomina together with accused Victoria pleaded not guilty. Trial ensued thereafter. During the presentation of defense evidence, accused Victoria jumped bail.[3]

The facts of the case as found by the trial court and adopted by the appellate court, are as follows:

The complainant Evangeline Bates gave evidence to the effect that in the last week of January 1993, the three accused approached her. Eliza, her townmate at Tadian, Mt. Province, introduced Victoria and Felomina to her. The three convinced her to contribute P330,000.00 as her share in the payment of the back taxes due on a parcel of land owned by the late Pulmano Molintas and located at Gibraltar Road, Baguio City, and once the title is validated she will be assigned a 2,500-square meter portion of the land. Because Eliza is her townmate and since Victoria assured her that her son is married to a daughter of Pulmano, she agreed.

Thus, starting January 27, 1993, at the Dainty Restaurant on Session Road, Evangeline gave P30,000.00 to Victoria (Exhibit “A”); P100,000.00 on February 1, 1993 (Exhibit “B”); and P202,000.00 on February 9, 1993

(Exhibit “C”). On all these occasions Eliza and Felomina were present and signed as witnesses the receipts issued by Victoria.

Evangeline gave more than P330,000.00, or the total amount of P332,000.00, because the three accused represented to her that they needed expenses in following up the papers of the land. In fact, on January 21, 1993, she gave Eliza another P1,000.00 for the three accused’s expenses in going to San Fabian, Pangasinan (Exhibit “E”). On February 6, 1993, she again gave another P9,000.00 to Engr. Orlando Figuerres for survey services and plans (Exhibit “D”). But under date of February 26, 1993, Victoria, with Eliza and Felomina as guarantors and witnesses, acknowledged receipt from Evangeline of the total amount of P337,150.00 only for the payment of back taxes and validation of the title of Pulmano Molintas with the express obligation that should there be a failure to pay the said back taxes and validation of title, the amount shall be returned to Evangeline; otherwise, the title shall be delivered to her (Exhibit “I” or “5”).

Subsequently, Evangeline found out that instead of paying for the back taxes and validation of the property, the three accused divided the money among themselves as follows: Victoria – P176,380.00 (Exhibit “H” or “4”); Eliza – P79,380.00 (Exhibit “F” or “2”); and Felomina – P81,380.00 (Exhibit “G” or “3”).

Evangeline demanded the return of her money and the three accused executed their respective promissory notes (Id.) to pay the amount each one had misappropriated at the end of June 1993. Up to the present, however, Evangeline has not yet been paid.

The accused Victoria Roberto partially testified on direct examination and then she jumped bail and has not since appeared to continue her testimony and, more importantly, to submit herself to cross-examination. Hence, at the instance of the prosecution, her partial testimony was stricken off the record.

With this development, the other accused, Eliza Pablo and Felomina Jacobe, alleged that it was Victoria who had conceived of the venture regarding the land of the late Pulmano Molintas and she invited them to join her. In turn, it was Eliza who brought Evangeline Bates into the picture.

Eliza claimed that they gave the money that came from Evangeline, together with their own money, to a certain Romeo Alcantara in Manila who is supposedly the engineer of Molintas. However, Eliza did not say how much of her own money did she give to Alcantara. On the other hand, Felomina averred that she agreed to contribute P200,000.00 and already gave Victoria P40,000.00 but the latter issued her no receipt.

In any event, when Evangeline backed out from the deal, all of them – Victoria, Eliza and Felomina – executed their respective promissory notes to return the former’s money (Exhibits “2” or “B”, “3” or “G” and “4” or “H”). Admittedly, they have not yet paid Evangeline.

The defraudation of Evangeline by the three accused is very evident even from the testimonies given by Eliza and Felomina. They made her believe that they needed her contribution of P330,000.00 to pay the back taxes and validation of a parcel of land belonging to the late Pulmano Molintas, whose daughter is married to a son of Victoria, and, in return, she will be given 2,500-square meter portion of the land; otherwise her money will be given back. However, once she gave her contribution, and more, the accused did not pay any taxes nor undertake any validation work on Pulmano’s supposed title. In fact, there is even no title in the name of Pulmano Molintas that could be validated. What the defense presented is a tax declaration (Exhibit “10”) in the name of Daisy Pacnos, wife of Molintas, which is not a title, much less capable of validation. Moreover, it is indicated on the tax declaration that the original tax declaration is in the name of a certain Acyay. Accordingly, the declaration in the name of Daisy Pacnos is of doubtful validity.

What the accused did was to divide Evangeline’s money among themselves. Their yarn that they gave the money to a certain Romeo Alcantara is an undisguised lie. For they do not even have any receipt to show for it even as the amount runs to hundreds of thousands of pesos.[4]

On the basis thereof, the trial court rendered judgment, the dispositive portion of which reads, as follows:

WHEREFORE, the Court finds and declares the accused ELIZA PABLO y MARTIN, VICTORIA ROBERTO y LIMMIPAO and FELOMINA JACOBÉ y MIRANDA guilty beyond reasonable doubt of the crime of estafa as charged and hereby sentences EACH of them to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to TWENTY (20) YEARS of reclusion temporal, as maximum; to indemnify the offended party, Evangeline Bates, in the following amounts; P79,380.00 to be paid by Eliza Pablo y Martin, P176,380.00 by Victoria Roberto y Limmipao and P81,380.00 by Felomina Jacobé y Miranda, all amounts to bear interest at the legal rate from December 6, 1993, the date of the filing of the Information, until fully paid; and to pay their proportionate share in the costs.

