

CARMELITO A. MONTANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 141980. December 07, 2001*

Ponente: DE LEON, JR., J.

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Before the Court is an appeal by certiorari under Rule 45 of the revised Rules of Court, assailing the Decision[1] dated May 12, 1999 of the Court of Appeals, which affirmed the Decision[2] of the Regional Trial Court, Branch 61, Makati City, convicting the petitioner-appellant, Carmelito A. Montano, of two (2) counts of the crime of estafa, and its subsequent Resolution dated February 15, 2000 denying petitioner's motion for reconsideration.

On June 2, 1988, the private complainants, Dra. Rosario Ballecer and her mother, Lourdes Ballecer, each entered into separate contracts denominated as "Reservation of Offer to Purchase" with the petitioner in his capacity as general manager of Legarda Pine Home involving two (2) townhouse units valued at Seven Hundred Fifty Thousand Pesos (P750,000.00) per unit. Under paragraph VII(A) of the contracts, the management of Legarda Pine Home, represented by the petitioner, promised to deliver possession of the two (2) townhouse units to the private complainants after one year from October 1, 1988. Accordingly, Dra. Ballecer and her mother paid the petitioner the sums of Three Hundred Seventy-Five Thousand Pesos (P375,000.00) and Two Hundred Fifty Thousand Pesos (P250,000.00) respectively, as downpayment.

On September 4, 1988, a Contract to Sell was executed by and between the Legarda Pine Home, represented by the petitioner, and KRC Trading Corporation, represented by private complainant, Dra. Rosario Ballecer, covering the same townhouse unit subject matter of the Reservation of Offer to Purchase entered into by the parties. As in the contract of June 2, 1988, the Contract to Sell also contains a stipulation wherein petitioner promised to deliver possession of the subject townhouse unit to the private complainant after one year from October 1, 1988.

Despite the lapse of one year from October 1, 1988, the petitioner failed to deliver to the private complainants the two (2) townhouse units. Petitioner also failed to return the money he received, as downpayment, from the private complainants notwithstanding verbal and written demands.

The private complainants then filed before the City Prosecutor's Office of Makati City complaints against the petitioner for two (2) counts of the crime of estafa as defined and penalized under Article 315, par. 2(a) of the Revised Penal Code; and ultimately, two (2) cases of estafa, docketed as Criminal Cases Nos. 94-5330 to 31, were filed against the petitioner in the Regional Trial Court, Branch 61, Makati City. After joint trial on the merits, the trial court found the petitioner guilty as charged in the two (2) separate informations in those two (2) cases and sentenced him to suffer the indeterminate penalty of seven (7) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum, in each case. Petitioner was also ordered to pay the private complainants, Dra. Rosario Ballecer and Lourdes Ballecer, the amounts of Three Hundred Seventy-Five Thousand Pesos (P375,000.00) and Two Hundred Fifty Thousand Pesos (P250,000.00), respectively, and to pay the costs.

His motion for reconsideration was denied by the trial court. Petitioner's recourse to the Court of Appeals proved futile as the appellate court affirmed in toto the judgment of the trial court in its Decision dated May 12, 1999 and in its Resolution dated February 15, 2000 denying his motion for reconsideration.

In the instant appeal by certiorari, the appellant raised the following assignment of errors:

A

IN THE ASSAILED DECISION AND RESOLUTION, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S CONVICTION OF PETITIONER NOTWITHSTANDING THAT THE PROCEEDINGS HAD BELOW WERE TAINTED WITH THE VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT TO BE PROPERLY INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM.

B

IN THE ASSAILED DECISION AND RESOLUTION, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT PETITIONER'S LIABILITY, IF ANY, IS ONLY CIVIL AND NOT CRIMINAL, THE ELEMENTS OF THE CRIME OF WHICH HE IS CHARGED NOT HAVING BEEN PROVED BY THE PROSECUTION BEYOND REASONABLE DOUBT.

C

IN THE ASSAILED DECISION AND RESOLUTION, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT PETITIONER'S LIABILITY, IF ANY, IS ONLY CIVIL AND NOT CRIMINAL, THE REAL NATURE OF THE CONTROVERSY BETWEEN THE PARTIES ARISING AS IT DID MERELY FROM A SIMPLE BREACH OF A TYPICAL BUSINESS CONTRACT.[3]

In substance, the petitioner contends that the basis of the judgment of the trial court convicting him of two (2) counts of the crime of estafa, which was affirmed by the Court of Appeals, that is, his alleged promise to build townhouse units and deliver possession thereof to private complainants one (1) year after October 1, 1988, was not alleged in the two (2) separate informations in these cases as constituting the false pretenses and deceit that induced them to part with their money. Under the second and third assigned errors, which are related and hence, will be discussed together hereunder, the petitioner contends that his liability under the two (2) informations is only civil in nature on the grounds of simple breach of contract and for failure of the prosecution to prove his guilt for two (2) counts of the crime of estafa beyond reasonable doubt.

We deny the petition for lack of merit.

The grounds raised by the appellant in the instant appeal by certiorari are actually mere rehash of his arguments which had already been adequately and correctly passed upon by the Court of Appeals in its appealed decision. On the alleged violation of the constitutional right of the appellant to be informed of the nature and cause of the accusation against him, the real question or issue is whether or not he performed the acts alleged in the information in the manner therein set forth.[4]

The petitioner-appellant, Carmelito A. Montano, was charged with two (2) counts of the crime of estafa as defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code in two (2) separate Informations which, save for the name of the complainants and amounts involved,[5] are identically worded, thus:

Criminal Case No. 94-5330:

That in or about and during the period comprise from June 2, 1988 to December 6, 1988, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named

accused did then and there wilfully, unlawfully and feloniously defraud Dra. Rosario Ballecer as follows: Said accused, by means of false manifestations fraudulently represented to Dra. Rosario Ballecer that "Legarda Pine Home" of which he is the General Manager was a duly organized corporation existing under and by virtue of the laws of the Republic of the Philippines; that said Legarda Pine Home was the owner of a property located at the corner of Marcos Highway and Legarda Road, Baguio City upon which as (sic) townhouses were to be built by Legarda Pine Home, knowing said manifestations and representations to be false and fraudulent; by cajolery and deceit induced Dra. Rosario Ballecer to pay the sum of P375,000.00 as downpayment for purchase of 1 town houses (sic) unit at Legarda Pine Home as in fact accused received the sum of P375,000.00 knowing that Legarda Pine Home is not a corporation nor was it an owner/developer of the property located at the corner of Marcos Highway to Legarda Road, Baguio City and the accused once in possession of the amount of P375,000.00 did then and there wilfully, unlawfully and feloniously despite demands with intent to defraud misappropriate misapply and convert said amount to his own personal use and benefit and to the damage and prejudice of said Dra. Rosario Ballecer in the amount of P375,000.00.

CONTRARY TO LAW.

A close scrutiny of the two (2) separate informations in these cases clearly and unmistakably describe the acts of deceit and false pretenses employed by the petitioner constituting his fraudulent representations to the private complainants that townhouse units would be built on the property located at the corner of Marcos Highway and Legarda Road, Baguio City and that the said property is allegedly owned by Legarda Pine Home of which he is the general manager, when in fact it is not, with the end of soliciting funds from them in the guise of a contract for the purchase of two (2) townhouse units which ultimately were not constructed. After analyzing the evidence presented during the trial, the trial court succinctly concluded:

[T]hat the prosecution has duly established the element of deceit, consisting of the false pretense, or fraudulent representation of accused that he was going to construct several townhouses for the BALLECERS, and on said false pretenses, the BALLECERS were induced to give their money to accused.[6]

Hence, appellant's claim that the decision of the trial court was based solely on his promise to deliver the townhouse units one year after October 1, 1988, is misleading and reflective of his desperate attempt to avoid his responsibility for the charges under the separate informations in these cases.