SO ORDERED.[5]

Only petitioners Eliza and Felomina appealed the decision to the Court of Appeals. Accused Victoria was considered to have forfeited her right to appeal as she failed to appear during the promulgation of the judgment of the trial court and she has neither surrendered herself nor has she been arrested.

On appeal, the appellate court rendered herein assailed decision sustaining petitioners' conviction.

Hence, the present petition for review on certiorari under Rule 45 of the Rules of Court on the sole ground:

THE COURT OF APPEALS ERRED IN CONCLUDING THAT PETITIONERS REPRESENTATION TO PRIVATE COMPLAINANT ANENT THE PAYMENT OF EACH TAXES AND THE VALIDATION OF TITLE OVER A PARCEL OF LAND BELONGING TO PULMANO MOLINTAS AMOUNTED TO DECEIT AND FALSE REPRESENTATION DESPITE THE KNOWLEDGE OF PRIVATE COMPLAINANT AS TO THE TRUTH OF SAID REPRESENTATION.[6]

Petitioners claim that there is no deceit nor false pretenses in the instant case because the land subject matter of the payment of back taxes and from which a portion of 2,500 square meters would be apportioned to private complainant upon its validation is existing; that their failure to pay the back taxes and secure the validation of the land is not tantamount to deceit or false pretenses; that Evangeline Bates parted with her money not because she was deceived by them, but because she wanted to own a parcel of land at a bargain.

In its Comment, the Office of the Solicitor General (OSG) contends that the claim of appellants that there can be no deceit or false pretenses because of the existence of the land subject matter of payment of back taxes, is misplaced and misleading; that the decisive question is whether or not petitioners had the intention of fulfilling their alleged part of the bargain to private complainant; that petitioners devised the scheme of validating a title supposedly upon payment of its back taxes to extract money from private complainant for their personal needs.

In their Reply, petitioners merely repeated their disquisitions in their petition.

The petition is devoid of merit.

Petitioners were convicted of the crime of Estafa under Article 315 of the Revised Penal Code which provides:

ART. 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned hereinbelow. . .

. . .

committed by any of the following means:

- With unfaithfulness or abuse of confidence, namely:

. . .

(b)

By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offended 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, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

- By means 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 Court of Appeals held:

The evidence is clear that accused-appellants made a false representation to private complainant that the purported transaction is the payment of back taxes and validation of a parcel of land belonging to the late Pulmano Molintas. With this representation, private complainant, was enticed by the trio to part with her money by contributing the amount of P330,000.00 and in return, she will be given a 2,500-square meter lot. Such promises and assurances of herein appellants are evident from the pertinent testimonies of private complainant.

...

Receipt of the money by appellants from private complainant was evidenced by Exhibits "A", "B", "C", "E" and "I" (Records, pp. 38-40 and 44). Such receipts were affirmed by all the accused upon their execution of individual promissory notes (Exhibits "F", "G" and "H"; Records, pp. 41-43).

Appellants even misrepresented to private complainant that they already paid the back taxes in Manila.

...

Though private complainant knew that the subject land was not titled, appellants made her believe that they can work for the validation of the title of the subject land thereby entitling her to a 2,500-square meter lot.

...

Worse, appellants practically admitted having misappropriated the money of private complainant by dividing it among themselves for their personal use. The promissory notes, by its (sic) execution, (Exhibits "F", "G" and "H") are the best evidence that appellants impliedly acknowledged misuse of complainant's money (TSN, April 5, 1994, pp. 13-15).

We find no cogent reason to disregard the above findings of the appellate court. Petitioners' argument that there was no deceit or false pretenses on their part because the land subject matter of the back taxes actually exists, utterly deserves no consideration. As aptly pointed out by the OSG, the same is misplaced and misleading.

Deceit is defined as the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.[7] False pretense is any deceitful practice or device by which another is led to part with the property in the thing taken.[8]

The deceit or false pretense employed by petitioners is the fact that they assured complainant that the amount of P330,000.00 delivered to them and accused Victoria by Evangeline was to pay the back taxes of a certain parcel

of land so that a title may be secured and complainant will be given 2,500 square meters of the subject land.

The failure of petitioners and accused Roberto in not paying the back taxes and in misappropriating the money to their own personal use, constitute the crime of Estafa. Even if the land exists, the crime of Estafa is committed when petitioners and accused Roberto convinced complainant to part with her money on the basis of their assurance that they will pay the back taxes due on the land so as to secure a title over the land and a portion thereof titled in the name of complainant.

WHEREFORE, the petition is DENIED for utter lack of merit. The assailed decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Callejo, Sr., and Chico-Nazario, JJ., concur.

Puno, J., on official leave.

Tinga, J., on leave.

[1] Penned by Justice Presbitero J. Velasco, Jr. (now Court Administrator) and concurred in by Justices Consuelo Ynares-Santiago (now Associate Justice of the Supreme Court) and B.A. Adefuin-de la Cruz (now retired).

[2] Records, p. 201.

[3] Order dated July 29, 1004; Records, p. 260.

[4] Records, pp. 199-200.

[5] Records, p. 1.

[6] Rollo, p. 15.

[7] People vs. Menil, Jr., 340 SCRA 125, 142 (2000).

[8] People vs. Avila, 44 Phil 720, 728 (1923).

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