Likewise, we find no cogent reason to deviate from the ruling of the trial court, as affirmed in toto by the appellate court, finding the appellant guilty beyond reasonable doubt of two (2) counts of the crime of estafa. From the respective testimonies of the private complainants which were found to be credible, it has been established that on June 2, 1988, the petitioner induced the private complainants to buy two (2) townhouse units to be constructed on a lot situated at the corner of Marcos Highway and Legarda Road in Baguio City which he misrepresented to be owned by Legarda Pine Home of which the petitioner claimed to be the general manager. To further induce the private complainants, petitioner informed them that the lot in question would be developed into an exclusive community consisting of forty-two (42) units of townhouse with an area of 86.04 square meters each; and that he undisputedly promised to turn over to the private complainants the possession of the two (2) townhouse units one year from October 1, 1988. Consequently, private complainants paid the petitioner the total amount of Six Hundred Twenty Five Thousand Pesos (P625,000.00) as downpayment for the purchase of two (2) townhouse units. After the lapse of one year from October 1, 1988, petitioner failed to deliver the possession thereof contrary to his written promise. It was also established that no construction of townhouse was undertaken; that Legarda Pine Home of which petitioner is the sole owner and general manager, is not actually the owner of the subject lot in Baguio City;^[7] and that petitioner has no right or authority to offer for sale the proposed townhouse units in question.

The elements of the crime of estafa, are: 1) there must be a false pretense, fraudulent act or fraudulent means; 2)

such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; 3) the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means; and 4) as a result thereof, the offended party suffered damage.[8] The act of the petitioner of deliberately and fraudulently misrepresenting to the private complainants that Legarda Pine Home of which he is the general manager, is the owner of the subject lot in Baguio City on which townhouse units would be built and that he has the right and authority to offer for sale the proposed townhouse units, when in fact he has none, so that he could, as in fact he collected money as downpayment for two (2) townhouse units from the private complainants and his failure to return the amounts that he had collected from them despite several demands, and considering that the townhouse units were never constructed, constitute the crime of estafa as defined and penalized under Article 315, par. 2(a) of the Revised Penal Code.

However, we modify the penalties imposed on the petitioner by the trial court and affirmed by the appellate court in view of the prevailing jurisprudence on the matter. Article 315, par. 2(a) of the Revised Penal Code on the penalty for the crime of estafa involving an amount that exceeds Twenty Two Thousand Pesos (P22,000.00), provides that:

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

1[st]. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over P12,000 pesos but does not exceed P22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional P10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. xxx

The above-quoted legal provision has been construed by the Supreme Court in this wise:

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be "that which, in view of the attending circumstances, could be properly imposed" under the Revised Penal Code, and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

The fact that the amounts involved in the instant case exceed P22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for the estafa charge against accused-appellant is prision correccional maximum to prision mayor minimum, the penalty next lower would then be prision correccional minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months.[9]

WHEREFORE, the instant appeal by certiorari is DENIED for lack of merit. The assailed Decision dated May 12, 1999 of the Court of Appeals is AFFIRMED subject to the sole modification that the prison term which the appellant Carmelito Montano shall suffer is the indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to twenty (20) years of reclusion temporal, as maximum, in each of Criminal Cases Nos. 94-5330 and 94-5331.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Quisumbing, JJ., concur.

Buena, J., on official leave.

[1] Penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Artemon D. Luna and Conchita Carpio Morales, Second Division, in CA-G.R. CR No. 19996, Rollo, pp. 40-52.

[2] Penned by Judge Fernando V. Gorospe, Jr., Rollo, pp. 56-60.

[3] Petition, Rollo, pp. 13-38.

[4] *People v. Labado*, 98 SCRA 736, 747 (1980).

[5] In Criminal Case No. 94-5331, the private complainant was Lourdes Ballecer involving the amount of P250,000.00.

[6] Decision of the RTC dated February 27, 1996, Rollo, pp. 56-60.

[7] Rollo, pp. 56-60.

[8] *People v. Juego*, 298 SCRA 22, 33 (1998).

[9] *Marcelo v. C. A.*, G. R. No. 128513 dated December 27, 2000; *People v. Fajardo*, G. R. No. 128583 dated November 22, 2000; *People v. Saulo*, G. R. No. 125903 dated November 15, 2000; *People v. Ladera*, G. R. No. 131922 dated November 15, 2000; *People v. Menil, Jr.*, G. R. No. 115054-66 dated September 12, 2000; *People v. Gabres*, 267 SCRA 581, 595-596 (1997).

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